

# Responding to Pedophilia: Legal and Ethical Issues

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**Undergraduate thesis / Završni rad**

**2020**

*Degree Grantor / Ustanova koja je dodijelila akademski / stručni stupanj:* **University of Rijeka, Faculty of Humanities and Social Sciences / Sveučilište u Rijeci, Filozofski fakultet**

*Permanent link / Trajna poveznica:* <https://um.nsk.hr/um:nbn:hr:186:756882>

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*Download date / Datum preuzimanja:* **2025-02-17**



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UNIVERSITY OF RIJEKA  
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**Responding to pedophilia: legal and ethical issues**

Submitted in partial fulfillment of the requirements for the B.A. in English Language and  
Literature and Philosophy at the University of Rijeka

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June 2020

## **ABSTRACT**

The focus of this work is the appropriate social response to pedophiles by distinguishing between those who have committed sexual offenses on children and those who have not. To specify, when discussing sex offenders in this dissertation, I am referring to people who sexually abuse children. This means they force or manipulate children into sexual activities or use threats to achieve sexual gratification.

I argue that non-offending pedophiles should be able to get psychiatric counseling and have their privacy protected. However, given that there is a correlation between pedophiles and sex offenders which should not be ignored, I argue that preventive screening policies should be used also with pedophiles who are not sex offenders. Regarding Croatia, I argue that regulations should be introduced to prohibit pedophiles to work with children. This would also help pedophiles by making them avoid situations that would cause temptation and thus badly affect their life with punishment, social exclusion, stigma, and so on. Finally, I argue that pedophiles who are also sex offenders should be sentenced to jail and that there should be a registry that is available to institutions that hire individuals to work in contact with children. Moreover, they should be presented with the option of being castrated as an alternative to punishment.

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## **1. Introduction**

The focus of this work is the appropriate social response to pedophiles by distinguishing between those who have committed sexual offenses on children and those who have not. To specify, when discussing sex offenders in this dissertation, I am referring to people who sexually abuse children. This means they force or manipulate children into sexual activities or use threats to achieve sexual gratification. When discussing sex offenders, I am assuming they are responsible for actions of child sex abuse, but neither category of pedophiles is responsible for the urges and other disturbances.

While answering that question of the social response to pedophilia, one needs to consider the ethical problems arising when dealing with this topic. If the answer is completely in favor of the public and the protection of people and children who are potential victims, it ignores some basic human rights, freedom in any sense (freedom of speech, sexuality), and the right to privacy. At the same time, an answer that focuses exclusively on the protection of pedophiles might overlook the risk they represent for society. The important factor is the balance between the two sides that should be protected.

To reach such a balance, I argue that non-offending pedophiles should be able to get psychiatric counseling or treatment. However, given that there is a correlation between pedophiles and sex offenders which should not be ignored, I argue that preventive screening policies should be used also with pedophiles who are not sex offenders. Regarding Croatia, I argue that regulations should be introduced that would prohibit pedophiles to work with children in schools, kindergartens, as nannies, or tutors. Finally, I argue that pedophiles who are also sex offenders should be sentenced to jail, should be in the registry, that is available to institutions that hire individuals to work in contact with children, and should be presented with the option of being castrated as an alternative to punishment.

The dissertation is organized as follows. The second section offers a short presentation of medical definitions of pedophilia. In this section, I argue that pedophilia is a mental disorder and thus that there are grounds for regarding it as a condition that needs to be treated. Additionally, I show that pedophiles are not necessarily sexual predators. In this section, I argue that pedophiles who are offenders are responsible for their actions, while they are not for their thoughts and urges. I address the problem of cultural influence on moral norms illustrating examples of societies that accept adult-child sexual conduct and discuss the notion of normativity in the definition of mental illness.

In the third section, I argue regarding Croatia, that child sexual abuse is very harmful to victims and that preventive measures should be brought to protect children and prevent cases of child sexual abuse. Besides, there should be a list of the sex offender registry available to institutions working with children and all employees should be tested and deemed able to work with children and not have pedophilic tendencies.

In the fourth section, I argue that pedophiles who are sex offenders and at serious risk of recidivating should be offered voluntary castration as an alternative form of rehabilitation. Also, I will argue that such an offer can be formulated in an ethical way that is not coercive. I also support the claim that this kind of treatment is not a form of punishment but an opportunity to be reintegrated into society and have positive effects on perpetrators.

