

Medical Pharmacologic Treatment (A. K. A. Chemical Castration) in the Macedonian Criminal Code

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Abstract

The implementation of the new measure of security – pharmacologic medical treatment (a.k.a. chemical castration) in the Macedonian Criminal Code is the most ongoing issue in the criminal theory and practice not only in Macedonia but also in the Balkan region. This measure is the first of its kind implemented in the whole region of the Western Balkan countries. Somehow our country finds itself to be most committed to introducing this measure in our Criminal Code. Therefore, the purpose of this paper is to give a theoretical explanation of the medical pharmacological treatment (chemical castration), to give a comparative approach of this measure in countries that have made chemical castration legal,, to explore the legal nature of this measure and, finally to elaborate the need of its implementation in our justice system so we can finally give comments and recommendation of this legal solution.

Key words: *medical pharmacological treatment, castration, security measures, sanctions, treatment, criminal law, child, sexual act.*

Introduction

In its basic meaning, the measurement of medical – pharmacological treatment is chemical castration and we note that it is different from the

general concept of the general term castration¹. Castration (surgical) represents an invasive method, also known as orchiectomy. It was a punishment for adultery in ancient Egypt, for rape in twelfth century Western Europe, and for homosexuality in thirteenth-century France. In ancient Greece slaves were castrated for commercial purposes. In the USA, it was forced on prisoners of war and slaves. At the beginning of the nineteenth century, the eugenics movement used castration as means of protecting the “welfare of society” by castrating persons with mental deficiencies² that led to sterilization of approximately 60,000 mentally handicapped incarcerated women.³ In Nazi Germany, sex offenders, homosexuals, persons with mental deficiencies and members of certain ethnic groups were all forcefully castrated.⁴ Men were castrated in China and the Middle East in order to prevent them from self – indulgence while they serve as harem guards.⁵ In Germany, the practice of castration during the period 1934 to 1945 arose from the Nazi German Act of November 24, 1933, which resulted in the involuntary castration of sex offenders. Germany also enacted laws governing voluntary castration of sex offenders that remained effective after 1945. Between 1934 and 1944, at least 2,800 sex offenders underwent compulsory castration in Germany, and, between 1955 and 1977, 800 sex offenders were castrated in West Germany.

Surgical castration necessarily differs between women and men. Surgical castration in men means an irreversible procedure that involves removal of the testis, which produce the male hormones and sperm.⁶ It is

¹ Terms like neutering and gonadectomy are also used;

² See *Buck v. Bell*, 274 U.S. 200, 207 (1927);

³ Druhm KW (1997): A welcome return to Draconia: California Penal Law 645, the castration of sex offenders and the constitution. *Albany Law Rev* 61, p. 285–343;

⁴ See Winslade W. (1998): *Castrating Pedophiles Convicted of Sex Offenses Against Children: New Treatment or Old Punishment?*, In *SMU Dedman School of Law Review*, Vol. 349, pp. 386 and Stojanovski, V. (2006): *Surgical Castration of Sex Offenders and its Legality: The Case of the Czech Republic*, Faculty of Law, Masaryk University, PrF D-TPV4 Theoretical Legal Sciences, Doctoral Degree Program Department of Criminal Law VI, pp.4;

⁵ Tauber, S., E. (1940): *Effects of Castration Upon the Sexuality of the Adult Male*, In *Psychosomatic Medicine*;

⁶ Winslade W. (1998): *Castrating Pedophiles Convicted of Sex Offenses Against Children: New Treatment or Old Punishment?*, In *SMU Dedman School of Law Review*, Vol. 349, pp. 386.

assumed that surgical removal of the sex glands will cause a diminution of sex hormones in the body, which will result in the ultimate reduction or abolition of the sex drive.⁷ Surgical castration in women is achieved by removal of the Fallopian tube and the ovaries that is also called an oophorectomy.⁸ Female surgical castration is an intricate procedure that has a relatively high complication rate during surgery.⁹

