

To be Punished or Treated? The Concept of Pedophilia and Criminal Action Against Sex Offenders

PhD Viktor Bérces*

PhD candidate Hurtony Alexandra Kittl**

Abstract

Nowadays, not only life problems, but also deviance are being medicalized, which are considered less and less a mere violation of the rules, but rather a disease. Among sexual offenders, pedophiles occupy a special place, because there is also a biological aspect to the phenomenon.

In addition, according to some studies, pedophile offenders have a high recidivism rate and problems that seem unmanageable to the law raise the need to find alternative solutions. Based on all this, the study seeks the answer to: should pedophilia be punished or treated?

Keywords: criminal law, criminology, pedophilia, sex offenders, chemical castration, medicalization, treatment of pedophiles

I. Introduction

One of the basic questions of criminal legislation is which behaviors entail criminal liability. The decision-making process is guided by a number of factors, such as international legal standards, or the state's obligation to protect individual fundamental rights, the constitutional standard of necessity and proportionality, but no itemized list of these factors is available. According to criminalization, a given social problem is essentially a crime, which makes it necessary for the criminal justice system to apply the appropriate sanction. This perception usually emphasizes the responsibility and even the guilty of the person¹. On the other hand, medicalization refers to the modern tendency in which a fundamentally non-medical problem is viewed from a medical point of view, described using medical terms and the language of medicine, understood using the explanatory principles of medicine, and attempted to be solved ("treated") with medical interventions². Nowadays, not only life problems,

* Senior lecturer, Pázmány Péter Catholic University, Faculty of Law, Institute of Criminal Law, Procedure and Law-Enforcement, Hungary. Contact: berces.viktor@jak.ppke.hu.

** PhD candidate, Pázmány Péter Catholic University, Faculty of Law, Institute of Criminal Law, Procedure and Law-Enforcement, Hungary. Contact: drhurtonyalexandra@gmail.com.

¹ G. Szöllösi, *A társadalmi problémák szociológiai elmélete – a konstrukcionista nézőpont* [The sociological theory of social problems – the constructionist point of view]. *Metszetek*, Vol. 5. No. 1, 2016, pp. 49-51.

² P. Conrad, *Medicalization and Social Control*, *Annual Review of Sociology* vol. 18, 1992, pp. 213-232; A. Garry, *Medicine and Medicalization: A Response to Purdy*, *Bioethics*, Vol. 15. No. 3. 2001, p. 264.

but also deviance are being medicalized, which are considered less and less a mere violation of the rules, but rather a disease. According to Conrad, a deviance is medicalized when previous efforts to control it have failed and there is some kind of medical intervention (mostly medication) that seems capable of controlling it, and medicine is willing to classify deviant behavior as a disease³.

The primary goal of the study was to examine the concept of pedophilia from a purely legal perspective. However, as a result of the review of the specialized literature, it was recognized that tangential research of the related disciplines is also necessary, since the concept of pedophilia does not appear either in criminal legal facts or in criminal law dogmatics. In criminal law, pedophilia can be compared to crimes against the freedom of sexual life and sexual morals committed against children or minors, but it is not a concept that can be identified with it. Pedophilia has different meanings in different disciplines, so simply put; it means something different to the general practitioner, the specialist (psychiatrist) and the criminal lawyer, and indeed to society as well. Although my thesis was not written through the analysis of the relevant legal background, jurisprudence and legal dogmatics, it tries to take a stand on the question: should pedophilia be punished or treated? The study examines the meaning of pedophilia and affects the action taken against sex offenders in the practice of individual countries.

II. The definition of sex offenders: why is a pedophile different?

Sex offender is a collective term that currently does not have a generally accepted definition recognized by all specialist literature⁴. Regardless of the commission of any kind of crime, the person who implements the legal facts is a "perpetrator" from the point of view of criminal substantive law. Studies of sexual crimes by foreign researchers use different definitions of perpetrators⁵. They were not able to create a general concept of a sex offender and differentiate between the offenders based on their motivation and motive. The diagnosis of pedophilia is irrelevant from the point of view of criminalization, the criminal justice system does not deal with the perpetrator's mental disorder as long as it does not limit or exclude his ability to be charged. According to the scientific point of view – be it medical or criminal law – the various sexual deviances (paraphilias) are not classified as a pathological state of mind as a reason for excluding criminal liability. However, the biological, psychological and sociological determination of pedophilia could justify the treatment and reintegration tools to be developed in the penitentiary in the future, or even chemical castration. The reasons and motivations behind the commission of sexually motivated crimes are usually different and a significant part of them (especially pedophiles) can be traced back to some kind of psychological illness, and their actions are manifestations of their

