

# CONSIDERATIONS OVER PARAPHILIA AND PAEDOPHILIA-BASED CRIMINAL OFFENCES AGAINST SEXUAL FREEDOM AND INTEGRITY

Lamy-Diana HĂRĂȚĂU\*

Cristina-Elena ILIE\*\*

## Abstract

*Common knowledge of how society works stands as sufficient proof to how wide is the array of mental disorders that have a significant impact on what is specific to certain offenders. The purpose of this thesis is to raise the level of awareness regarding the degree in which such persons, duly diagnosed with this type of deviant behaviour, pose a threat to society, and to also consider the response to such conduct, which should consist in security measures that are able to contain urges of such kind, desires that most of the times escape some of the aggressors' ability to control on their own. Therefore, we emphasise that, in order to prevent more people from falling victim to such persons, a firm reaction of the legislators is considered mandatory, followed by a similar reaction from the judicial bodies, especially in regard to those who admit and accept the fact that they suffer from this type of conditions, as we are about to demonstrate.*

**Keywords:** *paraphilia, paedophilia, expert report, compulsion to undergo medical treatment, non-voluntary hospital admission.*

## 1. Introductory elements to the notions of paraphilia and paedophilia

*Ab initio*, it is necessary to mention and to make understood the meaning of *paraphilia*, as a noun, which designates any intense and persistent sexual interest, other than sexual interest for genital stimulation of foreplay involving human partners, who are phenotypically normal, who have reached the age of physical adulthood and who are consenting. Specialised literature qualifies a paraphiliac disorder as a paraphilia that causes the individual to experience emotional discomfort and various dysfunctionalities, of a paraphilia whose pursuit involves harm to oneself or the risk of harming others<sup>1</sup>.

*Paedophilia* is a serious problem that has been known ever since ancient times, one that is able to bring about negative results both to the paedophiles themselves, as for the target person of the paedophile, at the moment when the former is manifesting their fantasies. Paedophilia, as a subspecies of paraphilia, is catalogued as a mental disorder and is also considered deviant behaviour<sup>2</sup>. As we start off from the concept of „paraphilia”, paedophilia is defined as a disorder of the sexual orientation or of the choice of the object thereof, in which the subject displays, for six months or longer, a series of reoccurring and persistent fantasies of a sexual nature, in which the object of their desire consists in prepubescent persons, usually younger than 13.

We need to clarify that we intend to reproduce and to properly quote certain definitions, concepts and classifications such as they appear in the day-to-day use of psychology and psychiatry scholars, in their own works and other such articles, since the thesis hereby submitted is focused on the analysis of certain medical conditions in an area highly specific to psychology and to the treatment of mental illnesses, one that has an impact on the very creation of the preexisting situations of the offence, in the case of transgressions committed in connection to the deviant behaviour that we are going to be examining.

We shall continue our article by proving how the above mentioned fantasies are able to generate a high level of tension, discomfort or impairment of day-to-day functionality in the case subject.

According to the Diagnostic and Statistical Manual of Mental Disorders (DSM IV), paraphilias are intense reoccurring sexually arousing fantasies and impulses of types of behaviour that involve in general the use of

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\* Lecturer, PhD, Faculty of Law, „Nicolae Titulescu” University, Attorney at Law - Bucharest Bar Association (e-mail: lamy@haratau.ro).

\*\* Licensed in Administrative Sciences at National School of Political and Administrative Studies, 4<sup>th</sup> year student at Faculty of Law, „Nicolae Titulescu” University of Bucharest (e-mail: elenacristina2305@gmail.com).

<sup>1</sup> American Psychiatric Association, DSM-5 Diagnostic and Statistical Manual of Mental Disorders, 2013, p. 690.

<sup>2</sup> <https://ro.yestherapyhelps.com/how-do-you-intervene-psychologically-with-pedophiles-12798>.

object, causing the subject to experience pain or degradation or causing the same to the partner thereof, to children or to other non-consenting person, as long as such fantasies or impulses are present for six or more months. The fantasies of paraphiliac stimuli can become a mandatory prerequisite for obtaining sexual arousal and are always part of the sexual activity. Sometimes, paraphiliac preferences only manifest occasionally (during high-stress periods). In other cases, the paraphiliac is able to sexually function without any paraphiliac fantasies or stimuli<sup>3</sup>.