## **2. Pedophilia is a disorder that needs to be cured**

Currently, pedophilia is considered a disorder as stated in the principal international classification of disease. For, instance, according to the *International Classification of Diseases*, ICD, pedophilia is defined as follows:

A disorder characterized by recurrent sexual urges, fantasies, or behaviors involving sexual activity with a prepubescent child or children

A sexual disorder occurring in a person 16 years or older and that is recurrent with intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child, generally age 13 or younger (ICD-10-CM Diagnosis Code F65.4: Pedophilia, 2020).

This definition includes characteristics regarding the urges as well as the actions of an individual – sexual acts including, but not limited to intercourse. It takes into consideration that these urges and fantasies must occur more than once to be identified as a pedophile, even though actions of indulging in sexual activities are against the law even if not repeated. The definition does not pay attention to examples in which a person would have sexual intercourse with a minor but does not identify as a pedophile, rather the attraction can come from a trauma of sexual abuse. I do not support the claim that urges and behavior are both a part of a disorder since sexual urges are thoughts, but sexual intercourse is not something out of the person's control which I further discuss in the next section. Additionally, if these sexual actions were a part of the disorder, sex offenders (who are pedophiles in this case) should not be sentenced to jail. If that is the case, they should be only treated in a hospital since it would mean they could not control their sexual tendencies due to their illness which I also respond to in the next section.

A very similar definition was suggested by the *American Psychiatric Association. Diagnostic and statistical manual of mental disorders* (APA 2013) in which it states that a pedophile is a person who has fantasies feels attraction towards prepubescent children for 6 months or longer. This definition provides additional input about the duration of sexual fantasies and urges lasting for at least 6 months to achieve a diagnosis of a disorder.

Both of these definitions start by suggesting pedophilia is a disorder due to the fact it has symptoms, it interferes with a subject's life by making it difficult to be a part of society and requires a history of conditions and situations that may have led to it.

It remains unclear what directly causes pedophilia. However, some theories claim it has to do with associating sex with childhood trauma, or a history of unhealthy sexual behavior. Lanyon offers the following as the possible causes of pedophilia:

1. behavioral model – a child is exposed to inappropriate sexual behavior or is a victim of one, starts to behave accordingly
2. compensation model – a person is deprived of consensual sexual behavior and compensates using socially unacceptable forms of sexuality
3. physiological model – the imbalance of hormones or the central nervous system affects a person, making them more aggressive (Lanyon, 1986).

Pedophiles could often be severely distressed by the urges and are faced with difficulties in interpersonal relationships. The cause does not always have to be visible or exist in a sense of abuse or hormonal imbalance since it would be much easier to diagnose pedophilia if that was the case.

Some have argued, however, that declaring pedophilia a disorder is wrong because its diagnosis involves certain normative standards that vary across cultures (Green, 2002). Green claims a certain society decides on whether to set rules on sexual conduct or not. Since there were societies in the past which allowed sexual intercourse between an adult and a child, he questions whether people having sexual relation with children in these societies should be proclaimed ill. He discusses societies that still do not judge, but encourage such sexual actions (Green, 2002). Green proposes that cross-cultural studies make us realize that there is a tendency in people who believe their moral norms and norms integrated into their societies to represent the natural law (Green 2002: 467). At the same time, moral norms of societies that encourage and accept pedophilia are based on purely a decision of what is normal.

What might be considered taboo, forbidden, or immoral is utterly common in other societies. In his paper, Green quotes studies on pedophilia that support it. Cases of sexual conduct have been discovered in Marquesan society. Suggs (1966) has found predominantly heterosexual

sexual behavior between adult men and women and children. It was considered very common among the people in Polynesia (Green, 2002:468). In New Guinea, young boys were taught that oral sex with older men for (allegedly) their own benefits. The people of Etoro, located in New Guinea, young boys had oral sex with adult men. The boys would swallow their semen in the hope it would encourage growth and health (Green, 2002:468).

Finally, there are societies that not only allow pedophilic sexual relations but offer the idea of a romantic relationship between an adult man and a young boy, if the boy chooses to do so. Among the people of Kaluli, young boys would have intercourse with adult men who would be chosen by their families. After the boys would turn ten, ceremonies would be organized to allow the boys to proclaim their wishes to continue a relationship with adult men (Green, 2002:468).

To illustrate that it is not only that undeveloped societies and smaller tribes supported pedophilia, Green mentions an important notion of the age of sexual consent. The age for consent was only ten in England for three hundred years. Green explains this was a society that already had people graduating from prestigious colleges such as Oxford or Cambridge to further stress how developed the nation was.

