4. Prevention of Sexual Online Grooming – Legal, Psychosocial and Technological

4.1 Combating the Phenomenon of Sexual Online Grooming from the Point of View of the State Office of Criminal Investigation Berlin

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The present chapter critically illuminates the criminal classification of sexual online grooming within the German criminal law. Furthermore, the specific procedures, problems and different case developments when applying the law will be described. The focus lies specifically on the initiation of proceedings, problems with the preservation of evidence, the evaluation whether the offender consciously contacted children, the determination of the number of offenses, aspects of the interrogation, the identification of the suspect and procedural steps. It also takes into account the most recent tightening of the law and the criticism levelled at it, particularly by criminal law practitioners.

Since the current chapter mainly reflects empirical experiences, a complete representation of the phenomenon and the dealing with it when translating legislations into the execution and jurisdiction cannot be ensured. Moreover, legislation is always subjected to modifications. Therefore, the validity of the described contents is linked to the period of origin of this article and must also be considered against this background.

Keywords: sexual online grooming, German criminal law, criminal classification, preservation of evidence, criminal prosecution

Criminal classification of sexual online grooming and expectation of punishment

The present chapter reflects upon the outdated § 176 and its subsection as well as the § 184 in contrast to the legislative changes according to the approved draft law 'Entwurf eines Gesetzes zur Bekämpfung sexualisierter Gewalt gegen Kinder' ('Draft Law to combat sexualized Violence against Children'; Bundesministerium der Justiz und für Verbraucherschutz, 2020a). The revised law came into force at the 1st of July 2021 and is fully effective since the 1st of January 2022.

Reflections on the classification within the outdated §§ 176

Before the legislative changes, sexual online grooming (SOG) played a rather subordinate role in the systematics of the *Strafgesetzbuch*[1] (German Criminal Code, 'StGB'; Fischer, 2020). In the portfolio of offenses of sexual abuse of children, it was partly found in § 176 (4) no. 3 and in the rather awkwardly formulated § 176 (4) no. 4 and was punishable by imprisonment from three months up to five years. Alternatively, criminal liability according to § 176 (4) no. 2 could also be considered, although this included all types of determination of sexual acts, primarily direct contact, whereas no. 3 and no. 4 referred specifically to a 'virtual' way of committing a sexual abuse of children.

§ 176 – Sexual abuse of children (outdated version)

[…]
(4) A prison sentence of between three months and five years shall be imposed on anyone who
[…]

2. orders a child to engage in sexual activities, unless the act is punishable under section 1 or section 2,
3. acts upon a child by means of writings (section 11, subsection 3) or by means of information or communication technology in order to
   (a) induce the child to engage in sexual activities which it is intended to perform or which the offender or a third person perform; or
   b) to commit an offense pursuant to section 184b subsection 1 no. 3 or section 184b subsection 3, or
4. affects a child by presenting pornographic images or representations, by playing sound recordings of pornographic content, by making pornographic content accessible by means of information and communication technology or by applicable speeches.

With this threat of punishment, SOG fell under minor crimes such as theft, bodily injury, fraud, etc. The act constituted a misdemeanor, as opposed to crimes (§ 12), and the minimum sentence was less than one year (see excursus below).

1 Every reference to §§ without further specification are those that included StGB (German criminal code).

In practice, the penalty framework of § 176 (4) was never fully exhausted: prison sentences were usually imposed only in the case of massive relevant criminal records. It was absolutely rare that these sentences for SOG as a special kind of violence against children and child sexual abuse were higher than two years and consequently were suspended for probation (§ 56). Moreover, although the legal minimum penalty was three months imprisonment, in many cases only fines were imposed. This was made possible by § 47, which allowed individual custodial sentences of less than six months to be converted into fines. One month imprisonment then corresponded to a fine of thirty daily rates.[2]

Behind this was the legislative concept that § 176 and § 176a punished influencing the sexual development of children under the age of 14 years. Within this framework, penalties were graded depending on the severity of the assault. So-called *hands-on offenders* who committed severe sexual acts with actual physical contact (e.g., forced sexual intercourse) must therefore expect higher penalties than those who have online sexual interactions with children (e.g., sexting, indecent exposure of themselves in front of the children, etc.). If an offender aged over 18 years of age penetrated the victim's body, the minimum penalty was already two years (see § 176a). It could hence only be suspended for probation if the legal minimum sentence is considered, since § 56 stipulates that suspended sentences could only be imposed for prison terms of a maximum of two years if the necessary positive social prognosis could be made. Sentences of more than two years therefore mandatorily resulted in imprisonment, i.e., they are actually enforced.

