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Surgical Castration of Sex Offenders and its Legality: The Case of the Czech Republic

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CONTENTS

I. INTRODUCTION	3
II. BACKGROUND.....	4
1. Castration in the developed world	5
2. Medical procedure and side-effects	7
3. Effects on recidivism among sex offenders	8
III. CASTRATION AND THE CZECH REPUBLIC	9
1. Sexual offences and the criminal justice system.....	10
2. Legal framework governing the practice of castration	11
3. Findings of the Committee for the Prevention of Torture	12
4. Response of the Czech Government	15
5. Constitutional and human rights issues.....	16
5.1 Prohibition of cruel, inhuman, or degrading treatment or punishment.....	17
5.2 The right to marry and found a family.....	19
5.3 The right to dignity and integrity	20
IV. ALTERNATIVES TO SURGICAL CASTRATION.....	21
1. Anti-hormone therapy – chemical castration.....	22
2. Behavior modification and Psychotherapy	23
V. CONCLUSION	24

I. INTRODUCTION

On a cold December morning in 2006, a 20 years old postwoman was just starting her work day, delivering mail in the city of Brno in the Czech Republic. At around 5 a.m., a man with a knife in his hand grabbed her and requested money. He then dragged her into his yard, forced her to undress, and proceeded to rape her. After 20 minutes he let her go and told her to come again the next day. The police was informed and he was arrested immediately. It was established that the man was already convicted to 13 years imprisonment for attempted murder, rape, and extortion in the past. After serving 11 years of his sentence, he was released from prison and took part in a sex offender treatment program which ended in 2002. For his new crime he was sentenced to 14 years imprisonment. At the time of the trial, the expert witness who judged his personality stated “[t]he offender’s stay at large is very dangerous; the only possibility of his rehabilitation is castration.”¹

After reading such news, one can hardly avoid feelings of anger and disgust towards the perpetrator of such a deed. Those feelings are magnified when the victim is a child or someone who we personally know and who has suffered a psychological trauma caused by a crime of sexual nature. Society, as well as the criminal justice system, is faced with a serious dilemma as to what has to be done with offenders of this type.

This paper will address the use of surgical castration as treatment for sex offenders. Special emphasis will be placed on the case of the Czech Republic as the only country in Europe in which the surgical treatment is practiced to the present day. First of all, background information on the historical use, the medical procedure, and the effects of castration on recidivism among sex offenders will be provided. Second, the legal framework with regard to sex offenders and castration, as well as the factual situation in the Czech Republic will be presented. In this part, the legitimacy and constitutionality of the treatment will be discussed. Finally, alternatives to surgical castration will be elaborated in an attempt to determine whether more appropriate options exist to address the treatment and management of sex offenders.

¹ Kroměřížský deník, *Násilník a recidivista si definitivně odsedí 14 let [A recidivist rapist will definitely serve 14 years]*, 8 July 2008, Available at: <http://kromerizsky.denik.cz/zlociny-a-soudy/nasilnik-a-recidivista-si-definitivne-odsedi--let.html> (Czech). Last accessed: 31 May 2010.

II. BACKGROUND

Surgical castration as either a punishment or treatment for sex offenders has been used throughout history² and persists to the present day. The practice of surgically removing the testes, however, has been used for a number of other purposes as well. The non-punitive reasons for performing castration can be of religious, musical, medical, sexual, and preventive nature.

It was a punishment for adultery in ancient Egypt, for rape in twelfth century Western Europe, and for homosexuality in thirteenth-century France.³ Both castration and a lost of one's eye was the punishment for treason in twelfth-century England.⁴ In the USA, it was forced on prisoners of war and slaves.⁵ 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 deficiencies.⁶ In Nazi Germany, sex offenders, homosexuals, persons with mental deficiencies and members of certain ethnic groups were all forcefully castrated.⁷ In ancient Greece slaves were castrated for commercial purposes. In the past, castration has been carried out as a religious practice. Nowadays, it occurs only in a small number of closely defined cultures.⁸ Men were castrated in China and the Middle East in order to prevent them from self-indulgence while they serve as harem guards.⁹ The procedure, before it was banned towards the end of the nineteenth century, was used on young boys in order to preserve their high singing voice (falsetto) so that they can perform in operas.¹⁰ Castration used as a treatment for testicular or prostate cancer, as well as for a number of testicular injury cases, can be a life-saving operation.¹¹ The sexual reason behind sexual castration is the desire to achieve freedom

² See, for example, Kimberly A. Peters, *Chemical Castration: An alternative to incarceration*, In *Duquesne Law Review*, Vol. 307, 1993, p. 309.

³ Travis Nygard and Alec Sonstebly, *Castration*, In *The Cultural Encyclopedia of the Body*, edited by Victoria Pitts, Westport, CT: Greenwood Press, 2008, p. 503.

⁴ *Davis v. Berry*, 216 F. S.D. Iowa 1914, rev'd, 242 U.S. 468, 1917, p. 416.

⁵ William Winslade et al., *Castrating Pedophiles Convicted of Sex Offenses Against Children: New Treatment or Old Punishment?*, In *SMU Dedman School of Law Review*, Vol. 349, 1998, p. 386.

⁶ See *Buck vs. Bell*, 274 U.S. 200, 205, 1927.

⁷ Robert J. Lifton, *The Nazi Doctors: Medical Killing and the Psychology of Genocide*, 1986, pp. 278-84.

⁸ Michael Kimmel et al., *Handbook of Studies on Men and Masculinities*, Sage Publications, 2004, p. 125.

⁹ Edward S. Tauber, M.D., *Effects of Castration Upon the Sexuality of the Adult Male*, In *Psychosomatic Medicine*, 1940.

¹⁰ *Ibid.*, p. 74.

¹¹ Winslade et al., see *supra* note 5, p. 369.

from sexual urges.¹² Some transsexuals undergo the procedure as a part of their sex reassignment surgery.¹³ Finally, chemical castration is used today in a number of countries as a preventive measure or treatment for sex offenders.

The most recent example of the practice performed in the most brutal ways was witnessed in the Darfur region in Sudan. Many villages were attacked by anti-government rebel forces castrating men and leaving them to bleed to death. Although surgical castration as treatment has been abandoned in most of the developed world, in a number of countries the practice continues to the present day if so required by the sex offenders themselves.