For paedophilia, voyeurism, exhibitionism and frotteurism, the diagnosis is reached if the person already acted in accordance to these impulses or if the sexual fantasies are able to cause a significant interpersonal difficulty<sup>4</sup>.

According to specialised literature, individuals known to have sexually approached several children will deny having an attraction towards children, but refuse to admit there was any sex-related behaviour or any physical contact.<sup>5</sup>

The sexual seduction of a child is a tool of vengeance. Paedophiles have, in many cases, fallen themselves victims of childhood sex abuse, and a feeling of triumph and empowerment may accompany the transformation of their passive trauma into an actively perpetrated victimisation. From a medical perspective, paedophilia is a mental disorder, that manifests as an abnormal preference as to what is a „sexual object”<sup>6</sup>.

Such anomalies will manifest in the form of avoidance of what is considered standard heterosexual intercourse, favouring children as sexual partners, as the only individuals whose existence triggers the sexual arousal of the paedophile. Generally, psychiatrists define paedophilia as a deviant sexual practice, characterised by erotic impulses that are mostly or even exclusively directed towards children<sup>7</sup>.

The persons who experience paedophiliac inclinations have a fixation towards children, one of both an emotional and a sexual nature. The cause of this so-called fixation is hard to alter, and they are able to easily swing to a state of anxiety or to a psychotic episode, if they prove unable to resolve their inner conflicts.<sup>8</sup>

Reason seems to tell us that medical emergency intervention is what it takes to mitigate and to eliminate such impulses.

## **2. Expert reports and fact-finding in regard to the assessment of paraphiliac and paedophiliac deviant behaviour**

In order to observe and to precisely establish what are the psychological disorders that may afflict a defendant, we think that it is mandatory that a psychiatric expert report be ordered, as it is necessary to establish, to clarify and to assess the facts by an expert witness, in order to clarify and to determine which are the mental conditions of that defendant, but also to establish a treatment plan that will alleviate or even wipe out the paedophiliac deviance altogether.

It is important to focus on the deviant conduct, from a medical perspective, because it is upon this criterion that we deem as deviants those individuals who are incapable of observing the rules of proper conduct in society, as a result of their physical and mental shortcomings. Therefore, if transgression of the laws is a particular form of deviant behaviour, a mental disorder is a different type of deviance, since the patient, as a result of their behaviour, strays from the requirements of normalcy, which are integrated in the very concept of mental health.

Deviant behaviour, as a general concept, can be defined as the „multitude of behavioural types whose features appear more or less offensive, reprobable or reprehensible, that generate disapproval, hostility and certain unpleasant consequences to the perpetrators thereof.” More so, individuals who display abnormal behaviour neither clearly adhere, nor do they clearly exclude the voluntary perpetration of their offences. Seen as a transgression of the applicable rules in a given social system, deviant behaviour reopens the debate on both the social regulations, but also on the unity and the cohesion of the system itself.<sup>9</sup>

<sup>3</sup> American Psychiatric Association, *op. cit.*, p. 702.

<sup>4</sup> D.B. Iliescu, G. Costea, A. Enache, L. Oprea, V. Gheorghiu, V. Astărăstoae, *The Psychiatric Forensic Expert Report, an Interdisciplinary Approach*, Timpul Publishing House, 2013, p. 205.

<sup>5</sup> American Psychiatric Association, *op. cit.*, p. 685.

<sup>6</sup> G.O. Gabbard, *Psychodynamic Psychiatry Treatise*, Trei Publishing House, 2007, p. 296.

<sup>7</sup> T. Stoica, *Psihosexology*, Medicală Publisher, Bucharest, 1972, p. 316.

<sup>8</sup> F. Tudose, C. Tudose, L. Dobranici, *Psychiatry and Psychopathology Treatise for Psychologists*, Trei Publishing House, 2011, p. 591-593.

<sup>9</sup> M.N. Turliuc, *The Psychology of Deviant Behaviour*, Universitaria, European Institute, 2007, p. 42.