Following these considerations by Green, we should conclude that there is not a good ground for thinking that pedophilia satisfies conditions for being an illness. In connection to the definition of pedophilia there is too much cultural variability, and that pedophilia stands out as disordered condition only because in our culture we morally condemn sexual relations with children. However, besides this contrasting with a certain moral order, there is nothing more to pedophilia. Thus, pedophilia is a value-laden notion and it is a disorder depending on the values of a certain society. But, by changing these values, as in the case of the cultures considered above, the condition ceases to be a disorder.

However, I am defending the thesis that pedophilia is a disorder. To engage with this objection, and develop my defense, we have to consider the problem of defining what is a mental illness in general. The problem with defining illnesses and disorders arises once one starts to define health or being normal. There are different views on what conditions must be satisfied for a state to be a mental illness (Radden 2019). While naturalism seeks a value-free account of mental disorders, normativism opposes the idea that mental illness is an exclusively objective matter. Instead, they stress the correlation between values and the notion of mental illnesses. When talking about mental health, normativism proposes the notion of good as normal and bad as sick. A third option is represented by hybrid theories that maintain that the notion of mental disorder might have uses or components that involve both a departure from some objective order and some value standards, (Cooper 2007).



Accepting that mental illness has a normative component; I focus on the norms relevant to the characterization of the disorder status of a mental condition. I use a definition of illness offered by Christopher Boorse (Boorse, 1977; however, since then he changed his position, see Boorse 2014). His analysis focuses on mental illness as a practical notion used in psychiatric practice (Boorse, 1977). Boorse advances the idea that the theoretical concept of a disease is due to environmental causes, free of value. He defined disease as a “deviation” from the norms of functioning typically for the species. Normal function is determined by taking into consideration the person’s age and sex. (Radden 2019). It is, then, an illness if it satisfies certain normative conditions. A disease is a mental illness if:

1. The individual suffers from it and is in an unwanted state
2. It requires a specific treatment
3. It serves as a justification for behavior which disrespects social and moral norms (Boorse, 1977:542-573).

I leave aside the issue of the objective notion of disease in Boorse, and I am proposing to focus on Boorse’s approach to defining the normative notion of mental illnesses. Whether pedophilia involves an objective disease in the sense of Boorse or other sense, is an open theoretical and empirical issue that cannot be dealt with in this paper. Thus, leaving open the issue of the biological causes of the condition and whether or not they are dysfunctional in some biological or other objective ways, I need to investigate whether the notion of pedophilia satisfies at least the normative conditions for being a mental illness.

I maintain that pedophilia is a statistically abnormal condition that satisfies the three normative components of Boorse’s account of illness. Firstly, pedophilia is undesirable for its bearer. Even if a pedophile fails to see it as undesirable, his urges are a target of stigmatization with undesirable consequences for the pedophile. However, the stigmatization of these urges is not arbitrary and depending on some culturally relative norms. This is the norm that sexual and romantic relationships should be consensual. Now, no sexual or romantic relationship with a child can be consensual. Therefore, the pedophile is harmed by his condition because he cannot, or finds it difficult to adjust, to this legitimate norm.

Secondly, specific treatment should be offered for pedophiles to alleviate their condition. As McMillan claims, pedophiles can benefit from treatment by establishing themselves as people without intrusive thoughts and being reintegrated back to society (McMillan 2014: 589). Furthermore, treatment is required for pedophilia since it has shown to be tightly related to underlying personality disorders and symptoms such as feeling of less worth, loneliness, low

confidence, dysphoria, and emotional immaturity (Hall and Hall, 2007). These symptoms can lead to severe anxiety disorders and develop further personality disorders that cannot be treated without psychiatric help and could potentially be causing pedophilia (Hall and Hall, 2007). If they are treated, there is a possibility of reintegrating those individuals to society which is the ultimate goal when discussing pedophilia and if these symptoms are causes of pedophilia, or we accept them as additional symptoms along with urges to have sexual relations to children, pedophilia could be cured or put under enough control so that the patient can function according to social norms.

Additionally, the fact that The Prevention Project Dunkelfeld has reported non-offending pedophiles seeking help shows that at least some pedophiles could not properly deal with their condition on their own (Beier, et al. 2009). Therefore, I support the idea that all pedophiles should get treatment voluntarily if they are non-offending pedophiles.