Nowadays castration (other from medical reasons) is used as a punishment for sexually violent predators that are engaged into sexual intercourse with minors. Generally, the medical criteria necessary for categorizing an individual as an Sexually Violent Predator/Sexually Dangerous Person (SVP/SDP) include findings that: (1) the person has been convicted of offenses determined by the state to constitute a sexually violent crime; (2) the person suffers from a diagnosed mental disorder; and (3) as a result of that disorder, the person is likely to engage in sexually violent offenses.¹⁰ Surgical castration to be considered as high risk operation, as well as humiliating punishment, an irreversible process that deprives one of having children again,¹¹ but nevertheless is still present in modern day societies, such as few states in the US and in the Czech Republic in Europe.¹²

⁷ Ortmann, J. (1980): The Treatment of Sexual Offenders, In International Journal of Law and Psychiatry, pp. 44. But however we must emphasize that this may be restored by taking hormonal drugs that are freely available to buy on the internet;

⁸ See Zachary E. Oswald, (2013): "Off with His ___": Analyzing the Sex Disparity in Chemical Castration Sentences, 19 Michigan Journal of Gender & Law, p. 471-503;

⁹ MDGuidelines: Qophorectomy, MED. DISABILITY ADVISOR (5th Ed. 2012), available at <http://www.mdguidelines.com/easyaccess/oophorectomy> , last access on 31.10.2014;

¹⁰ Weinberger, L., Sreenivasan, S., Garrick, T., Osran, H. (2005): The Impact of Surgical Castration on Sexual Recidivism Risk Among Sexually Violent Predatory Offenders, the Journal of American Academy of Psychiatry and the Law, Vol.33, pp. 16–36;

¹¹ This can be solved, if prior the surgical castration, one freezes sperm or an egg, that can be fertilized in vitro;

¹² See section below about castration in US;

Chemical castration

With the advent of modern hormone therapy it became possible to decrease one's sexual desire by lowering a man's testosterone level. This process is known as chemical castration. The first reported use of the hormonally based medications in order to reduce pathological sexual behavior in men occurred in 1944 when the progesterone hormonal compound diethylstilbestrol was prescribed to lower male testosterone.¹³ During the 1960s, German physicians prescribed anti-androgens in an effort to curb deviant behavior of male paraphilia's.¹⁴ In 1966, John Money became the first US researcher to use medroxyprogesterone acetate (MPA) in the treatment of sex offenders.¹⁵ Other drugs that are used for chemical castration are cyproterone acetate, gonadotropin-releasing hormone analogue triptorelin, and the leuteinizing hormone-releasing hormone antagonists' leuprolide acetate and goserelin.¹⁶ In Europe, chemical castration is performed through weekly chemical injections of a drug called Depo-Provera (the basic component is medroxyprogesterone acetate MPA),¹⁷ which was originally created as a form of female birth control. However we must emphasize that the use of these drugs / treatment has side effects that can be significant. For instance, the use of the Depo-Provera injections both by women and man may cause loss of

¹³ L. Scott, C, MD, and Holmberg, T., MD (2003): Castration of Sex Offenders: Prisoners' Rights Versus Public Safety, *J Am Acad Psychiatry Law* 31, p. 502–9;

¹⁴ Bradford JMW, Pawlak A. (1993): A double-blind placebo crossover study of cyproterone acetate in the treatment of the paraphilias. *Arch Sex Behav* 22, p.383–402;

¹⁵ He administered this drug on to a bisexual transvestite who was in therapy for pedophilic behavior with his six year- old son, See Bradford JMW (1983): Hormonal treatment of sexual offenders. *Bull Am Acad Psychiatry Law* 11, p.159–69 and Lehne GK (2000): The first case of paraphilias treated with Depo-Provera: 40-year outcome. *J Sex Educ Ther* 25, p.213–21;