1. Castration in the developed world

In the twentieth century in Europe, a number of countries have passed legislation enabling surgical castration to be used as treatment for sex offenders. These countries are: Denmark (1929, 1935 and 1967), Germany (1933, 1935 and 1969), Norway (1934 and 1977), Finland (1935 and 1950), Estonia (1937), Iceland (1938), Latvia (1938), Sweden (1944), and the Czech Republic (1966).¹⁴ Although no such legislation was enacted in Switzerland, the Netherlands, and Greenland, castration was used as means of treatment of sex offenders.¹⁵ In the United States of America, the procedure was practiced on prisoners as early as 1899.¹⁶

Denmark was the first European country to legalize castration in 1929. The law was later revised in 1935 and even though it allowed for forced surgical castration, in reality no involuntary castration was practiced. The latter law was repealed in 1967 and involuntary castration was banned.¹⁷ At the course of the seventies, Denmark has completely abandoned surgical castration and nowadays only voluntary chemical castration is

¹² See Richard J. Wassersug et al., *New Age Eunuchs: Motivation and Rational for Voluntary Castration*, In Archives of Sexual Behaviour, Vol. 33, No. 5, 2004, pp. 433-442.

¹³ See, for example, *White v. Farrier*, 849 F.2d 322, 324 (8th Cir. 1998).

¹⁴ Nikolaus Heim & Carolyn J. Hirsch, *Castration for Sex Offenders: Treatment or Punishment? A Review and Critique of Recent European Literature*, In Archives of Sexual Behavior, 1979, Vol. 8, p.282.

¹⁵ *Ibid.*

¹⁶ See, for example, Louis Le Maire, *Danish Experiences Regarding the Castration of Sexual Offenders*, In Journal for Criminal Law, Criminology & Police Science, Vol. 47, 1956, p. 294.

¹⁷ Stacy Russell, *Castration of Repeat Sexual Offenders: An International Comparative Analysis*, In Houston Journal of International Law, Vol. 1, 1997, p. 446.

practiced on sex offenders. The situation is somewhat the same in all the other European countries. Laws enabling forced surgical castration were either amended to ban involuntary castration or completely repealed. Although castration laws in some countries are still in force (Denmark, Finland, Sweden and Germany), the actual practice of surgical castration has been abandoned. The only exception is the Czech Republic¹⁸ where voluntary surgical castration of sex offenders is practiced to the present day. Voluntary chemical castration, on the other hand, is practiced today in the UK, France, Belgium, Germany, the Czech Republic, Denmark, Sweden, Hungary and Italy.¹⁹ In 2009 a law on compulsory chemical castration was enacted in Poland making it the only country in Europe to impose such treatment for certain sex offenders.²⁰

In the beginning of the twentieth century, castration was endorsed by the eugenics movement and was practiced on sex offenders in the USA.²¹ Knowledge of Nazi experimentation with castration and sterilization caused the public to disfavor these procedures as a means to adjust criminal behavior.²² Eight states currently allow castration.²³ In four of them (California, Montana, Florida and Texas)²⁴ surgical castration is also possible if asked for by the sex offender himself. While surgical castration is still only rarely used in the United States to respond to sex offender activity, there have been recent indications that the procedure is becoming more acceptable to society as a way to punish sex offenders.²⁵ In Texas, the first state to allow surgical

¹⁸ New York Times, *Europeans Debate Castration of Sex Offenders*, 10 March 2009. Available at: <http://www.nytimes.com/2009/03/11/world/europe/11castrate.html?pagewanted=all>. Last accessed: 24 May 2010.

¹⁹ Antul Gawande, *The Unkindest Cut: The Science and Ethics of Castration*, 1997. (Cited in Karen Harrison, *The Castration Cure*, In *Prison Service Journal*, Vol. 175, 2007, p. 15).

²⁰ BBC News, *Polish president signs chemical castration law*, 27 November 2009. Available at: <http://news.bbc.co.uk/2/hi/europe/8383698.stm>. Last accessed: 23 May 2010.

²¹ See Karl A. Vanderzyl, *Castration as an Alternative to Incarceration: An Impotent Approach to the Punishment of Sex Offenders*, *Northern Illinois University Law Review*, Vol. 107, 1994, pp. 109-13.

²² See Stacy Russell, *Castration of Repeat Sexual Offenders: An International Comparative Analysis*, In *Houston Journal of International Law*, Vol. 425, 1997, pp. 438-40.

²³ Washington Post, *Can Castration Be a Solution for Sex Offenders?*, 5 July 2006. Available at: <http://www.washingtonpost.com/wp-dyn/content/article/2006/07/04/AR2006070400960.html>. Last accessed: 23 May 2010.

²⁴ Winslade et al., see *supra* note 5.

²⁵ Lystra Batchoo, *Voluntary Surgical Castration of Sex Offenders: Waiving the Eighth Amendment Protection from Cruel and Unusual Punishment*, In *Brooklyn Law Review* Vol. 72, 2007, p. 696.

castration in 1997, between 1997 and 2005 only three sex offenders have been surgically castrated.²⁶

2. Medical procedure and side-effects

Surgical castration (also known as testicular pulpectomy or bilateral orchiectomy), is an irreversible procedure that involves the removal of the testes, which produce the male hormones.²⁷ In a relatively simple procedure, a small incision in the scrotum is made and the testes are removed.²⁸ Prostheses are often put in the scrotum to prevent it from appearing empty following the removal of the testes.²⁹ It is 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.³⁰

Surgical castration may lead to permanent side-effects including “excessive perspiration and blushing, loss of hair both on the body and face, increase in body weight, and softening of the skin”.³¹ Further side-effects include “loss of protein, augmentation of pituitary functions, augmentation of keratin found in urine, lowering of the hemoglobin percentage, and diminution of the calcium content of bones after a period of time.”³² Psychological side-effects may include “depressive reactions, suicidal tendencies, emotional lability, and indifference to life.”³³ After the procedure, the body is permanently changed and the ability for procreation is eliminated. Restoring sexual desire is, however, possible by taking hormonal drugs.³⁴ Testosterone is readily available for purchase on the Internet.

The Association for the Treatment of Sex Offenders (ATSA), an influential and respected organization, is “opposed to surgical castration procedures based on the availability of

²⁶ Gawande, see *supra* note 19.

²⁷ Winslade et al., see *supra* note 5, p. 369.

