



EFFECTIVE LAW IN AN EFFECTIVE STATE

*Local conditions in the global context in the face
of 21st century challenges of fighting crime.*

SEXUAL CRIMES IN POLAND. THE ESSENCE AND SCOPE OF THE PHENOMENON

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Introduction

This analysis deals with the complex phenomenon of sexual crime which brings out strong emotions. At the very beginning, it should be underlined that this type of crime has for many years been dependent on the social mentality, including the mentality of lawyers¹, which makes this subject extremely topical and difficult to study.

Considering the multi-theme nature of the study area, the author will analyse the general situation of sexual crime from the perspective of statistical data. Selected solutions adopted in the Penal Code of 6 June 1997 will be analysed successively². Firstly, the crime of rape and the discussions around it will be analyzed. Secondly, the analysis will cover a prevention measure in the form of pharmacological treatment which is criticized in the literature on the subject.

The analysis will also cover solutions adopted in other legal systems, in particular in the Swedish law, which, due to the historically applicable solutions in the territory of the Kingdom of Sweden, are very useful for these considerations. The comparative legal aspect will be twofold, for on the one hand it will enable the search for possible solutions to the challenges facing Polish law, and on the other hand it will ensure better understanding of the discussion present in the Polish doctrine.

¹ Międzybrodzki B., *Problematyka przestępczości seksualnej w latach 40. i 50. XX w. Trudności badawcze*, Sensus Istoriae Vol. X (2013/1), p. 40.

² Polish Journal of Laws of 1997 No. 88 item 553.

Statistical data

One of the most important elements showing the level of difficulty related to sexual crime is the statistical data concerning committed sexual offenses in comparison with their actual number. The reason for this is the high dark number of sexual crimes, which results, among others, from the victims' fear of the perpetrators and social pressure.

Art. 197 of the Penal Code of 6 June 1997³ (hereinafter: the PC) is of key importance for this category of prohibited acts. Between 2015 to 2020, 7,503 offences were detected in Poland. In the period from 2015 to 2019 the number of offences had been increasing. In 2015, the number of detected offences was 1,144, while in 2019 this number increased to 1,354 of detected offences. The highest number of offences was identified in 2016 and amounted to 1,383 cases⁴.

In the case of an offence under Art. 200 of the PC, i.e. sexual abuse of a minor, in 2015 the number of identified offences was 1,096, while in 2016 this figure increased to 1,241 cases, and in 2017 to 1,324. Then, in 2018 this number increased further to 1,438 identified offences, and finally in 2019 1,489 offences under Art. 200 of the PC were detected⁵.

In the case of an offence under Art. 200a of the PC, i.e. seduction of a minor under the age of 15 with the use of an ICT system or telecommunications network, the number of identified offences has also increased in recent years. For example, in 2015, 275 offences of this type were identified, while in 2017 there were as many as 339, and in 2018 the number was 626 detected cases. Moving on to 2018, the figure was 475 detected offences and in 2019 there were 423⁶. In the case of the offence of promoting paedophilia under Art. 200b of the PC, this number significantly increased in 2019 to 66 detected offences, where only 2 offences of this type were detected in 2015⁷.

This statistics shows that in certain years peaks of detected sexual offences are visible. This may be due to the fact that sexual offences, in particular those committed against a minor, cause social outrage, making them extremely susceptible to actions within the framework of penal populism. Therefore, if a particular crime is widely publicized in the media, there is increased political activity in

³ Polish Journal of Laws of 1997 No. 88 item 553.

⁴ Source: <https://statystyka.policja.pl/st/przestepstwa-ogolem/przestepstwa-kryminalne/zgwalczenie/122293,Zgwalczenie.html> accessed on: 29.05.2021.

⁵ Source: <https://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-6/63501,Seksualne-wykorzystanie-maloletniego-art-200.html> accessed on: 26.05.2021.