¹⁶ For more on the drugs see L. Scott, C, MD, and Holmberg, T., MD (2003): Castration of Sex Offenders: Prisoners' Rights Versus Public Safety, *J Am Acad Psychiatry Law* 31, p. 502–9;

¹⁷ Depo-Provera, produced by the Pharmacia & Upjohn Company, is the trade name of medroxyprogesterone acetate (also known as MPA). See Beckman, L. (1998): Chemical Castration: Constitutional Issues of Due Process, Equal Protection, and Cruel and Unusual Punishment, 100 W. VA. L. REV. 853, p. 856-57 (1998);

bone density, impotence, abnormal sperm in men, lowered ejaculation volume, loss of body hair and shrinkage of the prostate and seminal vessels. Women may be exposed to an increasing risk of irregular menstrual bleeding, increased risk of osteoporosis, slightly increased risk of developing breast cancer and increased risk of developing blood clots and stroke.¹⁸

States that have castration in their laws

Currently, chemical castration has been used in various forms, either forcibly as a sentence or as a way for offenders to reduce their jail time, in several countries including Argentina, Australia, Estonia, Israel, Moldova, New Zealand, Poland, Russia, Denmark, Germany, Hungary, France, Norway, Finland, Iceland, Latvia, UK, Belgium, Sweden, Macedonia and Czech Republic.¹⁹ In the United States, nine states authorize castration for convicted sex offenders. Four of these states permit the use of chemical castration only - Georgia, Montana, Oregon and Wisconsin, four allow either chemical or voluntary surgical castration - California, Florida, Iowa, and Louisiana, and one, Texas, provides voluntary surgical castration as the only treatment option.²⁰

Determination of the legal nature of castration

The determination of the legal nature of medical pharmacologic treatment a.k.a. castration is a very hard assignment, since this measure can be

¹⁸ Zachary E. Oswald, (2013): "Off with His ___": Analyzing the Sex Disparity in Chemical Castration Sentences, 19 Michigan Journal of Gender & Law, p. 471-503;

¹⁹ Voluntary chemical castration is practiced today in the UK, France, Belgium, Germany, the Czech Republic, Denmark, Sweden, Hungary and Italy and compulsory in Poland. The Czech Republic is the only country in Europe to have surgical castration.

²⁰ See L. Scott, C, MD, and Holmberg, T., MD (2003): Castration of Sex Offenders: Prisoners' Rights Versus Public Safety, J Am Acad Psychiatry Law 31, p. 502-9;

considered as a punishment or as a treatment, or as measure of security, as is the case with Macedonia. Therefore, we ask the question: What is the most appropriate solution and place for this measure / treatment / punishment, in the legal system? Is it considered more appropriate to declare it as punishment in according to its essence because castration has a more repressive nature than a medical one, or is it a measure of treatment (or measure of security in our system) because one of its aspects is to “cure” the offender of future possible sexual attractions? The first solution, declaring the castration as punishment and placing it in the system of sanctions, on first glance may be seen as appropriate. But after examining the circumstances, we decided that the legal solution in our system is the most appropriate one. Namely, if castration is consider to be a punishment, this presents a series of ethical questions that do not contribute to this solution. This means that the offender is punished with artificial suppression of his sexual desire, with artificial impotence, and other side effects from the *hormonal punishment*, and unnecessary retribution.²¹ It is clear that a punishment without some retribution is impossible, but declaring it as a type of punishment and not a medical measure, means accepting bodily sanctions in the system of criminal sanctions.²²

Our opinion is that the second solution is the only applicable solution in our legal system since the castration can be only placed in the system of measures of security, because castration in our legal system is named medical pharmacological treatment and therefore represents a medical measure.