²⁸ Kris W. Druhm, *A Welcome Return to Draconia: California Penal Law 645, The Castration of Sex Offenders and the Constitution*, In Albany Law Review, Vol. 285, 1997, p. 294.

²⁹ Georg K. Strüp, *Treatment of Sexual Offenders in Herstedvester Denmark*, 1968, p. 61.

³⁰ Jorgen Ortmann, *The Treatment of Sexual Offenders*, In International Journal of Law and Psychiatry, 1980, p. 44.

³¹ See, for example, Karen J. Rebish, *Nipping the Problem in the Bud: The Constitutionality of California's Castration Law*, In New York Law School Journal of Human Rights Vol. 86, 1998, p. 1386.

³² Michael J Bailey & Aaron S. Greenberg, *The Science and Ethics of Castration: Lessons From the Morse Case*, In New York Law School Journal of Human Rights Vol. 92, 1998, pp. 1225-38.

³³ Winslade et al., see *supra* note 5, p. 371.

³⁴ John Q. La Fond, *Should Sex Offenders be Castrated?*, In Preventing Sexual Violence, Washington DC: American Psychological Association, 2005, pp. 167-200.

anti-androgen medications which can achieve the same, if not better, results.”³⁵ One doctor has stated that “the idea that physicians would be used by the criminal justice system to perform mutilation on prisoners in order to effect punishment would be against a doctor’s ethics as well as the Hippocratic Oath.”³⁶

3. Effects on recidivism among sex offenders

In the previous century in Europe, four significant studies have been undertaken in order to evaluate the efficiency of surgical castration regarding its impact on recidivism among sex offenders. Bremer in Norway (1959), Langelüddecke in Germany (1963), Stürup in Denmark, and Cornu (1973) in Switzerland, have all examined criminal records of sex offenders and compared the recidivism rate before and after castration. An extensive review of these studies has been undertaken by Nikolaus Heim and Carolyn J. Hursch³⁷ in order to independently assess the results obtained in the mentioned studies. Their findings were published in 1979. This part of the paper will briefly summarize the results obtained following the review study conducted by Heim & Hursch.

Criminal records of 1036 sex offenders castrated in Germany in the period between 1934 and 1944 were examined by Langelüddecke. He compared those offenders with the criminal records of 685 sex offenders released without undergoing castration. His study pointed out that only 2,3% of the castrated offenders recidivated. Prior to the surgery, the same group had a recidivism rate of 84%. The rate of recidivism of the group of sex offenders that did not undergo castration was 39,1%. Langelüddecke’s study aimed at determining the effect of castration on sexual desire. In a follow up study on 90 offenders he came to a conclusion that 65% of them have lost their potency “instantly or soon after castration”, 17% reported disappearance of libido after a period of considerable fading, while 18% reported that they were still able to engage in sexual intercourse.

Cornu extended his study on mentally ill offenders. He examined a group of 127 “pathological” sex offenders. In the group that underwent castration, the recidivism rate was 7,44%. Prior to the surgery the recidivism rate was 78,86%. Regarding sexual

³⁵ ATSA, *Anti-Androgen Therapy and Surgical Castration*, 1997. Available at: <http://www.atsa.com/ppantiandro.html>. Last accessed: 24 May 2010.

³⁶ See Diane M. Gianelli, *Castration for Sex Offenders*, American Medical News, 13 April 1992. p. 2.

³⁷ See *supra* note 14.

potency, 63% reported losing their sex drive immediately after castration, 26% have lost it gradually, while 10% were still potent.

Bremer's study found that only 2,9% of the castrated sex offenders recidivated, while prior the castration the rate of recidivism in the same group was 50%. Stürup's study examined 900 cases of sex offenders in Denmark. Only 2,2% of the offenders who underwent castration recidivated while asexualization occurred in 97% of the cases.

The results obtained in the above mentioned studies indicate that surgical castration is a very effective method that significantly reduces recidivism in sex offenders. Heim & Hirsch, however, identified a number of deficiencies in the methodology of the studies reviewed. They suggest that the studies of Langelüddecke and Cornu failed to take into account that some offenders might have been sexually inactive prior castration. Further, they state that the findings regarding offender's asexualization were based on "self-ratings of sex offenders who must have learned during counseling by psychiatrists or other physicians to define themselves as sexless human beings." Nicholas Heim undertook an independent study³⁸ examining 36 voluntarily castrated sex offenders in Western Germany. His findings indicated that 36% of the offenders lost their sex drive immediately after castration, while 31% of those offenders still felt a sex drive and were able to engage in sexual intercourse. Heim went on to conclude:

The results reported in this article confirm our overall impression that sexual manifestations caused by castration vary considerably and that castration effects on male sexuality are not predictable with certainty. Therefore, surgical castration cannot be recommended as a reliable treatment for incarcerated sex offenders. Using this physical method represents an atheoretical pragmatism and a gross misunderstanding of the nature and psychodynamics of sexual deviation.

III. CASTRATION AND THE CZECH REPUBLIC

In the Czech Republic, the most important legal acts with regard to sex offenders are the Criminal Code No. 40/2009 Coll,³⁹ the Act on Human Health Care No. 20/1966 Coll., as

³⁸ Nicholas Heim, *Sexual Behavior of Sexual Offenders*, In Archives of Sexual Behaviour, Vol. 10, 1981.

³⁹ Available at: www.mvcr.cz/soubor/sb011-09-pdf.aspx (Czech). Last accessed: 26 May 2010.

amended (hereinafter “Act No. 20/1966 Coll.”),⁴⁰ and the Act on Security Detention No. 129/2008 Coll.⁴¹

1. Sexual offences and the criminal justice system

The Criminal Code of the Czech Republic entered into force on 1 January 2010 and it repealed the old Criminal Code from 1961.⁴² In the new Criminal Code, violent sex offences are addressed in Chapter III, titled “Crimes against human dignity in sexual matters.” Article 185 prescribes a punishment of between two and ten years for a sex offender who has committed rape. The severity of the punishment depends on the circumstances and the victim against whom the offence was committed (actual intercourse or action comparable to intercourse, rape charge involving a juvenile, or use of weapons while committing the act). The Criminal Code from 1961 prescribed a punishment of between three and eight years for the same offence. The offender will be punished with imprisonment for a term of five to twelve years if the act was committed against a child under the age of fourteen years. The same punishment is prescribed if the offence was committed against a person in custody, imprisonment, protective treatment, security detention, protective or institutional care or in a place where the personal freedom of the victim is restricted. The same punishment is prescribed if the victim has suffered a serious bodily injury. If the offence involves death of the victim, the perpetrator will be punished with imprisonment for a term between ten and sixteen years. The upper limit of the punishment was fifteen years in the old Criminal Code. Punishments with similar length are prescribed in articles 187 and 188 relating to sexual coercion and sexual abuse respectively.

