

# Special register of child sexual abusers and pedophiles as a necessary preventive measure

Vedije Ratkoceri

Dr. Sc. Vedije RATKOČERI

## Abstract

Child sexual abuse is one of the most severe and extreme forms of child abuse. Child sexual abuse leaves long-term consequences in children, causes severe physical and psychological harm as well as affects the development and the future of the child.

Today, in the contemporary world, one of the effective forms for the prevention of pedophilia is considered the registration of persons convicted of criminal offenses of pedophilia in a special register. The main purpose of registering these perpetrators is the possibility for the general public to have access to this data in order to know these persons (pedophiles) and to be able to prevent the possible actions of these persons. The Republic of North Macedonia has taken such a step, in accordance with these trends, where in 2012 the online portal for perpetrators of criminal offenses of child sexual abuse was launched.

In Albania, the Law on the National Register of Child Sexual Abusers is expected to be adopted very soon, proposed mainly by the non-governmental sector and organizations for the protection of children from sexual abuse.

This paper aims to address the experience in the RMV and review the draft law of Albania, to highlight the need to incorporate a special register of pedophiles in the Republic of

Kosovo, given the statistical data that speak of large number of these crimes in recent years.

**Keywords:** Child sexual abuse, special register, pedophilia, preventive measures, legislation

## 1. Introduction

Child sexual abuse is present in all countries of the world and is a complex product of many social, cultural, economic, and biological factors. As a serious crime, it constitutes one of the most brutal and serious violations of the life and health of children. This heinous crime has long-term and serious consequences for both the victim and his/her family, given that it has to do with immature individual (child) and in the developmental stage. One of the basic rights of children is their protection from abuse, especially sexual abuse. Therefore, all of us, including state institutions, family and society in general have a duty to protect children and to provide them with a living environment that protects, cares and educates. Given the characteristics of children on the one hand and the characteristics of child sexual abusers on the other, state institutions must take all necessary measures to combat and especially prevent these criminal offenses.

According to the diagnostic criteria of the Diagnostic and Statistical Manual of Mental Disorders, Fourth and Fifth Edition, a pedophile is an individual who fantasizes, is sexually aroused or experiences sexual excitements towards adolescent children (generally younger than 13 years) for a period of at least 6 months. So according to this Diagnostic and Statistical Manual of Mental Disorders (DSM-IV; 1) (DSM-V) pedophilia is classified as a *mental disorder*. Given that pedophilia is an uncontrolled lust of the individual towards children and is an opportunity crime, numerous researches show a high level of recidivism of these criminal offenses. In these cases, it should not be expected that the imprisonment of these perpetrators will fulfill its function - rehabilitation and resocialization of the individual. One of the most important measures to prevent child sexual abuse and pedophilia is the registration of persons convicted of child sexual abuse and pedophilia in a special register. This is a widespread practice in many countries, firstly introduced in USA and later in many EU countries. The purpose of the existence of such registries is informing the

public about the data of previously convicted persons for child sexual abuse thus protecting children from such persons.

Offender registries are based on perceptions by the public and lawmakers that sexual offenders pose an especially grave and enduring risk to the safety of the community, that there is a high probability of repeat offending against particularly vulnerable members of society, and that this risk can be effectively managed through the increased monitoring and supervision of known offenders (Sample & Kadleck, 2008). Registration is also intended to deter individuals from committing offenses, both in relation to general deterrence (whereby individuals who have not yet committed or been detected for sex crimes will refrain from committing such crimes to avoid being placed on a registry) and specific deterrence (whereby those on the registry will be less likely to commit further sex crimes because they are under additional surveillance and may be more easily apprehended) (Center for Sex Offender Management [CSOM], 2008a; La Fond, 2005).

The rationale behind sex offender registration and notification is simple and two-fold. First, by creating a continually updated database of information regarding convicted sex offenders, a registration system improves the ability of law enforcement to supervise such offenders and investigate new offenses. Second, community notification enables members of the public to specifically protect themselves and their families from risks in their communities (Lori McPherson, 2016).