This mirrored the documentation (i.e., filming, photographing, recording) of the sexual abuse of children, i.e., the criminal offenses of possession

2 Contrary to popular belief, a fine is not imposed in an absolute amount but is measured on the basis of a corresponding number of daily rates, and the amount of daily rates are based on the monthly net income. An 'sexual online groomer' with a monthly net income of 2,400 € would have to pay 120 daily rates of 80 € each, a total of 9,600 €, if a prison sentence of four months were appropriate but the sentence were converted into a fine. With a social welfare recipient the fine would amount to 120 daily rates of 15 € under the otherwise same conditions, thus altogether 1,800 €. In both cases, however, the corresponding convictions actually lacked one third of their annual income.
Under the intended revision, however, the minimum sentence would be six months. A conversion to a fine would then no longer be possible, and a custodial sentence would be imposed in any case. It remains to be seen whether this will also lead to a more frequent imposition of custodial sentences that are no longer eligible for probation.

and distribution of files, which were called diminutively 'child pornography'. The penalty for producing child pornography, on the other hand, differed depending on the motivation and purpose of the production. If the perpetrator made the recordings only for himself, this constituted sexual abuse of children under § 176 in combination with production of child pornography under § 184b, i.e., two offenses were committed by one act. If the production was for the purpose of dissemination, in particular resale, § 176a (2) of the German Criminal Code was relevant, which provided for a minimum sentence of two years.

Nevertheless, the further away the defendant was from the actual offense, the milder the punishment – the owner of child pornography writings is liable to fines or imprisonment. Whoever distributed these materials, i.e. make them accessible to others and thus perpetuates the crimes against the child, is already threatened with a prison sentence of at least three months. Similarly, the increased minimum sentence of three months for SOG compared to the punishment for the possession of child pornography could be explained by the fact that the offender had already taken a further step in the direction of the child, since there was direct contact and thus also direct, albeit not yet physical, influence.

In any case, SOG was one of the weakest forms of child sexual abuse, measured against the expected criminal sanction. The sentence did not reflect the possible impact of SOG in children by impairing children's sexual development, destroying trust, stirring up fears of attachment and traumatizing them. In addition, in most cases SOG does not stop at 'pornographic speeches' or at children being sent pornographic pictures. Often the child is also asked to send nude pictures of him- or herself to the ‚sexual online groomer' – this means that he or she is prompted to produce and distribute child pornographic pictures of him- or herself. Once distributed on the internet, it is practically impossible to effectively withdraw those pictures from circulation.[3] Also, online sexual interactions of children with

3 Since the child is of criminal age, this in fact leads to the 'sexual online groomer' acting as a so-called, 'indirect perpetrator'. According to § 25 (1), not only the person who commits an offense him- or herself is liable to prosecution, but 'like a perpetrator is punished' who as an indirect perpetrator commits the offense 'by another' who is not liable to prosecution. Reasons for this impunity of the person in front are, for example, that the perpetrator acts without intent, i.e., that he does not even know that he is committing a criminal offense, that he acts innocently himself (for example due to a mental illness excluding his ability to act and/or control) or the criminal responsibility of the person acting, § 19, i.e., when a child is instrumentalized.

adult strangers can act as bridge to actual physical offline meeting where child sexual abuse might occur (Greene-Colozzi et al., 2020).

In the outdated legal setting, the legislation produced an absurd situation: A 13-year-old child, for example, who is asked by a 'sexual online groomer' to take nude pictures of himself and does not delete them, himself becomes punishable by law from the age of fourteen for possession of child pornography: by law, it does not matter who is in the pictures.[4]

Reflections on the classification within the revised § 176 and § 184

In the current legislation, comprehensive modifications were implemented in order to fight against sexual abuse of children, adolescents, and persons in one's charge. For example, all acts – including SOG – are classified as sexualized violence as opposed to sexual abuse, with SOG being defined as 'sexualized violence against children without physical contact with the child' (§ 176a). This aims to underline that SOG is a form of sexual abuse.

In addition to these changes in terminology and the legal system's restructuring of the elements of the offense, the penalties increased considerably. The basic offense of sexualized violence against children is classified as a crime and its punishment ranges from one year to 15 years imprisonment (previously punishable as a misdemeanor with imprisonment from six months to ten years).