According to Article 123 of the Criminal Code, a person can be considered mentally ill (paraphiliac) if he suffers from a sexual anomaly or deviation. Article 98 defines the types of preventive measures for such persons. Protective treatment (mandatory

⁴⁰ Available at: http://portal.gov.cz/wps/portal/_s.155/701?kam=zakon&c=20/1966 (Czech). Last accessed: 24 May, 2010.

⁴¹ Available at: http://www.lexdata.cz/lexdata/sb_free.nsf/c12571cc00341df1000000000000000/c12571cc00341df1c125742d003e535b?OpenDocument (Czech). Last accessed: 26 May 2010.

⁴² Act No. 140/1961 Coll., as amended. Available at: www.mvcr.cz/soubor/trestni-zakon-140-1961-sb.aspx (Czech). Last accessed 27 May 2010.

hospitalization) and protective detention can be imposed on a sex offender if he is deemed to be dangerous for the society. Article 99 stipulates that protective treatment may be imposed separately or in addition to a punishment. According to Article 100, if the committed crime is particularly serious and the perpetrator is not criminally responsible due to mental illness, a court may order security detention. Security detention may be imposed separately, while waiving a punishment, or simultaneously with the punishment. Security detention shall continue as long as required for the protection of the society. This means that life-long incarceration is possible for sex offenders.

Protective treatment and security detention are more closely addressed in the Act on Security Detention. Article 72 states that protective treatment will continue as long as required, but no longer than two years. If not discontinued, the court will – before the end of this period – either decide to extend the treatment for additional two years, or will release the offender from protective treatment. The release might be accompanied by a supervision order for a maximum duration of five years.

Article 72a stipulates that security detention is carried out at an Institute for security detention. Detainees take part in special medical, psychological, educational, rehabilitation and activity programs. A court shall examine, at least once in every 12 months (or every 6 months in the case of juvenile detainees), whether the reasons for the detention are still existent. The court may substitute the security detention measure with a protective treatment measure in the event that the reasons for which the security detention has been imposed have ceased and the conditions for protective treatment have been met.

2. Legal framework governing the practice of castration

In the Czech Republic, voluntary surgical castration as a treatment for sex offenders was introduced in 1966. The legal provisions governing the procedure are to be found in Act No. 20/1966 Coll. Article 27 stipulates that castration may only be performed on voluntary basis. The Ministry of Health is the institution to decide the conditions under which the procedure may be performed. The grounds were clarified with the adoption of an amendment – Article 27a – in 1991. In order for the surgical castration to be carried out, a request must be submitted by the person concerned. Prior submitting the application, the applicant must be properly informed about the details of the operation as

well as the possible side-effects. Finally, the procedure must be approved by a ‘specialist’ committee – a panel of at least five members – consisting of a lawyer, at least two doctors specializing in the appropriate field, and two other medical doctors who are not directly involved in the intervention.

Castration is specifically addressed in the Draft Law on Specific Medical Services.⁴³ Article 17 (2) stipulates that castration can be performed on a patient who is at least 18 years old and has been medically diagnosed with deviant sexual behavior associated with tendencies to commit sexually motivated offenses. The procedure will be performed in accordance with Article 27a of the Act No. 20/1966 Coll. Patients deprived of legal capacity may undergo castration only after a written request by their legal guardian, following a favorable opinion of the expert committee, as well as with a consent of a court. Changes are foreseen regarding the members of the expert committee. Article 18 states that members of the expert committee shall consist of two sexologists, one psychiatrist, one urologist, one clinical psychologist and one lawyer. Castration applicants will be invited to the meetings of the committee of experts. The committee of experts shall provide the applicants with information on the nature of the medical intervention and its permanent consequences and possible risks. At the end of the meeting an official record will be signed by the applicant and the members of the committee. The applicant, who has consented and lodged an application, has the possibility to withdraw his consent and refuse to be castrated at any time.

3. Findings of the Committee for the Prevention of Torture

In 2006, the European Committee for the Prevention of Torture (hereinafter: CPT), established under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 1984,⁴⁴ paid its periodic visit to the Czech Republic. In its report⁴⁵ the CPT communicated its serious reservations regarding the medical intervention of surgical castration being performed in the country. The CPT

⁴³ Available at: http://www.mzcr.cz/Odbornik/dokumenty/vladni-navrh-zakona-o-specifickyh-zdravotnich-sluzbach_2161_1028_3.html (Czech). Last accessed: 26 May 2010.

⁴⁴ Available at: <http://www.cpt.coe.int/en/documents/eng-convention.pdf>. Last accessed: 24 May 2010.

⁴⁵ CPT/Inf (2007) 32, *Report to the Czech Government on the visit to the Czech Republic carried out by the CPT from 27 March to 7 April 2006 and from 21 to 24 June 2006*, Strasbourg 2007. Available at: <http://www.cpt.coe.int/documents/cze/2007-32-inf-eng.pdf>. Last accessed 24 May 2010.

noted that it had “grave doubts as to whether such an intervention should be applied in the context of persons deprived of their liberty.” The Czech authorities were asked to send additional information⁴⁶ so that the committee could form a worthwhile view regarding the actual practice and the conditions under which it is performed. The CPT wanted more information on, inter alia, “the annual number of surgical castrations carried out on men subjected to ‘protective treatment’ during the past five years” as well as “statistics concerning re-convictions, for a sexual offence involving violence against persons, of men who have been surgically castrated.”

The response of the Czech government⁴⁷ was qualified as not reassuring by the CPT. Czech authorities stated that no statistics on the number of surgical castrations carried out on sentenced sex-offenders were kept. Partial statistics, following a survey conducted by the authorities, from only five psychiatric hospitals were sent. The CPT was informed that between 2001 and 2006, around 50 sentenced sex-offenders had undergone surgical castration. Regarding statistics on re-convictions of offenders who have been castrated, the government stated that only one castrated offender has re-offended. In the view of the CPT “the number would probably be much higher if all institutions known to accommodate sex offenders sentenced to ‘protective treatment’ were to be canvassed.” This prompted the CPT to visit the Czech Republic once again in 2008.