⁶ Source: <https://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-6/64005,Uwodzenie-maloletniego-ponizej-lat-15-z-wykorzystaniem-systemu-teleinformatyczne.html> accessed on: 26.05.2021.

⁷ Source: <https://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-6/64006,Propagowanie-pedofilii-art-200b.html> accessed on: 26.05.2021.

the form of a proposal to make criminal liability more severe or to introduce new types of prohibited acts to the PC.

It is suggested that this state of affairs explains the interval intensification of activities by law enforcement agencies aimed at detecting a specific category of offences, which in turn leads to a change in statistical data⁸.

⁸ Widacki J., Szuba-Boroń A., *Przestępstwo zgwałcenia w Polsce w latach 1999-2017*, *Archiwum kryminologii*, 2019, Vol. XLI No. 2, p. 280.

Doubts regarding the crime of rape under Art. 197 of the Penal Code against a comparative background

The literature suggests that in accordance with the Polish criminal law, the crime of rape is committed when there was no express consent of the person to the specific behaviour of the perpetrator⁹. This consent is understood as the person showing no resistance. This leads to the conclusion that in the Polish law there is a theory of sexual freedom, which is opposed to the theory of sexual autonomy which assumes that the lack of consent on the part of the other person will meet the criteria of rape.

The consent of the other person in this case is of vital importance, because if it is expressed, the criteria of the type of prohibited act under Art. 197 of the PC will not be met. In the case of lack of consent, the literature emphasizes the need to demonstrate this attitude expressly¹⁰. It is underlined that a manifestation of lack of consent is resistance on the part of the other person, which can be understood as a physical but also non-physical opposition to sexual activities, at least in the form of crying¹¹. Additionally, the literature on the subject emphasizes that it is not justified to require the victim to use all available means. This leads to the adoption of a position according to which, by showing resistance, the victim should clearly oppose the sexual intercourse, and in this case breaking the victim's resistance will meet the criteria of the crime of rape¹².

Considering the adopted solution, the mistake regarding whether the resistance by the victim is apparent seems to be an interesting issue. An example of this type of situation provided in the literature involves the perpetrator's mistake in assessing resistance as one of the elements of a specific love game¹³. The Supreme Court addressed these doubts in its judgment of 26 July 2001¹⁴ and decided that it is important that, in order to dispel doubts that may result from the perpetrator's perception of the facts, the victim should show resistance clearly and unambiguously¹⁵.

⁹ Mozgawa M., in: M. Budyn-Kulik, P. Kozłowska-Kalisz, M. Kulik, M. Mozgawa, *Kodeks karny. Komentarz aktualizowany*, LEX/el. 2021, Art. 197.

¹⁰ Budyn-Kulik M., in: eds. Królikowski M., Zawłocki R., *Kodeks karny. Część szczególna. Vol. I. Komentarz do artykułów 117-221, 2017*, Komentarz do art. 197.

¹¹ Filar M., Berent M., in J. Bojarski, M. Bojarski, P. Czarnecki, W. Filipkowski, O. Górniok, E. M. Guzik-Makaruk, S. Hoc, P. Hofmański, M. Kalitowski, M. Kulik, L. K. Paprzycki, E. W. Pływaczewski, W. Radecki, A. Sakowicz, Z. Siwik, B. J. Stefańska, R. A. Stefański, L. Tyszkiewicz, A. Wąsek, L. Wilk, M. Filar, M. Berent, *Kodeks karny. Komentarz, ed. V*, Warszawa 2016, Art. 197.

¹² Ibidem.

¹³ Bielski M., in: *Kodeks karny. Część szczególna. Vol. II. Part I. Komentarz do art. 117-211a*, eds. W. Wróbel, A. Zoll, Warszawa 2017, Art. 197.

¹⁴ V KKN 95/99.

¹⁵ Budyn-Kulik M., in: ed. Królikowski M., Zawłocki R., *Kodeks karny. Część szczególna. Tom I. Komentarz do artykułów 117-221, 2017*, Komentarz do art. 197.