Also, the dissemination, possession and procurement of possession of child pornography were upgraded to a crime. For the dissemination of child pornography, the law defines one year to ten years (previously three months to five years) as imprisonment. Possession and procurement of possession are to be punished with prison sentences of one year to five years (previously up to three years imprisonment or a fine). Commercial and gang distribution is to be punishable in future by imprisonment of two to 15 years (previously six months to ten years).

However, the basic system remains the same in the revised version: From SOG to actual forcible sexual intercourse with children, all of these acts fall under the term sexual abuse or sexualized violence. The more immediately

4 In the context of youth pornography, the legislature has recognized this problem, at least in principle, by regulating it in § 184c (4) no. 3, also in conjunction with subsection 3 and subsection 5 sentence 3 shall not apply to acts of persons in relation to such youth pornographic writings which they have produced exclusively for personal use with the consent of the persons depicted'.

the contact between perpetrators and children is, the higher the penalty. For cases of SOG this means, both in the outdated and in the revised version of the law, that as the weakest form of abuse it also carries the lowest threat of punishment. Moreover, in the revised law the criminal liability of online SOG offenders is included although in those cases when they mistakenly believe that they act on a child. The so-called punishability of attempts is intended to facilitate criminal prosecution and refers, for instance, to sexualized contacts with children in chat rooms which happen, contrary to the perpetrators assumption, between the perpetrator and other adults (e.g., parent or police officer).

The revision of the law evoked partly considerable criticism from the ranks of criminal law practice and science, focussing on the one-sided criminal law tightening and the too low focus on prevention (Piechaczek & Lüblinghoff, 2021): For example, the term 'sexualized violence' is considered misleading and resulting in interpretative problems as it might diffuse different forms of child sexual abuse and might not allow for the differentiation of physically brutal sexual abuse. Moreover, the tougher penalties are expected to mainly provide for an increase in the minimum penalty for most cases. This is because, apart from the fact that there is widespread agreement in criminology that higher penalties do not have a stronger deterrent effect, there would then be a lack of practically relevant options for responding more flexibly and on a case-by-case basis to the injustice committed in each case. In turn, this could lead to decreased resources for the prosecution of severe cases. The relevance of the issue itself, however, was reflected in the large number of different statements that have been submitted and of parliamentary debates.

For the cases of SOG, the new regulations formulated within the revised version provide a more severe penalty (Bundesministerium der Justiz und für Verbraucherschutz, 2020b):

§ 176a – Sexualized violence against children without physical contact with the child

(1) A penalty of imprisonment of six months to ten years is imposed on anyone who

1. performs sexual acts in front of a child,
2. directs a child to perform in sexual acts, unless the act is punishable under § 176 (1) no. 1 or no. 2 or
3. influences a child by showing pornographic content (§ 11, subsection 3) or speech to that effect.

(2) Whoever offers or promises to supply a child for an offense under subsection 1 or who arranges with another to commit such an offense incurs a penalty.
(3) The attempt is punishable in the cases referred to in subsection 1, no. 1 and no. 2. In the case of acts under subsection 1, no. 3, the attempt is punishable in those cases in which completion of the act fails solely because the perpetrator mistakenly assumes that his action relates to a child.

Section 176b – Preparation of sexualized violence against children
(1) A penalty of imprisonment for a term of three months to five years shall be imposed on anyone who acts on a child by means of a content (§ 11, subsection 3)

1. in order to cause the child to perform sexual acts on or in the presence of the offender or a third person or to have the offender or a third person perform sexual acts on or in front of the child or
2. in order to commit an offense under § 184b (1) sentence 1, no. 3 or § 184b (3).

(2) Whoever offers or promises to supply a child for an offense under subsections 1 or who arranges with another to commit such an offense incurs a penalty.
(3) Offenses under subsection 1 incur a penalty in those cases in which the completion of the offense fails solely because the offender mistakenly assumes that his action relates to a child.

Case development and criminological approaches

In the area of SOG – as with most abuse and sexual offenses – a large number of unreported crimes can be assumed. Unfortunately, only a few offenses will be reported. In addition, many reports are made by chance, for example because parents detect a problematic chat session on their child's smartphone or computer, or if the police themselves investigate proactively in the relevant chat forums.

Studies on unreported crime with respect to SOG arrive at wildly varying results, mainly because there is a lack of a clear, uniform definition. Yet, almost all the surveys reach the conclusion that it is a common crime to which both boys and girls are exposed. Criminologist Rüdiger (2016): 'In my experience, I assume that almost every child who grows up in digital

space is confronted with an online groomer at least once. However, this does not mean that the children realize who they are talking to or what their intentions really are.'