Following the visit, in its new report⁴⁸ the CPT addressed the issue on 12 pages. This time the Czech Republic was criticized even more heavily. Surgical castration was usually taking place in the context of a protective treatment measure. CPT found out that between 1998 and 2008, 94 sex-offenders had undergone surgical castration. This was affirmed by the First Deputy Minister for Health of the Czech Republic. Contrary to the response of the government, the CPT came across three cases in which sex offenders had committed serious sex related crimes, including serial rape and attempted murder, after they had been surgically castrated. Addressing the response of the Czech government, the CPT stated that “the establishment of a valid conclusion as regards re-offending rates

⁴⁶ *Ibid.*, p. 52.

⁴⁷ CPT/Inf (2007) 33, *Response of the Czech Government to the report of the CPT on its visit to the Czech Republic from 27 March to 7 April 2006 and from 21 to 24 June 2006*, Strasbourg 2007. Available at: <http://www.cpt.coe.int/documents/cze/2007-33-inf-eng.pdf>. Last accessed 24 May 2010.

⁴⁸ CPT/Inf (2009) 8, *Report to the Czech Government on the visit to the Czech Republic carried out by the CPT from 25 March to 2 April 2008*, Strasbourg 2009. Available at: <http://www.cpt.coe.int/documents/cze/2009-08-inf-eng.pdf>. Last accessed: 24 May 2010.

(based on re-conviction data or self-reporting) is notoriously troublesome from a methodological point of view.”

During its visit, the CPT encountered both technical and practical problems. First of all, the committee was not satisfied because the director of the Horní Beřkovice Psychiatric Hospital – where some 16 surgical castrations were performed in the previous ten years – refused to provide the committee with access to medical files. In the view of the CPT this was not in line with Article 8, paragraph 2 (d) of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Secondly, the CPT stated that it received inaccurate information from the Czech government before, during and after the visit. It affirmed that under Article 8, paragraphs 2 (b) and (d) of the mentioned Convention, information provided should be accurate. Thirdly, the committee asked the authorities to introduce programs for treatment of sex offenders sentenced to protective treatment while they are held in prison. Apparently, there was “general absence of any treatment programs for imprisoned sex-offenders” in the Czech Republic. Fourthly, the CPT found that castration was performed on first-time offenders, some of which were non-violent. Other offenders were castrated for offences such as repeated exhibitionism. Overall, this was the case in 50% of the cases examined.

Last, the CPT found that although Act No. 20/1966 Coll. requires the procedure to be performed solely on voluntary basis, with an approval of a ‘specialist’ committee and after an informed consent of the offender, this was not the reality in a number of cases. In all of the cases examined, the patients pointed out that their application “was at least partially instigated by fear of long-term detention.” The CPT met only two sex offenders who have spontaneously applied to be castrated. The others replied that the treating sexologists were the ones to suggest the procedure. Some offenders stated that the treating sexologist told them to either choose castration or face possible lifelong detention.

Regarding informed consent; the information on surgical castration provided to the patients was written in Czech, German and English. At the time of the CPT visit, no universal leaflet explaining the medical consequences of surgical castration was existent in the Czech medical institutions. “Some inmates complained that they had received no information whatsoever”. One castrated sex offender stated that he was never informed

that surgical castration can lead to osteoporosis. Several offenders claimed that they would have never opted for the operation if they were properly informed of the possible side-effects.

In one of the hospitals, there was no lawyer amongst the members of the 'specialist' committee. This is obviously not in line with the provisions of Act No. 20/1966 Coll. regarding the composition of the committee. Further, the CPT stated that the procedural role of 'specialist' committee was not standardized and differed considerably depending on the hospital. "Members of the Prague commission declared themselves to be technically incompetent to assess whether or not surgical castration was advisable in a particular case." The 'specialist' committee rarely rejected the applications. The Ministry of Health reported that it is aware of "only one case" in which the application was rejected. The CPT concluded that surgical castration equals to degrading treatment and as such should be immediately abandoned.

4. Response of the Czech Government

In 2009, the Czech government responded to the report.⁴⁹ First of all, in the view of the government, the CPT is not a subject authorized to inspect medical documentation of patients without their consent. The argumentation was that sexual offenders enjoy the protection of their rights in relation to personal data as provided by the Charter of Fundamental Rights and Freedoms.⁵⁰ Secondly, the government refused the allegations that the authorities have provided inaccurate information to the CPT. The response stated that all minor discrepancies were immediately clarified and explained. Thirdly, in relation to the programs for the treatment of sex offenders while in prison, the authorities noted that the decision whether to start or not to start the ordered treatment depends on the will of the prisoner concerned. In the view of the government this approach is sufficient. It was stated however that the protective therapy in medical facilities will be addressed in

⁴⁹ CPT/Inf (2009) 9, *Response of the Czech Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to the Czech Republic from 25 March to 2 April 2008*, Strasbourg 2009. Available at: <http://www.cpt.coe.int/documents/cze/2009-09-inf-eng.pdf>. Last accessed: 26 May 2010.

⁵⁰ Available at: http://portal.gov.cz/wps/portal/_s.155/703/.cmd/ad/.c/311/.ce/10823/.p/8413/_s.155/703?PC_8413_l=2/1993&PC_8413_ps=10 (Czech). Last accessed: 26 May 2010.

the Draft Law on Specific Medical Services. The provisions relating to protective sexological treatment will be reassessed, in accordance with the CPT recommendation, so that such treatment might be provided concurrently with the prison sentence by all and not only by those prisoners agreeing with the treatment. Allegations by sex offenders that it was the medical personnel who recommended surgical castration were dismissed.

The Czech government did not address the finding of the CPT that castration was performed on first-time offenders as well as on sex offenders who have committed non-violent crimes. It did not comment on the discrepancies regarding the provided statistics and the opposing findings of the CPT. The procedure and the actual practice of castration were also not addressed. This was noted in the 2009 Human Rights Report on the Czech Republic⁵¹ prepared by the US Department of State.