The above approach to the analysed type of prohibited act is subject to criticism. First of all, the need to amend Art. 197 of the PC is underlined, which results from the entry into force of the Council of Europe Convention on preventing and combating violence against women and domestic violence of 1 August 2015¹⁶ (hereinafter: the Convention). Art. 36 of the Convention is a provision that directly concerns the crime of rape. Sec. 2 provides a change from the concept of a person's no consent to the concept of consenting to sexual activity or intercourse by a person. The provision reads "*Consent must be given voluntarily as the result of the person's free will*". Consequently, the Convention obliges the Polish legislator to move from the concept of sexual freedom to the concept of sexual autonomy¹⁷. In the end, these changes were not introduced in the PC, which resulted in a situation where the refusal to engage in sexual activity is not clear and obvious enough. This state of affairs was aptly pointed out by the Ombudsman in his message of 13 February 2021 to the Prime Minister entitled "*With consent. The Ombudsman to the Prime Minister to amend the provisions on rape*"¹⁸.

What is interesting is that the discussion on the concept of sexual autonomy occurs not only in the Polish system. The solutions adopted in the Kingdom of Sweden, which had undergone stages of development that were similar to the Polish ones, are particularly noteworthy.

The Swedish equivalent of Art. 197 of the PC, is Chapter 6 § 1 of the Criminal Code of the Kingdom of Sweden of 1 January 1965 (Brottsbalk)¹⁹ (hereinafter: BrB). This provision was the subject of many years' discussion on transition from the concept of sexual freedom to the concept of sexual autonomy²⁰. Finally, the result of these discussions was a change in the approach to the type of the basic offence of rape and the introduction of qualified types in Chapter 6 of the BrB. The draft amendments to the BrB emphasized that the person should consent to the sexual intercourse and this consent should be expressed by word or deed or in some other way²¹.

During work on the amendment to the aforementioned provision, Swedish Prosecutor's Office (Åklagarmyndigheten) expressed their concerns about this solution. In the opinion on the draft amendments to the BrB it was pointed out that the issue of expressing consent may cause difficulties

¹⁶ Council of Europe Convention on preventing and combating violence against women and domestic violence drawn up in Istanbul on 11 May 2011 (Polish Journal of Laws of 8 July 2015, item 961).

¹⁷ Płatek M., *Zgwałcenie. Gdy termin nabiera nowej treści. Pozorny brak zmian i jego skutki*, Archiwum Kryminologii 2018/Tom XL, pp. 264-266.

¹⁸ Source: <https://www.rpo.gov.pl/pl/content/za-zgoda-rpo-do-premiera-o-zmiane-przepisow-w-sprawie-gwaltu>, accessed on 25.05.2021.

¹⁹ Brottsbalk (1962:700).

²⁰ For instance Prop. 2012/13:111 En skärpt sexualbrottslagstiftning; SOU 2016:60 Ett starkare skydd för den sexuella integriteten.

²¹ Prop. 2017/18:177 En ny sexualbrottslagstiftning byggd på frivillighet, pp. 28-29.

when a person participates, for example, in a sexual intercourse voluntarily, but does not express this fact, which may be particularly difficult with the type provided for in Chapter 6 § 1a, i.e. negligent rape. It was also emphasized that this solution, i.e. the lack of consent, would facilitate evidentiary proceedings²². At the same time, it was pointed out that a person's passivity should not be considered in this case as a voluntary participation in sexual activities. Doubts were also raised about the need to give consent every time the type of sexual activity is changed, due to the fact that in practice it seems difficult to give consent every time²³.

As regards lack of consent that occurred in the course sexual activities, it was emphasized that in order to ensure protection for both parties in this case, i.e. legal certainty of one party and the right to consent to the other, more attention should be paid to the way of giving consent itself, which should be expressed overtly and not remain in the inner sphere of the person²⁴. The solution to this problem is the assumption that the person has to make sure that this consent exists not only at the beginning but also during sexual activity or intercourse. At the same time, there were voices that tacit consent should also be accepted as a form of consent. In the end, the Swedish legislator did not decide on this issue, making the requirements for obtaining consent dependent on the general factual circumstances of the case²⁵.

