

*Vedije Ratkoceri, PhD*

Assistant professor of criminal law and security  
Law Faculty, South East European University – Tetovo  
Republic of North Macedonia  
[v.ratkoceri@secu.edu.mk](mailto:v.ratkoceri@secu.edu.mk)

## CHALLENGES IN THE IMPLEMENTATION OF THE CHEMICAL CASTRATION IN THE RNM JUDICIARY

### Abstract

Nowadays in contemporary states, one of the most controversial issues in terms of fighting and prevention of sexual abuse of children and pedophilia remains, without a doubt, the adequate treatment of perpetrators of these crimes. It has been proven that imprisonment alone, even the long-term, is not an adequate treatment for pedophiles and does not prevent them from repeating the crime once they are released. Therefore, early on, penalties and other measures are envisaged in various criminal legislation, to prevent pedophiles from sexually abusing children. Initially it was the treatment of abusers with physical castration, which without a doubt as a barbaric method today has no place in contemporary criminal legislation (since it involves the removal of the human organ). This outdated method today has been replaced by modern, humane and highly efficient methods that are widely used in various countries, such as psychological treatments and medical-pharmacological treatments or otherwise known as chemical castration. Following these contemporary and scientific trends for a more efficient fight, in 2014 the RNM also incorporated in its legislation the medical-pharmacological treatment for sexual abusers of children under 14 years of age. However, even to this day the measure is not being implemented in our judiciary. Through this research we have tried to highlight the challenges, weaknesses and problems that makes chemical castration impossible to implement in our judicial practice.

**Keywords:** Chemical castration, pedophilia, child sexual abuse, judiciary, security measures



## INTRODUCTION

Sexual abuse of children is undoubtedly one of the worst and most serious crimes with long-term consequences mostly for the victim and his family and social circle. Childhood from medical, psychological and pedagogical disciplines is considered a crucial period for the future development of children as individuals and as citizens. But, unfortunately, children are often victims of abuse, including sexual abuse.

In the daily vocabulary the sexual abuse of children is also known as pedophilia, while individuals who commit sexual abuse against children are known as pedophiles. However, the medical and psychological literature reveals distinct differences between these two terms and we will try briefly to make clear the difference between pedophile and sexual abuser. According to the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV; 1), pedophilia is considered a mental disorder. As a particular paraphilic disorder, pedophilia is a desire or preference for sexual relations with prepubertal children (Winslade, Stone, Smith-Bell, & Webb, 1998). According to the American Psychiatric Association pedophilia is defined as intense and persistent sexual interest in prepubescent children (Stevens 2001). The Diagnostic and Statistical Manual of Mental Disorders gives the following criteria for pedophilia (Winslade, Stone, Smith-Bell, & Webb, 1998): 1) An impairment lasting at least 6 months, with recurrent and intense sexually arousing fantasies, sexual urges, or behaviors that involve sexual activity with a prepubescent child or children (generally age 13 years or younger); 2) Fantasies, sexual urges, or behaviors that cause clinically significant distress or impairment in social, occupational, or other important areas of functioning; and, 3) The impaired person is at least aged 16 years, and at least 5 years older than the child or children. From these definitions, it is clear that a pedophile is not a sex offender until he engages in a legally proscribed act (Absent the act, a person cannot generally be compelled to undergo treatment or otherwise be charged with a crime or be incarcerated simply because the person has a pedophilia disorder) see (Winslade, Stone, Smith-Bell, & Webb, 1998). The literature of the field distinguishes and categorizes four categories of child sexual abusers. Fitzgerald (1990) divided sex offenders into four types: Type I – denies the commission of the crime or the criminal nature of the act; Type II – confesses to the commission of the crime, but places the blame for the crime on nonsexual or non-personal forces, such as alcohol, drugs, or stress; Type III - is the violent criminal who is motivated by nonsexual gain, such as anger, power, or violence; Type IV- is the paraphiliac who exhibits a pattern of sexual arousal, erection and ejaculation, which is characterized by a specific fantasy or its actualization ( Fitzgerald 1990). The categorization of child molesters is very important because as we can see from this categorization not every child sexual abuser is appropriate subject to medical-pharmacological treatment (chemical castration). Of the four different types of sex offenders, only Type IV offenders (paraphiliacs), »feel remorse or guilt« and are »unable to 'control' [their] behavior». Therefore, only Type IV offenders will respond to medical-pharmacological treatment because the other three types either deny their behavior (Type I), project blame for their behavior (Type III), or enjoy exercising violent urges (Type VI), thus not admitting that their behavior is out of control or inappropriate (Peters, 1993). Accordingly, chemical castration laws should only apply to paraphiliacs (Type IV) and

should not apply to the other three types of sexual offenders, because the treatment may not reduce their recidivism rates (Peters, 1993).