Finally, the third condition Boorse proposes for diagnosis is more problematic and complex since it raises a question of balance between moral responsibility and illness. Establishing that criminal behavior associated with pedophilia should be excused is a complex empirical and normative issue that is difficult to address. However, if we focus on the urges that afflict the pedophile and that enter in the diagnosis of the disorder, there is some room for arguing that they are pathological. For sure the law does not exonerate them. In Croatia, for example, while sexual conduct concerning minors is punishable by a prison sentence and pedophilia is not taken to be an excusing condition. The law also cannot punish or exculpate an individual for being “more bound” to committing a crime or having wishes to commit them until they do (Criminal law: NN 125/2011). It is not punishable by law to be a pedophile, what is punishable is any sexual act inflicted on a child. According to the law of criminal offenses against sexual freedom, it is stated that children fall under the category of a particularly sensitive group. Anyone who commits an act of child sex abuse (article 153), is sentenced to 3-10 years if the victim is a part of a particularly sensitive group, which a category children fall into (Criminal law: NN 125/2011).

Thus, it seems that we can accommodate Boorse’s model to the case of pedophiles. We have seen that pedophiles are afflicted by urges that harm them or might harm them. There are possible ways of addressing them, and we have seen that pedophilia is comorbid with other mental problems. If not the behavior, the urges of the pedophile are not something that he can control or be responsible for.

I recommend that the urges of pedophiles should be regarded as symptoms that need to be alleviated or removed. In the case of a sex offender who does not have a mental disorder but has urges regarding aggressive behavior, rape, or sadistic tendencies, those urges should be morally

condemned. In the case of rape as a violent act which results in humiliation, and not only pleasure, it indicates that it is not a consequence of urges which cannot be tamed. Rapists are usually psychologically healthy, unlike pedophiles (LeGrand 1973).

Thus, I respond to the claim that pedophilia is not a disorder. Although it involves in its diagnosis a departure from certain moral standards, these are standards that are included in an account of mental illness, like the one advanced by Boorse, that recognizes normative components in this notion. Thus, there are reasons for considering pedophilia a disorder and that it should be cured like any other mental disorder. In the next section, I will consider the practical consequences that pedophiles might represent a risk for society.

### **3. Pedophiles represent a risk that needs to be tackled by preventive measures**

Due to the rising numbers in sexual offenses against children, the relation between pedophilia and sex offenses must be considered. According to the statistics of the Ministry of the Interior of the Republic of Croatia, over 590 children have experienced sexual abuse, and in 2016 the numbers have risen to 848. These numbers are only the result of the acts which were reported and proven in court, which implies an even bigger number in total. In a paper written by Stašević and Ropac regarding child sexual abuse in Croatia from 1993 to 2002, most often reported sexual crimes against children were lewd acts with the number of 3,5 on 100 000 children. Sexual intercourse has shown results of 2,5 on 100 000 children. Other forms of sexual abuse against children included the use and selling of pornography, and masturbation (Stašević, Ropac 2004). The paper also addresses the problem of authority abuse, shown by cases of sex predators among teachers, priests, and doctors. International studies have also shown that the rate of sexual abuse against male and female children. While 7-34% of girls were victims at one point in their lives, the percentage is 3-29% for boys (Stašević, Ropac 2004: 1131). However, the real numbers remain unclear due to cases not being reported or guilt proven in court. When talking about statistics regarding child sex abuse, it is important to understand there are differences in defining sexual abuse in different cultures and countries (Stašević, Ropac 2004). This data shows the numbers of sexual abuse against children.

Although it is important to distinguish non-offending pedophiles and sex offenders that target children, a correlation between the two categories exists. It is difficult to provide sufficient data regarding numbers of pedophiles who are not offenders since the stigmatization may prevent pedophiles from seeking help and defining themselves as pedophiles (Hall and Hall, 2007). The available information is that pedophiles comprise 60% of all older offenders (Hall and Hall, 2007). Araj and Finkelhor point out that some pedophiles have reported multiple cases of sexual

behavior due to their repeating urges and attractions (Araji and Finkelhor, 1985). It is crucial to find the connection between pedophiles and sex offenders as well as provide statistics that illustrate why it is important to bring preventive measures for pedophiles. Therefore, studies including pedophiles willing to speak out about their condition are important. Michael Sato mentions a study that was conducted on 50 self-proclaimed pedophiles. The study has shown that more than 50% of those pedophiles were having sexual relations with children at the time, while 50% have been reported and charged for sexual offenses against children (Seto 2004). Another study has shown that out of 290 pedophiles, most of them have at some point used child pornography to satisfy their urges (Seto 2004).

