

**PÁZMÁNY PÉTER CATHOLIC UNIVERSITY**  
**FACULTY OF LAW AND POLITICAL SCIENCES**

**Sexual Crimes Against Children and a Criminological Research on the  
Offenders Thereof**

Theses of the Doctoral Dissertation

**AUTHOR: DR. HURTONY ALEXANDRA KITTI**

**Thesis leader: Dr. Bérces Viktor**  
**Associate professor**

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## I. Introduction

Every age and society has its own sexual culture, which is determined by religious and moral traditions. Societies are changing, evolving, and sexual culture follows these changes. Accordingly, it is far from being unified, and it is divided into different levels and types depending on the cultural approach.<sup>1</sup> However, it is also noteworthy that sexual relationship between a child and an adult is „*mala per se*” – hence it has always been regarded as a violation against the basic norms of communal coexistence, regardless of the socio-political contexts – and has therefore always been strictly punished. Nowadays, taking action against perpetrators of sexual offenses against children is at the center of interest not only for lawyers, but also for the society. Protecting the physical, mental, but especially the sexual development of children is a fundamental social need, since the sexual abuse against them is severely condemned by the society. According to Balogh and Virág, the reason for this is that “*a physically and mentally immature child in a dependent position is unable to perceive or understand sexuality due to his or her vulnerability and immaturity and as a consequence of this position, the abuse may cause him or her immeasurable damage.*”

In Hungary, the results of a study –published by the National Institute of Criminology in 1996 – reflect the position of the Hungarian public on sexual offenses. According to this study, respondents considered the latter to be the most serious type of crime right after crimes against life. They also expressed that both offenders against life and sexual offenses deserve increased penalties as a consequence of their crimes.<sup>2</sup>

This social opinion was considered and reflected in Act LXXIX of 2021 on the “anti-pedophile” amendments to certain Acts (hereinafter: Act LXXIX of 2021). As the title suggests, the Act resulted changes to a number of Hungarian legislation, most importantly to the provisions of Act C of 2012 on the Criminal Code (hereinafter: Criminal Code).. This study aims to review and evaluate the current substantive criminal law instruments for combating sexual offenses against children in Hungary, in particular, the stricter measures against pedophile offenders. For that end, a criminological analysis of the perpetrators of sexual assault against children is

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<sup>1</sup> SZILÁGYI Vilmos: Szexuális kultúránk állapotáról. *Bűnügyi Szemle* 2000/4-5. szám. 6. o.

<sup>2</sup> KÓ József – VIRÁG György (1998). Lakossági vélemények a szexuális erőszakról, in: IRK F. (Szerk.) *Kriminológiai és Kriminológiai Tanulmányok* 35. 250-275.o.

essential, as practical results can be formulated into criminal policy. Utilizing the results of criminology as a discipline, they can justify the introduction of certain criminal law provisions.

It is to be noted for this particular research that in Hungary there are no adequate domestic researches with a large number of samples or with extended follow-up studies on the criminological characterization of perpetrators of sexual offenses against children. As confirmed by Drexler and Somogyvári; “*Such comprehensive, comparable studies and databases are not currently available in Hungary, there is only limited information on the size of the group in the category of sex offenders. There is no previous research at all on their characteristics, motivation or groups of perpetrators.*”<sup>3</sup> This is especially true for researching of recidivism, for which longitudinal (long-term) data on the crime is essential. In view of this, a significant amount of foreign sources can be relied on while researching the topic.

It is also important that sexual acts against children are analyzed by several social sciences, therefore, the definitions they use often cover psychological and psychiatric categories (such as pedophilia) or social phenomena (domestic violence).<sup>4</sup>

## **II. Description of the research task, problem definition, description of research methods**

While writing the dissertation, I tried to use the available Hungarian literature as fully as possible (primarily journals, studies, monographs, and to a lesser extent textbooks, commentaries), however, from the point of view of the topic, this effort encountered difficulties. Namely, in the domestic context, research on sexual freedom and crimes against sexual morality is carried out along other aspects (legal subject-specific research, etc.), and it can also be said that the issue of chemical castration is currently unprocessed in law and its related fields (criminology, constitutional law). However, the topic of English, American, Polish and German criminal law included in the legal comparison has a wide range of specialized literature, which is why they were largely used in my dissertation. These legal sources provide significant additional information compared to the Hungarian criminal law literature for the possible approaches and processing of the topic of the dissertation.

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<sup>3</sup> DREXLER Bernadett – SOMOGYVÁRI Mihály: A szexuális bűnt elkövetők hazai vizsgálata büntetés-végrehajtási statisztikák alapján. *Belügyi Szemle*, 2015/3. 67.o.

<sup>4</sup> Uo.