As to the CPT recommendation that surgical castration should be immediately abandoned, the government stated:

The Ministry of Health believes that this is a purely professional issue, and does not consider the reasons specified by the Committee in favour of absolute abandonment of castration upon request of the patient – sexual offender – as sufficient and established, particularly with regard to the fact that, as explained above, Act No. 20/1966 Coll. binds the performance of such intervention to strict conditions and the patient's request.

5. Constitutional and human rights issues

The practice of surgical castration raises uneasy medical, ethical and legal questions. These are issues that might affect the human rights of the sex offenders. The strongest argument in favor of surgical castration is that the procedure is performed solely on voluntary basis, with an approval of a ‘specialist’ committee and after an informed consent of the offender. However, as described above, in the Czech Republic the legal procedure leading to castration is not always followed as prescribed by the law. This raises the query if the procedure can be considered legally effective. The most difficult question to answer is whether the offender’s consent is indeed voluntary. If this is not the case, should surgical castration be considered treatment or punishment? Presuming that

⁵¹ Available at: <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136027.htm>, Last accessed: 26 May 2010.

one can answer that question, does it really make a difference given that in the Czech Republic both cruel, inhuman or degrading punishment and treatment are prohibited?

As mentioned above, research remains inconsistent and there are conflicting opinions within the medical community whether surgical castration does more to prevent sex offenders from re-offending than other available treatment. Given that surgical castration is irreversible, causes permanent physical change, and can lead to numerous adverse side-effects, the question arises whether it can be considered proportional. “If the patient’s leg was amputated when less onerous methods would perfect the desired cure, that patient would encounter needless pain and permanent disability.”⁵²

A defendant “may not waive the constitutional ban [on cruel and unusual punishment] and thus empower the state to impose a punishment that it is otherwise forbidden to inflict.”⁵³ This part of the paper will seek to examine the legitimacy and constitutionality of voluntary surgical castration.

According to Article 3 of the Czech Constitution:⁵⁴

An integral component of the constitutional system of the Czech Republic is the Charter of Fundamental Rights and Freedoms.

Article 10 states:

Promulgated international agreements, the ratification of which has been approved by the Parliament and which are binding on the Czech Republic, shall constitute a part of the legal order; should an international agreement make provision contrary to a law, the international agreement shall be applied.

5.1 Prohibition of cruel, inhuman, or degrading treatment or punishment

The first test of constitutionality will be to determine whether surgical castration represents cruel, inhuman or degrading treatment or punishment.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment from 1984⁵⁵ in its Article 16 states:

⁵² William L. Baker, *Castration of the Male Sex Offender: A Legally Impermissible Alternative*, Loyola Law Review, Vol. 30, 1984, p. 389.

⁵³ Richard J. Bonnie, *The Dignity of the Condemned*, Virginia Law Review, Vol. 74, 1988, pp.1363-71. (Cited in Batchoo, see *supra* note 25).

⁵⁴ Constitutional Act No. 1/1993 Coll., as amended. Available at: <http://www.vlada.cz/scripts/detail.php?id=8073>. Last accessed: 27 May 2010.

Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Article 5 of the Universal Declaration of Human Rights from 1948⁵⁶ states:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

The International Covenant on Civil and Political Rights from 1966⁵⁷ (Article 7), the European Convention for the Protection of Human Rights and Fundamental Freedoms from 1950⁵⁸ (Article 3), and the Charter of Fundamental Rights of the European Union from 2000⁵⁹ (Article 4) all contain the same wording. In the Czech Republic, the ICCPR is promulgated in Act No. 120/1976 Coll., while the ECHR is promulgated in Act No 209/1992 Coll. Although a member of the EU, in the Czech Republic, the CFREU does not have legal force.⁶⁰ Finally, the Charter of Fundamental Rights and Basic Freedoms of the Czech Republic⁶¹ contains the same wording in Article 7 (2).

Since surgical castration is prescribed as treatment in the Czech Republic, the most important question to be answered is whether this treatment is cruel, inhuman or degrading. In *Davis v. Berry*⁶² the Supreme Court of the United States stated “[t]he physical suffering may not be so great, but that is not the only test of cruel punishment; the humiliation, the degradation, the mental suffering are always present and known by all the public, and will follow him wheresoever he may go”. In *Weems v. United States*,⁶³ the Supreme Court described castration as “barbaric.” Castration is an invasive operation after which internal glands are removed and a part of the body is permanently destroyed. This procedure fits the definition of mutilation. The verb *mutilate* is defined as “to cut off

⁵⁵ Available at: <http://untreaty.un.org/cod/avl/ha/catcidtp/catcidtp.html>. Last accessed: 27 May 2010.

⁵⁶ Available at: <http://www.udhr.org/UDHR/default.htm> (hereinafter: UDHR). Last accessed: 27 May 2010.

⁵⁷ Available at: <http://www.hrweb.org/legal/cpr.html> (hereinafter ICCPR). Last accessed: 27 May 2010.

⁵⁸ Available at: <http://www.echr.coe.int/nr/rdonlyres/d5cc24a7-dc13-4318-b457-5c9014916d7a/0/englishanglais.pdf> (hereinafter ECHR). Last accessed: 27 May 2010.

⁵⁹ Available at: http://www.europarl.europa.eu/charter/default_en.htm (hereinafter CFREU). Last accessed: 27 May 2010.

⁶⁰ In October 2009, the President of the Czech Republic agreed to sign the *Treaty on the Functioning of the European Union* after he was reassured by EU leaders that the country will be given an “opt-out” clause making the CFREU not legally binding in the Czech Republic.

⁶¹ See *supra* note 50 (hereinafter: CFRBF).

⁶² See *supra* note 4.

⁶³ *Weems v. United States*, 217 U.S. 349, 1910, p. 377.

or permanently destroy a limb or essential part” by the Merriam-Webster dictionary. The answer to the question if surgical castration – either as a punishment or treatment – is cruel, inhuman or degrading appears to be an apparent one.

5.2 The right to marry and found a family

The UDHR in Article 16 states:

Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family (...)

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 23 of the ICCPR reads:

The right of men and women of marriageable age to marry and to found a family shall be recognized.

This right is also part of the ECHR, Article 12 stipulates:

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Article 9 from the CFREU:

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Finally, Article 32 of the CFRBF states:

Parenthood and the family are under the protection of the law (...).