The following countries have laws governing sex offender registration and notification systems at the national and/or provincial level: Argentina, Australia, Bermuda, Canada, France, Germany, Ireland (Republic of), Jamaica, Jersey, Kenya, Maldives, Malta, Pitcairn Islands, South Africa, South Korea, Taiwan, Trinidad & Tobago, United Kingdom and the United States. The following countries have considered or are considering sex offender registration and notification laws, but such laws have not yet passed: Austria, Bahamas, Fiji, Finland, Hong Kong, Israel, Malaysia, New Zealand, Switzerland, United Arab Emirates and Zimbabwe (Global Overview of Sex Offender Registration and Notification Systems, 2014). There are, however, some important differences in how the registries have been established. For example, only the USA and South Korea currently allow public access to sex offender information via community notification laws. Six countries, including the UK, Australia, Canada, France, Ireland, and Japan, have sex offender registries but prohibit the public from

accessing the information they contain. This is despite pressure in some countries from victim advocacy groups to change legislation to give the public access to the registries (Long, 2009).

In the Balkan region, Northern Macedonia is the first and the only country so far to have adopted a special law which provides for the registration of child sexual abusers in a special register open to the public. Meanwhile, Albania is in the phase of public debate and civil society initiative to adopt a law that would register child sexual abusers in a special register. We consider that Kosovo also should take such a step in order to combat and prevent these crimes as effectively as possible, as according to Kosovo Police statistics these crimes are in considerable numbers.

In this paper we will address the history of child abuse registries in two countries with different registration and notification systems, the US and the UK. We will address the legislation of the Republic of Northern Macedonia and its modality of registering child sexual abusers. We will also look at the proposed modality in Albania for the registration of child sexual abusers and the need to incorporate such a register in the Republic of Kosovo.

## **2. The history of sex offender registration and notification systems in USA and United Kingdom**

In the late 1990s more than 25 states (of USA) began implementing laws to register sexual abusers (Tullio, 2010, p.197). It all started in 1994 with the *Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act* (abbreviated The Wetterling Act), which was approved in response to the abduction of eleven-year-old Jacob Wetterling by a stranger. This Law obliged states to collect data and keep records of child sexual abusers, even to keep them in a special register, but access to this data was available only to state bodies and not to the general public (Kielsingardf, 2014, p.250). In the same year that this law was approved, seven-year-old Megan Kranka was raped and murdered in the state of New Jersey (Kielsingardf, 2014, p.250). The perpetrator in the Megan Kranka slaying, Jesse Timmendequas, admitted to killing and raping Megan. Timmendequas told the police he feared Megan would convey to her mother he had touched and attempted to kiss her and that he had offered to allow her to pet his novel puppy to entice her into his house. He had

raped Megan, beat her, and used a belt to strangle her. Timmendequas had two prior convictions for sexual assault in 1979 and 1981 and was sentenced to death in the Kanka rape/murder. Timmendequas's death sentence was later commuted to life when the State of New Jersey banned the death penalty (Kielsingardf, 2014, fq. 251). Megan was raped and killed by her neighbor, a registered pedophile, but due to lack of access to the register, her family did not have this information and therefore failed to protect her. With the persistence of the family and the public, New Jersey became the first state to enact a special law (Megan's Act) that gave the public access to data on registered pedophiles (Smith, 2012). Over the next few years, each U.S. state, along with the District of Columbia, passed certain versions of Megan's Law (Smith, 2012). Moreover, the US Supreme Court ruled those laws requiring the registration of sexual abusers and the notification of the community with the data of these persons are in accordance with the Constitution of USA (Tullio, 2010, p. 198).

In 1996, Congress acknowledged the importance of community notification by enacting a federal version of Megan's Law, which amended the Wetterling Act. The Law permits public dissemination of sex offenders' registration information (Lissa Griffin & Kate Blacker, 2010, fq.990).

In 2005, the Department of Justice developed a national sex offender database on the Internet. The website was created in an effort to provide easier access to all fifty states' individual sex offender databases. The following year, the website was renamed the Dru Sjodin National Sex Offender Public Registry; the website's namesake was yet another victim of a convicted sex offender who was not listed on any sex offender registry (Lissa Griffin & Kate Blacker, 2010, fq.990). Meanwhile, on July 27, 2006, the US Congress passed the Sex Offender Registration and Notification Act (SONRA), a comprehensive national registration system to protect the public from sexual abusers. The law was passed in response to several sexual assaults on children that gained much publicity. SONRA requires sexual abusers to be registered throughout the territory and imposes criminal penalties in cases where convicted abusers fail to register (Lissa Griffin & Kate Blacker, 2010, p.991).

