



The challenges posed to German criminal law by the so-called Pedo Hunters

Os desafios impostos ao Direito Penal alemão pelos chamados 'caçadores de pedófilos' (Pedo Hunters)

Abstract: This article examines the legal challenges posed by the phenomenon of so-called “Pedo Hunters” under German criminal law and criminal procedure. It addresses the central research problem of whether private individuals who deliberately provoke and expose suspected child sexual offenders act within the limits of the law and how the evidence they produce should be treated in criminal proceedings. The study was conducted through a doctrinal analysis of German substantive and procedural criminal law, combined with the examination of case law and relevant legal literature. The analysis considers the criminal liability of both the suspected offenders and the Pedo Hunters themselves, as well as the procedural admissibility of privately obtained evidence. The findings indicate that, although the state must investigate reported offenses, the activities of Pedo Hunters may themselves constitute criminal conduct, while evidence obtained through serious procedural violations remains inadmissible, preserving the rule of law and due process guarantees.

Keywords: Pedo Hunters; Criminal Law; Criminal Procedure; Private Evidence; Germany.

Resumo: Este artigo examina os desafios jurídicos decorrentes do fenômeno dos chamados “Pedo Hunters” no direito penal e processual penal alemão. Analisa o problema de saber se particulares que provocam e expõem suspeitos de crimes sexuais contra crianças atuam dentro dos limites da legalidade e como as provas por eles produzidas devem ser tratadas no processo penal. A pesquisa foi desenvolvida por meio de análise doutrinária do direito penal material e processual alemão, complementada pelo exame da jurisprudência e da literatura especializada. O estudo aborda a responsabilidade penal dos suspeitos e dos próprios Pedo Hunters, bem como a admissibilidade processual das provas obtidas por particulares. Conclui que, embora o Estado deva investigar os delitos comunicados, as atividades dos Pedo Hunters podem configurar crimes, enquanto provas obtidas mediante graves violações processuais permanecem inadmissíveis, em respeito ao Estado de Direito e ao devido processo legal.

Palavras-chave: Pedo Hunters; Direito Penal; Processo Penal; Evências Privadas; Alemanha.

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INTRODUCTION

Former German police officer and mixed martial arts fighter Nick Hein runs a YouTube channel on which he is already followed by over 450,000 people. They watch him and his “unicorn crew” set traps for suspected paedophiles on the internet by pretending to be children and willingly opening themselves up to more or less explicit sexual requests from men on messenger services such as WhatsApp. During an arranged meeting documented with hidden cameras, the group then confronts the alleged perpetrator on camera and calls the police. In at least one case, the activities of the group have already been brought before the Federal Court of Justice (BGH): A stepfather had called in the group after he persuaded the later defendant, who believed he was chatting with his 13-year-old stepson, to meet in real life. A decoy persuaded the defendant to pursue his sexual request for so long that he had already taken off his sweater and believed that “in the immediate further course there would be (...) acts with penetration.”¹

Even if the group claims to abide by the law at all times – which is doubtful in the following – there are now increasing reports of imitators who use the confrontational situation to beat up or rob the alleged paedophile.² In addition, the Federal Office for the Protection of the Constitution reports that the supposed protection of children is now also being used by right-wing extremist groups to legitimize violence against homosexuals.³ A similar model already existed in the 2010s with the “Occupy Pedophilia” group in Russia.⁴ Even though there is broad consensus, at least among experts in Germany⁵, that the activities of the self-appointed Pedo Hunters constitute an undesirable parallel justice system, the principle of legality set out among others in

¹ BGH, NStZ 2023, 408 (409); the video is still available in a shortened and pixelated version, <https://www.youtube.com/watch?v=VaAnIMx1pSk> (retrieved on 15.07.2025).

² Cf. e.g. <https://www1.wdr.de/nachrichten/westfalen-lippe/bielefeld-prozess-pedo-hunter-100.html> (retrieved on 07.08.2025).

³ BT-Dr. 20/13463, p. 3;

⁴ Human Rights Watch (Ed.), License to Harm: Violence and Harassment against LGBT People and Activists in Russia, 2014, pp. 26 ff.