We often find in specialised literature various studies focused on the pathological personality, placing the emphasis on the individual, when it comes to the perpetration of the deviant acts, and suggesting that, most times, the transgression of social regulations is perpetrated by deficient individuals, unable to adapt to the cultural and social context of their lives. Even more so, according to this criterion, the disorder means a non-voluntary or even coerced choice, that can give motive to the deeds of the deviant.<sup>10</sup>

It has been said that it takes a social reference model in order to assess a certain type of behaviour as being pathological or abnormal, and based upon that model can we ascertain the legal or illegal nature of a certain act, as well as its tortious consequences. Abnormal behaviour is considered to be problematic, because it raises difficulties both to the perpetrator, as an individual, and to society in which the offence is committed. However, insofar as mental disorders often have a defensive, protective or compensating nature, it is challenging to draw a clear line between normal and abnormal behaviour<sup>11</sup>.

Therefore, the development of a psychiatric forensic expert report is decided by the necessity to conclude whether the existence of certain mental disorders had a contribution or not in the perpetration of this type of offences.

Also, it appears without doubt that paedophilia, as a sub-species of paraphilia, constitutes a serious disorder, one that derails the aggressor's behaviour, and, as any other physical or mental condition, it requires treatment before anything else, in order to obtain a total remission thereof or, failing that, in order to at least alleviate the condition.

In addition, experts have proven that, by clinical and paraclinical assessment, certain aspects can be clarified:

- what is the level of accountability of the perpetrator in relation to the self-acknowledgement of their deviant behaviour, by using the medical approach, the only one able to produce results;
- how to adapt the prosecution and conviction of certain persons who were unable to understand the significance and the consequence of the actions for which they are being held liable, and who are at risk to miss the significance of the prosecution and of the penalty imposed;
- taking adequate security measures - compulsory medical treatment and a decrease in the social threat posed by the patient.<sup>12</sup>

To this end, certain objectives of the expert report that would be ordered in any criminal proceedings regarding offences against sexual freedom and integrity can be identified as viable, in light of the considerations above, such as:

- whether or not is the person examined displaying and deviant behaviour or mental disorder that belong to the paraphiliac-paedophiliac spectrum;
- as per the above mentioned diagnosis, what is the development stage of the said deviant behaviour/mental disorder and what is the current state of the person under examination;
- whether or not the person under examination is simulating or concealing a mental disorder that belong from the paraphiliac-paedophiliac category;
- what personality features are characteristic to the person under examination and whether or not they are influencing the emergence of a general propensity towards the perpetration of offences against the sexual freedom of children;
- if the subject under examinations is displaying elements of typical features of a person who survived sexual abuse themselves; when the answer is affirmative, to establish what is the extent of the damage and what are the odds that the subject will replicate the deviant behaviour themselves;
- what is the degree of the subject's accountability, as an expression of the level of acknowledgement of the severity of their own offences to be observed at the precise moment when the examination is carried out;
- how serious a threat is the person under examination, in terms of current and general social dangerousness, considering the possibility of them committing an offence or adopting other type of antisocial behaviour;
- if there is a need to perform a medical intervention, using specific therapy and specialised treatment plans, in order to limit or to eliminate the sexual impulses targeted at children, based on the current and general

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<sup>10</sup> M.N. Turliuc, *op. cit.*, p. 30-31.

<sup>11</sup> *Ibidem*.

<sup>12</sup> D.B. Iliescu, G. Costea, A. Enache, L. Oprea, V. Gheorghiu, V. Astărăstoe, *op. cit.*, p. 97-98, 117, 336.

social dangerousness of the subject;

- what therapy would be adequate in order to prevent a repeated offence from the same subject and to help rehabilitate the subject, in dependence to the type of paraphiliac-paedophiliac deviance/disorder that is diagnosed in the subject;
- whether or not is a security measure such as mandatory medical treatment able to prevent the risk of a repeated offence from the same subject that was examined, once they are reinserted into society, after serving a custodial sentence.

### 3. The need for specialised treatment, in order to cure the patient

The need to identify and pursue a medical treatment of a defendant standing trial for sexual offences against children resides, on one hand, in the necessity to make sure such criminal behaviour will not be reiterated in the future, and on the other hand in the need to alleviate the paraphiliac disorder, because the essence of the addiction is represented by the perpetrator's lack of control over their own repeated, persisting behaviour, that has failed to adapt.

This being the case, the subject affected by this type of deviance cannot resist the urge to give in to a conduct that places them in the realm of criminal offences, and in such circumstance, they go through a period of tension, followed by a feeling of liberation, once the act is accomplished. However, the attempts of a person suffering from paedophilia most of the time result in a significant state of frustration and discomfort. The individual, at this point, enters a phase of uncontrollable reiterations of the same behaviour and ceases to properly function in society, in their profession or in their respective families.