Defining security measures in our Criminal system

Security measures are measures that are taken in response to the dangerous illness of the offender and the purpose of these measures is to cure

²¹ Миладиновић-Стефановић, Д.(2014): Хемијска Кастрација – Прихватљиво Средство за спречавање кривичних дела против полне слободе према малолетним лицима? **Зборник Радова Правног Факултета У Нишу**, Број 66, pp.51-68;

²² This is prohibited with the Constitution of Macedonia (Constitution and the amendments of the Constitution No. I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX and XXX) Article 11;

that dangerous condition of the offender.²³ There are no other definitions of these measures but they appear to be defined through the goals of their application.²⁴ By this means, according to our Criminal Code, the purpose of the security measures is to eliminate the situations and dangerous conditions that may affect the offender causing him to commit future crimes.²⁵ After the major reform of the criminal and penal system in 2004, our legislature chose the alternative, to reorganize the system of security measures and make them only measures from medicine nature.²⁶

Types of security measures in our Criminal Code are²⁷:

- 1) Obligatory psychiatric treatment, keeping offenders in health institutions;
- 2) Obligatory psychiatric treatment while allowing offenders to live in society;
- 3) Obligatory treatment of alcoholics and drug addicts
- 4) Medic-pharmacological treatment on offenders of the crime sexual assault on a child under the age of 14;

Medical pharmacological treatment can be imposed to the offender only after the criminal sanction of imprisonment has been imposed.²⁸

The sexual offence for which this measurement can be imposed is “Sexual assault against child under the age of 14” for which is provided

²³ See Kambovski, V. (2006): Criminal law – part I, 2-ri Avgust, Stip, pp.747;

²⁴ There is no definition of security measures in the current Criminal Law. In general, these are the compulsory measures of medical and correctional nature. See Chankseliani, M. (2012): PUNISHMENT AND OTHER PENAL MEASURES, European Scientific Journal February /Special/ edition vol. 8, No.2;

²⁵ Article 60 from the Criminal Code;

²⁶ Until 2004, the system of security measures included also three other measures that nowadays are sanctions: prohibition of performing profession, activity and duty, prohibition for driving a motor vehicle, and deporting a stranger from the territory of our state.

²⁷ Article 61 from the Criminal code;

²⁸ Article 62 paragraph 6 from the Criminal code.

criminal sentence - at least 12 years of imprisonment²⁹ for the basic crime, and for its qualified form³⁰ – imprisonment of at least 15 years to life. Our opinion is that this kind of solution is not right. When this measurement can be imposed on someone who has sexual intercourse with a child under the age of 14, why cannot the same measurement be imposed on those who have committed the criminal act “Enticement on sexual intercourse or other sexual acts with a child under the age of 14”³¹ more than twice (recidivism in this crime). When the legislature already introduced this kind of a measurement we do not see the reason why the measurement is limited only to the crime “Sexual assault against child under the age of 14” and not to the crime “Enticement to sexual intercourse or other sexual acts with a child under the age of 14” when the object that is under protection is the same – the sexual integrity of the child under the age of 14 and when the intention of the offender in both acts is the same: sexual intercourse with a child. For comparison in the US, the castration is provided for every sexual act that refers to copulation, penetration with objects or any other form of sexual act.

If the offence is punishable by criminal sentence of lifelong imprisonment, then the court can impose a criminal sentence 40 years of imprisonment if and only the offender agrees to the measurement medical – pharmacological treatment that will last to the end of his life, or to the time that according to the court assessment is required to take the treatment.³²

If the crime is punishable by a sentence of long-term imprisonment of 40 years, the court may impose a sentence of 20 years of imprisonment if the offender agrees to measurement medical-pharmacological treatment that will

²⁹ Article 188 from the Criminal Code;

³⁰ Qualified form is when there are death consequences, or heavy bodily injury or other heavy consequences from the crime, or when the sexual assault is committed from more people, or in a very hurtful and shameful way, Article 188 paragraph 2 from the Criminal Code.

³¹ This criminal provision is addressed for those who are arranging a sexual intercourse or other sexual acts or production of child pornography with children under the age of 14, through computer-communication or in other ways, and if that intention is realized into a meeting with the child. For this crime is provided criminal sentence in the duration of 1 to 5 years imprisonment, Article 198 – b from the Criminal Code.