The term »chemical castration« describes a medical treatment that uses anti hormonal drugs to block the release of hormones, resulting in significantly lower testosterone levels and sex drives in men (Murray, 1998). Chemical castration is used to reduce sexual urges. This type of castration is performed by taking a class of drugs called anti-androgens in tablet or injection form and does not involve the removal of the testes (Russell, 1997). Chemical castration is one of the most effective and least restrictive ways to help treat child predators and keep children safe (Tullio, 2009). In certain legislations chemical castration has been introduced as a sanction (USA, Poland, Estonia etc.) while in others (Great Britain, Germany etc.) is used as a medical therapy for perpetrators of sexual acts with their consent (Kambovski, 2015).

#### INCORPORATION OF THE CHEMICAL CASTRATION IN THE CRIMINAL LEGISLATION OF RNM

With the Amendments to the Criminal Code in February 2014 in our legislation was introduced a new security measure called “Medical-pharmacological treatment”, which is also known as “chemical castration”. This measure in the form of medical treatment was introduced in order to reduce the cases of pedophilia, in particular to serve as prevention of recidivism for these offenses.

#### **Chemical Castration in the Criminal Code of RNM**

The security measures are imposed in addition to the main punishments and are intended to avoid the dangerous situation in which the perpetrator has committed the criminal offense. Until 2014, the Criminal Code provided three security measures: 1. Compulsory psychiatric treatment and care in a health facility, 2. Compulsory psychiatric treatment at liberty, and 3. Compulsory treatment of alcoholics and drug addicts (Article 61 of the CMM).

The Criminal Code of the Republic of Macedonia in the Article 65-a states that to the perpetrator of sexual assault against a child under 14 years old, when there is a risk of further commitment of such offenses, the Court can impose a measure of medical-pharmacological treatment (paragraph 1). So, this measure is provided only for the criminal offense “Sexual assault against a child who has not attained 14 years” provided in the Article 188 of the Criminal Code.

The imposition of this measure requires the approval of the perpetrator of the criminal offense, so its implementation is voluntary. The “reward” for voluntary submission to such medical treatment is the reduction of the imprisonment sentence, respectively the convict will suffer half of the sentence. Thus, if the criminal offense is punishable by life imprisonment, the court may sentence the perpetrator to 40 years in prison; if the criminal offense is punishable by 40 years, the court may impose a sentence of 20 years of

imprisonment, and if a sentence of 20 years is envisaged, the court may impose a minimum sentence of imprisonment provided for the criminal offense, but always and only if the perpetrator agrees to be subjected to the treatment of chemical castration which will last until the end of his life or a specific time period that according to the court's assessment it is necessary to extend the treatment (paragraphs 2,3 & 4 of Article 65 of the CCM).

Unlike other security measures in our legislation, which are executed before the perpetrator is sentenced to imprisonment, the measure of pharmacological-medical treatment will be executed after serving the prison sentence, ie after the perpetrator is released. Treatment will be performed in specialized medical institutions. Supervision over the implementation of treatment is performed by the Directorate for the Execution of Sanctions, which at least once every 6 months notifies the court of the execution of this measure and for the need to continue or discontinue treatment (paragraph 5).

While, in principle, chemical castration is applied on a voluntary basis, namely with the consent of the perpetrator, the application will become a mandate or obligatory in cases when the perpetrator, after giving consent and suffering punishment is not subject to chemical castration, or when voluntarily abandons the treatment. In these cases, the court may order that the measure be enforced by force in a health institution or other specialized institution (paragraph 6 of Article 65 of the CCM). Meanwhile, when dealing with recidivism, namely in cases when the perpetrator will repeat the criminal offense after serving the sentence for the same criminal offense, the court, without the consent of the perpetrator, will obligatorily impose the measure of medical-pharmacological treatment (paragraph 7 of Article 65 of the CCM).