The treatment for paedophilia is a complex reality, and throughout history it was scaled in many sizes, it involved various techniques that touch upon both psychology and medicine.

A psychological or psychiatric treatment plan of the paedophile should take into account, before anything, that the subject is a patient, regardless whether they committed sexual abuse or not.

The specialists have proven that a professional who is treating such patients must keep in mind that their attitude towards the individual can prove decisive at the time of the treatment. They also proved it's essential to adapt the treatment in accordance to the particulars of each case, because there is a vast array of factors that can influence a person and can vary the effectiveness of the treatment. These rehabilitation plans can be scheduled as programmes, keeping track not only of the shift in sexual preferences, but also of the connection between the paedophile and the search for cognitive changes. It has been emphasised that, in most cases of this type, the favoured paradigm is of a cognitive-behavioural nature, although other approaches have been used, such as psychodynamic<sup>13</sup>.

In practice, it is recommended to use the cognitive restructuring method and the training in stress management - because, in certain cases, impulsive behaviour is linked to anxiety impulses. It is also a possible perceived inability in adults to maintain a relationship with other adults that, in some cases, reveals itself as one of the causes that makes the paedophile become interested in children. Paedophiles have a certain pattern for a determined age group or gender. It has been noted that there is a higher frequency in recruiting victims from younger age groups and to also internationalise such offences, as many paedophiles will travel with higher interest to countries with a lower standard of living, such as Eastern Europe<sup>14</sup>.

In an attempt to change sexual behaviour, several alternative methods and programmes have been proposed, and most of them are similar to those used in other paraphilias or in dealing with substance abuse.

The prevention of such offences is fundamental in order to stop the paedophile subject from repeating this behaviour, assuming that one offence was perpetrated. It must be kept in mind that the treatment of a paraphilia, such as paedophilia, is a complex and difficult challenge, but it is not impossible<sup>15</sup>.

<sup>13</sup> <https://ro.yestherapyhelps.com/how-do-you-intervene-psychologically-with-pedophiles-12798>.

<sup>14</sup> D.B. Iliescu, G. Costea, A. Enache, L. Oprea, V. Gheorghiu, V. Astărăstoaie, *op. cit.*, p. 209, 509.

<sup>15</sup> Paul Feodoroff, a psychiatrist working at the Ottawa University, has a very different approach. In fact, he has recently published an article under the title „Can People with Paedophilia Change? Yes, They Can!“. The study, co-authored by Feodoroff, involved analysing 43 men whose general arousal was assessed in two separate occasions. On every testing session, the participants listened to erotic tales being read to them, describing children or adults, while the changes in their erectile state were being recorded by a penile plethysmography, which is basically a ring fitted on the penis, that takes measurements of the changes in the blood circulation. All the men indicated a pattern of paedophile arousal on the first testing, which means they became aroused upon hearing the child stories. However, approximately half of those men (49%) indicated a shift in the arousal pattern, on the next testing session: the arousal caused by children decreased, while the arousal caused by adults increased. I cannot say what the cause was, because this study did not come with a treatment. The participants

Another aspect that must be considered is the vast variety of cases, each with its own specifics; while some suffer and experience guilt for their paedophilic disorder, others deem their actions as legitimate and even hold the child responsible for the abuse, if perpetrated.

All these elements, by mutual agreement, ought to be taken into consideration and given a different kind of treatment, as the only instrument that is able to achieve the purpose is the development of a forensic psychiatric expert report.

The term „paedophilia”, as encountered in specialised literature that studies this deviance<sup>16</sup>, is often applied to various social contexts to any sexual interest manifested towards a child or to the act itself of sexual abuse against children. Another problem that was noticed is linked to the stigmatising of paedophiles in society, and this is a deterrent to patients who would consider specialised medical help, in order to get their condition treated.

Therefore, it is mandatory to take into account the need to place the abuser under treatment, in order to prevent the offence from being repeated, but also in order to repair the mental disorders that may afflict the paedophile.