This data provides evidence that there are pedophiles who are prone to child sexual abuse. Self-proclaimed and diagnosed pedophiles have admitted that they use child pornography or have sexual intercourse with children. Meaning, preventive measures for pedophiles are justified due to the correlation between pedophilia as a disorder and child sexual abuse.

This is the reason why I claim that some preventive measures should be brought to protect the children and to lower the possibility of situations which would lead to their harm. It is important to emphasize the negative impact sexual abuse has on children to proceed with preventive measures for two categories of individuals: pedophiles and sex offenders. The consequences of sexual abuse against children can be extremely harmful. Heasman and Foreman discuss child sexual abuse and the reasons why it should be prevented (Heasman, Foreman 2019).

Child sexual abuse (CSA) has shown immense consequences for victims. Some of them are low self-esteem along with other mental health problems and suicide attempts, and deviance in sexual behavior which led to unplanned pregnancies, due to the inability to fully understand a sexual activity and the term consent. All this was the beginning of a proposal on how to prevent CSA before it comes to it. The three approaches served as a form of education and protection. The primary prevention program targeted parents and teachers, the secondary targeted victims of CSA, while the tertiary targeted the perpetrators. However, a long-term solution and prevention of CSA remained unsolved (Heasman, Foreman 2019: 264).

Considering the consequences of child sexual abuse prevention programs should be brought to prevent abuse before it happens. I advocate two different approaches for offending and non-offending pedophiles, although some components of prevention are to be used for both categories. The first preventive program is a German prevention program that allows both pedophiles and sex offenders to get treatment. A prevention program was created to help both victims of child sexual abuse as well as pedophiles by creating a media campaign in Germany

which was called *The prevention project Dunkelfeld* (literally “dark field”). This project has brought measures for screening and prevention of child sexual abuse. The methodology assumed two factors:

- 1) a media campaign was launched to call upon pedophiles
- 2) it was suggested that pedophiles are a target group which would benefit from this program

The message of the project was intended to call upon pedophiles, creating a safe place for them and allowing them to take control over their actions by sending a message that they are not guilty for their urges and attraction and should seek help to avoid becoming offenders (Beier, et al. 2009: 1-7)

The media campaign proposes the message that pedophiles do not choose to feel sexual urges towards children, but if there are pedophiles who are sex offenders and pedophiles who are not, and that some decide to act on them while others do not. If we compare this with a mental disorder or anger problems, a person cannot decide not to have feelings and urges they do, but can choose to get treated, to find other actions which allow a vent in a safe environment and can control their actions at least to a degree. This project was created to help pedophiles who fear they might succumb to their urges, as well as those who are offenders and wish to be rehabilitated. The idea behind the project’s success was to provide help and show some pedophiles feel shame, remorse, and anger due to their condition which makes them victims of their thoughts. If pedophiles feel this amount of distress, especially because pedophilia has become a taboo, they are more likely to seek help than other sex offenders. To protect both children and pedophiles, the Berlin Institute of Sexology initiated an online program offering help to pedophiles who had not yet offended. Germany was trying to implement this project into other countries to provide help to all pedophiles who see themselves as victims of their condition (Beier 2009: 866-867).

The second prevention measure I propose is the screening of pedophiles. The problem is not only the need to do screenings to prevent possible crimes of already diagnosed pedophiles but searching for pedophiles and screening them consequently after legal sanctions of anyone being guilty of selling or producing pornographic content including children, not only guilty of sexual abuse in a narrow-minded way it is thought of when mentioned. The medical perspective focuses on the condition itself, while all the legal terms refer to the criminal acts which can have the cause in the medical diagnosis of pedophilia but not necessarily. One can infer that the possibility of a potential threat for the society on a legal plane is derived from the condition of pedophilia. However, accurate medical screenings must be carried out. If they are carried out in the

controlled environment, which means they include experts in the field of psychology and psychiatry, it is possible to point out individuals who have tendencies towards aggressive behavior or do not grasp the social norms and do not feel remorse for their urges and fantasies.

Unfortunately, since there is no public registry of sexual offenders in the Republic of Croatia, it is easier to protect the privacy of offenders than potential victims. This is visible on the Ministry of Justice's official website. If I were to argue for it being public, I would not be able to support the consequences when considering the life danger, the perpetrators would be in without any protection. Therefore, I will state that every employer working with children, or whose job partly includes the possibility of working with children, must require a document stating the employee is not on the list of sexual offenders. Any other employee would be able to access this document by choice to decide whether they would employ a previous convict. I would also add that they should be monitored and tracked by the police to prevent those cases in the future. However, when discussing prevention measures for non-offending pedophiles, I argue all employees in establishments working with children should be given tests and a psychological assessment to confirm they do not have pedophilic tendencies.