Even an evaluation of *Polizeiliche Kriminalstatistik* assessing prosecuted offenses based upon the outdated § 176 (PKS; police crime statistics; Bundeskriminalamt, 2021) indicates an approximate trend in the development of the phenomenon. On the one hand, this only covers the number of proceedings initiated on complaint or *ex officio*, without it being established that a crime has actually been committed. On the other hand, criminal offenses according to the outdated § 176 (4) no. 3 and 4 were generally recorded in the PKS – not every proceeding mentioned related to this section was therefore necessarily a SOG proceeding. Nevertheless, SOG was likely to account for the vast majority of the proceedings in the PKS filed under § 176 (4) no. 3 and 4 (for example, see Bundesarbeitsgemeinschaft der Kinderschutz-Zentren e. V., 2019; Bundeskriminalamt, 2019).

Cases of SOG according to the outdated law could be classified under both § 176 (4) no. 2 and § 176 (4) no. 3 and 4, depending on the characteristics of the crime. For both defined acts, a steady increase can be seen. The following tables show the total number of initiated proceedings and the percentage of crime clearance rate (CCR) for Berlin and the Federal Republic of Germany for the years 2012 through 2018:[5]

5 It must also be taken into account with regard to the rate of clarification that a case in the PKS is regarded as clarified if a perpetrator has been named. Whether this is the actual perpetrator and whether a criminal offense could be proven at all is thus not yet established.

Table 1: Total number of initiated proceedings and the percentage of crime clearance rate (CCR) for Berlin

Berlin	2012		2013		2014		2015		2016		2017		2018	
	cases	CCR	cases	CCR	cases	CCR	cases	CCR	cases	CCR	cases	CCR	cases	CCR
Ordering a child to perform sexual acts on itself, § 176 section 4 no. 2	7	57.1	13	100	8	62.5	10	80	14	78.6	12	91.7	6	83.3
Influencing a child by means of image or sound, § 176 section 4 no. 3 and 4	52	75	52	55.8	60	71.7	76	78.9	79	67.1	140	82.1	101	71.3

Table 2: Total number of initiated proceedings and the percentage of crime clearance rate (CCR) for the Federal Republic of Germany

Germany	2012		2013		2014		2015		2016		2017		2018	
	cases	CCR	cases	CCR	cases	CCR	cases	CCR	cases	CCR	cases	CCR	cases	CCR
Ordering a child to perform sexual acts on itself, § 176 section 4 no. 2	664	87.7	592	84.3	523	87.4	592	87.7	590	90	465	84.5	421	85.5
Influencing a child by means of image or sound, § 176 section 4 no. 3 and 4	1406	85.6	1464	81.8	1907	84.8	1958	85.8	2028	86.3	2121	81.9	2439	86.3

Particularly surprising about these figures is that, in spite of consistently high CCR, the number of cases is steadily increasing. In criminology, it is generally assumed that the risk of being sentenced for a violation of the law has a far greater influence on the willingness to commit a crime than the severity of the expected penalty. Against the presented statistics of the PKS, this association might not be presented for these specific crimes.

Rüdiger (2018) developed the term *Broken Web Theory* as an explanatory approach based on the *Broken Windows Theory* by Kelling and Wilson (1982) and the *Routine Activity Theory* by Cohen and Felson (1979) and comes to the conclusion that 'the probability of prosecution in digital space is too low to have a controlling effect'. To change this, he sees three starting points: One can attempt to counter the motivation of offenders by making

the potential victims less attractive or shift the balance towards compliance with legal norms by increasing protective mechanisms. Another approach is to prepare potential victims – e.g., children in SOG – for risks and thus reduce potential targets. A third starting point is to strengthen the control of standards in the internet in order to increase the risk assessment of potential actions. In principle, there are three actors: the users themselves, the private operators of social media and the rule of law.

Investigations into sexual online grooming – procedures, problems and developments

Initiation of proceedings

Due to the so-called 'principle of legality', the initiation of preliminary proceedings merely requires that the prosecuting authorities – the police or a public prosecutor's office – become aware that a criminal offense may have been committed, the so-called 'initial suspicion'. In general, there are many possibilities of gaining such knowledge, which naturally encompass SOG. However, other authorities or courts are under no legal obligation to report suspected cases of child sexual abuse. If, for example, SOG incidents become known at the Youth Welfare Office, in a school or in a family court case, it is up to the authorities to decide whether to involve law enforcement. However, the protection of the family plays a subordinate role in this consideration (in contrast to other, especially *hands-on constellations* of sexual abuse), since SOG offenders are rarely from the social vicinity of the child.