A patient diagnosed with paraphilia should undertake a perversion therapy plan, in order to develop their own internal control, that will stop the victimisation behaviour and will increase the patient's abilities to relate with other people.<sup>17</sup>

#### **4. Whether or not it is adequate to subject diagnosed paedophilic aggressors to compulsory medical treatment**

From what we examined earlier, it would appear, beyond any doubt, that such offenders need to be subject to an appropriate treatment plan in order to restore their behaviour to a condition that is not affected by a paraphilic disorder, namely by paedophilia. Therefore, we conclude that it would be necessary to subject such patients to compulsory and provisional medical treatment, as it has been proven that medication and psychological therapy combined constitute the most successful methodology.

An important aspect that needs to be kept in mind is the fact that the prevention of offences is achieved, on one hand, in relation to the perpetrator, by what is called the *special prevention*, which makes sure that the offender is coerced and re-educated; *general prevention*, on the other hand, is aimed at everyone else who can be subject to criminal liability and who, under the threat of the penalty provided for under the law, will comply and adjust their behaviour in accordance with the regulations.

Criminal law doctrine also insisted on the fact that, for crime prevention to be effective, it is mandatory to observe the principle of humanity in criminal law, since inhuman or degrading penalties or treatments will not determine the desired change in the perpetrator's attitude. The author also insists that, under such circumstances, criminal policy should not swing to the opposite extreme, because stripping the penalty of its afflictive component will completely undermine the prevention of crimes<sup>18</sup>.

In direct relation to this goal, it is important to mention the following.

At the end of the 19<sup>th</sup> century, a theory that gained momentum claimed that fighting crime strictly within the confines of the penalties provided for under the Criminal Codes was proving inefficient, in many cases.

It was so noticed that certain categories of offenders are beyond criminal coercion. Such categories of persons, as far as fighting crime was concerned, were considered to be „threats” that fell under the scope of criminal law, as, on one hand, such persons were directly involved in the perpetration of an act stipulated by criminal law and, on the other hand, it was through these acts that they emerged into the attention of the authorities.

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were chosen strictly based upon being tested twice, regardless of whether they took a treatment or not. Feodoroff indicates this study, and another set of evidence, suggesting that paedophilia is not pre-programmed and that it can change. For example, he mentions that, on a global level, the repeat offence rate of child abusers is relatively low and that, despite the increase in population, there is a decrease in sexual abuse against children. If paedophilia could not be changed, he claims, we would expect a higher rate of repeated offences and an increased number of sexual abuses. The same is indicated by other studies showing that sex offenders will generally display a decrease in the risk of repeating the offence over time, which he holds as proof that their sexual interests change [J.M. Cantor, J.P. Feodoroff, *Can Paedophiles Change? Response to Opening Arguments and Conclusions*, Curr Sex Health Rep 10, 2018, p. 213-220].

<sup>16</sup> <https://psihologiejudiciara.ro/tulburarea-pedofila-o-simpla-orientare-sexuala-o-tulburare-sau-o-infractiune/>.

<sup>17</sup> F. Tudose, C. Tudose, L. Dobranici, *op. cit.*, p.590.

<sup>18</sup> M.A. Hotca, *Criminal Law Manual, General Part*, 2<sup>nd</sup> ed., Universul Juridic Publishing House, Bucharest, 2020, p. 375.

These threats, as noted by the literature, can be defeated NOT by means of criminal penalties, but only by preventive measures, since they are not rooted in situations that constitute transgressions of criminal law, and therefore security measures must be introduced, in order to prevent crimes from happening<sup>19</sup>.

One of the most important moments, that ushered in the introduction of security measures in the European Criminal Codes, was the International Conference for Codifying Criminal Law held in Rome, in 1928.

Security measures were first regulated, under this denomination, in the Romanian Criminal Code of 1936.

Specialists have emphasised that security measures provided for under criminal law are mainly intended to be prevention means, aimed at averting the perpetration of acts stipulated by criminal law, by the removal of the threats that have caused such measures to be taken.

On a secondary plan, these security measures are also meant to coerce, because they are imposed by judicial bodies against the will of the subjects. The subsidiary nature of the security measures makes them more alike criminal penalties, who are first and foremost means of coercion<sup>20</sup>.

Therefore, the provisional and compulsory medical treatment is a security measure, a preventive coercion measure whose purpose is to ward off a state of dangerousness that can generate acts stipulated by criminal law, of the magnitude of those supposedly committed in the case at hand.

