

## CHEMICAL CASTRATION –THE NEW SECURITY MEASURE IN THE MACEDONIAN CRIMINAL LEGISLATION

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### ABSTRACT

With the Amendments of the Macedonian Criminal Code from February 2014, the Medical- Pharmacological Treatment or the so - called “Chemical Castration” is introduced for the first time in the legislation of Macedonia. The authors in this article give legal overview of this security measure that is intended for perpetrators of sexual offenses of children. The intention of the policy makers was the prison sentence to be reduced if the perpetrator voluntarily agrees to undergo a chemical castration. In the cases when sexual offenders of children are recidivists, a mandatory application of this security measure is envisaged. With these stricter legislative changes, the criminal legislation of Macedonia became part of the group of the countries which adopted the chemical castration for sex offenders and as the only country with such solution in the neighborhood became potential regional leader in the incorporation of this instrument in the fight against pedophilia.

**KEYWORDS:** Chemical Castration, Treatment, Criminal Legislation, Sexual Offenders

### INTRODUCTION

Regarding the impact of this security measure and the violation of human rights, there have been major discussions in the scientific community whether it is appropriate to incorporate such a measure into the Macedonian Criminal Code (Хемиската кастрација за педофилите ги подели психијатрите и правниците/Хемиската kastracija za pedofilite gi podeli psihijatrite i pravnicite, 2012 [1]). A question arises also whether this particular measure is in conflict with the provisions of the international instruments for human rights protection. However, a common ground was found that this measure is more human than the surgical castration which has been used to punish sex offenders for centuries in other (Nordic) jurisdictions and which was endorsed by the early eugenics movement to eliminate future social ills of an offender’s progeny (Burchil, J, 2008 [2]). Chemical castration, from comparative point of view, is usually performed with injection of a chemical hormone blocker used to reduce sex drive and libido. The substance injected into the organism in the countries where it is applied, is usually synthetic estrogen based contraceptive, such as Medroxyprogesterone-Acetate and Cyproterone-Acetate. The first is commonly used in the USA and is known under the name of Depo-Provera, and the second is commonly used in the Europe, under the name of Dianette (Rylyk, C., 2008 [3]). But, the basic dilemma is whether this medical-pharmacological treatment is in line with the provisions of the International Covenant on Civil and Political Rights and the European Convention of Human Rights, or not? The Covenant of Civil and Political Rights forbids cruel, inhuman treatment or punishment, and in particular – no one will be subjected to medical or scientific

experimentation without their consent (Russell, S. 1997 [4]). First, one has to establish factors to determine whether the punishment is cruel or not. The factors must imply on the following questions: Does it violate the dignity of the person? Does it violate the evolving standards of decency? Does it involve unnecessary infliction of pain? Does it involve barbarous methods of punishment (Burchil, J., 2008, p.15)? These factors in evaluating the cruelty of a punishment were firstly established by the US. Supreme Court in the case of Trop v Dulles (Trop vs. Dulles, 1958 [5]), and must be taken as a measurement for degrading treatment in every criminal legislation where the chemical castration is envisaged (Pitula, E. 2009, p. 24 [6]). Further debate by the scientific community and legal practitioners, on this security measure in Republic of Macedonia is still needed, in order to improve the safeguards for human rights and liberties in the execution of this measure.

## CHEMICAL CASTRATION IN THE NATIONAL CRIMINAL LEGISLATION

### Criminal Code

In the last several amendments in the criminal legislation of Republic of Macedonia, the Criminal Code, in several cases follows a strict pattern of tightening its criminal policy against sexual offenders. Apart from the other measures envisaged in the latest amendments of the Criminal Code, the accent was on the introduction of the so called “Chemical Castration” for perpetrators of sexual assault of a child less than 14 years of age as a new security measure (Law on Amendments and Addendums of the Penal Code, Republic of Macedonia, 2014 [7]). The definition of the chemical castration of sex offenders is stipulated in the new Article 65- a, named “*Medical-Pharmacological Treatment*”, which states that with this security measure only a perpetrator for sexual assault of a child under 14 years of age can be sentenced when there is a possibility or danger that the perpetrator will repeat the criminal act. From this definition we can sense the restrictive approach of the Macedonian Criminal Legislation regarding the scope of punishable conduct. Chemical castration is limited only for perpetrators of the criminal act “*Sexual Assault of a Child Under the Age of 14 Years*” (Penal Code, Republic of Macedonia – Article 188 [8]). Apart from some criminal jurisdictions, such as the Polish, Estonian etc. which envisaged mandatory chemical castration, the Macedonian Criminal Code is seemingly more lenient and envisages the voluntary form. The voluntary chemical castration divides into three directions, stipulated in paragraphs (2), (3) and (4) of the same article, which according to the severity of the criminal act, envisage reduction of the prison sentence (Tupanceski, N., & Kiprijanovska D., 2014 [9]). Paragraph 2 of Article 65-a stipulates that, if for the committed criminal act life imprisonment is envisaged the Court can reduce that sentence to long term imprisonment of 40 years. In paragraph (3), we have similar reduction of the sentence as the previous paragraph, from long term imprisonment of 40 years to prison sentence of 20 years. Moreover, in paragraph (4), the Criminal code stipulates that, if for the committed criminal act the envisaged sentence is maximum 20 years imprisonment, that sentence can be reduced to the minimal sentence, prescribed for the committed criminal act. All these reductions apply only in case the perpetrator agrees to undergo medical-pharmacological treatment or chemical castration until the rest of his life or until the time the Court deems necessary the perpetrator to undergo the procedure. By these provisions we can see the seemingly liberal nature of the newly introduced medical-pharmacological treatment in the Macedonian Criminal Legislation, but if a thorough analysis is made, it can be detected that the commitment on chemical castration is not actually on voluntary basis. From further analysis of the provisions, it is deducted that, if the perpetrator does not undergo previously accepted treatment, it will be enforced. Lawyers consider this to be an illogical solution, because the possible “deal” here is: instead of longer imprisonment, the perpetrator to get shorter imprisonment plus voluntary treatment. Without undergoing the treatment, the