The research method underlying this study was essentially descriptive and comparative. However, the comparative international law method in the classical sense could not gain ground due to the following reasons;

- It is generally true that examining the regulations of too many countries on a specific topic can make the analysis borderless. This is especially true for sexual crimes, where such differences occur that they constitute an objective limitation of the comparison. In addition, in the case of legal comparison, it is always a question of defining the countries examined and providing a precise and detailed justification for the selection. The latter is the subject of the dissertation throughout, and before analyzing the legal sources and related studies of each country, it is clarified why the given country was selected.

- Continuing along the line of thought, in view of the reasons explained in the above chapter “1.1. Choice of topic and topicality”, the uniqueness of the study is given by the exploration of the practice of applying chemical castration in certain countries. In this regard, I had to select those countries, states, where the use of chemical castration is widely regulated (United States of America), or the country itself has unique regulations (Poland) and therefore exemplary conclusions can be drawn as a result of the research.

- It was difficult that due to the legal nature of the scope of sexual crimes, these concepts always mean a perpetration behavior defined in the Criminal Code of a given country, so it was not possible to work with a comprehensive, general concept. Given this fact, the comparability of the legal provisions of individual countries also proved to be significantly limited during the research.

During the research, primary and secondary legal sources were searched for and, after selecting them based on their significance and usefulness, I made them the subject of examination. Regarding the primary legal sources, the most important thing proved to be to examine the specific legal provisions of the given country regarding chemical castration, which also raised several other problems. The translation of the legal sources of countries belonging to the continental legal system (Poland, Germany) and their comparison with domestic legal institutions did not encounter as much difficulty as the processing of laws belonging to the Anglo-Saxon legal system (United States of America). The understanding and analysis of all primary legal sources were assisted by those secondary legal sources that provided the critical interpretation of the legal provisions by legal scholars.

In each case, the substantive legal material was processed based on the original, foreign-language text. Thus, during the research, relying on my knowledge of English and Polish, I applied my own translation, trying to consistently use the legal terminology known in Hungarian law, since the analytical evaluation of legal sources and the comparison of the provisions of individual countries on chemical castration could not have taken place without defining the concepts that form the basis of the topic. Of course, I could not eliminate the differences in legal institutions resulting from the differences between the continental and Anglo-Saxon legal systems, but my knowledge of Hungarian legal dogma and conceptual system helped me recognize similarities with the legal institutions of individual countries. To help with this, I laid down the use of different concepts when analyzing the substantive legal material of each country.

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 treatment. The doctrines are related to modernism and positivism. A significant part 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 behavior. 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". 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 prison. In addition, some studies report 50%-70% declines in sex offenders.

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 uncertain<sup>5</sup>. 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 recidivism.<sup>6</sup> 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 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

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<sup>5</sup> KINGSTON DA, SETO MC, AHMED AG, FEDOROFF P, FIRESTONE P, BRADFORD JM. The role of central and peripheral hormones in sexual and violent recidivism in sex offenders. *J Am Acad Psychiatry Law*. 2012;40:476–485. [elérhető: <https://pubmed.ncbi.nlm.nih.gov/23233468/>] [letöltés dátuma: 2022. január 05.]

<sup>6</sup>GRUBIN D, BEECH A. Chemical castration for sex offenders. *BMJ*. 2010. [elérhető: <https://pubmed.ncbi.nlm.nih.gov/20068060/>] [letöltés dátuma: 2021. január 05.]



enforcement agencies with greater or lesser intensity."<sup>7</sup> 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 victims.<sup>8</sup>

The following hypotheses are formulated.

1. Pedophilia is a phenomenon that occurs in several disciplines, but there is no comprehensive, appropriate concept for all disciplines involved.
2. The perpetrator of a crime against the freedom of sexual life and sexual morality cannot be identified with pedophilia.
3. Chemical castration is a pharmacological solution in response to sexual crime, which can be justified both in terms of the punishment and treatment of perpetrators.
4. If the above hypothesis proves to be true, then a further hypothesis is that the method of introducing chemical castration (punishment or treatment) depends on social need and criminal policy considerations.

### **III. Summary of the scientific results of the thesis**

There is no doubt that trauma caused by experiencing sexual abuse in children determines and distorts the emerging personality. Therefore, childhood grievances - especially if they are chronic and recurrent - are not only associated with current stress symptoms and anxiety, but also fundamentally affect the whole personality. On the one hand, a childhood concussion can cause emotional, relationship problems - anxiety, depression, lack of confidence, inability to intimacy, sexual problems, etc. - until adulthood. On the other hand, it fundamentally transforms thinking: it changes the notions of the security of the world, the reliability of people, the predictability of events, the notion of self-efficiency. Other studies have shown that children

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<sup>7</sup> SÁRKÁNY István – TAUBER István: A kriminológiai gondolkodás fejlődése - a jogpolitika változásai - és a büntetőjogi reformok. In.: *Börtönügyi Szemle 1990/2. szám*, Budapest, 1990. 2. o.