⁵ Hoven/Wiedmer, StV 2022, 247 (254); Franzke, NStZ 2024, 513 (518); the Independent Commissioner for Child Sexual Abuse Issues of the Federal Government also agrees, c.f. <https://www.lto.de/recht/hintergruende/h/sexueller-missbrauch-kinder-pedo-hunter-paedophilie-kinderschaeuder> (retrieved on 07.08.2025).

Sections 152 (2), 160 and 163 of the German Code of Criminal Procedure (StPO⁶), obliges the state to investigate criminal charges brought by Pedo Hunters and to take measures against the accused if there is initial suspicion. However, the authorities are not limited to the accusation, but must also investigate whether and how the Pedo Hunters may have committed a criminal offense. In addition to the facts of the case, the decisive factor for the state's reaction is the question of whether the evidence generated by the Pedo Hunters, such as chat histories and video recordings, may be used as evidence in criminal proceedings at all.

This article therefore first introduces the substantive legal assessment of the actions of those provoked to commit the crime under German criminal law before looking at the possible criminal liability of Pedo Hunters. Thereafter, the challenges of sentencing for both sides are presented. Finally, it examines how German criminal procedure law deals with evidence that private individuals have deliberately created in order to convict a third party.

1. POSSIBLE OFFENSES OF THE PROVOKED PERSONS

With regard to the possible criminal liability of those provoked, two essential distinctions set the course. The first question to be asked is how old the young person actually was or how old the perpetrator thought he or she was. According to Section 176 (1) of the German Criminal Code (StGB), an age under 14 years leads to classification as a child and thus to absolute protection from any sexual acts under the provisions on the sexual abuse of children. Persons aged 14 and over and under 18 are considered juveniles in German criminal sexual law and only receive special protection in certain situations that are deemed by the legislator to be particularly dangerous for sexual self-determination, e.g. if they are offered a reward (see Section 182 StGB). Both age groups are, of course, also protected by the provisions on sexual assault, sexual coercion and rape (Section 177 StGB), which apply to everyone.

While juveniles are only protected from sexual acts involving physical contact, a second distinction is made between hands-on and hands-off offenses in the case of children. Section 176 StGB classifies a hands-on offense as a felony within the

⁶ Current English translations of the regulations cited below can be found at https://www.gesetze-im-internet.de/Teilliste_translations.html (retrieved on 07.08.2025).

meaning of Section 12 (1) StGB (minimum sentence of one year) and, if applicable, aggravates it in accordance with Sections 176c, 176d StGB, e.g. if a person aged 18 or over engages in sexual intercourse with a child (Section 176c (1) No. 2 StGB).

In addition, Section 176a StGB also criminalizes abuse without physical contact as a misdemeanor (minimum sentence of less than one year, in this case 6 months), for example if the offender performs sexual acts in front of a child (e.g. as an exhibitionist, para. 1 no. 1), causes the child to perform other sexual acts, in particular on himself/herself (para. 1 no. 2) or influences a child with pornographic content (para. 1 no. 3).⁷ Furthermore, Section 176b StGB considers cybergrooming as “preparation for the sexual abuse of children” with a minimum sentence of 3 months. The legislator defines cybergrooming as influencing a child based on content⁸ with the intention of persuading the child to perform a sexual act involving physical contact or to produce or obtain a child pornographic image of this young person.

The fact that in reality (adult) pedo-hunters carry out sexualized communication with the accused and that decoys are also regularly of legal age during real-life meetings results in constellations that are legally described as impossible attempts. A reverse conclusion from Section 23 (3) StGB shows that this is always punishable if the attempt is also punishable in other respects. In the case of misdemeanors, this is only the case in the event of a special statutory order, whereas the attempt to commit a felony is always punishable (Section 23 (1) StGB). With regard to acts of abuse involving physical contact, such attempted offenses are punishable for both children and adolescents. In contrast, attempts to commit hands-off offenses, which can only be committed against children anyway, were not punishable for a long time. In the

⁷ Pursuant to Section 184 (1) No. 1 StGB, any making available of pornography to persons under the age of 18 is prohibited. There are considerable doubts as to whether this is still up to date, see *Franzke*, NSTZ 2024, 513 (516) with reference to the findings of *Quandt/Vogelsang*, Kumulierte Evidenzen 2018, 91 (104 ff.) on the widespread use of pornography among young people and their plea for a removal of taboos from the debate.