To recapitulate the two-last sections, I have suggested that in the case of pedophiles that are not sex offenders we should find a balance between the fact that they are afflicted by a disorder or illness. At the same time, we need to have in place measures to prevent the possibility that they might commit crimes.

Given that it is difficult to predict which individual with pedophilia could become a sex offender, such establishments should require a mandatory psychological examination and screening for all future employees. If a candidate was estimated to be of risk, have pedophilic tendencies, or any other disturbance which would prevent them from providing children with a safe environment, the candidate would not be able to work in such establishments. Even though I claim not all pedophiles are necessarily sexual predators, considering the correlation between pedophiles and sex offenders in prisons, as previously stated, children as a particularly sensitive group need to be protected. Even if not all pedophiles are sex offenders, statistics show the link between the two categories.

It is important to stress that what I am suggesting is in no way a form of punishment, but a protection and prevention measure that would ensure the children's safety and not bring a pedophile into a situation where it might be harder to work due to distractions and intrusive thoughts. To avoid discrimination against non-offending pedophiles, I also argue that any person who would probably have a major distraction or exhibit inappropriate conduct towards children, should not be able to work with them. Due to the lack of accurate predictions in the behavior of

pedophiles, measures like this should be brought to ensure not only minimal but non-existing cases of sexual tension, inappropriate conversation or conduct aimed at children in such establishments.

As a form of psychiatric screening for such establishments, I would underline the importance of a certain term crucial to successful testing. It is referred to as automatic and controlled attentional processes in sexual stimuli (Fromberger, et al 2013). The test presented in the paper about eye movements when responding to sexual stimuli has shown that pedophiles tend to focus more on children's faces and genital area, while individuals who are not attracted to children focus predominantly on the faces and/or breasts (Fromberger, et al 2013: 588). I argue this or similar tests should be a part of testing for employees and candidates working with children. The test would show computer-generated simulations of people to see how they would respond, taking into consideration their eye movement, focus, and other bodily changes. This kind of testing would show changes that individuals display when being sexually attracted to someone and it would exclude the possibility of manipulating and deceiving psychologists or the test.

In the next section, I address the issue of a possible response to pedophiles that have committed sexual crimes on children and that are at risk of recidivating.

#### **4. The voluntary castration of pedophiles who are sex offenders and at risk to recidivate**

Castration is one of the treatments that does not only "punish" sex offenders but helps pedophiles have control over their desires. I claim castration should be an allowed practice, but never under circumstances which include coerciveness. Sex offenders who are pedophiles should be presented with a choice between castration and a jail sentence. Depending on the crime, the jail sentence would be of different duration as stated by the Croatian criminal law. In such cases, the option would be presented as a choice and not a coercive offer, it should be stated by the law and offered to all equally. I also suggest that those who choose castration should be provided with psychiatric help to better understand the consequences and to adapt to the new lifestyle. These individuals should be put on registry which is available to establishments working with children. However, while some might consider castration to be a valid option, it is a serious commitment.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has reported cases in Germany and the Czech Republic, claiming they castrate sex offenders using coercive offers. The response was the following: both countries do offer surgical castration but only in case an offender asks for their services (McMillan 2014).

However, if their prisoners are offered a choice between a longer jail sentence and surgical castration, it does not make a case for a coercive offer. I claim it is only a choice that is given to the perpetrator. Surgical castration is one form of castration which has shown to be somewhat effective. 104 men were castrated in the Federal Republic of Germany in the 1970s and then compared to individuals who never went through with castration but volunteered to do so. The sexual recidivism rate has shown the dramatic difference – 3% for the first group and 45% for the second (McMillan 2014: 584). This case illustrates the success rate of surgical castration.

To achieve this in Croatia, it would take subjects willing to undergo surgery and report the consequences before integrating surgical castration into practice. Pedophiles should be able to apply, they should be able to get castrated if they wish to improve the quality of their mental health, and should be provided with additional psychological help to ensure the patients' wellbeing.

Pedophiles who are not sex offenders should under no circumstances be forced to be castrated but should be offered the option as a form of treatment. When it comes to pedophiles who are sex offenders, they should be offered an option to get castrated instead of having a longer jail sentence. This might seem like a coercive offer, which creates a problem for this idea.