³ P. Conrad, *On the Medicalization of Deviance and Social Control*. In: Richard Stivers (2004): *Shades of Loneliness. Pathologies of a Technological Society*. New York—Oxford: Rowman & Littlefield Publishers, Inc. 2004, p. 33.

⁴ Aggrawal, A., *Paraphilias and Sexual Crimes-An Overview*. In: Wiley Encyclopedia of Forensic Science (Five Volume Set) Edition: 1 Chapter: Paraphilias and Sexual Crimes – An Overview. Publisher: Wiley, US Editors: Jamieson, Moenssens. 1.

⁵ D. Finkelhor, *Child Sexual Abuse: New Theory and Research*, New York: Free Press, 1984, pp. 35-37.

sexual urges⁶. The terms used for individual offenders actually cover a much wider range and are often misleading without proper definition⁷, however, from the point of view of criminological investigation, it is essential to define the circle of perpetrators.

Pedophilia is one of the diseases known in (psychiatry) medical literature, which are called paraphilias or psychosexual disorders. According to Turvey: "paraphilias can be characterized as qualitative disorders of sexual drive, when the sexual desire is not directed to the original biological goal, but to another person or object, which often conflicts with the rules of public morality or is even considered an act sanctioned by law"⁸. The literature defining the definition of pedophilia starts from the American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders – fifth edition (DSM-V)⁹. In the interpretation of the manual, the starting point is the constant existence of deviant sexual desire and fantasizing for an immature body for a long period of time – at least 6 months. Childhood and adolescence are considered the two main centers for the development of deviant sexual fantasy worlds. In both periods, fantasizing can be incorporated as the main coping mechanism, and then it can become automatic even at the expense of reality, which can ultimately result in the fixation of deviant fantasy content. However, deviant sexual fantasy can also appear and become fixed in adulthood, but then it typically appears as a response to traumatic sexual experiences, or a sexualized environmental impact coupled with heightened emotional charge¹⁰.

The diagnostic techniques that appeared as a result of the development of medicine made it possible to observe how changes in the structure or function of the human brain affect the sexual orientation and behavior of the individual. Such neurobiological research examined the manifestation of an individual's sexual desire for children in connection with brain functions and the functioning of individual lobes. Studies have proven that as a result of certain brain deviations, the individual is unable to control his repetitive, deviant sexual behavior¹¹. Other studies have seen disorders of sexual development as a result of the reduction of gray matter¹², while neuroendocrinological theories trace the bad brain structure, which results in the development of deviant sexual behavior, to poor masculinization and defeminization during the fetal period¹³.

⁶ G. Pregunné Puskás, *A szexuális bűnelkövetők terápiás kezelésének tapasztalatai* [Experiences in the therapeutic treatment of sex offenders], Börtönügyi Szemle no. 1/2011, pp. 37-52.

⁷ B. Drexler, M. Somogyvári, *A szexuális bűnt elkövetők hazai vizsgálata büntetés-végrehajtási statisztikák alapján* [Domestic investigation of sex offenders based on penitentiary statistics], Belügyi Szemle, no. 3/2015, p. 67.

⁸ A. Lehoczki, *A fantázia szerepe a szexuális emberölésekben* [The role of fantasy in sexual homicides]. In: Magyar Rendészet no. 2/2017, p. 69.

⁹ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition., Arlington, VA, American Psychiatric Association, 2013, [https://repository.poltekkes-kaltim.ac.id/657/1/Diagnostic%20and%20statistical%20manual%20of%20mental%20disorders%20-%20DSM-5%20\(%20PDFDrive.com%20\).pdf](https://repository.poltekkes-kaltim.ac.id/657/1/Diagnostic%20and%20statistical%20manual%20of%20mental%20disorders%20-%20DSM-5%20(%20PDFDrive.com%20).pdf).