⁸ According to Section 11 (3) StGB, the content no longer necessarily has to be perpetuated on an information carrier, but can also be transmitted without storage by means of information or communication technology, so that influence by means of telephony is also covered, see BT-Dr. 19/19859, p. 26 f. However, it is precisely the spoken word between those present that is not included in the offense, since, unlike in § 176a StGB, the legislator has dispensed with the addition “or through corresponding speech”, although this can lead to a physical assault in a particularly obvious and timely manner. This seems implausible, cf. *Fischer*, in: Fischer (ed.), Strafgesetzbuch, 72nd ed. 2025, Section 176b marginal no. 3.

meantime, however, a legislative rethink has taken place in several steps⁹ with reference to the increasing dangers for children due to digitalization.¹⁰ Sections 176a and 176b both stipulate in para. 3 that attempted offences are punishable in so-called fictitious child constellations. This refers to situations in which the offense is not completed solely because the offender has selected an unsuitable target over the age of 14. As a result of the generally far-advanced communication via messenger service, this usually constitutes an attempted cybergrooming offense under Section 176b StGB. In addition, this may also constitute an attempted abuse without physical contact in accordance with Section 176a StGB if the perpetrator asks the child to perform sexual acts on themselves (Section 176a (I)(No. 2)StGB) and may even amount to influence through pornographic content (Section 176a (I)(No. 3)StGB) if the perpetrator – as in the case presented by the BGH¹¹ –uses such crude words to influence the child that meet the definition of pornography.¹²

On the other hand, the question of whether an attempted hands-on act has been committed depends crucially on whether the act has already entered the attempted stage. According to Section 22 StGB this is the case if the perpetrator has, in his mind, already commenced the realization of the offence. The BGH has incorporated these criteria into a mixed subjective-objective approach in an almost unmanageable amount of case law. This approach can be summarized as follows: The offender must have subjectively crossed the threshold of “now it's time” and objectively carried out actions which, if continued undisturbed according to his plan, lead to the realization of the

⁹ Originally, the legislator rejected criminal liability for attempts, cf. BT-Drs. 15/350, 18; this was followed by an introduction for cybergrooming, cf. BT-Drs. 19/13836, 9 and finally an extension to abuse without physical contact, cf. 19/23707, 39.

¹⁰ BT-Drs. 19/13836, p. 9. Culpability also arises from the fact that the offender creates a risk of repetition vis-à-vis real children through his behavior towards the pseudo-child, who is typically unknown to him, and trains his communicative-manipulative skills, cf. *Schneider*, KriPoZ 2020, 138 (142 f.). The critical objection that only “bad faith” is being sanctioned therefore does not hold water, but cf. *Fischer*, <https://www.bundestag.de/resource/blob/666626/745dbbdb45deb6871e4113d723022809/fischer-data.pdf> (accessed on 17.07.2025).

¹¹ BGH NSTz 2023, 408 (409).

¹² Pornographic content is content which, ignoring other human references, places sexual processes in the foreground in a grossly intrusive, sensational manner and is aimed exclusively or predominantly at the arousal of sexual stimuli, cf. BGHSt 37, 55 (60); 32, 40 (44 ff.). This only recently introduced criminal liability for attempt in Section 176a StGB for sham child constellations thus often leads to a doubling of the minimum penalty compared to the actual cybergrooming penalty in Section 176b StGB, cf. critically *Franzke* NSTz 2024, 513 (514 f.).

offence without significant intermediate steps or are directly related to it in terms of space and time.¹³ It is therefore a question of the specific design of the trap set by the Pedo Hunters as to whether criminal liability for attempted (severe) sexual abuse of children can also be considered. In the case decided by the BGH, this was affirmed, as the perpetrator and his alleged victim had retired to an apartment and the perpetrator had already partially undressed.¹⁴ However, if a confrontation takes place in public, e.g. in a restaurant, there are likely to be significant intermediate steps necessary before the start of the attempt, which are therefore considered non-punishable preparatory acts.