³² Article 65-a paragraph 2 from the Criminal Code;

last to the end of his life, or to the time that according to the court assessment is required to take the treatment.³³

If the offence is punishable with imprisonment of 20 years, the court may impose the minimum sentence prescribed for this crime if the offender agrees to measurement medical-pharmacological treatment that will last to the end of his life, or to the time that according to the court assessment is required to take the treatment.³⁴

Ways of execution the measurement

The legislature provided that the measurement shall be executed on freedom in a specialized medical facilities, after serving the prison sentence, and the Directorate for execution on criminal sanctions is responsible to supervise the execution of this measure. Also, the Directorate is obliged to inform the court at least once in every six months concerning the execution of the measure and the need for its continuation or termination.

In cases when the offender shall not be subjected to the measure or voluntary leave treatment, then the court may force the measure to be executed in health or other specialized institution.³⁵

But this treatment is not always given on a voluntary basis. The treatment is mandatory and will be imposed without the consent of the offender if the offender has been convicted of a second or more offence. The duration of the treatment is the same as in the other paragraphs in this article - treatment that will last to the end of his life, or to the time that according to the court assessment is required to take the treatment.³⁶ The voluntary basis is in general questionable. How voluntary can it be when the offender is "blackmailed" to accept the treatment or the court will impose sentence that is double then the sentence that will be imposed if he accepts the treatment? For instance, if he is willing accepts the treatment, then instead of long

³³ Article 65-a paragraph 3 from the Criminal Code;

³⁴ Article 65-a paragraph 4 from the Criminal Code;

³⁵ Article 65-a paragraph 6 from the Criminal Code;

³⁶ Article 65-a paragraph 7 from the Criminal Code;

imprisonment of 40 years, the court can impose imprisonment of 20 years. We failed to see that this is really voluntary. Our opinion is that the legislator should use the term “alternatively” therefore he will indicate that choosing the treatment is an alternative to the offender and not a “voluntary” option.

In the Criminal code in article 65-a paragraph 8 requires that the manner of execution of the measure medical-pharmacological treatment be closely regulated with the Law on execution of Sanctions. However, these provisions have yet to be implemented in this Law, and are still an ongoing issue in the legislative body. And ironically, the measure is implemented and entered in force, but the courts cannot impose it because the manner of execution has yet to be arranged. In this way, persons who have committed sexual act against a child under the age of 14, cannot choose to reduce their sentence by accepting the treatment because the provisions for the execution of that treatment have yet to be arranged. In this way they are discriminated against and cannot use the right that is given to them by law. Hypothetically, if the court decides to impose this measure and see if the defendant decides to volunteer for the treatment in order to medroxyprogesterone acetate to reduce the sentence, he is choosing something that he does not have a clue how it will be enforced on him. Because of this, our opinion is that these provisions that are *condition sine qua non* to each other should have been implemented at the same time, instead of implementing the measure first, and after a year or two maybe, implementing the way of its execution. In this legal vacuum period, the measurement is just a “dead letter on paper.” Moreover, in the absence of the provisions for the execution of this treatment, one is deprived of the right to know how he will be treated; is the treatment painful; is the treatment on weekly basis, monthly, every few months or even once a year; what drug will be used; what are the side effect of that drug; are there any conditions related to his specific health that are in collision with that kind of treatment (for instance if he has some kind of a heart condition and the drug that is used for the treatment is in collision with the drugs that he has to take in order for his heart to work correctly); are there alternative treatments with other drugs etc.?

