
**PROTECTING THE VULNERABLE? ASSESSING THE CONSTITUTIONALITY
OF THE NATIONAL REGISTER FOR SEX OFFENDERS IN RESPECT OF
JUVENILE SEX OFFENDERS – *S v JJ* 2013 2 SACR 599 (WCC) AND *J v
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS* 2014 ZACC 13**

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SUMMARY

This contribution deals with the recent judgments pronouncing on the entering of the particulars of child sex offenders into the register for sex offenders as enunciated in Chapter 6 of the *Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007*. The constitutionality of having juvenile sex offenders' names entered into the National Register of Sex Offenders is scrutinised by the High Court as well as ultimately by the Constitutional Court. A critical analysis specifically of section 50(2) of the *Criminal Law (Sexual Offences and Related Matters) Amendment Act* is embarked upon with specific reference to the lack of discretion afforded to courts in deciding whether the particular offender's details should be entered or not. The judgment delivered by the Constitutional Court is elucidated, where these provisions were declared unconstitutional in respect of child sex offenders. The decision under discussion is of particular relevance as the court was required to assess the constitutionality of the provisions relating to the Register with specific reference to juvenile sex offenders. The Constitutional Court specifically emphasised the need for an individuated discretion in respect of juvenile sex offenders catering specifically for the needs of juvenile sex offenders. The difference between adult sex offenders and juvenile sex offenders is also emphasised. The approaches followed by both the High Court and the Constitutional Court are provided and discussed, conclusions are reached and recommendations are made. It is suggested that in respect of juvenile sex offenders, a more holistic approach should be adopted with due regard to the *Constitution*, the objects of the CJA, and the specific circumstances of the offence. Children should be treated in such a way

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as to promote their dignity as well as their reintegration into society, having regard to the specific circumstances of the offence. In terms of the latter, children should be placed on the Register only if they pose a demonstrable risk and danger to the community.

KEYWORDS: Sexual offences register; sexual offence.