The penalties that offenders face for an impossible attempt on a fictitious child are considerable. It is possible to reduce the statutory range of punishment in the case of an attempt in accordance with Sections 23 (2) and 49 (1) StGB, which is also regularly done in practice.¹⁵ Nevertheless, this still leaves a sentencing range of 6 months to 11 years and 3 months for the severe sexual abuse of children. In the case of the BGH, in which the court had even granted a further reduction in sentence pursuant to Section 21 StGB due to the presence of paedophilia (resulting in a sentencing range of 1 month to 8 years 5 months), an individual sentence of 1 year and 6 months was still handed down, which, taking into account a total of ten other hands-off offences via messenger service, resulted in a total custodial sentence of 2 years and 6 months.¹⁶

2. POSSIBLE OFFENSES OF THE PROVOKING PERSONS

While the offenses of the provoked are essentially sexual offenses, the provoking individuals may be guilty of a wide range of crimes.

2.1 Participation in the sexual offenses of the provoked person

According to Sections 26 and 27 StGB, individuals can participate in another

¹³ *Wessels/Beulke/Satzger*, Strafrecht Allgemeiner Teil, 54th Ed. 2024, § 17 marginal no. 951; cf. BGHSt 26, 201 (203 f.); BGHSt 43, 177 (182); BGHSt 48, 34 (35 f.).

¹⁴ BGH NSTz 2023, 408 (409).

¹⁵ Cf. Bosch, in: *Tübinger Kommentar StGB*, 31st ed. 2025, § 23 para. 7a on regular mitigation in the case of impossible attempts.

¹⁶ Reprinted in BeckRS 2023, 1809 marginal no. 1.

person's criminal offense as inciters or abettors, whereby the crime can also be a mere attempt.¹⁷ For incitement, which generally entails punishment from the full range of penalties, it is objectively necessary for the perpetrator to provoke or increase another person's intention to commit the offense. According to the controversial but prevailing opinion, any communicative influence on the perpetrator can be considered, including the non-verbal creation of an incentive to commit a crime.¹⁸ Anyone who promotes or facilitates the offense in any other way can be punished as an abettor. From an objective point of view, it might be difficult to distinguish between the different forms of participation, as only those persons who have not yet finally decided to commit a certain offense (so-called “*omnimodo faciturus*”) can be incited, so that a distinction must be made between them and those who are merely inclined to commit the offense.¹⁹

Nevertheless, in the case of Pedo Hunters, both forms of participation fail in any case due to a subjective requirement: If the reason for punishment for participation is seen in the fact that the participant independently attacks the protected legal interest indirectly via the principal offender, a wrongful act only exists if the participant also seeks an actual impairment of the protected legal interest. Therefore, the participant must not only strive for the main offense to reach the execution stage, but must also want it to be completed.²⁰ Otherwise, he is a mere “agent provocateur” who remains unpunished. Since the Pedo Hunters know that the object of the crime is actually an adult and therefore not suitable, they do not want the crime to be completed.

2.2 Sexual offenses committed by the Pedo Hunters themselves

However, there is an exception to the classification as “agents provocateurs” in the area of child pornography offenses regulated in § 184b StGB. There have been isolated press reports that Pedo Hunters have also sent child pornographic material

¹⁷ Scheinfeld, in: Münchener Kommentar zum StGB, Vol. 1 5th Ed. 2024, § 26 marginal no. 8.

¹⁸ BGHSt 45, 373 (374); BGH NSTZ 1994, 29 (30); cf. on stricter approaches Otto, JuS 1982, 557 (560); Rogall, GA 1979, 11 (12).

¹⁹ BGHSt 45, 373 (374); Heger, in: Lackner/Kühl/Heger (Ed.), StGB, § 26 marginal no. 2a: Scheinfeld, GA 2007, 695 (702).