### **Chemical Castration in the Law on Execution of Criminal Sanctions**

The procedure of execution of the security measure of medical-pharmacological treatment is regulated by the Law on the Execution of Criminal Sanctions of the Republic of Macedonia with the changes made to this law in November 2014 where as a novelty was incorporated an entire chapter, Chapter XXI-a titled "Medical-pharmacological treatment of perpetrators of the sexual offense assault against a child who has not attained 14 years". This law regulates which institutions are responsible for the execution of this measure, who has the obligation to supervise the execution of this measure, how is the procedure of execution and other relevant issues regarding chemical castration (see also Ratkoceri V. 2017).

Hence, according to Article 257 of this Law, the measure of medical-pharmacological treatment of the perpetrator of the criminal offense »sexual assault on a child under 14 years of age« is executed in specialized medical institutions. Which are these specialized institutions and the manner of execution of this measure, the law in this article stipulates that it will be regulated with a Directive by the Minister of Health.

The institution responsible for the execution of this measure is the Directorate for the Execution of Criminal Sanctions in cooperation with the Correctional Institutions - prisons and Specialized medical institutions. Thus, the Correctional Institutions have the obligation

to immediately after serving the sentence of imprisonment of the convict to send to the Directorate for Execution of Criminal Sanctions the court decision by which the person in question was imposed this measure (paragraph 1 - Article 257- b). The manner in which this data will be submitted will be regulated more closely by an Act brought by the Minister of Justice (paragraph 4 - Article 257-b). Furthermore, this Directorate sends such a court decision to the specialized medical institution before starting the preparatory phase for the release of the convicted person in order to perform the analysis and its preparation for medical-pharmacological treatment (paragraph 2 - Article 257- b). Implementation of the measure will begin after serving the prison sentence (paragraph 3 - Article 257-b).

For the beginning and the course of the execution of the medical-pharmacological treatment measure, the specialized medical institution has the obligation to notify the Directorate for the execution of criminal sanctions every six months, while this Directorate can request information from the medical institution outside this deadline regarding the health situation of the person to whom this measure is applied as well as for the results from the application of the measure, while on the other hand, the Directorate for Execution of Criminal Sanctions notifies the court at least once every six months for the execution of the measure or for the need of its continuation or its termination (Article 257-v).

In cases when the person who has to undergo treatment for justified reasons does not appear for the treatment, it is obliged to justify his absence within three days from the day when he had to undergo treatment in the specialized medical institution, to justify its absence and notify the institution. After receiving this justification, the Health Institution appoints a new term for the implementation of the measure and notifies the Directorate for the execution of sanctions.

The specialized medical institution has the possibility to extend the medical-pharmacological treatment of the person in question if he / she brings evidence that he / she is in hospital or a case of death of a close family member has occurred. This prolongation can last at most until the end of hospital treatment, respectively up to 3 days from the day of death of a close family member (Article 257-d). Also, the person who must undergo the treatment, has the obligation to notify the specialized Medical Institution of any change of residential address (Article 257 - g).

If the convicted person is not subject to the application of the measure for unreasonable reasons or if three days have passed from the day he had to appear at the health institution, the institution has the obligation to notify the Directorate for the execution of criminal sanctions within 48 hours. For such refusal or unreasonable absence of treatment, the Directorate will notify the competent court for the execution of the sanction without delay. The court, in order to execute the measure without delay, will bring an arrest warrant, which it will hand over to the police. If the person is unavailable to the authorities, the court will issue a warrant for the finding and arrest of the person. All expenses for such arrest shall be borne by the convicted person (Article 256-gj) and the costs for the execution of the medical-pharmacological treatment shall be borne by the Budget of the Republic of Macedonia (Article 257 -e).

## CHALLENGES OF APPLICATION OF CHEMICAL CASTRATION IN RNM

To this date, chemical castration has not been imposed in the Courts of the Republic of Northern Macedonia (neither on a voluntary basis nor on a mandatory basis). We suspect that in court practice to date, after six years since incorporating this measure into our legislation, there has been no case of recidivism of the criminal offense of child sexual abuse under the age of 14 (to impose this measure on a mandatory basis).