In addition to changing the approach to the basic type of rape, the Swedish legislator has gone a step further. Chapter 6 § 1a of the BrB was introduced into the BrB, which provides for criminal liability for committing the offence of rape with gross negligence expressed in relation to the perpetrator's attitude to the fact whether the other person consented to the intercourse or not²⁶. This involves the situations in which the perpetrator realized that it may be the case that the participation of the other person in the sexual activity is not voluntary, but has nevertheless decided to perform it. It also covers situations where the perpetrator could have taken appropriate steps to ascertain that the other party consented, but did not do it²⁷. During the work on the draft, there was a fear of an excessive extension of criminal liability on this basis, due to the fact that it was combined with the transition to the concept of sexual autonomy²⁸.

²² Prop. 2017/18:177 En ny sexualbrottslagstiftning byggd på frivillighet, pp. 30-31.

²³ Prop. 2017/18:177 En ny sexualbrottslagstiftning byggd på frivillighet, p. 32.

²⁴ Prop. 2017/18:177 En ny sexualbrottslagstiftning byggd på frivillighet, pp. 33-34.

²⁵ Prop. 2017/18:177 En ny sexualbrottslagstiftning byggd på frivillighet, p. 34.

²⁶ Prop. 2017/18:177 En ny sexualbrottslagstiftning byggd på frivillighet, p. 45.

²⁷ Prop. 2017/18:177 En ny sexualbrottslagstiftning byggd på frivillighet, p. 48.

²⁸ Prop. 2017/18:177 En ny sexualbrottslagstiftning byggd på frivillighet, p. 20.

The above preliminary analysis shows that the definition developed by the Swedish legislator regarding the scope of application of the equivalent of Art. 197 of the PC is extremely broad, and thus provides greater protection for the victim. On the other hand, the discussions on the draft amendments also focused on guarantees and legal predictability for the other party to the sexual intercourse. In spite of several years' discussions, the Swedish legislator, decided to adopt the concept of autonomy, which should be deemed an inevitable or even a desirable solution also in the Polish legal reality. The Swedish experience is a valuable guidance for the potential amendment of Art. 197 of the PC, because it will make it possible to use the experience of other systems.

Criminal law response to the so-called paedophile crimes - challenges

This part of the study analyses the criminal law response to sexual crimes against minors. The literature indicates two possible responses to the commission of the so-called "paedophile" crime. The first of them is defined as the model of protection of the local community, which assumes the inability to change the status of the sex offender, and therefore the possibility of criminal law response is either capital punishment²⁹ and life imprisonment³⁰. The other one is referred to as clinical work model and consists among others of teaching the perpetrator to control their own behaviour, and to avoid border situations that create the possibility to commit a crime³¹. It seems that the Polish system offers a solution closer to the clinical work model. However, there are more and more opinions favouring the second approach, which assumes shifting the severity of the criminal response to long-term imprisonment in the case of sex offenders whose victims are minors. There is a proposal to increase the severity of liability for paedophilic offenses with new limits of penalties being from 5 to 30 years, and in the case of qualified types, even life imprisonment³². Such crimes stir intense emotions within the society, which does not help to actually counteract the phenomenon of crime against minors.

²⁹ Mancini C., Daniel P. M., *To Execute or Not to Execute? Examining Public Support for Capital Punishment of Sex Offenders*, *Journal of Criminal Justice* 38, no. 5 (2010), p. 959.

³⁰ Bocheński M., *Trendy w polskiej polityce karnej w zakresie przestępczości seksualnej*, "Czasopismo Prawa Karnego i Nauk Penalnych" 2019, issue 3, p. 132.

³¹ Bocheński M., *Trendy w polskiej polityce karnej w zakresie przestępczości seksualnej*, "Czasopismo Prawa Karnego i Nauk Penalnych" 2019, issue 3, p. 133.