²⁰ Roxin, Strafrecht AT II, 2003, § 26 Rn. 8; Jescheck/Weigend, Lehrbuch des Strafrechts AT, 5th Ed. 1996, § 64 I 2; Rönnau, JuS 2015, 19 (19 f.).

that is supposed to show the alleged child in order to gain the trust of the perpetrator.²¹ In this case, the act of dissemination is completed in the material sense, so that exemption from punishment according to the legal concept of the “agent provocateur” is out of the question.²²

2.3 Offenses in the context of obtaining and publishing evidence

Criminal liability in connection with the collection and dissemination of evidence is multifaceted and depends heavily on the specific circumstances of the individual case, so that it can only be outlined in broad terms:²³

a) With regard to the storage of sexualized communication, a distinction must be made based on the type of communication. While the storage of text messages is not subject to any criminal provision, the secret recording of the non-publicly spoken word is generally punishable under Section 201 (1) StGB. In particular, the recording of telephone calls and live video chats can be considered as offences (Section 201 (1) (No. 1) StGB), while the storage of delayed voice and video messages is not prohibited, as the person concerned makes the recording themselves. However, this does not apply if a recording that was made without authorization is used or made accessible to third parties (Section 201 (1)(No. 2) StGB).²⁴ For the small area of potentially punishable recording of live communication, it is also necessary for the recording to be unauthorized, i.e. not covered by the consent of the person being recorded or by general justification grounds. However, such authorization is generally lacking. The only authorization that comes into consideration is the justifiable state of emergency (§ 34 StGB), which requires that there is a “present danger”. However, an abstract risk of

²¹ Cf. <https://www1.wdr.de/nachrichten/rheinland/prozess-pedo-hunter-krefeld-100.html> (retrieved on 07.08.2025).

²² German investigating authorities are permitted to disseminate child pornographic content that does not depict a real crime, e.g. AI-generated content, under the provisions of Section 184b (6) StGB upon court order (Section 110d StPO). This procedure, also known as “chastity test”, is sometimes essential for admission in darknet networks. However, this exception is explicitly intended for public officials. A generalization of this idea is unthinkable, especially in light of the state’s monopoly on the use of force and the resulting exclusive right to prosecute criminal offences.

²³ In detail *Hoven/Wiedmer*, StV 2022, 247 (249 ff.).

²⁴ Section 201 (1) No. 2, with the phrase “produced in this way,” refers to the recording situation described in No. 1, in which unauthorized recording by third parties takes place, cf. *Kargl*, in: *Nomos Kommentar zum StGB*, 6th Ed 2023, § 201 marginal no. 12; *Hoven/Wiedmer*, StV 2022, 247 (250).

repetition is not sufficient.²⁵ Justification would therefore only be conceivable if previous communication showed that the perpetrator was also in contact with real children at the same time.

b) In addition, Section 42 (2) no. 2 of the German Federal Data Protection Act (BDSG) makes it a criminal offence to obtain personal data that is not generally accessible by providing false information if the perpetrator acts for financial gain or with malicious intent. Objectively speaking, personal data such as names and ages, but also particularly sensitive data on sexual life (Art. 9 para. 1 GDPR) is obtained by using a false identity.²⁶ Subjectively speaking, however, there is no intent to cause harm if the intention was only to file a criminal complaint. However, since the advantage does not have to be of a financial nature, malicious intent and therefore criminal liability can be considered if the perpetrator is to be publicly exposed with the obtained data.²⁷

c) Finally, the right to one's own image could also be affected by image recordings, especially in the confrontation after the meeting with the decoy, which is partially protected, namely in the highly personal sphere of life, by § 201a StGB and generally against public dissemination by §§ 22, 23, 33 Kunsturhebergesetz (KUG).²⁸ In accordance with the protective purpose of the offenses, this presupposes the recognizability of the person depicted, so that (effectively) pixelated images do not fall under the criminal offense.²⁹

Since the violation in Section 201a StGB must occur “through the recording of images” according to the official heading means that the context conveyed by the audio track cannot be taken into account. The confrontation situation must therefore be assessed solely on the basis of whether a discussion with a group of people belongs to the highly personal sphere of life. The fact that an accusation of abuse is made in the discussion, on the other hand, cannot be taken into account. In the activity of the

²⁵ BGHSt 18, 271 (272); on different case scenarios *Kargl*, in: Nomos Kommentar zum StGB, § 201 marginal no. 26 f.

