

Navigating the Missteps: An In-Depth Critique of Albania's Sex Offender Registry

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ABSTRACT¹

This article critically examines the legislative journey and implications of Albania's Sex Offender Registry Law 62/2023, shedding light on the disconnection between scientific research and public policy formulation. Tracing the historical origins of sex offender registries and contrasting various international models, the study underscores the lack of alignment between the approved law and established research findings. The article highlights the overestimation and misrepresentation of statistical data, the shortcomings in the legislative process, and the absence of a transparent, evidence-based approach. The law's failure to materialize the intended registry within the stipulated timeframe and the inherent limitations of the approved model further emphasize the challenges in creating effective legislation. The findings not only critique the flaws in Law 62/2023 but also reflect broader concerns about utilizing scientific research in shaping legal frameworks, underscoring the need for a more informed and evidence-driven approach to policymaking.

Keywords: sex offender, sex offender registry, Albania, criminal punishment, criminal policy.

1. INTRODUCTION

On June 5, 2020, the heart of Tirana witnessed the gathering of hundreds of individuals spanning different age groups and genders—men and women, young and old—who rallied against violence towards women, rape, and sexual abuse. This collective outcry stemmed from the disturbing events in Babrru, where a 15-year-old girl fell victim to rape and blackmail orchestrated by the school guard and three boys from her neighborhood. Remarkably, this protest, devoid of a centralized organization, started spontaneously through grassroots efforts on social networks.

Simultaneously, an informal group, spurred by the same initiative, proposed the establishment of a national registry of individuals convicted of sex crimes [49]. A change.org petition collected over 40,000 signatures, complemented by a physical petition amassing over 20,000 signatures [12]. However, an attempt to present a bill through citizen-initiated legislation faltered as procedural formalities for the collected signatures were overlooked [13].

This moment of heightened awareness and citizen solidarity became a catalyst for civil society. The genesis of this paper traces back to two distinct civil society groups that seized upon the idea, spawning parallel movements advocating for the approval of legislation on sex offender registration. The bills originating from these movements provided the foundational framework for this research.

The Child Rights Centre Albania (CRCA/ECPAT Albania) spearheaded the drafting of 'Bill No. 1' titled 'On the National Register of Convicts for Sexual Crimes.' After a brief public consultation campaign [8], Member of Parliament (MP) Fatjona Dhimitri formally proposed the bill to the Assembly on February 14, 2021 [9]. Subsequently, MP Erisa Xhixho re-filed the bill on November 5, 2021 [10], with minor differences between the two drafts. The analysis in this paper primarily focuses on the text of the second draft.

'Bill No. 1' introduced a sex offender registry, although not accessible to the public. Registration was confined to offenses strictly of a sexual nature, excluding crimes such as trafficking of women for prostitution. Public institutions and private entities working with or for children could access the register upon request. The General Directorate of the State Police assumed responsibility for data collection and storage, with additional duties allocated to the General Directorate of Prisons. The draft imposed obligations on registered convicts to seek permission before changing their residence, and on institutions to

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consult the register before employing individuals working with children. It also facilitated the voluntary registration of those prone to committing sex crimes. Registration ceased upon rehabilitation, adhering to general criminal law provisions. The draft law further addressed the inclusion of individuals convicted by foreign courts, albeit lacking a clear procedural framework.

Concurrently, an alliance of civil society organizations—comprising the Counseling Line for Women and Girls, the Women's Empowerment Network in Albania, and the Gender Alliance for Development—meticulously examined the recently adopted law no. 54/2019 on citizen-initiated legislation. Subsequently, they proposed 'Bill No. 2,' titled 'On the creation of the national register of perpetrators of sexual offenses.' The Central Election Commission approved the form for collecting signatures in June 2020 [40], and the State Election Commissioner registered the legislative initiative of voters in February 2021 [41]. The bill was submitted to the Assembly on November 10, 2021 [42].

In contrast to 'Bill No. 1,' 'Bill No. 2' was less detailed and lacked certain crucial aspects of registration requirements. It outlined a registry accessible to the public, searchable by area, with searchers required to input their data. Data for the registry originated from various sources, though the coordination process remained unclear, despite the Ministry of Justice being designated as the central authority. The duration of registration correlated with the length of punishment and closely mirrored rehabilitation periods in line with general criminal law principles.