³² Source: <https://www.gov.pl/web/sprawiedliwosc/bezwzgledna-walka-z-pedofilia-rzad-przyjal-pakiet-zmian-przygotowany-w-ministerstwie-sprawiedliwosci> accessed on: 29.05.2021; source: <https://www.pap.pl/aktualnosci/news%2C879765%2Czbigniew-ziobro-naszym-obowiazkiem-jest-podjecie-kwestii-zaostrenia-kar> accessed on: 27.05.2021.

Drug therapy

Under the current legal framework, the preventive measure stipulated in Art. 93a § 1 of the PC, namely "therapy" is of vital importance. However, this is not a novelty in the Polish system, as this type of measure had previously been regulated in Art. 95 a of the PC and was criticized in the literature on the subject³³. Its basic assumption was to offer treatment to perpetrators who suffer from mental health disorders, personality disorders, as well as disorders of sexual preferences³⁴.

In 2015, the legislator decided to amend the system of preventive measures, which resulted in, inter alia, Art. 93f § 1 of the PC. Under this provision, as part of a preventive measure, a convict may be required to appear in a place designated by the court on the days indicated by a psychiatrist, sexologist or therapist therefore assuming outpatient treatment in the form of therapy³⁵. It should be emphasized here that, in order to be effective, such treatment should be undertaken voluntarily³⁶. The situation is similar in the case of drug therapy, the aim of which is to weaken the sexual drive of the offender³⁷. Drug therapy should basically result in the elimination of the risk of a crime being committed in the future. In turn, it is believed that the source of this danger is the committed crime and the offender's mental health³⁸.

The concept of therapy under the PC is quite broad and includes, among others, psychiatric therapy, drug therapy aimed at reducing the sexual drive³⁹. As regards the form of treatment as part of the therapy, it is determined by the therapist at the stage of implementing the preventive measure, which is also justified by the need to constantly adapt the measure to the recent medical progress⁴⁰. The purpose of this preventive measure is to prevent the commission of a crime as a result of a sexual preference disorder. However, the possibility of using this preventive measure is subject to certain limitations, namely in a situation where the implementation of this measure constitutes danger to the life or health of the offender⁴¹.

³³ Weigend E., Długosz J., *Stosowanie środka zabezpieczającego określonego w art. 95a § 1a k.k. w świetle standardów europejskich. Rozważania na tle wyroku ETPC z 17 grudnia 2009 r. w sprawie M. v. Niemcy*, Czasopismo Prawa karnego i nauk penalnych Rok XIV: 2010, issue 4, p. 54.

³⁴ Krajewski M., *System Prawa Karnego, T. 7, komentarz do artykułu 93f, el. Legis.*

³⁵ Pyrcak-Górowska M., in: eds. W. Wróbel, A. Zoll, *Kodeks karny. Część ogólna. Tom I. Komentarz do art. 53-116*, Warszawa 2016, pp. 786-787.

³⁶ Zakrzewski P., in: ed. W. Wróbel, *Nowelizacja prawa karnego 2015. Komentarz*. Kraków 2015, p. 705.

³⁷ Ibidem

³⁸ Zakrzewski P., in: ed. W. Wróbel, *Nowelizacja prawa karnego 2015. Komentarz*. Kraków 2015, p. 706.

³⁹ Pyrcak-Górowska M., in: eds. W. Wróbel, A. Zoll, *Kodeks karny. Część ogólna. Tom I. Komentarz do art. 53-116*, Warsaw 2016, p. 789; I. Zgoliński, *Komentarz do art. 93 (a) Kodeksu karnego*, stan prawny 2018.08.01, el. Lex.

⁴⁰ Zakrzewski P., in: ed. W. Wróbel, *Nowelizacja prawa karnego 2015. Komentarz*. Kraków 2015, pp. 701-702.

⁴¹ Zakrzewski P., in: ed. W. Wróbel, *Nowelizacja prawa karnego 2015. Komentarz*. Kraków 2015, p. 704.