Surgical castration prevents an individual to engage in a normal marital sexual relationship or any other sexual behavior permissible by law.⁶⁴ Even if a person achieves sexual desire by taking hormonal drugs, he might have to suffer from possible unwanted side-effects. This would have not been the case if his testes were not removed. A man with removed testes can never procreate and thus his right to marry and found a family might be denied. This is a situation in which the treatment exceeds the cure. Therefore, the accomplishment of the intended societal goal – the prevention of recidivism in sex offenders – is the same point wherein treatment becomes punishment.⁶⁵

⁶⁴ Julian M. Davidson et al., *Maintenance of Sexual Function in a Castrated Man Treated with Ovarian Steroids*, In *Archives of Sexual Behavior*, Vol. 12, 1983, p. 263.

⁶⁵ Baker, see *supra* note 52, p. 389.

5.3 The right to dignity and integrity

The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine from 1997⁶⁶ in its Article 2 states:

The interests and welfare of the human being shall prevail over the sole interest of society or science.

Article 5 continues:

An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it.

This person shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks.

The person concerned may freely withdraw consent at any time.

This Convention is promulgated into Czech law by Act No. 96/2001 Coll. These principles were also confirmed by the Constitutional Court. In its Decision No. 639/2000 of 18 May 2001⁶⁷ the Constitutional Court emphasized that the constitutional principle of the inviolability of the integrity of the person follows the principle of self-determination in matters of personal health care.

The CFREU, in its Article 1 states:

Human dignity is inviolable. It must be respected and protected.

Article 3 continues:

Everyone has the right to respect for his or her physical and mental integrity.

In the fields of medicine and biology, the following must be respected in particular:

- the free and informed consent of the person concerned, according to the procedures laid down by law,
- the prohibition of eugenic practices, in particular those aiming at the selection of persons (...).

Article 7 of the CFRBF reads:

The inviolability of the person and of her private life is guaranteed. They may be limited only in cases provided for by law.

⁶⁶ Available at: <http://conventions.coe.int/Treaty/EN/Treaties/html/164.htm> (hereinafter: Convention on Dignity of the Human Being). Last accessed: 27 May 2010.

⁶⁷ Nález sp.zn. IV.ÚS 639/2000, Available at: <http://czp.prf.cuni.cz/?q=node/89> (Czech). Last accessed: 27 May 2010.

Article 10:

Everyone has the right to demand that his human dignity, personal honor, and good reputation be respected, and that his name be protected.

The practice of surgical castration and the way it is administered in the Czech Republic (as described by the CPT) would appear to be not only in contradiction with national law, but with a number of international conventions as well. The findings of the CPT indicate that the procedure as prescribed by Act No. 20/1966 Coll., was not always followed. Although the Act contains the basic provisions which are part of the above mentioned conventions, the actual practice was not in compliance with the law in a number of cases. Even though there is no constitutional decision regarding the treatment of those sex offenders to the present day, it is to be expected that the Constitutional Court would have found that some of their basic rights were not respected.

Human dignity, personal honor, and good reputation are rights that a castrated person might not anymore enjoy or feel to possess if his manhood is taken away from him. Even after he serves his punishment and is deemed not dangerous for the society, he will not be capable of having normal sexual relation. One might argue that a life without sexual intercourse and the possibility to procreate is not very honorable or dignified. This is also in contradiction with the right to private life.

The inviolability of the person and his integrity are rights that do not go hand in hand with removal of parts of the human body. The right to integrity of a person means a right to both mental and physical integrity. This is certainly not the case when a person is surgically castrated and parts of his body are removed.

IV. ALTERNATIVES TO SURGICAL CASTRATION

Many countries that have abandoned chemical castration as a form of treatment of sex offenders continue to treat them with alternative methods. Nowadays, the most promising treatments are the anti-hormone therapy (widely known as chemical castration) and behavior modification as part of psychotherapy. In the past, physicians in Germany have experimented with psychosurgery, an operation where areas of the brain regulating sexual

desire are destroyed.⁶⁸ The procedure did not appear to have been followed in other countries. It is of course questionable if this can be considered an acceptable alternative given that its intrusiveness and impact on human rights is not much different than surgical castration.

1. Anti-hormone therapy – chemical castration

Probably the most promising and effective alternative to incarceration or castration is the use of anti-hormone drugs – also referred to as chemical castration.⁶⁹ Administering anti-hormone (or antiandrogen) drugs to a person will reduce the levels of testosterone in his body. Further, his sexual desire will be reduced followed by decrease of erotic fantasies and often temporal impotency.⁷⁰ Full effects include a reduction of potency, orgasm, sperm production, frequency and pleasure of masturbation and sexual frustration.⁷¹ The use of chemical castration will not only suppress sexual urges and desires but will also aid patient's concentration on other therapeutic activities, which are also aimed at controlling deviant behavior.⁷²

There are currently two androgen drugs used for the treatment. Medroxyprogesterone Acetate (hereinafter: MPA) in the United States and Cyproterone Acetate (hereinafter: CPA) in Europe and Canada. MPA and CPA are administered as an injection and are both synthetic progestins (the female hormones) which act on the brain to inhibit hormones that stimulate the testicles to produce testosterone.⁷³ The effects of the drug are temporary and within days the person taking them can regain his sexual desire and potency. A number of studies⁷⁴ have shown that recidivism rates in treated sex offenders

⁶⁸ Gunter Schmidt and Eberhard Schorsch, *Psychosurgery of sexually deviant patients: Review and analysis of new empirical findings*, In Archives of Sexual Behavior, Vol. 10, 1981, p. 301.

⁶⁹ Baker, see *supra* note 52, p. 394.

⁷⁰ Pamela K. Hicks, *Castration of Sexual Offenders: Legal and Ethical Issues*, In Journal of Legal Medicine, Vol. 14, 1993, pp. 665-66.

⁷¹ Jackie Craissati, *Managing High Risk Sex Offenders in the Community - A Psychological Approach*, Routledge, New York 2004. (Cited in Karren Harrison, *The Castration Cure?*, In Prison Service Journal, Vol. 175, p. 13).

⁷² Peter Weiss, *Assessment and Treatment of Sex Offenders in the Czech Republic and in Eastern Europe*, In Journal of Intrapersonal Violence, Vol. 14, 1999, pp. 411-21. (Cited in *supra* note 70).

⁷³ Craissati, see *supra* note 71.