In December 2021, the National Security Committee of the Assembly decided to consolidate the two draft bills into a unified procedure, advocating for the passage of a singular sex offender registry bill [42].

2. ON THE MODELS AND A BRIEF HISTORY OF SEX OFFENDER REGISTRIES

Numerous countries employ sex offender registries as a means of monitoring individuals convicted of sex crimes, a practice often recognized as integral to public protection policies [60]. Historically, the inception of sex offender registries can be traced back to the United States, with the American model influencing legislators globally and instilling a belief among the public that such policies effectively combat sex crimes [12]. In this section, we explore prominent models of sex offender registries, distinguishing between public and non-public variants. Contrary to the terminology, the registry itself plays a secondary role compared to the range of legal requirements imposed on convicts, principally mandating regular updates to law enforcement regarding changes in circumstances such as address or name [60].

In the United States, there was no federal sex offender registry until 1994. Before this, certain states, including

California since 1947, maintained non-public sex offender registries. These originated during the era of 'sexual psychopathy laws,' which suggested that individuals committing sex crimes lacked control over their impulses and required institutionalization [11]. By the 1970s, these laws fell out of favor and were gradually repealed due to their perceived ineffectiveness and injustice [59]. In response to shocking child abuse cases in the early 1990s, the federal government enacted the Wetterling Child Offender and Violent Sexual Offender Registration Act in 1994, compelling states to establish sex offender registries to receive federal funding. Subsequent amendments, such as Megan's Law, further mandated public dissemination of registry information to protect the public.

The Wetterling Law was superseded by Adam Walsh's Law in 2006, introducing the Sex Offender Registration and Notification Act (SORNA) and enhancing the legal framework for public sex offender registries. All 50 states, the District of Columbia, five U.S. Territories, and 137 federally recognized Indian Tribes operate registries and public registry websites, incorporating various community notification schemes [64]. Adam Walsh's Law also brought forth Dru's Law, resulting in the creation of the Dru Sjodin Registry—a comprehensive database of all U.S. sex offenders.

In the United Kingdom, the sex offender registry was established in 1997 and modified in 2003, with separate registries for England/Wales, Scotland, and Northern Ireland. Offenders must report to the police upon release [26], providing personal information, and the duration of registration depends on the sentence imposed. Access to the registry is restricted to law enforcement agencies, with limited exceptions under Sarah's Law for specific child safety inquiries, subject to a stringent screening process [45, 58]. Provisions exist for court-mandated removal from the registry [26], and the UK does not implement community notification schemes [61].

Canada's sex offender registration closely resembles the UK model, with information accessible to law enforcement agencies [27]. However, some provinces have separate public notification schemes for high-risk offenders [44]. Australia introduced the Australian National Child Offender System in 2004, with public access available in Western Australia since 2012 [56]. In France, the National Automated Sexual Offenders Database (FIJAIS) operates exclusively for authorities, aligning with its purpose to prevent sex crimes.

Several European countries, like Germany, lack nationwide sex offender registration systems but employ state-level systems to monitor sex offenders [63]. Poland, on the other hand, has established a sex offender registry with both public and restricted access components. The public register is available online and includes information on the most dangerous offenders, while the restricted

access registry serves law enforcement, employers, and entities working with children.

At the European Union level, sex offender registries are neither mandated nor prohibited. EU regulations stress the need for confidentiality in maintaining criminal records, allowing member states flexibility in implementing measures targeting child sex abuse [3], including registry creation. However, access to these registries is subject to limitations, with data protection standards and constitutional principles guiding their implementation. Notably, EU legislation mandates the provision of information on previous sex crime convictions for individuals working with children. Although efforts to establish a comprehensive EU-wide sex offender registry have been unsuccessful due to priorities on ex-convict rehabilitation and personal data protection, emphasis has been placed on improving information exchange between authorities across borders [57].