The United Kingdom developed a sex offender register and Sarah's Law' to keep communities safe from sex offenders. However, Sarah's Law is quite different from Megan's Law, particularly because there is no direct public access to the United Kingdom's Sex Offender Register (Lissa Griffin & Kate Blacker, 2010, fq.988). The Sex Offenders' Register was created by

the Sex Offenders Act 1997 as a way for police to keep track of known sex offenders. Although the Sex Offenders Act 1997 was subsequently repealed by the Sexual Offences Act 2003 it also mandated sex offender registration. The Sexual Offences Act 2003 was created to make new provisions about sexual offences, their prevention, and the protection of children. The notification requirement in the Sexual Offences Act 2003 mandates convicted sex offenders register with their local police department. Offenders must notify the police within three days of sentencing, which is like the United States notification requirement. Offenders must stay on the register for varying lengths of time depending upon the severity of their sentence. Offenders are required to be on the Register for a minimum of seven years. The most severe offenders must remain on the Register for an indefinite length of time. The information offenders must give to police includes their name, date of birth, national insurance number, address, and any other information prescribed by the Secretary of State. Additionally, an offender must allow the police to take fingerprints and photographs (Lissa Griffin & Kate Blacker, 2010, p.995).

Sarah Payne, hence, the name Sarah's Law was kidnapped and murdered by a previously convicted pedophile in 2000. Her parents subsequently proposed Sarah's Law, which called for the United Kingdom to release the names of local sex offenders, as they are released in the United States under Megan's Law (Lissa Griffin & Kate Blacker, 2010, p.997).

Although open access to this data was not possible despite public demand, in 2007, the Home Office introduced a procedure through which members of the public could request information about suspected child sex offenders. If citizens harbored suspicions about someone with whom they had a personal relationship (like a single mother and her new boyfriend) or someone who had regular, unsupervised contact with their children, they would be able to contact the police and "register an interest" in that person. The police would first determine whether the person of interest had any child sex offense convictions. If the person of interest were a convicted child sex offender, the police would next evaluate whether he posed a serious risk of harm to the children of the person who registered the interest. If the offender posed a serious risk of harm, the police would subsequently disclose the offender's information to the requesting person (Lissa Griffin & Kate Blacker, 2010, p. 998).

### **3. The special register of pedophiles in RNM**

In 2012, in continuation of the activities for prevention and combating sexual abuse of children and pedophilia, among others, the Parliament of the Republic of Northern Macedonia adopted the Law on the Special Register of Persons Convicted by a Final Judgment for Criminal Offenses of child sexual abuse and pedophilia" (Official Gazette of the Republic of Macedonia No. 11/2012, 2012). Based on this law, an online register was created with the personal data of persons convicted of crimes described in Chapter Nineteen of the Criminal Code "Criminal offenses against freedom and gender morality" committed against children under 14 years of age. This register has open access, and everyone can see the persons who are convicted of pedophilia in our country.

The online register ([www.registarnapedofili.mk](http://www.registarnapedofili.mk)) is coordinated by the Ministry of Labor and Social Policy and is managed by the Office for Social Work - Skopje and has been operational since 2012. Here you can find information on convicted persons at the state level, in the respective city or even in the designated neighborhood based on their personal data: name, surname, address and photograph as well as the type of criminal offense for which he/she was convicted, and the sentence imposed. Also, in this register there is the possibility of searching by name and surname if we want to verify whether or not a certain person has been convicted for these criminal offenses.

In the data of these persons, it is also emphasized whether the person in question is serving a sentence or is released. In addition to this information for the purpose of prevention and protection of children, the portal also contains a range of educational information related to pedophilia and its prevention.

Pedophiles in this register stay for a period of 10 years after release from prison and if during this period they do not repeat the crime then their data will be deleted.

The register contains data on persons convicted by a final judgment for 11 criminal offenses against gender freedom and gender morality for minors. According to Article 3 of the Law on the Special Register of Persons Convicted of Crimes of Child Sexual Abuse and Pedophilia, the criminal offenses included in the Register are:

- Rape (Article 186 paragraph 2)
- Abuse of a disabled person (Article 187 paragraph 2)

- Sexual assault on a child under 14 years of age (Article 188)
- Abuse of position (Article 189 paragraph 2)
- Satisfaction of sexual desires in front of the others (Article 190 paragraph 2 and 3)
- Child prostitution (Article 191-a)
- Showing child pornography (Article 193)
- Production and distribution of child pornography (Article 193-a)
- Fraud for abuse or other sexual act against a child under 14 years of age (Article 193-b)
- Incest (Article 194 paragraph 2)
- Trafficking in children (Article 418-g)

In this portal, up until the time when this research was conducted, there were data for a total of 248 persons convicted by final judgment. So far, 100 people have been released after serving prison sentences. Most of the perpetrators of sexual abuse of children registered in the Register are male, i.e., 237 or (95.5%). Only 4.5% are women who are often male collaborators and helpers, not direct authors. The largest number of criminal offenses committed (in a total of 143 cases) is related to the criminal offense "Sexual assault on a child under 14 years of age" under Article 188 of the criminal Code of RNM.