¹⁰ D. Gee, A. Belofastov, *Profiling sexual fantasy: Fantasy in sexual offending and the implications for criminal profiling*. In: R.N. Kocsis, (ed.), *Criminal profiling: International theory and research*, Totowa, Humana Press, 2007, p. 60.

¹¹ M. Mendez, J.S. Shapira, *Pedophilic behavior from brain disease*, Journal of Sexual Medicine vol. 8 (6), 2011, pp. 1092-1100, <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1743-6109.2010.02172.x>

¹² T.B. Poepl, J. Nitschke, B. Dombert, P. Santtila, M.W. Greenlee, et al., *Functional cortical and subcortical abnormalities in pedophilia: a combined study using a choice reaction time task and fMRI*, Journal of Sexual Medicine vol. 8(6), 2011, pp. 1660-1674, <https://pubmed.ncbi.nlm.nih.gov/21477019/>.

¹³ *Idem*.

According to some studies, sexual desire for children may be related to neurochemical changes due to different serotonin function and metabolism in the brain¹⁴. According to another study, the level of the hormone cortisol is significantly higher in pedophiles than in the control group, and at the same time, serum cortisol and prolactin levels are significantly lower¹⁵. According to Marshall and Barbaree's integrated theory, injuries resulting from a dysfunctional childhood lead to the commission of sexual violence in connection with the social and biological processes of adolescence, and then in contact with situational factors (stress, mind-altering drugs etc.) and opportunities¹⁶.

Research shows that sexual desire for children can be biologically determined and identifiable as a mental disorder (paraphilia), but abnormal sexual socialization can contribute to its development. The researchers were not able to create a concept of pedophilia that summarizes all areas, and there was no agreement on what is responsible for the development of pedophilia. In the medical and psychiatric literature, pedophilia is a concept that examines a deviant behavior, sexual desire, in such a way that it is not evaluated either from the point of view of society's value judgment or from the point of view of criminal law, it is regarded as a "disease" that is essential from the point of view of medicalization.

III. Treatment options for pedophilia: can it be medicalized?

Psychiatric and (legal) medical expert explanations of the concept of pedophilia mostly appear in foreign – English, American – literature. The research method of the concept of pedophilia appearing in other, non-legal disciplines – due to the lack of an adequate level of competence – was limited exclusively to description, without critical formulations or evaluations. However, this did not affect the inclusion of criminally relevant findings from the literature, forward-looking, relevant facts from the point of view of the dissertation. In connection with explaining the possibility of treatment applied to offenders, it is essential to mention the so-called treatment ideology. Efforts aimed at the improvement and education of criminals have never been alien to the penal system. After The World War II, the American Donald Clemmer, Gresham Sykes and Erving Goffman provided a conceptual framework for a better understanding of the prison world, which brought with it the realization that the prison is a personality-destroying institution that is dysfunctional in several aspects. During this period, the various social sciences developed by leaps and bounds – such as psychology, sociology – and psychiatry within medicine, which brought with it the assumption that human behavior changes with the help of all these tools. This led to the so-called for the birth of the treatment ideology, according to the basic premise of which the cause of criminal behavior lies in the personality, so it should be treated not by punishment, but by treatment¹⁷. The doctrines are related to modernism and positivism. A significant part

¹⁴ M. Maes, D. Van West, N. De Vos, H. Westenberg, F. Van Hunsel, D. Hendriks, P. Cosyns, S. Scharpé, *Lower Baseline Plasma Cortisol and Prolactin together with Increased Body Temperature and Higher mCPP-Induced Cortisol Responses in Men with Pedophilia*, *Neuropsychopharmacology*, vol. 24, 2001, pp. 37-46.

¹⁵ *Idem*.

¹⁶ G. Virág, G. Kulcsár, A. Rosta, *Szexuális erőszak* [Sexual violence]. In: Borbíró, A., Gönczöl, K. Kerezsi, K., Lévy, M. (eds.), *Kriminológia*, Wolters Kluwer Hungary, Budapest, 2019, p. 575.