3. EVOLUTION OF SEX OFFENDER REGISTRIES AND LEGAL CHALLENGES

In the United States, the genesis of sex offender registries aimed at assisting law enforcement in tracking known sex offenders, initially requiring offenders to register with local law enforcement agencies [6]. However, the advent of the federal sex offender registry shifted the purpose to involve the public in preventing sex crimes [14], enabling them to receive notifications about offenders in their vicinity. The efficacy of public registries in the U.S. is attributed to the incorporation of punitive elements, particularly public shaming [2, 53], and the provision of information for enhanced self-protection against potential threats [14]. Public support for these registries is widespread, as reflected in studies indicating a desire among the American public for information on all types of convicted sex offenders and a belief in the effectiveness of these registries as sex offender management tools [15].

While the constitutionality of sex offender registries in the U.S. has not been fundamentally disputed in court, specific requirements imposed on offenders have been subject to legal challenges. Notably, the retroactive application of registration laws, tested in pivotal cases like *Smith v. Doe* (538 US 84, 2003) and *Connecticut Dept. of Public Safety v. Doe* (538 US 1, 2003), saw the U.S. Supreme Court deeming these laws civil rather than punitive, allowing retroactive application. However, conflicting decisions from state and federal courts have contested the retroactive application, contending that these laws are punitive and, therefore, unconstitutional when applied retroactively [65]. Despite these debates, significant reform in sex offender registration laws in the U.S. has yet to materialize.

In the UK, the impetus behind the sex offender registry was framed within a demand for stricter criminal punishments for sex crimes [30]. The primary purpose was

to ensure the accuracy of information on convicted sex offenders within the police national databases, with the expectation that this would aid in crime prevention, recidivism reduction, and the deterrence of potential offenders [60].

In France, the creation of the National Automated Sexual Offenders Database (FIJAIS) was driven by the goal of preventing the recurrence of sexual offenses, with the system designed to flag and locate non-compliant offenders promptly [46].

FIJAIS faced challenges before the European Court of Human Rights (ECHR), with judgments in cases like *Bouchacourt v. France* (5335/06), *Gardel v. France* (16428/05), and *UK v. France* (22115/06) upholding the French registration scheme, including its retroactive aspect. The ECHR justified this stance by deeming the obligations arising from the registry as proportional and reasonable, asserting that the retroactive power did not contradict human rights principles since the registry itself was not a criminal measure.

In Europe, there has been persistent pressure, as mentioned earlier, to establish public sex offender registries, but these efforts have encountered resistance [28]. The rejection of public registries in Europe stems from the consideration of criminal history as confidential information vital for protecting the convict's privacy and facilitating rehabilitation [29]. Poland's public registry of high-risk offenders faced criticism for its perceived ineffectiveness, lack of integration with other criminal policy elements, and adverse effects on offender rehabilitation [22].

4. CRITICAL ASSESSMENT OF SEX OFFENDER REGISTRIES: A LEGAL AND SOCIOLOGICAL PERSPECTIVE

The examination of sex offender registries' effectiveness gained scholarly attention in the late 1900s to the early 2000s. Initial studies in the United States suggested that these registries generated a false sense of community safety and demonstrated no significant difference in recidivism rates between registered and non-registered offenders [1, 23]. Subsequent research indicated a potential impact on reducing crimes against known victims but not against strangers [32]. While some studies suggested that registration requirements contributed to reduced recidivism by aiding law enforcement [35], others highlighted that community notification did not decrease recidivism and, in some cases, prompted the commission of additional crimes [32]. Moreover, registration laws exhibited a deterrent effect on first-time offenders but raised concerns about the potential underreporting of sex crimes [32, 34, 35].

Later studies failed to demonstrate a substantial decrease in rape rates or the number of sex crime arrests following the implementation of registries or internet access to

registry information [4]. In-depth analyses of residence restrictions in the U.S. did not reveal overall effectiveness in reducing the sex crime rate or in distinguishing between recidivists and new offenders [37, 38, 48]. Recent meta-studies further confirmed that registration and notification laws lacked statistically significant impacts on recidivism rates [39].