In Art. 93c of the PC, the penal law regulates the conditions that must be met in order for a preventive measure in the form of drug therapy to be imposed. Firstly, the offender must commit one of the offences listed in Art. 93c (3) of the PC. The offences must be committed in connection with the disorder of sexual preferences. On the other hand, it is emphasized that the offender may be referred for the said treatment due to limited sanity pursuant to Art. 93c (2)⁴². Due to the fact that this measure is of a post-penal nature, pursuant to Art. 93d § 3, within 6 months before the release of the offender from prison, a prognosis of the need for therapy after leaving prison is prepared⁴³. Obviously, such term gives rise to many practical doubts e.g. what will happen if the convict is not released from prison after all? It is said that in this case the court's decision to refer the offender to therapy is not binding⁴⁴.

After the preliminary analysis, it should be emphasized that the structure and the preventive measure itself in the form of drug therapy are subject to considerable criticism in the literature on the subject. One of the reasons for the aforementioned criticism is the fact that in practice drugs aimed at reducing the sexual drive have significant side effects, such as alopecia, gynecomastia⁴⁵ or depression in the patient. Therefore, it is emphasized that this measure may not be used in a person if it may pose a threat to their life or health. On the other hand, it is also difficult to imagine that a doctor would administer such drugs against the person's will⁴⁶.

Another difficulty related to the operation of this measure is its compulsory nature, i.e. what may be the potential consequences of the patient's failure to comply with the obligations imposed on them as part of drug therapy. An obvious conclusion is that the actual implementation of the measure, and hence its effectiveness depend on the voluntary cooperation of the person to be treated. Therefore, in the absence of the voluntary cooperation, this measure is ineffective in practice, because it is enough for such person to report to the doctor's office at the indicated time without the need to take medications.

The structural analysis of the preventive measure in the form of drug therapy shows that at a given stage it is a measure that is difficult to enforce due to a potential conflict with fundamental rights regulated in the Basic Law. Although the legislator has made an attempt to solve

⁴² Barczak-Oplustil A., in: ed. W. Wróbel, *Nowelizacja prawa karnego 2015. Komentarz*. Kraków 2015, p. 692; Barczak-Oplustil A., in: ed. W. Wróbel, A. Zoll, *Kodeks karny. Część ogólna. Tom I. Komentarz do art. 53-116*, Warszawa 2016, p. 766.

⁴³ Królikowski M., *Środki zabezpieczające* in: ed. P. Wiliński, *Obrońca i pełnomocnik w procesie karnym po 1 lipca 2015 r. Przewodnik po zmianach*, el. Lex.

⁴⁴ Pyrcak-Górowska M., in: ed. W. Wróbel, A. Zoll, *Kodeks karny. Część ogólna. Tom I. Komentarz do art. 53-116*, Warsaw 2016, s. 775.

⁴⁵ Wilkowska-Płóciennik A., in: Stefański R., *Kodeks karny. Komentarz*. 2018, Komentarz do artykułu 95a, el. Legalis; Mozgawa M., *Komentarz aktualizowany do art. 93 (f) Kodeksu karnego, stan prawny 2018.11.15*, el. LEX.

⁴⁶ Krajewski K., *System Prawa Karnego, T. 7, komentarz do artykułu 93f*, el. Legalis.

this problem, it nevertheless raises a lot of controversy and therefore is ineffective. These attempts are reflected in Art. 244b § 1 of the PC which provides for criminal liability for failure to comply with the obligations imposed on the offender as part of the preventive measure. This Article potentially penalizes, among other things, failure to undergo treatment as a preventive measure in the form of drug therapy. Such approach is, however, subject to criticism due to the fact that in reality such persons should not be punished in the event of failure to comply with the obligations imposed by drug therapy - on the contrary – they require further help⁴⁷.