To better understand what a coercive offer is, McMillan explains three cases which represent examples of possible coercion. The first case refers to an expert psychiatrist who presents coercion in a form of a threat. Meaning, if an offender does not accept to be castrated, he will have to serve a prison sentence. The second case explains that a psychiatrist mentions an option of castration to an offender without the influence over the option of whether the offender will be released if not castrated. However, a psychiatrist mentions the state will not release him otherwise. In this scenario, the state makes a coercive threat since the psychiatrist does not have the authority to assess what the state will decide. The third case occurs when the option of castration is not presented as coercive. The author claims there is no voluntariness-based objection to this case (McMillan 2014: 587).

A coercive offer is formed in such a way a person has to choose between two options while neither one is desirable. Such cases include extortion or blackmail. If the law states that a sex offender can choose two punishments: a jail sentence or chemical castration, it is a choice which can result in a) losing freedom for a longer period but maintaining their sexual urges, or b) being integrated to society but lacking the sexual urges. If this were the case, a sex offender would directly cause events that would lead him to this decision. He would also be completely free to decide and demonstrate what has more value: his sexuality or his freedom. The idea of it



being a coercive offer would be possible only in case the law does not specify this and an offender is met with an option in the middle of the trial or after a certain period spent in prison. However, if the law states a sex offender should spend 5 years in prison and is offered the possibility of early release under the condition he is chemically castrated, I would still not consider it to be a coercive offer since an offender would either certainly spend 5 years in prison or accept the option of being castrated. If there is an offender who values his freedom more than sexuality, he would certainly not feel coerced but relieved.

To avoid coerciveness, the law should state that all new cases of sexual abuse starting from a certain point in time would have two forms of punishment. The idea of said punishment would exclude perpetrators who have been reported without having a presented castration as an alternative. It would avoid thinking that such an act is forced upon them to achieve a sense of fairness among the population. If such a law was brought and the consequences were highlighted for potential sex offenders, and since I have previously stated that feelings are not controlled or chosen but actions are, I can claim I see no ethical issue. The law works hypothetically, meaning *if A commits X, then A will suffer Y*. It is presented more so as a choice to do X since the punishment does not take place before X has been committed. To be able to put this theory into practice, the evidence and a thorough investigation would have to be conducted to avoid cases of falsely accused persons.

I can thus conclude that if the law explicitly states an offender can choose between castration or a prison sentence, it would leave no room for the problem of coerciveness. McMillan argues that castration is provided to hopefully change the values, desires, and behavior of sex offenders, which would allow them to rehabilitate and return to society (McMillan 2014: 588). It makes a strong case for using castration as a form of the betterment of the individual and society. McMillan underlines that the key part of castration is not the punishment but other positive changes in mental health. This concerns both pedophiles and child sex offenders.

He claims that an important desirable change can come from castration. While McMillan is aware that both forms (chemical and physical) of castration have big impacts on a person and can result in changes considered unfamiliar, he believes those changes could be positive. If there were sufficient conditions for predicting a positive outcome, it would allow people to reflect and start functioning following social norms (McMillan 2014: 589). Feeling of having more control over one's sexuality and urges, as well as an understanding of social norms and creating a new personal moral compass would be beneficial to a pedophile suffering due to his condition. It would also help sex offenders have less urges to be aggressive and at least one less reason to commit sexual abuse.

## **5. Conclusion**

It is crucial to avoid prejudice and to differentiate the terms sex offender and pedophile to have a coherent discussion. Pedophilia is a state in which a person feels sexual urges towards prepubescent children. A sex offender is any person who commits a sexual act without consent. Since children are considered inexperienced and immature for sexual actions and giving consent, it is easy to manipulate them for such actions, so they are considered unable to give consent to any sexual activity.

I have concluded the following. Pedophilia is a disorder that should be treated with the help of psychiatrists. Even if certain societies still consider it normal, pedophilia should be treated as a disorder due to all the conditions I have discussed. Pedophiles should be allowed to seek professional help if they cannot cope with the distress of their thoughts on their own following the data reporting multiple pedophiles seeking help. However, since there is a connection between pedophilia and child sexual abuse, pedophiles should not be allowed to work in places such as schools, kindergartens, or any other facilities that directly work with children. Any employer who works in those places should be legally obligated to request verification as a form of proof that any potential employee has not been convicted for any crime, as well as to request a verification that specifically states a potential employee has not been convicted of child sexual abuse.

Pedophilia is a disorder, it requires treatment, and involves urges and thought processes that appear to happen in the pedophile more than his direct control, which is why I claim that these components satisfy the normative elements of the notion of mental illness.