Beyond their purported ineffectiveness, the U.S. Sex Offender Registration and Notification Act (SORNA) faced widespread criticism for various reasons. Critiques focused on the absence of judicial discretion in ordering registration, mandatory registration for lesser non-sexual crimes, and the perceived quasi-exile from society resulting from harsh restrictions [18, 52]. Empirical research demonstrated that public notification increased homelessness rates among offenders, perpetuating stigma, instability, and risks for them and their families [15, 52]. Additionally, registries were deemed resource-intensive without justified benefits [34].

A critical aspect of the discourse revolves around the inclusion of minors in sex offender registries. Scholars advocate for separate policies for juvenile sex offender registration, considering rehabilitation goals. In the U.S., where registration and notification laws are deemed non-punitive, arguments have been made that juvenile sex offender registration is cruel and unusual punishment and should be treated as such [55]. Critics contend that sex offender registries place an undue burden on victims for crime prevention [14].

Amid mounting criticism and supported by research findings, proposals have emerged to abolish public notification, curtail registry usage, and redirect resources toward preventing and treating convicted sex offenders [50]. This shift in perspective underscores the need for a comprehensive reevaluation of the efficacy, ethical implications, and societal impact of existing sex offender registry frameworks.

5. ANALYSIS OF REPORTS ACCOMPANYING THE DRAFT BILLS ON SEX OFFENDER REGISTRIES IN ALBANIA

The reports accompanying the draft bills on sex offender registries in Albania lack clarity in justifying the need for such registries and the selection of specific models. The absence of referenced scientific research findings on sex crimes, treatment efficacy for offenders, and the impact of sex offender registries raises concerns. Both reports rely heavily on general statements without proper citation, undermining their credibility and the transparency of the legislative process. As put by Mancini & Mears [7] regarding the U.S. Supreme Court's decisions on sex offender registries, the reports contain overstatements and misinterpretation of existing data to justify the proposals.

While acknowledging the prevalence and severity of sex crimes and their impact on victims, the reports fail to provide statistical information specific to Albania. Official crime statistics in the country are incomplete and fragmented [36], making it challenging to draw reliable conclusions. The figures cited in the reports, such as the number of released sex offenders, minor victims, and suicides, lack clear sources and cannot be verified. The reliance on an NGO's online sex offender database without transparent information collection standards further complicates the assessment.

The reports claim that a sex offender registry would deter recidivism in sex crimes without a thorough evaluation of the actual recidivism rate in Albania. Existing studies on recidivism rates lack specificity regarding sex crimes globally, and even more so in Albania [5, 16, 31], making the effectiveness of the proposed registry difficult to measure accurately.

The reference to French and Dutch models in the CRCA/ECPAT report introduces confusion, as the Netherlands does not have a sex offender registry. The lack of clarity on which EU member state models influenced the draft bills further muddles the legislative foundation. Moreover, the argument that the registry would identify pedophiles for monitoring and treatment demonstrates a misunderstanding of legal and psychiatric concepts. A sex offender registry does not equate to a medical diagnosis of pedophilia, highlighting a critical misconception.

The unusual routes taken by both draft laws to reach the Albanian Parliament, bypassing the Council of Ministers, raise questions about transparency and adherence to proper legislative procedures. The limited historical information available from the Parliament, with records from a single Laws Commission meeting, hinders a comprehensive assessment of the decision-making process. The absence of documented discussions, expert consultations, and scientific information review further diminishes the transparency and integrity of the legislative process.

In conclusion, the reports accompanying the draft bills lack substantive justification, transparency, and reliance on scientific evidence, raising concerns about the robustness and appropriateness of the proposed sex offender registries in Albania.

6. ANALYSIS OF LAW 62/2023, 'ON THE NATIONAL REGISTRY OF CONVICTS FOR SEX CRIMES' IN ALBANIA

The adoption of Law 62/2023 marks a significant step in the establishment of a National Registry of Convicts for Sex Crimes in Albania. However, several notable aspects and potential challenges are identified based on the provided information:

Non-Public Registry:

The decision to create a non-public registry, as opposed to a public one, might be influenced by concerns about constitutionality, data protection, and compliance with EU standards. Public registries are often controversial due to privacy issues and potential negative consequences for the rehabilitation of offenders. The move to a non-public registry aligns with this cautious approach and may reflect a preference for protecting individual rights over public disclosure.