²⁶ *Bieber*, in: Beck-OK StGB, 65. Ed 2025, § 42 BDSG Rn. 24.

²⁷ LG Aachen BeckRS 2011, 20917; *Bieber*, in: Beck-OK StGB, 65. Ed 2025, § 42 BDSG marginal no. 28; *Wybitul/Klaas*, NZWiSt 2021, 216 (219).

²⁸ On the protected good, cf. *Graf*, in Münchener Kommentar zum StGB, Vol. 4 4th Ed. 2024, § 201a marginal no. 10; see also BVerfG NJW 2000, 1021 (1022).

²⁹ *Hoven/Wiedmer*, StV 2022, 247 (249); *Altenhain*, in: Matt/Renzikowski (Ed.), Strafgesetzbuch, 2nd Ed. 2020, § 201a marginal no. 2.

Pedo Hunters, therefore, only the events immediately prior to the alleged act of abuse (undressing, etc.) can ultimately be considered as a suitable factual situation under Section 201a StGB. However, a confrontation usually takes place at an earlier point in time. If the recording actually shows events that are already punishable by law, a secret recording would also regularly be justified due to the exercise of legitimate interests in accordance with Section 201a (4) StGB. The protection of the right to one's own image under criminal law therefore only comes into play for Pedo Hunters if the recordings are distributed without pixelation, e.g. on YouTube.³⁰

2.4 Offenses in the context of confrontation or arrest

If there is a confrontation with the suspected paedophile, no special regulations apply to the Pedo Hunters in comparison to other citizens. It is therefore initially obvious that assault (Section 223 StGB) with the mere aim of retaliation is just as punishable as other excessive acts.

A more differentiated view is required with regard to the actions intended to facilitate transfer and handover to the police. While trespassing (Section 123 StGB) is regularly ruled out because the confrontation takes place in public or in the home of a Pedo Hunter, and consent to enter the home even obtained by deception also excludes the offense, it is worth taking a closer look at the “arrest” of the persons concerned.

Deprivation of liberty (Section 239 (1) StGB) as “deprivation of liberty by other means” clearly applies if the person concerned wants to escape the confrontation and is prevented from leaving by physical coercion.³¹ This may also result in assault or joint dangerous assault (Sections 224 (1) No. 4, 25 (2) StGB). Coercion (Section 240 (1), (3) StGB) is legally absorbed by deprivation of liberty,³² unless the person concerned has to endure further actions, such as a forced interview, regularly including a confession, a “confiscation” of the mobile phone in order to prevent deleting evidence or being taken to the police.³³ However, the Pedo Hunters' videos available on the

³⁰ Hoven/Wiedmer, StV 2022, 247 (249); Graf, in Münchener Kommentar zum StGB, § 201a marginal no. 75; Altenhain, in: Matt/Renzikowski (Ed.), Strafgesetzbuch, § 201a marginal no. 21.

³¹ BGH NJW 1993, 1807 (1807 f.); BGH NSTZ-RR 2021, 281.

³² BGHSt 30, 235 (236); BGH NSTZ-RR 2021, 281.

³³ Only the prevention of a change of location falls under § 239 StGB, but not the compulsion to go to a certain place, cf. Sonnen, in: Nomos Kommentar zum StGB, § 239 marginal no. 6.

internet often show a somewhat more subtle approach to confrontation. Several strong men usually build up around the suspect, who is then pushed into the situation with words such as “let's have a chat”. Whether this also constitutes a deprivation of liberty is a question of the exact circumstances of the individual case. If the circle around the person concerned is already so tightly closed that it seems physically impossible to break through it, this constitutes a coercive effect on the person concerned and therefore a further deprivation of liberty by force. If the circle is still a loosely closed, the behavior would have to be interpreted as an implied threat of violence against life or limb³⁴ in order to fall under the offence. The person concerned would therefore have to be made aware that they would have to expect physical reprisals if they tried to leave. So far, there are no published court decisions on this question, but it seems very plausible to see such an implied threat in the confrontation with a physically superior force.