¹⁷ L. Huszár, *Medical model. Historical overview of treatment/education*, *Börtönügyi Szemle*, no. 3/1997, p. 67.

of the sources created in this area consider the teachings of the representatives of the Italian anthropological school, Lombroso, Ferri and Garofalo, to be decisive. Positivism – be it biological, psychological or sociological – represented a paradigm shift compared to the teachings of the classical school in that the perpetrator – and not the act – became the center of attention. Thus, in place of the rationally decisive and fully responsible criminal of the classical trend, he painted a picture of a person determined by external and internal factors beyond his control. They believed that behind the commission of a crime there are biological, social and/or psychological factors over which the individual has no influence and which determine and "decide" his behavior¹⁸. However, as a result of the coercive nature of some of the therapeutic interventions carried out within this framework, as well as the related ethical reservations and concerns regarding the human rights of prisoners, the medical model seemed to be called into question starting in the 1960s. According to Gönczöl; "In the Western world, especially on the North American continent, a panic has developed due to the failure of penal policy"¹⁹. Despite the fall of the treatment ideology, it did not pass without a trace. Sexual deviance is such a complicated problem for communities that it may have psychological or pharmacological treatment options. Regarding the selection of the latter, individual countries do not differentiate between pedophiles and non-pedophiles. In view of the different motivations and the overlapping categories of offenders, it is difficult to choose the appropriate ("medical") treatment for those who commit crimes against the freedom of sexual life and sexual morality. It is clear from the practice of individual countries that therapies – chemical and surgical castration – are generally applied to sex offenders, and individualization – such as the treatment of pedophilia, if applicable – can only take place within that framework. Despite the wide range of treatments, it can be stated that the goal of all of them is to reduce the risk of offenders recidivism, and the statistical data justifies the review of treatment options for sex offenders. Because, according to a 1991 study, they committed the crime again within an average of 6 years after their release from prison²⁰. In addition, some studies report 50%-70% declines in sex offenders²¹.

IV. Pharmacological treatment: the application of chemical castration

Drug treatment of sex offenders is based on the assumption that behavior is sexually motivated, so suppressing sexual desire will reduce sexually deviant behavior. Although sexual fantasy and urges remain, it is reduced to the extent that the individual is able to suppress it – as a result of the drugs²². Chemical castration is, on the one hand, a drug treatment option for pedophilia, and on the other hand, in some countries (for example, some states of the United States of America, Poland) it functions as a

¹⁸ J. Szabó, *Speciális prevenció és dezisztencia* [Special prevention and desistance], Országos Kriminológiai Intézet, Budapest, 2019, pp. 52-53.

¹⁹ K. Gönczöl, *Bűnös szegények* [Guilty poor people]. Közgazdasági és Jogi Könyvkiadó, Budapest, 1991, p. 6.

²⁰ M.E. Rice, V.L. Quinsey, G.T. Harris, *Sexual recidivism among child molesters released from a maximum security institution*. Journal of Consulting and Clinical Psychology, 1991.

²¹ E.M. Tullio, *Chemical Castration for Child Predators: Practical, Effective, and Constitutional*, Chapman Law Review no. 13, pp. 191-220.

²² J.M.W. Bradford, N.S. Kaye, *The Pharmacological treatment of sexual offenders*, American Academy of Psychiatry and Law Newsletter no. 24, 1999, pp. 16-17, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.741.4512&rep=rep1&type=pdf>.

punishment, because it can be imposed by the court. In 1996, California became the first state in the United States of America to allow chemical or surgical castration for statutory sex offenders after serving their prison sentences. Eight additional states have since passed laws providing for some form of castration for sex offenders on parole or probation²³. The treatment method is medical castration, the essence of which is that the testicles are not removed, but the sexual desire is eliminated with drugs. Its mechanism has been known since the 1940s, when evidence was found that the so-called anti-androgens reduce testosterone production and its blood level²⁴. Two typical chemicals used in the treatment are cyproterone acetate (CPA) and medroxyprogesterone acetate (MPA). Both quickly reduce sexual drive and deviant sexual fantasy. In addition to both drug treatments, serious side effects such as liver dysfunction, the development of adrenal disorders, gynecomastia, weight gain, and digestive system diseases can be expected. In terms of its mechanism of action, testosterone, which is primarily responsible for sexual activity, is inhibited, by stopping the production of testosterone in the testicles and adrenal cortex, as well as neutralizing its effect, in addition to stopping the production of the biological product that controls the production of testosterone in the sexual center of the brain.