In practice, usually criminal charges are pressed by parents who have either been informed by their children or (more frequently) become aware of suspicious chat traffic by checking on their children's media activities. However, the detection of such offenses also largely depends on the parents' commitment to carry out such checks.

Occasionally, distribution of pictures is an indication of SOG: If, for example, pornographic material sent by an offender to a child is passed on by children in class chats, it will be easier for other parents, educators or teachers to become aware of it. This renders it possible to trace the pictures back to the child who originally spread the pictures – and thus, to the offender.

Furthermore, other proceedings (e.g., on suspicion of the distribution of child or youth pornographic writings) often give the decisive cue. In the

course of these proceedings, searches and seizures are ordered, and confiscated materials are evaluated by law enforcement authorities. During this process, chat traffic is usually also evaluated, as is access to corresponding exchange forums – and thus the possibility of identifying further people committing SOG and affected children.

Depending on the capacities of police personnel within the federal states of Germany, inquiries without cause can be conducted. For example, suspicious online chat rooms are visited – e.g., by non-publicly investigating police officers or covertly investigating police officers (see § 110a of *Strafprozessordnung*, StPO; criminal procedure code; Bundesamt für Justiz, 2021b) impersonating a child. When 'sexual online groomers' initiate contact, this leads to the initiation of separate investigation proceedings and, if necessary, the transfer of these proceedings to the responsible public prosecutor's office.

Some legal questions are connected with the procedure 'undercover investigations':

On the one hand, undercover investigations of police officers might inadmissibly provoke an offense. As offenders usually visit the relevant chat forums on their own accord, this has less impact in the area of SOG than in other areas of crime. In the field of organized drug-related crime, the risk that later suspects were only inspired by police officers to commit such crimes is significantly higher. Usually, such an *agent provocateur* problem would have to be taken into account when sentencing. However, only in exceptional cases undercover investigations will lead to a suspension because of a procedural bar (see Bundesverfassungsgericht, 2014).

The question of possible 'chastity tests' can arise during covert investigations in chat forums, especially in the exchange of child and youth pornographic writings. However, it only plays a rather subordinate role in SOG.

Under the previous legal situation before the revision of § 176, perpetrators who believed to be in contact with children under the age of 14 but actually chatted with police officers have not yet committed a crime. According to the offenders' idea, a child was to be influenced although they were chatting with an adult. This behavior was classified as so-called 'unsuitable attempt', but now it is punishable since the 3rd of March 2020.

Moreover, with the before-mentioned law changes the scope of action for investigations was expanded when it comes to telecommunications monitoring, online searches and traffic data.

Problems with the preservation of evidence

The most common situation in which parents file a complaint is often associated with problems that arise prior to filing. For example, it is usually not sufficient for parents to inform the law enforcement authorities that a questionable, sexualized online conversation has taken place in order to provide evidence in court. In order to substantiate accusations, it is necessary to be able to view, evaluate and present the corresponding chat as evidence. However, this requires that the corresponding data can be read from the device used by the child (mobile phone, tablet, computer). This is often difficult, as parents very often already deleted the chat history and occasionally even the entire messenger software from the device in a first and impulsive move because of their quite understandable indignation upon discovery. It might still be possible to recover the data, but doing so is not straightforward. When using services such as Skype or Snapchat, reconstruction is almost impossible due to the live nature or lack of conversation backups.

Another problem is that reading the data from a mobile phone is usually time-consuming. In times in which mobile devices are inseparably connected to their users, seizing the device for several days up to several weeks for data preparation often leaves parents and above all children annoyed. However, these items can be confiscated according to § 94 (2) StPO (Bundesamt für Justiz, 2021b).

A lack of problem awareness on the part of parents who regard SOG as a minor offense can also reduce the readiness to file a complaint. In such constellations, there is a lack of awareness that such actions can unsettle, and in some cases considerably impair, the sexual development of a child. At worst, parents blame their children for having become victims of SOG by accusing them of having engaged in the corresponding chats and often associated picture transmissions – without reflecting on the fact that the underlying lack of sensitization of the children in dealing with social media and sexuality often has its cause in the corresponding educational commitment of the parents themselves.