If the elements of a criminal offense - assault, coercion, deprivation of liberty - are present, the question also arises as to whether these actions can be justified in exceptional cases. In general, self-defense or emergency aid in accordance with Section 32 StGB does not apply, as there is no current attack on an individual's legal right, i.e. an attack that is imminent or still ongoing. More likely relevant are the requirements of Section 127 (1) StPO, which allows anyone in Germany to provisionally arrest a person – with necessary and proportionate physical force³⁵ –if they have been caught in a recent crime and are suspected of fleeing or if their identity cannot be established immediately.³⁶ A person is considered to be recently involved in a crime if they are found directly at or near the scene of the crime during or immediately after the crime. These requirements are generally not met for Pedo Hunters. If there is a confrontation before a sexual offense with physical contact even enters the attempted stage (see II above), there is no recent offense. Previous cybergrooming cannot serve as a basis either, as it lies too far in the past.

If there is a recent attempted offense, it must still be necessary to establish

³⁴ A threat of violence against property (e.g. against a dog present) should not be sufficient, cf. BGH NSTz 2015, 338 (339); BGH NSTz-RR 2021, 281.

³⁵ The rule can therefore also justify an assault, cf. BGHSt 45, 378 (380 f); OLG Karlsruhe NJW 1974, 806 (807).

³⁶ RGSt 30, 386 (388); 65, 392 (394).

identity. However, the Pedo Hunters often already know the suspects beyond doubt, as evidenced by information on age, occupation and previous convictions in the videos. If therefore the requirements for a right of arrest are not met, this result must not be thwarted by the assumption of a justifiable state of emergency (Section 34 StGB) for the collective legal interest in the effective administration of criminal justice. Rather, this particular legal assessment must be taken into account when weighing up the interests under Section 34 StGB, or at least Section 127 (1) StPO must be given priority when interpreting the appropriateness clause³⁷ under Section 34 sentence 2 StGB. In the confrontation situation, Pedo Hunters therefore regularly commit crimes, contrary to their own opinion, if they behave as described.

2.5 Other Offenses

Since Pedo Hunters are therefore associations that are aimed at the commission of not insignificant criminal offenses with a maximum sentence of more than two years imprisonment, criminal liability for forming criminal associations pursuant to Section 129 (1) StGB can also be considered. The offense would be excluded according to para. 3 no. 2 if the commission of criminal acts was only a subordinate purpose in relation to the overall purpose of the association. This depends on whether, from the perspective of an informed third party, the criminal conduct at least contributes to the appearance of the association.³⁸ However, if the confrontation with the accused and their handover to the police is part of the self-presentation and “highlight” of an episode on YouTube, the punishable acts must also be regarded as (co-)formative, so that criminal liability under this provision is likely.

However, criminal liability for usurpation of authority under Section 132 StGB does not apply, as the Pedo Hunters do not claim to be public officials and do not presume to perform official acts. According to established legal precedent, the latter requires the appearance of official authority.³⁹ However, as it is clear beyond doubt that these are private individuals, criminal liability is ruled out.

³⁷ On this, specifically on the restricting effect of legally regulated proceedings, *Erb*, in: Münchener Kommentar zum StGB, § 34 marginal no. 254 ff.

³⁸ BGH NSTz 2024, 280 (marginal no. 32); BGH NSTz-RR 2005, 306 (307); BGH NSTz 1995, 340 (343).