This measure represents the strongest element, and it is able to support the judicial bodies in their efforts to reprehend serious criminal phenomena that threaten physical, mental and sexual integrity of the most vulnerable of persons - children. Once the perpetrators meet with a swift response, one that makes use of these levers of criminal law, akin to the other category of criminal sanctions - the penalties - we can only expect a positive impact in what concerns the treatment of psychiatric disorders and the prevention of repeating the offences.

In this context, it is important to point out to *Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA*, which stipulates, *inter alia*, the measures that need to be taken in order to prevent the perpetration of such offences:

- offenders should be subject to an assessment of the danger posed by the offenders and the possible risks of repetition of sexual offences against children;
- Member States shall take the necessary measures to ensure that persons who fear that they might commit any of the offences referred to in art. 3 to 7 may have access, where appropriate, to effective intervention programmes or measures designed to evaluate and prevent the risk of such offences being committed.

One cannot ignore the vision of Romania's lawmakers, who understood the need to establish a specific framework for this type of penalties and, pursuant to the provisions of art. 245 para. (1) CPP and art. 109 para. (1) CP, the security measure of compulsory and provisional medical treatment can be ordered if the suspect or defendant, because of a disease, including one caused by chronic alcohol or psychoactive substance abuse, poses a threat to society. Turns out that, in order for this security measure to be ordered, two conditions must be simultaneously met: there must be an illness affecting the defendant and the existence of that illness must pose a threat to society, as revealed by the forensic psychological expert report.

Certain details need to be clarified in regard to the security measures, beyond the position that a perpetrator may have in relation to the acknowledgement of their own disorder and the admittance thereof.

Observing art. 109 and 110 CP, of interest to this article, we can derive one first conclusion as to the moment up to which such measures can be ordered. Pursuant to the abovementioned legislation, the lawmakers decided that a perpetrator can be subject to any of those measures until their full recovery or until such time as the condition alleviates enough to stop being considered a public threat.

According to the dictionary of the Romanian language, the notion of „recovery” implies that a person has been healed of a certain disease, while an alleviation only means an improvement of the patient's state of health. Considering that the conditions described above can only be ascertained in terms of „recovery” and „alleviation” until the subject has been exposed to the same triggers that initiated the deviant behaviour prior to the treatment, we deem the role of the therapist as crucial, being of first and foremost importance in assessing, after

<sup>19</sup> C. Mitrache, C. Mitrache, *Drept penal român, Partea generală*, 5<sup>th</sup> ed., revised and supplemented, Universul Juridic Publishing House, Bucharest, 2023, p. 268.

<sup>20</sup> T. Dima, A.S. Nicolescu, *Criminal Law. General Part*, Hamangiu Publishing House, Bucharest, 2023, p. 694-695.

the completion of the treatment plan, to what extent has the threat disappeared and whether or not the perpetrator has become fit to re-enter society. In our opinion, though, such an exposure will never be safe, in the case of such persons.

Therefore, it is our proposal that the lawmakers keep in mind the establishment of a treatment plan that the abuser will continue to follow even after the completion of a full recovery or a significant alleviation, because such results are volatile. It would certainly be worth analysing the legal framework in which such a subsidiary measure can be ordered, and it is our opinion that it should be coined as another security measure. In case the perpetrator does not comply, the consequences may affect the chances of a conditional release or rehabilitation.

Another way of looking at this reveals that, in the case of compulsory medical treatment, if the perpetrator does not comply and refuses to undertake the treatment, the court may order another measure, the non-voluntary hospital admission.

It is our opinion that, given the optional nature of the hospital admission in the particular situation when the offender refuses to undergo the mandatory medical treatment, this measure may become arbitrary to an extent that it could be misunderstood by the perpetrator, who may think the court cannot order them to be admitted into a medical facility. However, given the social dangerousness of the offences perpetrated by these abusers, we think it would be useful that, in a future bill to amend the Criminal Code, the lawmaker should make it mandatory to forcibly admit into hospital an offender who suffers from such deviant behaviour, should they refuse to comply to the compulsory treatment, and thus the prevention of a new threat may become even more viable.

## 5. Conclusions

To conclude, in the event that one of these security measures is taken, even at the request of the offender, they should understand that they've taken upon themselves to submit to the treatment prescribed by a specialist doctor, until full recovery or until such time the illness alleviates to the extent where it no longer poses a threat; this obligation is a real necessity and it is able, to the purpose of those above mentioned, to prevent the perpetration of very serious offences, with deep consequences on the psychological and emotional development of the victim.

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