The questioning of the sentencing of the exclusive prison term used among sex offenders has already begun. May 16-17, 2013 In Freiburg, Germany, the Max Planck Institute (MPI) and the National Institute of Criminology (OKRI) held an expert workshop on the joint research entitled "Means for the prevention of sexual recidivism in the penitentiary" – "Development/development of legal regulation and treatment of sexual offenders in Europe" ("Developing sexual offender laws and treatment in Europe")²⁵. The event was attended by 24 experts in the field – including lawyers, psychologists, sociotherapists, mediators and researchers – from several European countries, such as Germany, England, Scotland, Ireland, France, the Netherlands, Belgium, Denmark, the Czech Republic, Poland, Croatia, Bulgaria, Hungary also from Russia. The participants reported on the possibilities, legal, psychological and medical means of preventing sexual recidivism, as well as their country's practices regarding the latter. Due to the disproportionate violation of the human rights of sex offenders, Germany has often been criticized for a process that prioritizes the social protection function of punishment, which paralleled the question of whether criminal law is suitable for providing protection against sex offenders. In the spirit of this problem statement, the MPI researchers began to evaluate and evaluate the effectiveness of the therapeutic practice aimed at sex offenders²⁶.

Chemical castration clearly functions as a punishment and not as a treatment in the individual states, from which it follows that the countries do not accept the "disease nature" of pedophilia, in fact they do not order to treat it, but to punish it with this severe punishment. Chemical castration works on a voluntary basis in some countries, in other countries we can also find examples of its use as a punishment that can be imposed by the court. Louisiana, Wisconsin, and Iowa mandate chemical castration for child rape victims, but Florida, Oregon, and Montana subject the perpetrator to

²³ F.S. Berlin, "*Chemical castration*" for sex offenders, The New England Journal of Medicine. 1997, vol. 336, p. 1030, <https://pubmed.ncbi.nlm.nih.gov/9091797/>.

²⁴ *Idem*.

²⁵ Szabó, J., Parti, K., Virág G., *cited*, p. 14, p. 95.

²⁶ *Idem*, p. 96.

chemical castration regardless of the victim's age²⁷. In the states of Iowa, Florida, and Louisiana, the mandatory use of chemical castration can be waived if the offender chooses physical castration instead. Texas gives the offender a choice of chemical or physical castration²⁸. The practice of Poland is unusual in the application of chemical castration, because in the European Union states – if the possibility of chemical castration exists – the treatment can be used on a voluntary basis. On the other hand, as of 2009, according to Polish legislation, in the case of rape of a minor under the age of 15 or a close family member, after the imposed prison sentence, the court can oblige the perpetrator to participate in drug treatment that reduces sexual desire, as well as psychological therapy. Before the court decides on the appropriate therapy, it must take into account the expert opinion of psychiatrists and psychologists²⁹. The provisions regarding psychotherapy prescribed in addition to chemical castration do not apply in practice either, since there are a total of 50 beds in the appropriate therapeutic institution for the approximately 3,000 sex offenders in Poland. Since chemical castration can only be carried out after serving a prison sentence according to Polish legislation and has only been ordered since 2009, there has not yet been an example of its imposition. Therefore, there is no information on its effectiveness or cost implications³⁰. As a result of Poland's practice, on August 17, 2017, the European Parliament addressed a question to the Commission regarding whether European Union member states can apply chemical castration as a condition for release or mitigation of punishment, or whether they can impose it as a punishment (mandatory)³¹? The answer to the question was quite broad: Directive 2011/93/EU on the fight against sexual harassment and sexual exploitation of children and child pornography provides minimum rules for the definition of crimes and sanctions, especially in the field of such serious crimes. With regard to the sanctions imposed on natural persons, the directive only prescribes the maximum level of imprisonment, at the same time it obliges member states to propose "treatment" programs or measures for perpetrators of sexual abuse of children, which can be used on a voluntary basis. The Commission did not take a position on the applicability of chemical castration, but emphasized that, during the implementation of the directive, the member states are obliged to respect the rights contained in the Charter of Fundamental Rights of the European Union. Respect for the Charter implies that the sanctions imposed on persons must not be disproportionate to the crime for which they have been convicted³².