#### **4. The initiative for incorporation the special register of pedophiles in Albania**

The situation with child sexual abuse appears to be a serious and worrying problem in Albania as well. The Criminal Code of Albania incriminates some criminal offenses that focus on the protection of children mainly under the age of 14 from sexual abuse but also those aged 14-18. Child sexual abuse is incriminated in Article 100 - Sexual or homosexual relations with minors and Article 101 - Violent sexual or homosexual intercourse with a minor who is 14 - 18 years old. There are also some other criminal offenses of a sexual nature which in cases when committed against minors are punished more severely. These criminal offenses are provided in Articles: 107-A - Sexual violence, Article 108 - Immoral acts, Article 108 / A - Sexual harassment, Article 117 - Pornography, Article 121 / A / 3 - Stalking (Criminal Code of Albania, 2014).

Albanian Center Media look in its online portal has presented a chart of cases of pedophilia in Albania in the last ten years (based on decisions of first instance courts). It's about sex crimes against children under 14 years old during the period 2010-2019 at national level. According to these data, there are 92 cases of the crime under Article 100 - sexual or homosexual relations with minors or 26.8 % (Article 100), Article 108 - immoral acts 114 cases (33.2%), Article 121/a/3 - 55 cases or 16%, Article 101 - violent sexual or homosexual intercourse with a minor who is 14-18 years old - 40 cases or 11.7%, Article 108/a - sexual harassment 10.8% or 38 cases, Article 107/a - sexual violence - 3 cases or 0.9 % and Article 117 - Pornography 2 cases or 0.6% (<https://medialook.al/projects/pedophilia-in-albania/>).

Considering this situation, in Albania we see a great commitment of some non-governmental organizations which focus on child protection and with special emphasis on the protection of children from sexual abuse. Thus, the experts of the Office of Free Legal Protection for Children of CRCA / ECPAT Albania, after an intensive work of several months, have prepared for consultation the draft law "National register on Sexual crimes against children", which aims to monitor and control the movements of convicted or self-registered persons as pedophiles, to prevent crimes and sexual violence against children in Albania.

The draft law is based on the legislative experience and best practices of several countries, such as France, the United Kingdom, Canada, Ireland, the United States and North Macedonia. According to this proposal, all persons convicted with a final decision for sexual crimes, will be automatically registered in the Register, while persons who have not committed crimes, but who tend to have sex with children, will have the right to self-declare and self-register in the Register as pedophiles and will benefit free of charge from social and psychological treatment and rehabilitation programs, which will be funded by the responsible Ministry in cooperation with NGOs. The Register will serve all institutions that work with and for children to eliminate the employment of pedophiles in environments where there are children, while the law itself has a strong social and preventive character, enabling any person who is a pedophile to avoid committing sexual crimes. On the other hand, all those who have committed sexual crimes against children and who do not want to accept to attend rehabilitation or psycho-social training programs, will have to report any information and their movements to the police ([---

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The register will function as a database of records of persons who are resident in Albania and who are sentenced by the a national or international court decision for sexual crimes against children; will include persons who are sentenced by a final court decision for criminal sexual crimes with children and will establish a database on persons who have committed criminal offenses of sexual nature with children. This Register will be in an electronic form.

The Main aim of the register is the prevention of sexual crimes against children until the age of 18, identification from the responsible authorities of individuals with high risks towards children, control of the movement of pedophiles and notification according to the specific dispositions of the individuals involved in this issue (<https://www.crca.al/en/national-register-sexual-crimes-against-children-albania/towards-national-register-sexual-crimes>).

The Register will be managed and supported by the Ministry of Interior and the General Police Directorate and will constantly update data declared by the offenders themselves regarding their residence and his/her own movements in or outside the country.

In terms of access, unlike Northern Macedonia for example and some other countries that have open access, in Albania the Register will be accessible only by public and private institutions working with / for children, that by law have a duty to protect children. In this regard, institutions such as schools, NGO's, or penitentiaries, will address the Register with a request to be informed if the person is registered or not. All personal data of all the offenders registered will be protected by law for the protection of personal data.