Evaluation whether the offender knew about the age of the child

If the chat logs and other evidence-relevant data actually were backed up, further difficulties often arise. Firstly, it needs not only to be proven by

comprehensive prints of chat protocols in what way the offender sexually interacted online but also whether the offender assumed that he actually was contacting a child.

The names of the corresponding contact lists or chat forums can give a first hint to this. Names like 'horny teens' or 'willing boy', however, do not allow for the compelling conclusion that they are children. Adolescents or adults can also hide behind these names.

Ultimately, this even applies to nicknames that seem to clearly point to children (e.g., '12yo horse lover'). Here, too, it cannot be ruled out that another adult offender hides behind this account; i.e., the absurd constellation may arise that two adult 'sexual online groomers' chat with each other in misjudgment of the other.

In any case, when evaluating such chat traffic, the focus should be primarily on whether the offender can be proven to know the age of his or her chat partner at all. At best you will find a corresponding age indication by the chat partner. However, if the perpetrator mistakenly believes that he/she acts on a child while communicating with an adult, his/her attempt is punishable.

Determination of the number of offenses

Also, the determination of the number of offenses requires an increased evaluation effort. Not every single statement constitutes a single act. The StPO sees a 'natural' unity of action 'if there is a direct spatial and temporal connection between a majority of similar criminal conducts that the entire conduct of the offender objectively appears to a third party to be a single action, and if the individual acts of actuation are also interconnected by a common subjective element' (Stuckenberg, 2018).

So, if several verbal assaults should occur in the course of a conversation, it would still be *one* offense in the sense of the concept of criminal offense. Against this background, it is necessary to evaluate how many different offenses can be detected and what offending behavior can be subsumed under a 'unity of action'. Therefore, a substantial review process of the evidence secured is essential but also time consuming (e.g., analyzing the number of platforms used, number of sessions, detect sessions with relevant offending behavior). A high amount of personnel capacities is needed which cannot be ensured by the law enforcement agencies.

Interrogation of the affected children

An essential part of the investigation procedure is the interrogation of the affected child itself. However, such interrogation is problematic in several respects.

On the part of the interrogator, it is necessary to have a basic understanding of the operating principles of the chat portals or apps in question, which cannot be taken for granted in light of the (growing) number of corresponding applications (Ebizmba, 2021). In addition, a special 'internet slang' (e.g., 'Vong'; Turysheva, 2018) and symbolic use of emojis is often used in corresponding chats, which requires at least a complex quasi-translation (e.g., eggplant metaphorical for penis, goggling eyes for 'send nudes'). Moreover, the understanding of the written texts can also be limited by poor orthography and punctuation.

Concerning the child, many issues arise from the legal proceeding itself. It is understandably unpleasant and embarrassing for many children to talk to strangers about sexual interactions and sexual offenses they experienced, no matter how sensitive the prosecutor may be (Caprioli & Crenshaw, 2017; Goodman-Brown et al., 2003; Sivagurunathan et al., 2019). Moreover, shame can also play a role, being the reason that the child did not really know how to defend oneself against a 'sexual online groomer' or did not dare to confide in one's parents. Finally, the willingness to testify will not be increased by the existing awareness that nude pictures and videos, which may have been made by the user him- or herself, are now not only available to the chat partner but also obviously known to the employees of the law enforcement authorities and the parents and may have been disseminated further. Moreover, testifying and reporting sensitive information to unknown police investigators and even to the court can be frightening and cause refusal to report the case in the first place.

The reluctance to report sexual offenses also takes place against the background of the principle of presumption of innocence (Articles 20 und 28 of the Basic Law for the Federal Republic of Germany; Bundesamt für Justiz, 2020c). Every witness needs to be interrogated critically to assess circumstantial evidence, which in turn might lead to the perception of being questioned as a victim. The expected course of conversation in a children's interrogation is generally friendly. However, by the nature of the interrogation an unbiased approach is necessary.

For these and other reasons, children can understandably be reluctant to report details about the experienced sexual interactions – especially when

the child perceives itself as having a part in it and/or having also replied in a sexualized way despite its young age. In addition, such a police interrogation imparts the danger of a (secondary) victimization: an intensive examination of an event that is actually perceived as harmless by the child itself could push the child into a stigmatizing victim role (Condry, 2010).

Next to the risk of (secondary) victimization, interrogations about experienced sexual offenses can often be emotionally burdensome and stressful for the child victims. A criminal procedural instrument aiming at reducing the strain is judicial video interrogation (especially when significant traumatization is the result of the sexual offense). Pursuant to § 58a StPO (Bundesamt für Justiz, 2021b), underage witnesses of sexual offenses are to be questioned by an investigating judge, which must be recorded on video. This points to another aspect that prolongs the investigation process, as this procedure also requires considerable technical, time and human resources of the law enforcement authorities and courts.