Also, we have to mention that any kind of execution of this measure has serious financial implications. The treatment is very expensive and normally, the treatment will be on the state expenses that ultimately means that all citizens that pay taxes “sponsor” this highly expensive treatment to sex offenders. Unfortunately this is the only solution for the execution of this

treatment, but our state failed to research the financial implications of this treatment and how much will the state have to pay for lifelong treatment in comparison with the expenses of the imprisonment of the same person. For instance, in U.S. there are available information about the cost of the treatment per person and comparison of these costs with the costs of the imprisonment of one person. Namely, from 2002, weekly injections of MPA cost 160 \$ per month.³⁷ This cost is for the drug alone and do not include additional costs involved with the therapy. The difference in cost remains phenomenal, as the average cost of one inmate's incarceration is over \$1,660 per month.³⁸ This difference is magnified when coupled with the fact that incarceration can be fifteen times more expensive per prisoner than for those on parole or probation. In addition, some countries in the US, like Iowa and Louisiana require the offender to pay for his own treatment.³⁹

Reasons of implementing the *medical* measure of security - medical pharmacologic treatment in our Criminal Code

The first reason is apparently to prevent recidivism. Our government officials announced that the measure medical pharmacologic treatment is a response to the frequent recidivism in sexual crimes. But they do not list any research that shows in how many cases there has been recidivism for this crime. Claiming recidivism for one criminal act is very usual, but without any relevant statistical information, claims like these are nothing more than flat statement. Therefore, without any relevant research, the conclusion of a frequent recidivism cannot be relevant. For instance, different research of the phenomenon recidivism in sexual criminal acts came to the opposite results. In

³⁷ See Tullio, E. M. (2010). Chemical Castration for Child Predators: Practical, Effective and Constitutional, Chapman Law Review, Vol.13, p.208, also Миладиновић-Стефановић, Д.(2014): Хемијска Кастрација – Прихватљиво Средство за спречавање кривичних дела против полне слободе према малолетним лицима? **Зборник Радова Правног Факултета У Нишу**, Број 66, pp.51-68,

³⁸ See Tullio, E. M. (2010). Chemical Castration for Child Predators: Practical, Effective and Constitutional, Chapman Law Review, Vol.13, p.208;

³⁹ Tullio, E. M. (2010). Chemical Castration for Child Predators: Practical, Effective and Constitutional, Chapman Law Review, Vol.13, p.208 – 210;

this manner, Langevin⁴⁰ and his coworkers came to results that claim 61.1% sex crime recidivism in a research period for 25 years. But other researchers say that he and his coworkers worked on a non-random sample limited to a group who were referred for major prosecutions (“the worst of the worst”).⁴¹ Prentky estimated rates of 52% and 39%, also for a research period of 25 years.⁴² Research results according to Soothill and his researchers came to result of 20 % of recidivism,⁴³ and according Patrick and Marsh research only 9.2 %.⁴⁴ Thus we came to the conclusion that it is very hard to categorically determinate frequency of recidivism, or to claim that in these sexual offences

⁴⁰ Langevin, R., Curnoe, S., Fedoroff, P., Benett, R., Langevin, M., Peever, C., Pettica, R., Sandhu, S. (2004): Lifetime Sex Offender Recidivism: A 25-year Follow-up Study. *Canadian Journal of Criminology and Criminal Justice* p. 531-552. Langevin and his coworkers claim that: Recidivism risk is an important component of criminal justice and correctional planning, especially when it comes to sex offenders who may pose physical danger to others. The current study assessed the recidivism rate of 320 sex offenders and 31 violent non-sex offenders over a 25 year follow-up period. Participants were sex offenders referred for psychiatric treatment by the court, police, probation services, defense lawyers, or mental health professionals between 1966 and 1974. The comparison group was comprised of the 31 violent non-sex offenders. Recidivism data were drawn in 1994 and 1999 from the RCMP database and from hospital records. Results of statistical analyses indicated that approximately 3 out of 5 sex offenders were re-convicted of a sexual offense during the 25 year follow-up. When all offenses were considered, including non-sex offenses, four out of five sex offenders recidivated during the follow-up period. Child sexual abusers and exhibitionists were most likely to re-offend, while incest offenders were the least likely to re-offend. The findings reveal that sex offense recidivism remains a problem over a significant part of a sex offender’s adult life.