It is also argued that this provision raises doubts as to its compliance with the Constitution of the Republic of Poland of 2 April 1997⁴⁸. In its judgment of 4 July 2006⁴⁹, the Constitutional Tribunal referred to compulsory treatment as part of addiction therapy, indicating that failure to undergo treatment under this measure cannot entail criminal liability. If this interpretation is extended to cover also the measure in the form of drug therapy, it should be stated that the liability under Art. 244b § 1 of the PC will be possible only if the person totally fails to show up for therapy at the designated place and time in breach of the obligation imposed on them⁵⁰.

It is also important that there are doubts concerning compliance of current wording of Art. 244b § 1 of the PC with the Constitution due to the potential violation of the principle of *ne bis in idem*, principle, the principles expressed in Art. 30 and Art. 31 § 3 of the Constitution⁵¹. Doubts as to the compliance of the analyzed provision with the Basic Law additionally suggest that only failure to report at a specific place designated by a psychiatrist, sexologist, etc. appears to be punishable. Therefore, there is no doubt, that a person cannot be held liable for failure to undergo drug therapy⁵².

The system of preventive measure in the form of drug therapy established in this way suggests that it is an instrument that cannot be used compulsorily and requires the patient's consent in order to be effective. The literature on the subject emphasizes that the person's cooperation in therapy is of vital importance for the success of the therapy⁵³.

⁴⁷ Zontek W., *Kara za brak poddania się terapii? Konsekwencje wprowadzenia art. 244b k.k.*, Palestra, 7-8/2015, p. 125.

⁴⁸ Polish Journal of Laws of 1997, No. 78, item 483.

⁴⁹ Judgement of the Constitutional Tribunal of 4 July 2006. K 43/05

⁵⁰ Zontek W., *Kara za brak poddania się terapii? Konsekwencje wprowadzenia art. 244b k.k.*, Palestra, 7-8/2015, p. 129.

⁵¹ Opinion of the Helsinki Foundation for Human Rights about the Act of 15 January 2015 on amendment of the Act – Penal Code and some other acts, source: https://www.senat.gov.pl/gfx/senat/userfiles/_public/k8/dokumenty/konsultacje/809/809_hfpc.pdf accessed on: 25.05.2021; W. Zontek, in: ed. W. Wróbel, *Nowelizacja prawa karnego 2015. Komentarz*. Kraków 2015, p. 853.

⁵² Szewczyk M., Wojtaszczyk A., Zontek W., in W. Wróbel, A. Zoll, *Kodeks karny. Część szczególna. Tom II. Komentarz do art. 212-277d (part 2)*, el. Lex, Art. 244b.

⁵³ Wilkowska-Płóciennik W. in: R. Stefański, *Kodeks karny. Komentarz*. 2018, Komentarz do artykułu 93f., el. Legalis.

Brief considerations concerning a preventive measure in the form of drug therapy suggest that this regulation needs to be reconsidered constructively. On the other hand, the very system of responding to sexual crimes against minors may also be questioned due to the fact that it is addressed to people who have already committed a sexual crime against minors. It seems, however, that the very response to the phenomenon of sexual crime against minors should also focus on activities primarily aimed at preventing such crimes, for example by offering help to people who are sexually attracted to minors, which attraction has not yet been materialized in the form of committing a crime. The argument for this kind of approach is the fact that in the overwhelming number of cases, the issue of sexual preference disorder is taken into account only after the offence is committed, i.e. when there is already a victim. Specialist literature indicates that this also has an impact on the treatment process, as *"studies conducted on convicted persons are less relevant to people prone to paedophilia who are hidden in society or suffer silently trying to control their impulses"*⁵⁴.