The importance of recorded statements is underlined by § 255a StPO (Bundesamt für Justiz, 2021b), which allows to bring forward such a record of an earlier interrogation in a later main hearing in a meaningful way. This provides the circumstance that a child victim of sexual abuse does not have to repeat already made statements in police and judicial interrogations. This would be especially burdensome if, in the worst scenario, the case entails several offenses and the prosecution stretches over a period of several years. Particularly in severe cases of child sexual abuse, in which the child victims are in particular need for the prompt start of therapeutic treatment, § 255a StPO (Bundesamt für Justiz, 2021b) allows to provide evidence at a very early stage during the prosecution. By this, the risk of a therapy-related distortion of the statement through the process of suggestion (Shobe & Scholler, 2001) can be averted too.[6]

6 Occasionally it becomes known in investigation proceedings that parents have deliberately postponed a therapy that was actually necessary for their child because they fear that this would be accompanied by a falsification of the statement, which in the worst case would lead to the offender's impunity. This danger cannot be dismissed. However, in the knowledge of a therapy it is possible to determine whether and to what extent it has had a falsifying effect. A punishment of a perpetrator is thus not excluded by a therapy in principle. Apart from that, when weighing up a 'successful' criminal case against the need to treat a child, concern for the child's welfare should prevail. At best, both aims can be achieved through close coordination between parents and law enforcement authorities.

Possible problems in identification of the suspect

In a further (possibly parallel) investigation step it must be determined who the chat partner is at all. This requires an approach to the respective service providers and can be quite complicated.

If a phone number is stored – as with WhatsApp, for example –, at least an attempt can be made to find out the user via this number. This can already be difficult, especially since the user registered with the Federal Network Agency can deviate from the actual user, and it is possible that false personal details were entered during connection registration. As a rule, however, the determination of inventory data is largely unproblematic for reputable European and US providers. Yet with regard to small providers (so-called 'living room providers') it can be problematic to obtain the needed information – either due to a lack of willingness to cooperate on the part of those responsible or (more often) due to their inability or excessive demands.

In the case of foreign providers – the Canadian-based chat provider 'kik' is a particularly practice-oriented example here – the fact that the relevant information can only be obtained through so-called legal assistance channels makes it even more difficult to obtain the corresponding inventory data information. Using the example of 'kik', this means in simplified terms that, in order to avoid premature data deletion, a data backup must first be applied online, which is, however, guaranteed for a maximum of 90 days. Moreover, requests for extensions must be submitted regularly before this period expires. At the same time, in accordance with the international agreements between Canada and Germany a request for mutual legal assistance must be submitted to the Canadian authorities, who are then asked to collect the necessary data for the German investigation in Canada and to transmit them to Germany.

What sounds like a simple process is actually complicated and tedious. Requests for mutual legal assistance are quite extensive because they must describe the facts of the case and the evidence as well as the legal specifications and the statutory limitation. Furthermore, numerous formalities which vary from country to country must also be taken into account. The request is then sent via the Federal Offices of Justice, both in Germany and in Canada. Thus, it usually takes several months for the request for mutual legal assistance to be received by a person ultimately appointed to implement it. The reply is then returned by the same means.

Tracing connection data, in particular IP addresses, is also difficult in practice, since this data is traffic data in the sense of § 100g StPO (Bundesamt für Justiz, 2021b), which is not stored by the respective telephone providers over a longer period of time. Often the necessary data can no longer be obtained when a crime is filed. Attempts to oblige providers to keep data available for longer for law enforcement purposes have been controversial in legal policy terms for years (so-called 'data retention').

In this area, too, corresponding legal changes could at best occur in the near future. The driving force behind this is the European Union, which has been discussing a *Regulation on European Production and Preservation Orders for electronic evidence in criminal matters* (E-Evidence-Regulation; Europäische Kommission, 2019) for years now, the adoption of which is now imminent and hopefully can soon take place. There are still a few points of contention. These essentially concern the domestic procedures associated with implementation and the willingness of individual states to tolerate interventions against companies and persons on their territories under their jurisdiction. However, there is broad agreement on the basic idea of the *e-evidence Regulation*: All providers offering digital services within Europe are obliged to provide a contact person in a country of the European Union. This person shall then be obliged to answer inventory data and other provider inquiries from investigating authorities of the EU member states within ten days, in urgent individual cases within a few hours. A time-consuming request for legal assistance, particularly with regard to providers in non-EU countries, would no longer be necessary.