Legislative Transparency:

The lack of clarity in the legislative process, especially the absence of detailed discussions on why a non-public registry was favored, raises questions about legislative transparency. Understanding the considerations and concerns that led to specific choices is essential for evaluating the appropriateness and effectiveness of the adopted law.

Responsibility for Maintenance:

Placing the obligation to maintain the registry on the Albanian State Police and the General Directorate of Prisons aligns with practices in some other countries. However, the absence of reporting requirements for convicts is noteworthy. The reliance on assigned police officers in each district for periodic updates is a common approach but may raise concerns about the accuracy and timeliness of the information.

Reporting Requirements:

The reporting requirement for foreign citizens or stateless individuals to self-report upon the termination of their sentence introduces a potential gap in the registry's completeness. The lack of penalties for non-compliance may further weaken the effectiveness of this provision.

Access Levels and Vagueness:

The law's lack of clarity regarding access levels and categories of users, especially concerning entities like Child Protection Units, the Department of Public Administration, educational institutions, NGOs, and other institutions working with or for children, raises concerns. Ambiguity in these provisions may contribute to the delay in making the registry operational.

Registration Duration and Retroactivity:

The mandate for lifetime registration for all offenders, coupled with retroactive power, aligns with practices in some other jurisdictions. However, the absence of specific provisions for minor defendants and exceptions for crimes like statutory rape committed by minors may raise ethical and legal concerns.

Operational Challenges:

The vagueness and confusion in the law's provisions, particularly regarding access and notification, may pose operational challenges in implementing the registry. Clarifications and additional regulations may be necessary

to facilitate a smooth and effective functioning of the system.

In conclusion, while Law 62/2023 represents a legislative effort to establish a National Registry of Convicts for Sex Crimes in Albania, further clarity, transparency, and adjustments to address potential operational challenges may be needed for the law's effective and ethical implementation.

7. CONCLUSIONS

The analysis of the approval process and the resulting Law 62/2023 on the National Registry of Convicts for Sex Crimes in Albania reveals significant disconnects between legislative actions and scientific research. This process reflected a common theme observed in other jurisdictions—legislators often draft such laws to increase public safety. Meloy et al. [47], while assessing the perceptions of legislators that had been involved in the approval of sex offender registries, wrote that 'most of [these] laws were drafted with hopes of increasing public safety, and policymakers believed their laws were functioning as intended'. However, the disconnection arises when scientific research on the various models and degrees of effectiveness is not adequately considered or utilized in the legislative process, despite the ongoing desire among the scientific community and the general public to see the research being utilized by lawmakers [51].

The failure to use available research, coupled with the overestimation and misrepresentation of statistical data, results on its end in a perceived waste of resources and time. The effort invested in drafting, publicly presenting, and collecting signatures for the public registry model, which ultimately did not materialize, underscores the potential inefficiencies in the legislative process. These inefficiencies are more evident if we consider the presentation of two drafts to the Parliament, the establishment of a working group, and the bypassing of transparency standards in the legislative process. These elements have contributed to shortcomings in the resulting law, emphasizing the importance of a transparent and rigorous legislative procedure.

The identified shortcomings in Law 62/2023, including vagueness in access levels, reporting requirements, and potential operational challenges, may contribute to the failure to create and implement the sex offender registry. A law with deficiencies in clarity and operational aspects can hinder its effective execution.

Furthermore, the research findings highlighted in the analysis suggest that even when the registry is created, it may have a limited impact on the recidivism rate of sex crimes or the prevention of new offenses. The lack of reliable and complete data on sex crimes and recidivism

further complicates the assessment of the registry's effectiveness.

The case of Albania's sex offender registry reinforces the idea that good intentions alone are insufficient to create effective laws. As Thomas Edison once said: 'A good intention, with a bad approach, often leads to a poor result,' this example emphasizes the importance of a well-informed, research-based approach to legislation.

In conclusion, the analysis underscores the need for closer collaboration between legislators and the scientific community. Integrating research findings into the legislative process, ensuring transparency, and addressing identified shortcomings can contribute to developing laws that are well-intentioned, effective, and informed by evidence.

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