An interesting example of an attempt to create preventive treatment for paedophilic offenses is the 2016 program run by the Karolinska Institute (Karolinska Institutet) called "Paedophilia at Risk – Investigations of Treatment or Biomarkers" (PRIOTAB)⁵⁵. The aim of the experiment was to reduce the risk of committing sexual crimes, including those against minors, by changing the intended use of the drug *Degarelix*⁵⁶. This drug had so far been used in the treatment of prostate cancer to block the production of hormone testosterone⁵⁷. The main assumption of the program was the voluntary participation of people who had not committed a sexual crime. The aim of the project was to prepare effective treatment with the least possible side effects, as well as to activate people with disorders of sexual preferences in order to develop mechanisms for coping with drives⁵⁸. The program is of great importance because it highlights the need to respond to the phenomenon of paraphilia, including paedophilia, even before the crime is committed, which may reduce the number of sexual crimes committed against minors and thus avoid harm to children who are a vulnerable part of the society.

⁵⁴ *Pessimism about pedophilia*, Harv Ment Health Lett. 2010 Jul;27(1):1-3.

⁵⁵ *Kastrering testas på pedofiler*, Dagens Nyheter 2016, source: <https://www.dn.se/nyheter/sverige/kastrering-testas-pa-pedofiler/> accessed on: 25.05.2021.

⁵⁶ *ibidem*.

⁵⁷ Reaves M., *Pedophilia: Prevention or Paternalism?*, http://www.voicesinbioethics.net/voices-in-bioethics/2016/11/15/pedophilia-prevention-or-paternalism#_edn3=; Rick, Ferenc G., Norman L. Block, and Andrew V. Schally. "An update on the use of degarelix in the treatment of advanced hormone-dependent prostate cancer." *Onco Targets and therapy* 6 (2013): 391, source: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3633549/> accessed on: 25.05.2021.

⁵⁸ Guyoncourt S., *Sweden giving drugs to paedophiles to suppress their sexual urges*, 8 May 2016, Independent, source: <https://www.independent.co.uk/news/sweden-begins-drugs-trial-to-prevent-paedophiles-abusing-children-a7019231.html> accessed on: 25.05.2021.

Another issue that is often overlooked is the fact that paedophilia is usually associated with men. However, studies show that women are responsible for approximately 6% of all paedophilia cases⁵⁹. As the number of paedophilic crimes increases, so will the number of women suffering from paedophilia which is a type of paraphilia⁶⁰.

Paedophilia is also mistakenly seen as a disorder occurring independently from other states of mental health disorders, whereas affective disorders are also most often associated with this condition. It may also result from sexual abuse experienced earlier in life⁶¹, which means that treatment as part of the therapy should take into account the need for targeted measures, for example treatment of depression.

⁵⁹ Current results for the United States of America.

⁶⁰ Guyoncourt S., *Sweden giving drugs to paedophiles to suppress their sexual urges*, 8 May 2016, Independent, source: <https://www.independent.co.uk/news/sweden-begins-drugs-trial-to-prevent-paedophiles-abusing-children-a7019231.html> accessed on: 25.05.2021.

⁶¹ Ibid.

Conclusion

Sexual crime is highly controversial in present-day society. That is why it often becomes an instrument of penal populism and actions taken to counteract it are temporary and of ad hoc nature. Efforts taken to correct the situation and better protect victims of such crimes, should in the opinion of the author of this study, focus on the development of the crime model under Art. 197 of the PC in accordance with the obligations imposed on Poland under international law. This solution should be considered purely pragmatic as it may contribute to reducing the number of sexual crimes. On the other hand, aptly drafted regulations, drawing on the experience of other countries, will ensure better protection of victims not only before a crime is committed, but also in the course of criminal proceedings by significantly facilitated evidentiary proceedings.

The problem of the criminal law response to sexual crimes against minors is also extremely topical. The aforementioned solutions concerning the tightening of criminal liability will not contribute to solving the problem of sexual crime against minors in the long term, because they are a reaction to the result, and not the cause. Ultimately, an appropriate solution is to create a number of instruments to help people with paedophilia which is a disorder, before they commit a crime. They may take the form of various social campaigns encouraging such people to undergo therapy with their anonymity ensured. In the long run, it may help reduce the number of sexual crimes committed against minors and thus decrease the number of victims being the most vulnerable members of our society.

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