<sup>8</sup> LÉVAY Miklós: A büntető hatalom és lehetséges korlátai egy alkotmányban, különös tekintettel a bűncselekménnyé nyilvánításra és a büntetésekre. Pázmány Péter Katolikus Egyetem Pazmany Law Working Papers, 2011/24. Budapest, 2011. 3.o.

who have been victims of sexual abuse are more likely to have post-traumatic stress disorder and other anxiety disorders, depression and suicidal ideation. .

In view of all this, criminal law takes strict measures against sexual offenses committed against children. The study concludes that the provisions of the Hungarian Criminal Code are shifting towards deterrence by severe penalties and other legal institutions, as well as retaliation against perpetrators, legitimized by public opinion. This process is described in Act LXXIX of 2021. The stricter regulation introduced as a result of an enactment of the law. The law also saw a reduction in the recidivism of offenders in the introduction of strict criminal law provisions (exclusion from the possibility of parole), which may be particularly justified for offenders whose regular behavior has become part of their life cycle, or, given their extremely violent personality, the goal of crime prevention is best achieved through isolation.

It is clear that this type of crime requires decisive action, but it is also important to keep in mind the extent to which strict provisions help to reintegrate offenders into society. In addition, it is important to emphasize that the results of criminological investigations of perpetrators reveal different motivations and personality traits that could ultimately lead to a new approach to tackling the crimes in question; treatment of perpetrators.

Ultimately, the importance of recognizing sexual offenses against children, which requires a sense of social responsibility and a social environment that strengthens and protects the victim, cannot be overemphasized. As Garai points out; "For all crimes, we have to talk about the hidden crowd, but for sexual crimes, this secret concealment is perhaps hiding an even higher-than-average, indefinite number of victims." There are specific causes of criminal latency, including the criminal sensitivity of the victims and potential witnesses, the personality of the perpetrator and the victim, the influence of the perpetrator on the victim, and even the degree of trust in the authorities and the investigative activity of the investigating authorities. In addition, it is key to recognize the signs of crime - or, worse, the signs of what has already happened, as a means of raising public awareness of the mechanism of such crimes and the symptoms of the victim's behavior and appearance. In this context, it is important to point out the appropriate intervention of the various "indicators" (kindergarten, school, health care institution, etc.), as children who cannot expect safety and understanding from their families cannot count on other help. In the vast majority of minors who had suffered sexual abuse, they

did not primarily tell their relatives what had happened to them or asked for help, but voted for outsiders (contemporary relationships, class teacher).

The hypothesis formulated proved to be justified on the basis that pedophilia is fundamentally a category outside criminal law, which becomes relevant for this discipline because it can manifest itself in a behavior that is dangerous to society and is a punishable act. In medicine and psychology, the reasons and motivations behind the commission of sexually motivated crimes are generally different and in a significant part of them (especially in the case of pedophiles) they can be traced back to some kind of psychological illness, their actions are the manifestations of their sexual urges resulting from it – sometimes dangerous to the other party. Since the same phenomenon is used by different disciplines with similar, but still different meanings, and is viewed from completely different aspects, a comprehensive concept useful for all disciplines cannot be created. In this context, it should be noted that since the pedophile sexual orientation is not relevant in the current criminal law, the creation of the concept is also irrelevant from a legal perspective. The definition of the legal concept of pedophilia would be necessary if the criminal code contained a specific provision regarding it (for example, in the case of the introduction of chemical castration against pedophile perpetrators).

Based on the dissertation, it was confirmed that the diagnosis of pedophilia and pedophilia are only one characteristic of those who commit sexual crimes against children, quasi-one risk factor for committing them among many. Therefore, the pedophilia quality cannot enjoy special importance in the development of tools for the prevention of child abuse. That is why the position that relies exclusively on the existence of pedophilia and its treatment in terms of the prevention of sexual crimes against children is questionable. Based on what has been read in the literature, it can be proven that the majority of those who commit sexual crimes against children cannot be considered pedophiles, their actions are generally not or not exclusively determined by sexual attraction to children.

Drug therapy for sex offenders is vaguely situated between punishment and treatment, as it is regulated either as a punishment (United States of America) or as a special measure to prevent the offender from reoffending (Poland) in order to protect society, and it is important to emphasize the possibility of voluntary use. Countries where chemical castration is used as a therapy emphasize the “sick” quality of offenders and view sexual offenses as deviant behavior that is a symptom or consequence of some mental disorder. Countries that use chemical

castration as a punishment, on the other hand, use it more as a retributive punishment, emphasizing the rights of the victim and the neutralization of the offender. In the perception of these latter countries, it can be criticized that they do not distinguish between the motivations of the offense and are based exclusively on deviant sexual desire.