⁴¹ Recidivism Statistics mostly gathered and cited by Chris Dornin;

⁴² Prentky, R.: Study of 136 rapists and 115 child molesters released from Bridgewater civil commitment center in Mass. 1959-1986, showed 32% sex crime recidivism for molesters; 25% for rapists (over widely varied periods).

⁴³ For more see: Soothill, K., Harman, J., Francis, B & Kirby, S. (2005): ['Identifying future repeat danger from sexual offenders against children: a focus on those convicted and those strongly suspected of such crime.'](#) *Journal of Forensic Psychiatry and Psychology*, vol 16, no. 2, p. 225-247;

⁴⁴ Patrick, S., Marsh, R. (2009). Recidivism among Child Sexual Abusers: Initial Results of a 13-year Longitudinal Random Sample. *Journal of Child Sexual Abuse*, p. 123-136;

there is always recidivism.⁴⁵ Therefore, we find that the decision to implement this measure should have been preceded with a study of the recidivism in Macedonia, research that would be conducted on the relevant group and would give statistical information on the real frequency of the recidivism in these cases, which ultimately would have been a credible basis for the implementation of the measurement. But, since this is not the case, we consider that this measure is more a demonstration of repression and punishment, then of real treatment and cure for a recidivism that is not proven to be frequent.

Another reason for the implementation of this measurement is that these crimes are extreme and victims are the ones that should be protected from harm. Because of the severity of these crimes, the previous state response was evaluated as insufficient. Also the repeated stricture of the sanctions did not play its role in the special nor in the general prevention of the crime.⁴⁶ The legislature found that the only way to prevent an offender from ever perpetrating this crime again is to treatment him, lower or terminate his libido and his urge for sexual contact so he or she will not find themselves in a situation when they are willing or capable to engage in the sexual act and in that way to repeat the crime.

Other countries from our region, such as Serbia, instead of implementing measures like these, decided to go one step at a time they first implemented a special law for special measures for the prevention of criminal act against the sexual integrity of minors.⁴⁷ This law provides that in such a

⁴⁵ To the same conclusion came: Миладиновић-Стефановић, Д.(2014): Хемијска Кастрација – Прихватљиво Средство за спречавање кривичних дела против полне слободе према малолетним лицима? **Зборник Радова Правног Факултета У Нишу**, Број 66, pp.51-68, and Константиновић Вилић, С., Николић Ристановић, В., Костић, М. (2009).Криминологија. Ниш: Пеликан принт; According to these authors the precise frequency of recidivism is impossible because of methodological problems in assessing the results and because of the “gray” number in such cases.

⁴⁶ First, for the crime Sexual attack against child below the age of 14, the criminal sanction was at least 4 years of imprisonment, then at least 8 years and now is at least 12 years of imprisonment.

⁴⁷ Law for special measures for the prevention of criminal act against the sexual integrity of minors, Official Gazette of Serbia No. 32/13.

criminal act, the court can impose measures such as mandatory reporting to the competent police authority and the Directorate for the execution of criminal sanctions, prohibition of visiting places where minors may be, mandatory visiting of professional counseling and institutions, mandatory notification for the change of domicile, residence or workplace, mandatory notification of any travel abroad, as well as keeping record of the persons convicted of sexual offences against minors.⁴⁸ Macedonia does not have this type of a special law. Some of these provisions are integrated in the Criminal law in the provisions regarding sanctions and alternative measures that can be imposed. The last measure “keeping record of the persons convicted of sexual offences against minors” is much more intelligently implemented in the Serbian legislative then in ours.⁴⁹ The question about the measure chemical treatment is still open in Serbia, and will be taken in consider if and only if the measures of the Law for special measures for the prevention of criminal act against the sexual integrity of minors proves in practice to be insufficient for the prevention sexual offences against minors.