## **5. Should Kosovo incorporate a special register for child sexual abusers?**

Child sexual abuse is a worrying issue in the Republic of Kosovo as well. According to the data of the Kosovo Police for the period 2013-2018, annually we have about 60 criminal offenses of sexual abuse of persons under 16 years of age. Respectively, in 2013 we have 55 cases, in 2014 - 56 cases, in 2015 - 65 cases, in 2016 we have the highest number - 76 cases, in 2017 - 61 cases and in 2018 - 58 cases. These data speak for a high number

of cases of child sexual abuse on an annual basis for a country with a population like Kosovo.

In Kosovo legislation, persons under the age of eighteen enjoy special criminal-legal protection in the field of sexual relations. This protection of this intimate sphere is even more enforced against persons under the age of sixteen.

In the Criminal Code of Kosovo, sexual abuse of children under the age of 16 and 14 is incriminated in Article 229 - Sexual Assault. According to this article, paragraph 1 emphasizes Whoever touches a person for a sexual purpose or induces such person to touch the perpetrator or another person for a sexual purpose, without the consent of such person, shall be punished by a fine or by imprisonment of up to one (1) year. Further in paragraph 5 and 6 is specified - When the offense provided for in paragraph 1 of this Article is committed against a person under the age of sixteen (16) years, the perpetrator shall be punished by imprisonment of five (5) to ten (10) years (paragraph 5). When the offense provided for in paragraph 1. of this Article is committed against a person under the age of fourteen (14) years, the perpetrator shall be punished by imprisonment of ten (10) to twenty (20) years (paragraph 6). When the offense provided for in paragraph 5. or 6. of this Article results in the death of the victim, the perpetrator shall be punished by imprisonment of not less than fifteen (15) years or by lifelong imprisonment (paragraph 8) (Criminal Code of RKS, 2019). The purpose of this criminal norm is to prevent any kind of sexual arousal with persons under the age of sixteen since these persons are not mentally and sexually maturing for such actions. At this age they are not able to freely understand, judge and decide about their sex life. Early entry into such relationships can cause detrimental consequences for the mental and physical development of their personality. (Commentary on the Criminal Code of KS, 2014).

As can be seen in Article 229 itself, the penalties provided for this criminal offense are quite severe, including the sentence of life imprisonment if it leads to the death of the victim because of abuse. However, despite the harsh sentences, as we have pointed out earlier in this paper, we consider that imprisonment alone is not enough to prevent these crimes. Therefore, we consider that Kosovo should as soon as possible take steps towards the incorporation of the register of pedophiles, with open access, according to the model of Macedonia.

## Conclusions

Despite the different solutions in different countries about the register of child abusers and pedophiles, in the literature we see many arguments for and against the registration and publication of such data of sexual abusers.

Arguments in favor of registration include the alleged high recidivism among sexual abusers, the inadequacy of oversight provisions, and the resulting need to 'track down' these perpetrators for public protection (McAlinden, 2000, p. 75). Children, their rights, and the need to protect them from sexual abuse are the principles that operate in support of the registration of sexual abusers. Articles 3 and 19 of the UN Convention on the Rights of the Child (November 20<sup>th</sup>, 1989), which was adopted unanimously by 168 states, state that the rights of the child and their well-being are important and appropriate legislative measures must be considered to ensure this (McAlinden, 2000, p.86).

On the other hand, opponents of public registers of pedophiles consider that the punitive effects of registers with full disclosure of perpetrators' data include possible vigilance and public labeling of the acquitted offender. Such a mark is an antithesis to rehabilitation efforts because it inevitably leads to community instability and re-imprisonment. It prevents the perpetrator from finding a legal job (in safe professions), forming healthy adult relationships and is counterproductive to therapy, especially behavioral therapy (Kielsgardf, 2014, p.252).

From the analyzed data we can conclude that R. of Kosovo as a country with a relatively small territory and small population has a very high number of pedophiles and perpetrators of criminal offenses related to child sexual abuse. These persons are mainly males and come from different regions throughout the country. We consider that given the mental condition of the pedophile perpetrator, we cannot expect the prison to perform its function and the perpetrators to be rehabilitated. On the contrary, when pedophiles are free, they are potential danger to children, so their registration in such registers and the open access of the public to this data is a very adequate and necessary measure to protect children from such persons.

With the creation of the special Register, a unique record is established, and a database is created that can be used to monitor the case, compare it, improve the legal framework and work to prevent child sexual abuse. This is a positive security measure, especially for children, considering the

child's right to a safe childhood, as well as raising public awareness about this phenomenon, raising the cultural, social, and educational level of citizens for them to recognize it. In this way, primary prevention is done in the context of public awareness of the possible consequences, sanctions, and prevention of the activities of potential violators.

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