It can be proven that the use of chemical castration depends on the penal policy of a given country, which depends on many factors. Penal policy, like all spheres of politics, is determined by a given social system, and there are also other connections that influence the penal policy of a given system, for example, what legal system a country traditionally belongs to. It is well known that the so-called Anglo-Saxon legal system thinks in completely different categories than the continental (French-German) legal system prevailing in the majority of European countries. But even within individual legal systems, there are significant differences between geographical regions and countries, and the general, so-called state-legal culture is of fundamental importance in this respect as well. A serious determining factor is the cultural level, including legal awareness, of the population of a given area. It is not unimportant how people think about crime, law enforcement, and criminal justice, because depending on the socio-political system, this can have a greater or lesser impact on legal policy and the activities of law enforcement agencies.

However, the issue of the applicability of chemical castration raises not only criminal law and penal policy issues, but also other practical issues. It cannot be ignored that in addition to the therapeutic goals and their effectiveness, an important question is what type and extent of resources the given state could mobilize, whether in terms of costs, infrastructure, or personnel. Another important aspect is who exactly within the legal and enforcement system of the given country would be focused on during treatment, whether the treatment itself takes place in a health or social institution, or perhaps through the penitentiary system. In addition, there is a question of what special departments for the group of people using the therapy, using what resources, would be appropriate to create (i.e. is there a theoretical possibility of a separate department, are there enough specialists, etc.), and what methodology should be followed during placement and treatment. Subsequently, from the perspective of developing treatment strategies, but especially therapeutic programs, the issue of inclusion in the programs may be an important issue, whether chemical castration is mandatory based on a court decision or its use is voluntary. In this regard - as German practice has emphasized - it is essential for the

effectiveness of the treatment that the use of the treatment is based on the internal determination of the recipient, and not on external pressure, or perhaps in order to avoid other punishment.

#### IV. List of publications

##### IV.1. Hungarian language publications

Hurtony Alexandra Kitti: Kémiai kasztráció, mint büntetési nem és az emberi méltóság összeegyeztethetősége a pedofil elkövetők vonatkozásában. *Büntetőjogi Szemle*, 2019/2., 32-40. o.

Hurtony Alexandra: A materiális és a processzuális igazság ütközése a gyermekek sérelmére elkövetett nemi élet szabadsága és nemi erkölcs elleni bűncselekmények miatt folyamatban lévő büntetőeljárásokban. *Büntetőjogi Szemle* 2021/2., 38-43. o.

Hurtony Alexandra: Az igazságügyi szakértő szerepe a büntetőeljárásban, különös tekintettel a kiskorúak sérelmére elkövetett szexuális bűncselekmények biztosítási nehézségeire. *Ügyészek lapja*, 2021. (28. évf.) 1-2. szám 53-64. old.

Hurtony Alexandra: A gyermekek sérelmére elkövetett szexuális cselekmények elleni büntetőjogi fellépés és az elkövetők kriminológiai vizsgálata. *Magyar jog*, 2022. (69. évf.) 3. sz. 179-187. old.

Hurtony Alexandra Kitti: A pedofil bűnelkövetőkkel szembeni fellépés: büntetés vagy kezelés? *Magyar jog*, 2022. (69. évf.) 11. sz. 655-663. old.

Hurtony Alexandra Kitti: A dark weben elkövetett bűncselekmények jellemzői és kihívásai. *Jogtudományi közlöny*, 2023. (78. évf.) 7-8. sz. 366-373. old.

Hurtony Alexandra Kitti: A szexuális bűnelkövetőkkel szembeni fellépés nemzetközi kitekintésben - a kémiai kasztráció alkalmazása Lengyelországban. *Magyar jog*, 2023. (70. évf.) 11. sz. 656-663. old.

Hurtony Alexandra Kitti: A jogos védelem összehasonlító jogi vizsgálata Magyarország és az Amerikai Egyesült Államok szabályozásában. *Magyar jog*, 2024. (71. évf.) 10. sz. 596-603. old.

### **13.2. English language publications**

Bérces Viktor - Hurtony Alexandra: To be Punished or Treated? The Concept of Pedophilia and Criminal Action Against Sex Offenders. *Journal of Eastern European Criminal Law*, 2023. (10. évf.) 1. sz. 80-91. old.

Hurtony Alexandra: Sexual Crimes Against Children and a Criminological Research on the Offenders Thereof. *Journal of Eastern European Criminal Law*, 2022. (9. évf.) 1. sz. 51-63. old.