perpetrator should get longer imprisonment sentence instead of enforced treatment, because at the end, the voluntary form ends up to be mandatory. The procedure for enforcement of this security measure is set in *paragraph 5* of article 65-a. According to it, the procedure shall be executed on freedom in specialized medical facilities after the perpetrator served the jail sentence. The supervisory body for the execution of this security measure is the Directorate for Execution of Sanctions (DES). This body is responsible for informing the Court every six months on the enforcement of this measure and the further need for continuation or termination. The explicitly mandatory chemical castration or medical-pharmacological treatment is envisaged in paragraph (7) of the same article, which stipulates that this measure can be executed without the consent of the perpetrator in the case of recidivism. The perpetrator is submitted to this security measure, his/her entire life, or in case when the Court finds the treatment is sufficient and end it.

### **Law on Execution of Sanctions**

The Procedure for execution of the newly introduced security measure – medical pharmacological treatment of sexual offenders, is regulated with the Law on Execution of Sanctions. The Law on Amendments of the Law on Execution of Sanctions was promulgated in November 2014 (Law on Amendments and Addendums of the Law on Execution of Sanctions 2014 [10]). These amendments provide for the addition of a new chapter – Chapter XXI-a (Medical-Pharmacological Treatment of Perpetrators of Sexual Assault on Child up to 14 Years of Age) and 8 new articles (Art.257-a; Art. 257-b; Art 257-c ; Art. 257-d; Art 257-e; Art. 257-e; Art. 257-f; Art. 257-g; Art. 257-h) which regulate the procedure for execution of this security measure. According to the respective articles this measure must be performed in specialized medical facilities and that the performing procedure shall be regulated with a special Guideline, which will be promulgated by the Minister of Health (Law on Amendments and Addendums of the Law on Execution of Sanctions 2014, Article 257-a). The proceedings of submission of the court decision to the competent institutions consist of the following steps: first the correctional facilities shall deliver the court decision to the Directorate for Execution of Sanction, which must deliver the court order to the appropriate medical facility, before the start of the discharge period of the convicted person for examination and preparation for the execution of this measure. The application of this measure shall commence after the perpetrator served his/hers prison sentence, which is considered a more appropriate solution to avoid further health complications and stigmatization by other inmates than commencement of this measure during serving prison time. The Minister of Justice will promulgate a guideline which regulates the procedure of deliverance of the court decision by the correctional facilities to the Directorate for Execution of Sanctions. The reporting period of the medical facility to the Directorate for Execution of Sanctions cannot be longer than 6 months (Law on Amendments and Addendums of the Law on Execution of Sanctions 2014, Article 257-c). The Directorate is allowed to require an early report on the health condition of the perpetrator and is obligated to inform the Court at least once in every six months, on the status of execution of the measure or the need for continuation or cancelation of the procedure. Regarding the obligations of the perpetrator – subject to a chemical castration the Law stipulates that the perpetrator must notify the medical facility on eventual change of the address and place of residence, he should notify the medical facility in three days if there are valid reasons of his not appearance on the scheduled date etc. Postponement of the execution of the chemical castration can occur only in the case of medical treatment or in case of death occurrence of a member of the immediate family. The postponement in the first case last until the end of the medical treatment of the perpetrator and in the second case, 3 days after the death of a member of his immediate family (Law on Amendments and Addendums of the Law on Execution of Sanctions 2014, Article 257-e). Article 257-f envisages situations and sanctions, in the cases where the perpetrator-subject of the chemical castration

will not appear for his medical-pharmacological treatment at the medical facility. The medical facility in a period of 48 hours must contact the Directorate for Execution of Sanctions who has an obligation to notify the Court, if the perpetrator refuses or abandons medical-pharmacological treatment. The Court is obligated in this situation to issue an order for forced apprehension of the person-subject to chemical castration, and if the perpetrator is unavailable to the prosecuting authorities, to issue a warrant or Interpol red notice for his/her arrest. All costs for the apprehension must be paid by the perpetrator himself/herself. The costs for the overall medical-pharmacological treatment are paid from the Budget of Republic of Macedonia. The Directorate for Execution of Sanctions should also create and keep a record-database of perpetrators which are subjects to a chemical castration, and the Minister of Justice promulgates the form, contents and modus of storing and keeping records.