Although chemical castration is potentially life-long for some offenders, it can allow sex offenders to resume normal sexual activity as part of psychotherapy. In addition, some sex offenders voluntarily undergo chemical castration. Unlike surgical castration, the effects of anti-libido medication are reversible after treatment is stopped. Despite this, chemical castration continues to be debated for a number of social and health reasons. Social problems include the fact that chemical castration may not guarantee

²⁷ *Ibidem*.

²⁸ *Ibidem*.

²⁹ eLitMed.hu, *Kémiai kasztráció Lengyelországban* [Chemical castration in Poland], 15 August 2011, <https://elitmed.hu/ilam/hirvilag/kemiai-kasztracio-lengyelorszagban>.

³⁰ G. Virág, G. Kulcsár, A. Rosta, *cited*, p. 8.

³¹ European Parliament, *Chemical castration in the EU*, Question for written answer E-005203-17 to the Commission, 17.08.2017, https://www.europarl.europa.eu/doceo/document/E-8-2017-005203_EN.html.

³² https://www.europarl.europa.eu/doceo/document/E-8-2017-005203-ASW_EN.html.

human rights in forced, mandatory cases without the informed consent of the sex offender, so it can only be considered a punishment, not a treatment. In addition, medical aspects cannot be neglected. According to the guidelines of the World Federation of Biological Psychiatric Societies, combined psychotherapy and drug therapy is more effective than either monotherapy treatment³³. However, whether it is about the application of any treatment option or the development of a therapy program, an important dilemma is the issue of involvement and voluntariness. This is closely related to the perpetrator's admission of the crime and individual responsibility for the act. This is because admitting or denying a crime can range widely, so it includes relativizing the act, shifting responsibility, or even complete denial³⁴. Voluntary participation is essential for the effectiveness of the therapy, as its obligation may result in the convict's interest-driven attitude. In the case of compulsory participation in therapy, in order to obtain some discount (leave, absence, parole) or to avoid a sanction, the convict may show remorse and acknowledge responsibility, which may have a counter-productive effect in terms of effectiveness.

V. Alternative methods

The treatment and rehabilitation of sex offenders, including pedophiles, can be done not only with medication, but also with psychotherapeutic methods. A more popular model for the rehabilitation of criminals, the so-called Risk-Need-Responsiveness (RNR), the results of which show that so far cognitive behavioral therapies have proven to be the most effective in treating sex offenders and preventing recidivism. In Croatia, there is a special treatment program based on cognitive behavioral therapy for sex offenders. The 10-month program, in which 10 convicts can participate at a time, will take place during the period of execution of the prison sentence. Its primary goal is to develop the empathy skills of criminals, especially towards the victim(s) of their crime³⁵. The Swedish Penitentiary and Probation Organization sent a brochure edited in 1995 entitled: "Treatment of sex offenders in prison – Action plan" to the Council of Europe's Department for Crime Problems, Prison Law and Criminology. Based on this, those convicted of sexual crimes are placed only in designated prisons. Participation in information and personality development programs was mandatory for them. Medical treatment is voluntary, the most recommended method of treatment is psychotherapy, but there is also the possibility of drug treatment, if it is justified³⁶.

However, the conditions for the implementation of therapy and special programs are not given everywhere – and in this area the countries of Eastern and Central Europe are particularly lagging behind. Not only because criminal law populism advocated the

³³ F. Thibaut, F. De La Barra, H. Gordon, P. Cosyns, J.M. Bradford, *The World Federation of Societies of Biological Psychiatry (WFSBP) guidelines for the biological treatment of paraphilias*. World Journal of Biology and Psychiatry vol. 11, 2010, pp. 604–655, <https://pubmed.ncbi.nlm.nih.gov/20459370/>.

³⁴ B.M. Maletzky, *Denial of Treatment or Treatment of Denial?*, Sexual Abuse: A Journal of Research and Treatment vol. 8, issue 1, 1996, <https://journals.sagepub.com/doi/10.1177/107906329600800101>.

³⁵ J. Szabó, K. Parti, G. Virág, *cited*, p. 14, p. 97.