To illustrate it with the example 'kik': Instead of a request for mutual legal assistance, 'kik' would be obliged to designate a contact person in the EU territory, who would provide the necessary data at short notice and on a simplified request form. The providers must then only check whether the request makes sense and seems justified. Even then, a prompt judicial review of the inquiry and its background would be possible.

If it is not possible to identify a suspect in any of these ways, the only *ultima ratio* that remains is to write to the suspect directly via the portal or app used. In this way, at least a warning effect is achieved in the hope that the perpetrator will refrain from committing further offenses. However, further investigations will then be considerably more difficult. In particular, the usual measures following the identification of the offender, such as house searches, hardly make sense for an accused person who knows of proceedings brought against him.

If the offender was identified by some other means, especially without the defendant knowing, all types of data carriers are usually confiscated in the course of house searches. Also it is checked whether the accused is in contact with children, for example has children of his or her own who run the risk of becoming a victim of crime, or whether he or she is working full-time or on a voluntary basis in child and youth work, be it as a teacher, educator, sports trainer or the like. In such case appropriate notifications would be sent to the responsible authorities, who in turn would examine whether and at what point there is a need for action to avoid any danger to the welfare of the child.

The following evaluation of the acquired data carriers serves not only to secure the chat traffic but also to check whether there are other injured parties. Also references to the possession and distribution of child and youth pornographic writings or indications of actual abuse by the accused him- or herself will then be investigated. (The latter is rare, though, since the 'typical' 'online groomer' has not yet taken the step of becoming a *hands-on perpetrator*.) In practice, however, there are some hurdles in data carrier evaluation, such as access to specially secured data containers, lack of access to cloud memories and overcoming device locks and passwords. This effort is often so considerable that the police cannot manage it by themselves. The evaluation is then outsourced to external experts. As a rule, this shortens the evaluation times considerably compared to those of forensic technology, so that results are already available after six to nine months. But it also entails considerable costs which, depending on the size of the data volume to be evaluated, can in individual cases reach high five-digit amounts.

Further procedural steps

If a suspect could be identified and the evidence is sufficient for a so-called 'probable cause' (according to the contents of the file, a conviction of the accused appears more probable than an acquittal), the public prosecutor's office is obliged to file charges, § 170 (1) StPO (Bundesamt für Justiz, 2021b). Alternatively, an application for a penalty order or a discretionary decision, in particular a suspension of proceedings due to the insignificance of the infringement pursuant to § 153 StPO (Bundesamt für Justiz, 2021b) or against conditions such as monetary payments or charitable work, § 153a StPO (Bundesamt für Justiz, 2021b), could be considered.

However, at least in constellations in which there are strong indicators for the risk of recidivism of sexual offending against children, preference should be given to pressing charges: Criminal proceedings and opportunistic decisions are decisions that conclude the proceedings and are made in writing. When a charge is brought, however, a main trial takes place and the accused is inevitably confronted with this risk for repeated offending. For the necessary confrontation and, at best, the willingness to start preventive intervention, a main hearing might foster a decisive impulse, independent of the criminal processing of the allegations.

Conclusion

The criminal prosecution of SOG represents – despite the apparent low threshold of the offense on the one hand and the occasionally criminal-political exaggeration on the other hand – an important aspect in the fight against sexual abuse of children. The procedural measures now certainly make it possible to keep the risk of revictimization of the children concerned low. In addition, despite all the procedural evidentiary difficulties involved and the considerable investigative effort, which is offset by a rather low expectation of punishment, criminal prosecution makes it possible to identify offenders at an early stage, before they might become direct 'hands on' offenders. At best, the pressure of criminal proceedings can motivate them to enter therapy at an early stage.

A problem with this preventive-repressive approach, which also applies to accusations of possessing and distributing child pornography, is the practically small number of therapy options available. Even if the fear that therapy could only take place pro forma in order to be able to prove wrongdoing in a later main hearing cannot be dismissed, the few therapy places and the associated long waiting times for those willing to undergo therapy, as well as the long duration of the preliminary proceedings due to the evaluation, mean that the pressure for therapy threatens to fizzle out. With greater human resources at the investigative authorities, especially the police, and a considerably greater range of therapy options, much greater efficiency could be achieved in the context of prevention.

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