Child sexual abuse is extremely harmful to victims, resulting in anxiety and deviant sexual behavior in adulthood. Therefore, some preventive measures should be brought. People working in establishments that include working with children should be tested and assessed. One of the prevention projects is The Prevention Project Dunkelfeld which promotes a media campaign to provide both pedophiles and sex offenders with treatment. Furthermore, accurate screenings need to be done to prevent sexual abuse before it happens.

Castration should become an alternative form of punishment for pedophiles that are sex offenders and are at risk to re-offend. The state would need to explicitly announce this law and decide on the date it would be put into effect to avoid coerciveness.

I have argued that a choice between a long prison sentence and chemical castration does not fall under the category of coercive offers since this choice, as I propose, would be explicitly stated by the law and the alternative explained thoroughly and clearly. Following John McMillan, I propose that castration would be beneficial for mental health and overall wellbeing of both

pedophiles and sex offenders since the feeling of control and following of social norms would be helpful to both categories of people. Castration should be viewed as a form of treatment and not strictly as punishment.

## **BIBLIOGRAPHY**

American Psychiatric Association. 2013. *Diagnostic and statistical manual of mental disorders (DSM-5)*. American Psychiatric Pub.

Araji, S., & Finkelhor, D. 1985. Explanations of pedophilia: Review of empirical research. *Bulletin of the American Academy of Psychiatry and the Law*. 13(1):17-37.

Beier, K. M., Ahlers, C. J., Goecker, D., Neutze, J., Mundt, I. A., Hupp, E., & Schaefer, G. A. 2009. Can pedophiles be reached for primary prevention of child sexual abuse? First results of the Berlin Prevention Project Dunkelfeld (PPD). *The journal of forensic psychiatry & psychology*, 20(6), 851-867.

Boorse, C. 1977. Health as a theoretical concept. *Philosophy of science*, 44(4), 542-573.

Boorse, C. 2014. A second rebuttal on health. *The Journal of Medicine and Philosophy: A Forum for Bioethics and Philosophy of Medicine* 39 (6): 683–724. <https://doi.org/10.1093/jmp/jhu035>.

Fromberger, P., Jordan, K., Steinkrauss, H., Von Herder, J., Stolpmann, G., Kröner-Herwig, B., & Müller, J. L. 2013. Eye movements in pedophiles: Automatic and controlled attentional processes while viewing prepubescent stimuli. *Journal of Abnormal Psychology*, 122(2), 587.

Green, R. 2002. Is pedophilia a mental disorder? *Archives of sexual behavior*, 31(6), 467-471.

Hall, R. C., & Hall, R. C. 2007. A profile of pedophilia: definition, characteristics of offenders, recidivism, treatment outcomes, and forensic issues. In *Mayo Clinic Proceedings* (Vol. 82, No. 4, pp. 457-471). Elsevier.

- Heasman, A., & Foreman, T. 2019. Bioethical Issues and Secondary Prevention for Nonoffending Individuals with Pedophilia. *Cambridge Quarterly of Healthcare Ethics*, 28(2), 264-275.
- Kazneni zakon [Criminal law] (NN 125/2011, 144/2012, 56/2015, 61/2015, 101/2017, 1182018, 126/2019)
- Lanyon, R. I. 1986. Theory and treatment in child molestation. *Journal of consulting and clinical psychology*, 54(2), 176.
- LeGrand, C. E. 1973. Rape and rape laws: Sexism in society and law. *Calif. L. Rev.*, 61, 919.
- McMillan, J. 2014. The kindest cut? Surgical castration, sex offenders and coercive offers. *Journal of Medical Ethics*, 40(9), 583-590.
- Ministarstvo pravosuđa Republike Hrvatske [The Ministry of Justice of the Republic of Croatia]. <https://pravosudje.gov.hr/registri-i-baze-podataka/6348> (accessed: 10/3/20)
- Radden, J. 2019. 'Mental Disorder (Illness)'. In *The Stanford Encyclopedia of Philosophy*, edited by Edward N. Zalta, Winter 2019. Metaphysics Research Lab, Stanford University. <https://plato.stanford.edu/archives/win2019/entries/mental-disorder/>.
- Seto, M. C. 2004. Pedophilia and sexual offenses against children. *Annual Review of Sex Research* 15.1:321-361.
- Stašević, I. 2005. Učestalost i rasprostranjenost seksualnoga zlostavljanja djece u Hrvatskoj od 1993. do 2002. [Frequency and prevalence of sexual abuse of children in Croatia from 1993 to 2002]. *Društvena istraživanja-Časopis za opća društvena pitanja*, 14(80), 1129-1147.