### **Comparative Experiences**

The chemical castration today represents legal reality, and it is regulated in different manner in much criminal legislation.

In Europe, the mandatory chemical castration is envisaged in the Penal Code of Poland, with the reform of the Polish Penal Code in 2009 which envisages the mandatory chemical castration for perpetrators of the criminal offense "Sexual Assault of a Child under the Age of 15 Years". Also in Republic of Moldova, after the promulgation of the Law on amendments of the Penal Code in 2012, the chemical castration is made mandatory for any perpetrator which sexually assaulted a child under the age of 15 years (Baczynska, G. 2009) [11]. These provisions are also valid for foreigners which shall commit this crime in Moldova. The Estonian Penal Code follows the same example of mandatory chemical castration. However there are European legislations which still envisage the surgical castration instead of the chemical castration (Estonia Passes Chemical Castration Bill (2012, June 5) [12]. Such example is the German Penal Code that is under harsh criticism for the continuous implementation of the surgical castration for sexual offenders. According to the German Penal Code, in order the surgical castration to be performed, several conditions must be met such as: written consent from the perpetrator-subject of the chemical castration, written recommendation from a medical team, the age limit of the perpetrator must be above 25 years and this procedure must not cause impairment of physical or mental health (Calls for Germany to End Surgical Chemical Castration of Sex Offenders, 2012, February 2) [13]. In Portugal the chemical castration is on voluntary basis. The Portuguese Penal Code envisages voluntary chemical castration after the end of the 2008 – experimental intervention program. This program was of a voluntary nature and envisaged voluntary chemical castration of convicted sexual offenders, and total mental and physical rehabilitation after the procedure ([Chemical Castration for Pedophiles in Portugal, 2012](#)) [14].

In the USA, the chemical castration is also present in the legislation and practice of many of the states: California, Florida, Iowa, Louisiana etc (Tupanceski, N., & Kiprijanovska D., 2014, p. 269-270).

### **DISCUSSIONS: MEDICAL AND LEGAL ASPECTS**

There are several aspects regarding the chemical castration that raise debate and discussion. In the Macedonian criminal legislation, it is envisaged as a security measure, meaning that it is of medical preventive character aiming to protect children from assaults and exploitation of pedophiles. However, it is uncertain whether pedophilia is strictly of hormonal origin or not. Namely, medical science identifies several causes of pedophilia: biological, psychological and

social (Olshan, A, 2014) [15]. Therefore, lawyers and doctors stress the concern that the chemical castration may not meet the preventive expectations asrepresents a hormonal treatment. Furthermore, the effects of the chemical castration, also recognized in some states in the USA are considered to be possibly minimized or reversed by simple intake of testosterone ((Olshan, A, 2014, p. 14). Furthermore, the psychological treatments are considered effective in pedophilia treatment and should follow eventual medical measures. Another problematic aspect of the application of the chemical castration is the human rights issue. Namely, the forced medical interventions are in contrast to the right to informed consent and the protection of the physical and mental integrity of the person. If we take into consideration the fact that the chemical castration is not proved to be secure and effective preventive measure, it is also considered not legitimate. Since it can result in danger to the health and sometimes even to the life of the offender, this measure can end up being a bodily injury or ‘corporal sanction’.

Moreover, according to the Macedonian Criminal Code it will be enforced after the execution of the imprisonment, which in many cases means that senior persons whose sexual arousal are significantly lowered are subjected to the risky measure.

Finally, according to the official statistical data, these crimes in Macedonia do not show increasing trends, nor represent significant part in the overall crime.

## CONCLUSIONS

The inclusion of the abovementioned security measure in our legislation means that the Macedonian Criminal Legislation is in line with the several contemporary legislations, both European and American and follows the global tendencies in the fight against sexual crimes against children. The Macedonian dual approach to chemical castration differs in many ways from the European legislations which still envisage surgical castration or only mandatory chemical castration of sexual offenders. However this subject is still under high attention in the experts' public, the legal circles and the policy makers. More scientific and professional discussions are needed between legal experts, legal practitioners and medical practitioners to determine key recommendations for advancement in this respect.

Several weaknesses of this security measure can be underlined. First, this is the only security measure which refers to a single criminal offense – art. 188 of Macedonian Criminal Code - "Sexual Assault of a Child under the Age of 14 Years" Second, the chemical castration addresses only the hormonal etiology of the pedophilia, whereas it is considered of unclear and complex origin. Third, the execution takes place years after the perpetration - after the execution of the imprisonment that cannot last less than 12 years. Four, the voluntariness regarding the acceptance of the chemical castration is unreal since is backed up by enforced execution. Five, it is a step back from the standard of prescription of human and not degrading sentences and measures in the criminal law. This means that not only the provision, but the whole concept itself should be reexamined, amended and upgraded possibly with mandatory psychiatric treatments.

No chemical castrations have been performed yet in the Macedonian court practice; the commencement will certainly show all the positive and negative aspects. The Macedonian courts are faced with a tremendous challenge.

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