⁴⁸ The question about the measure chemical treatment is still open in Serbia, and will be taken in consider if only the measures of the Law for special measures for the prevention of criminal act against the sexual integrity of minors prove in practice that are insufficient for prevention sexual offences against minors.

⁴⁹ According to the Law for special measures for the prevention of criminal act against the sexual integrity of minors, the competent authority for this record is the Ministry of interior of Serbia, and in Macedonia, the competent authority for this register is the Ministry of labor and social policy, and the register is made **public** and wide open for any person in the world to see by creating a special web site. This web site presents personal data of the person that is convicted of this type of sexual offence, like picture, place of birth and residence, time of conviction, sanction etc. For more see: Koshevaliska, O.(2012): Protection on personal data in criminal cases vs. national security in EU and Macedonia, Doctoral Thesis, UKIM, pp.192-193; His existence is under question, sine the Constitutional Court decided to start a procedure for the register and evaluate the legal grounds for his being. Somehow it seems that Macedonia is the first country in the region that always has unnecessary courage for some legal solutions, which prove to be inadequate. The Official web site is <http://www.registarnapedofili.mk/Naslovna.aspx> , last access 17.10.2014;

Conclusion and recommendations

In this article we have define the castration (surgical and chemical) in order to be precise concerning the phenomenon that was subject of our research. We defined surgical castration in men as an irreversible procedure that involves removal of the testis, which produce the male hormones and in women as removal of the Fallopian tubes and the ovaries (called an oophorectomy). We defined chemical castration as hormonal therapy to lower a man's testosterone level. Also we made an effort to define the legal nature of this measure. Namely, the only applicable solution in our legal system is to place medical pharmacologic treatment in the system of measures of security, because as is stated above it represents a medical measure, so we agree with our legislature that this treatment is a security measure. The reasons for introducing this measure in our legal system are (apparently) to prevent recidivism. We criticized this idea noting that there is little relevant research of any kind about the recidivism in this particular crimes, which would have represented a solid ground to say that this treatment is to prevent recidivism rather than to punish the offender. The other reason for the implementation of this measurement is that these crimes are extreme and severe, and every increasing of the penalties has shown to be insufficient for deter the offender to commit this crime.

The main conclusions of the article are that there have to be changes and amendments of the relevant legislation. First, our opinion is that these measures should also be introduced for the criminal act of "Enticement on sexual intercourse or other sexual acts with a child under the age of 14." When the legislature introduced this measure, we do not see the reason why the measure was limited only to the crime "Sexual assault against child under the age of 14" and not to the crime "Enticement on sexual intercourse or other sexual acts with a child under the age of 14" when the object that is under protection is the same – the sexual integrity of the child under the age of 14 and when the intention of the offender in both acts is the same: sexual intercourse with a child. We also recommend a research of the financial implications of the execution of this measure. One of the most important things that our legislature should have in mind is that, in our criminal law systems there are no provisions for mandatory psychological therapy for sex offenders, ex. treatments and psychotherapy with a psychiatrist and other medical staff should be considered. We have provisions for obligatory

psychiatric treatment and institutionalization in a health facility and obligatory psychiatric treatment on freedom, but these treatments are only for persons who have been proven insane or have other biological or psychological conditions that make that person unable to understand the significance of his criminal act or unable to control his action.⁵⁰ Also, our legislature should bear in mind that provisions should be arranged concerning the medical assessment of the person on whom the medical pharmacological treatment will be imposed. Who will be in the team for evaluation, can every defendant be compelled to undergo this treatment or are there reasons why a person might not be a good candidate for this treatment (for instance for some health condition that they have), what solutions are available for those that cannot take the treatment because of their health condition that is in collision with the medical pharmacological treatment? It seems to us, that this article raised more questions that it can answer.

How this treatment will effect to the recidivism and to the real treatment of the sexual offenders against children, is remains to be seen.

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