³⁶ I. Köck, *Summary of survey of treatment of sex offenders in some of the member states of the Council of Europe*.

tightening of measures and punishments against sex offenders, but also because social intolerance prevents the introduction of soft crime prevention tools in addition to punishing the offenders. This, along with the rise of the pessimistic "nothing works" doctrine of recent decades, does not favor the spread of the treatment ideology³⁷. Recommendation CM/Rec (2014) 3 of the Council of Europe formulates the special treatment of serious sexual offenders and the importance of taking into account their needs assessed on the basis of risk. It draws attention to the fact that after the reception and risk analysis, as well as the evaluation of the inmate's characteristics and risk-based needs (in the light of its results), an adequate treatment program and appropriate institutional placement must be provided for the inmates as soon as possible³⁸.

VI. Conclusion

As a result of the review of the literature, it can be said as a whole that pedophilia is basically a category outside of criminal law, the concept of which is comprehensive, summarizing all disciplines and at least accepted by the majority of the scientific community. There was also no agreement on the ethology of pedophilia and the cause of its development, because according to some researchers, pedophilia cannot be "cured", it can only be controlled – for example by chemical castration – while other researchers believe that pedophilia is a consequence of bad sexual socialization – in the development of which early sexual experiences they are significant – or they can be of genetic or biological origin. Due to the blurring of the sex offender category, a clear causal relationship between testosterone levels and sex crimes remains uncertain³⁹. However, despite surprisingly little evidence, various comprehensive theories of sex crime have incorporated hormonal factors into their explanations, concluding that both surgical and chemical castration undoubtedly reduce sexual interest, sexual performance, and, consequently, sexual recidivism⁴⁰. In each study, the researchers tried to distinguish between sex offenders based on their motivations, but it is important to point out that this can be the basis of purely criminological investigations and, as a result, it can only support penal policy.

Chemical and physical castration is used in individual states – either voluntarily or compulsory – as a form of punishment, or as a measure that the offender can choose to avoid or mitigate the punishment. The conclusion can be drawn from this that the individual countries view sex offenders from the point of view of criminalization and that chemical castration appears as a criminalization tool. According to Peter Conrad's formulation already mentioned in the introduction, in order to medicalize a phenomenon, it is essential to declare it as a "disease", which is based on the medical science point of view and, ultimately, on the consensus of the given society. According to the current legislation and literature, chemical castration is vaguely situated between punishment

³⁷ Szabó, J., Parti, K., Virág G., *cited*, p. 14, p. 95.

³⁸ B. Drexler, M. Somogyvári, *cited*, p. 66.

³⁹ D.A. Kingston, M.C. Seto, A.G. Ahmed, P. Fedoroff, P. Firestone, J.M. Bradford, *The role of central and peripheral hormones in sexual and violent recidivism in sex offenders*. The journal of the American Academy of Psychiatry and the Law, vol. 4, issue 40, 2012, pp. 476-485, <https://pubmed.ncbi.nlm.nih.gov/23233468/>.

⁴⁰ D. Grubin, A. Beech, *Chemical castration for sex offenders*. BMJ. 2010, doi:10.1136/bmj.c74, <https://pubmed.ncbi.nlm.nih.gov/20068060/>.

and treatment, as it can also operate on a voluntary basis, and in some countries, it can be imposed as a punishment, and overall it is a problematic issue for both medical ethics and reconciliation with human dignity.

Regarding the answer to the question in the title of the study, I would like to quote the words of Sárkány: "*Penal policy, like all spheres of politics, depends on a specific social system. There are also other connections that influence the penal policy of a given system. For example, what legal system a country traditionally belongs to. But even within individual legal systems, there are significant differences between geographical regions and countries. The general culture, the so-called state-legal culture is also of fundamental importance from this point of view. A serious determining factor is the cultural and legal awareness level of the population of a given area. It does not matter how people think about crime, law enforcement, and criminal justice. After all, depending on the socio-political system, this affects legal policy and the activities of law enforcement agencies with greater or lesser intensity*"⁴¹. However, it is important that although the perpetrators of crimes against the freedom of sexual life and sexual morality committed to the detriment of children are widely despised by society, they cannot be an exception to the requirements of the rule of law. In order to protect the basic rights of its citizens and those staying on its territory, as well as to fulfill its international obligations, the state is entitled to criminalize certain acts and to threaten their commission with specific punishments, so that it must at the same time respect the freedoms guaranteed by the constitution, and at the same time guarantee the rights of the perpetrators and the victims⁴².

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