As early as 2014, the authors Tupanceski and Kiprijanovska in the cited work had expressed their scepticism about the implementation of this measure. The scepticism of the authors in question has to do precisely with the effects that the implementation of this measure is expected to have, although they have openly supported this legal initiative to fight pedophilia in our country. Their scepticism derives precisely from the legal solution of the CCM and LECS on this issue, which according to them have some essential anomalies, where they especially emphasize:

- This is the only provision of the general part of the CCM that deals only with an incrimination from the special part of the CCM which is Article 188, in principle, the provisions of the general part of the IMC relate to all provisions of the separate part.
- One of the biggest weaknesses of the measure is that it will be executed after serving a prison sentence, which means that it can be done even after 40 years of committing a criminal offense (!) - then what is this ratio legis of this provision?
- Also, the court is obliged to prove »the dangerous situation of the perpetrator who in the future will commit such criminal offenses«, which is not at all easy!
- In terms of basic human rights, especially problematic is Article 7 of the provision where recidivists can be imposed this measure without consent, etc (Tupanceski, N., & Kiprijanovska, D. (2014).

In addition, what we have found in this regard is that the CCM does not specify who should notify the perpetrator of the possibility of choosing the pharmacological treatment. That is, who informs the perpetrator what chemical castration is, what are the side effects of this procedure, what are its benefits if it is subjected to treatment, is it a procedure that causes pain and so on, so that the perpetrator has the opportunity to think and then decide on the treatment. We think that at this point, the perpetrator should consult with the relevant medical staff who will notify him in details and based on this then the perpetrator will decide whether to undergo treatment or not (in cases where this measure is foreseen to be imposed on a voluntary basis).

Second, according to Article 257-a of the LECS, the measure of medical-pharmacological treatment against the perpetrator of the criminal offense under Article 188 is executed in Specialized medical institutions. Which institutions are these specialized institutions and the manner of the execution of this measure, the law in this article stipulates that it will be regulated by a Directive (Instruction) to be brought by the Minister of Health. This Instruction (Directive) of the Minister is still missing. So, we do not have data which drug will be used in RNM, in which health institution will be administered, in what time intervals (weekly,

monthly, etc.) will be administered, will it be injectable therapy or oral therapy, who are the doctors that will administer it, etc. If we do not know these essential information, then the judge (assuming that he must ask the perpetrator if he wants to undergo the treatment) will not be able to inform the perpetrator with the necessary information in order to ensure his informed consent.

Chemical castration has been incorporated since 2014. However, it still stands as a treatment written on paper but not applied in practice, for many reasons. We consider that even the legal regulation regarding this treatment has certain weaknesses and as a consequence, even if it is implemented, it may prove ineffective. Among the recommendations issued for RNM from this research we will single out:

- The treatment (chemical castration) should be started before the perpetrator is released from prison (because the effect of the medication does not start immediately and the perpetrator may commit sexual abuse again during the time he has been released from prison and the effect of the treatment has not started).
- The minimum age of the perpetrator who can undergo chemical castration should be determined, which according to scientific medical recommendations should be at least 25 years of age (because otherwise it interferes with the health development of the individual).
- Regarding the suitability for chemical castration, it should be determined the category of sexual abusers - pedophiles - against whom chemical castration will be imposed, respectively in the CCM to be specified “qualified sexual abusers of children” implying here that it should be determined that the person in question should be diagnosed as paraphilic.
- It could also be added that since the CCM does not stipulate that chemical castration can only be imposed on diagnosed paraphiliacs to whom it also has an effect, there is a risk that the child’s non-paraphilic sexual abuser will not serve the sentence in full by admitting to undergo a treatment which is not even proven to have an effect on him.
- The CCM needs to determine (designate) a medical evaluation by a team of experts for the individual who has committed sexual abuse of the child/children and to assess his / her mental state, starting at the court procedure.
- Predicting a comprehensive program for sexual abusers – which would be implemented in specific institutions (neither prison nor psychiatric hospital; hospital-prisons).
- Regarding the mandatorily application of chemical castration for recidivists, it should be taken into account that all world studies conclude that the drug and the procedure of chemical castration is ineffective in cases when it is not voluntary and that the mandatory application conflicts with human rights.
- International researches have shown that medical-pharmacological treatment without psychological treatment it is not effective that’s why we highly recommend treating pedophiles with medical-pharmacological treatment and psychological treatment along together.



## CONCLUSIONS

It is evident that the Republic of Northern Macedonia has taken all necessary legal measures to toughen criminal policy in sentencing and preventing the criminal offenses of child sexual abuse. However, the situation in practice is different. A tendency of the judiciary to impose lower penalties for these criminal offenses has been observed (for more see Ratkoceri (2018)). Furthermore, there is not enough research that shows the real extent of these acts in our country, nor there are researches that shows the recidivism rate of sexual abusers in RMV.