⁷⁴ See, for example, Meyer WJ, Cole C, Emory LE: *Depo-Provera treatment for sex offending behavior: an evaluation of outcome*, In Bulletin of the American Academy of Psychiatry and the Law, Vol. 20, 1992, pp. 249–259, Kravitz HM, Haywood TW, Kelly JR, et al: *Medroxyprogesterone treatment for paraphiliacs*,

are as low as 1% while the rates for sex offenders who did not undergo the treatment were as high as 68%. Potential side-effects associated with CPA include: fatigue, hypersomnia, lethargy, depression, a decrease in body hair, weight gain, liver damage, bone mineral loss, nausea, indigestion, skin rashes, hot and cold flushes, shortness of breath, and decreased production of oil from sebaceous glands in the skin.⁷⁵ However, some physicians⁷⁶ argue that in reality CPA causes virtually no side-effects or that the long term effects are simply unknown. The effects of the CPA are not diminished by the use of testosterone.⁷⁷ This means that a sex offender who is undergoing chemical treatment will not be able to reverse the effects of the drug by taking other hormonal drugs. This is not the case with surgical castration where it is possible to regain sexual desire and potency by simply taking testosterone. A number of experts insist that chemical treatment must be accompanied by counseling.⁷⁸

In the Czech Republic antiandrogens are commonly administered in the psychiatric hospitals while in the prisons the treatment begins six months before transfer to a psychiatric hospital due to financial limitations.⁷⁹

2. Behavior modification and Psychotherapy

Behavior modification as a treatment attempts to eliminate deviant sexual response through various behavior techniques and, at the same time, develop normal responses. One such technique is aversive conditioning.⁸⁰ It is performed with the use of electric shocks or noxious odour. Each time a patient becomes sexually aroused when watching or fantasizing about a sexual experience with themes of violence, the patient is subjected to a negative stimulus. A similar technique is covert sensitization. In this technique,

In Bulletin of the American Academy of Psychiatry and the Law, Vol. 23, 1995, pp. 19–33, Berlin FS, Meinecke CF: *Treatment of sex offenders with antiandrogenic medication: conceptualization, review of treatment modalities, and preliminary findings*, In American Journal of Psychiatry, Vol. 138, 1981, 601-07.

⁷⁵ Karren Harrisson, *Legal and Ethical issues when using Antiandrogenic Pharmacotherapy with Sex Offenders*, In Sexual Offender Treatment, Vol. 3, 2008, p.4.

⁷⁶ See, for example, Cooper, A. J., *A placebo-controlled trial of the antiandrogen cyproterone acetate in deviant hypersexuality*, In Comprehensive Psychiatry, Vol. 22, 1981, pp. 458-465 or see *supra* note 74. p.2.

⁷⁷ Ortman, see *supra* note 30, p. 451.

⁷⁸ Fred S. Berlin, *The Case for Castration*, Part 2, In Washington Monthly, 1994, p. 28.

⁷⁹ CPT Report, see *supra* note 48, p. 15.

⁸⁰ Nicholas A. Groth, *Men Who Rape: The Psychology Of The Offender*, Plenum Press, 1979. p. 218-19. (Cited in Baker, *supra* note 52, p. 396).

offenders verbalize a detailed deviant fantasy. Once aroused, they start verbalizing equally detailed fantasy of highly aversive consequences, such as being arrested. The technique requires them to focus attention on negative consequences that they find upsetting.⁸¹ Although behavior modification appears to be a viable treatment for sex offenders, little is known about the long-term effect such treatment will have in preventing this type of crime.⁸²

Psychotherapy is used as a method to help the offender to control undesirable behavior through introspection. The treatment “views sexual assaultiveness as the result of internal emotional conflicts... which aims to relieve such problems by helping the offender to become more aware of and to better understand these underlying issues”.⁸³ The techniques used in psychotherapy are self-help groups, marital and family counseling, group therapy, and individual counseling.⁸⁴

V. CONCLUSION

Throughout history, surgical castration has been used to punish sex offenders. In the developed world, the practice of removing the testes was considered a viable treatment that is able to prevent recidivism in offenders who commit crimes of sexual nature. With the advent of medicine in the seventies of the last century, drugs that can produce the same, if not better, effect were discovered. This prompted most of the countries practicing castration on sex offenders to abandon the surgical treatment and continue using chemical castration to achieve the same goals instead.

Surgically removing the testes is an invasive and irreversible procedure that permanently changes the human body. Aside of diminishing sexual desire and potency, the procedure completely eliminates the ability for procreation. Surgical castration can also lead to adverse side-effects that are both of physical and psychological nature. Taking hormonal drugs that are easily available for purchase, however, restores the sex drive and makes it possible for sex offenders to engage in sexual intercourse even though their testes are

⁸¹ Linda S. Grossman et al., *Are Sex Offenders Treatable? A Research Overview*, In *Psychiatric Services*, Vol. 50, 1999, p.354.

⁸² Groth, see *supra* note 80.

⁸³ *Ibid.*, p. 216-17.

⁸⁴ *Ibid.*

removed. This is not the case with chemical castration as testosterone can not reverse the effects of antiandrogene drugs.

Although research shows that surgical castration is a very effective method that significantly reduces recidivism in sex offenders, independent review studies have shown that the positive effects might not be based on genuine scientific evaluation. Today, there are conflicting opinions within the medical community whether the intervention does more to prevent sex offenders from re-offending than other available treatment. Therefore, surgical castration can not be considered as a reliable treatment for sex offenders.

In the Czech Republic, the intervention of physically removing the testes has been introduced in 1966 and continues to the present day. In the period between 1998 and 2008, 94 sex offenders have been castrated. This shows that although the procedure is not a frequent measure, its practice can not be considered rare. Legal framework in the Czech Republic stipulates that surgical castration may be performed solely on voluntary basis, with an approval of a ‘specialist’ committee and after an informed consent of the offender. The report of the CPT following its visit to the Czech Republic stated that this was not the reality in a number of cases. This raises the question whether the treatment can be considered legally permissible. It is also questionable if the procedure can pass the constitutionality test with regard to the prohibition of cruel, inhuman, or degrading treatment or punishment, the fundamental rights to marry and found a family as well as to human dignity and integrity. When these fundamental legal questions are combined with the advent of modern medicine and the possibility to reach the desired goal by alternative unobtrusive treatment, it becomes apparent that surgical castration is not only impermissible but also unnecessary.