Regarding the place of chemical castration in our legislation, as a security measure, we consider that this is the most adequate solution for this treatment, to avoid viewing it as a punishment; in favour of this goes the adequate language used in the CCM starting from the naming “medical-pharmacological treatment” up to the emphasis given by the CCM where it says that the abuser “will be subjected” to pharmacological treatment and does not say “will be punished” with a medical pharmacological treatment, so the CCM clearly states that it does not provide it as a sentence for the perpetrator.

Despite international data proving the need for psychiatric diagnosis and treatment, most sex offenders convicted of sexual offenses against children in the RNM are released from prisons (after serving their sentences) without any diagnostic, medical or psychological evaluation and without any treatment. Diagnosis and treatment can help the perpetrator (offender) improve the quality of his life after being released from prison, treat their possible illnesses and, most importantly, prevent recidivism. In short, despite some progress, R. of North Macedonia still has work to do to meet international legal, medical and ethical standards of care for this category of perpetrators.

## BIBLIOGRAPHY

Darjee, R., & Quinn, A. (2020). Pharmacological Treatment of Sexual Offenders. *The Wiley Handbook of What Works with Sexual Offenders: Contemporary Perspectives in Theory, Assessment, Treatment, and Prevention*, 217-245.

Diagnostic and Statistical Manual of Mental Disorders, DSM-5 (5th edn, American Psychiatric Association 2013)

Fitzgerald, E. A. (1990). Chemical Castration: MPA Treatment of the Sexual Offender. *18 Am. J. Crim. L. 1 1990-1991*, 18:1 (1990), 1-57

Igoumenou A. (2020) The Use of Medication for the Treatment of Sex Offenders: Ethical Issues and Controversies. In: Igoumenou A. (eds) *Ethical Issues in Clinical Forensic Psychiatry*. Springer, Cham

Journal of International Law, 1997, ISSN: 0194-1879.

Kambovski, V. (2015). *Komentar na Krivicniot Zakonik na Republika Makedonija* (Vol. II). Skopje: Matica.

Law on Amendments and Addendums of the Law on Execution of Sanctions, Official Gazette of RNM No. 166/2014

Law on Amendments and Addendums of the Penal Code of RM, Official Gazette No. 114/09-14, 2009

Law on Amendments and Addendums of the Penal Code, Official Gazette of RNM No. 27.2014

Murray. (1998). California's Chemical Castration Law: A Model for Massachusetts? *Criminal and Civil Confinement*, [Vol. 24:729].

Peters, K. A. (1992-1993). Chemical Castration: An Alternative to Incarceration (comments). *Duquesne Law Review*, 31 (2), 307-328.

Ratkoceri V (2018) – Chemical castration as a criminal sanction, PhD Thesis, Available at: [https://repository.seeu.edu.mk/sites/thesis/ThesisSharedDocs/DR\\_107190.pdf](https://repository.seeu.edu.mk/sites/thesis/ThesisSharedDocs/DR_107190.pdf)

Ratkoceri V. (2017) Chemical Castration as a security measure in the criminal legislation of the Republic of Macedonia. *International Journal of Social Sciences and Education Research*, Volume 3 (2), pp. 356-360. ISSN: 2149-5939.

Russell, S. (1997). "Castration of repeat sexual offenders: an international comparative analysis". Houston

Stevens, D. J. (2001). *Inside The Mind of Sexual Offenders: Predatory Rapists, Pedophiles, And Criminal Profiles*. Lincoln: Authors Choice Press.

Tullio, E.M. (2009). Chemical Castration for Child Predators: Practical, Effective, and Constitutional, 13 CHAP. L. REV. 191 Available at: <http://digitalcommons.chapman.edu/chapman-law-review/vol13/iss1/7>

Tupanceski, N., & Kiprijanovska, D. (2014). New Safety Measure In The Criminal Code Of The Republic Of Macedonia "Medical-Pharmaceutical" Treatment – Its Context And Implications. *1.02 Scientific Review Article UDC 343.541:343855*, 271-278.

Winslade, W. T., Stone, H., Smith-Bell, M., & Webb, D. M. (1998). Castrating Pedophiles Convicted of Sex Offenses against Children: New Treatment or Old Punishment., *51 SMU L. Rev.* 349 (1998), 351-410