³⁹ BGHSt 40, 8 (12); KG JR 1993, 388 (391); OLG Köln NJW 1999, 1042 (1044)

3. SENTENCING

The penalty ranges in German criminal law generally give the presiding judge a wide scope for classifying the specific offense. On the part of the provoked party, it is generally undisputed that an incitement to the offense by a third party must have a mitigating effect. This follows from the legal assessment of Section 35 StGB (excusable state of emergency), which can also intervene if a person has been coerced into committing a crime by another person. If the law even recognizes cases in which an external influence completely eliminates guilt, an external influence below the threshold of Section 35 must at least reduce the guilt.⁴⁰

For Pedo Hunters, the matter is somewhat more complicated. § Section 46 (2) sentence 2 StGB requires the court to take into account the “motives and aims of the offender”, among other things, when determining the sentence. If the conviction of pedophiles is only a disguise to cover up the actual predatory or even homophobic motivation, this can be charged to the perpetrators as an aggravating factor. If pedophile hunters actually believe that they are acting in the best interests of the community, two things must be taken into account: Firstly, if Pedo Hunters have considered their behavior to be permitted, i.e. if they have made an error of prohibition or justification, this may have a mitigating effect, as Section 17 sentence 2 StGB provides for an optional mitigation of punishment if the error was avoidable. If it was unavoidable, which is subject to very high requirements,⁴¹ the guilt is even completely waived in accordance with sentence 1. If, on the other hand, those affected are aware of the prohibition, but consider a violation to be essential for the conviction of the alleged paedophile, it is assumed that there has been a deliberate violation of the law. Through these actions, the perpetrator demonstrates to a particular degree that he does not recognize the requirement to comply with the norm, which also implies a risk

⁴⁰ BGHSt 32, 345 (355); BGH NSTz 1986, 162; BGH NSTz 1988, 550; for the specific issue of when the reasons for the conviction must also explicitly address the provocation of the crime, see *Franzke*, NSTz 2024, 513 (516 f.).

⁴¹ The courts first require the offender to conduct a thorough examination of conscience in accordance with his intellectual abilities. If this gives rise to doubts about the legality of the planned act, the offender must seek expert advice or refrain from his intention, BGHSt 2, 194 (201); BGH NSTz 1993, 594 (595); *Schuster*, in: *Tübinger Kommentar*, § 17 marginal no. 17 ff.

of repetition.⁴² However, it is sometimes recognized that these generally aggravating circumstances can be relativized if the perpetrator has a fundamentally respectable intention.⁴³ Nevertheless, this exception which was developed for so-called offenders of conscience is unlikely to apply to the Pedo Hunters. Unlike freedom of conscience (Article 4 (3) of the Constitution [Grundgesetz – GG]), there is no constitutionally guaranteed right for private individuals to prosecute offenders. Moreover, it is generally not apparent why the groups could not contribute equally effective or even more effectively to criminal prosecution by reporting the offenders as early as possible. It therefore generally remains the case that the Pedo Hunters are to be charged with deliberate violations of the law.

4. PROCEDURAL LAW ISSUES

The extent to which the above considerations have practical significance also depends largely on the provisions of criminal procedure law. While there is no doubt that any criminal offenses committed by Pedo Hunters must be prosecuted under the principle of legality (see I above), there are various concerns regarding the prosecution of those who have been provoked, which will be examined below.

4.1 No procedural obstacle

In Germany, the fact that a person who was not inclined to commit a crime was led to do so by an action attributable to the state was long taken into account by imposing a reduced sentence independent of the guilt of the person concerned.⁴⁴ However, based on recent case law of the ECtHR,⁴⁵ the BGH now also considers it conceivable that the right to a fair trial under Article 6(1) sentence 1 ECHR requires the recognition of a procedural obstacle.⁴⁶ However, the requirements for attributing the conduct of Pedo Hunters to the state are not met. Even if these requirements have not

⁴² BGHSt 8, 162 (163); *Meier*, in: Münchener Kommentar zum StGB, Vol. 2 5th Ed. 2024, § 46 marginal no. 209.

⁴³ BayObLG NJW 1980, 2424 (2425); *Schneider*, in: Leipziger Kommentar zum StGB, Vol. 3 13th Ed, § 46 marginal no.105

⁴⁴ BGHSt 32, 345 (348 ff.); BGHSt 45, 321 (326 ff.); BGH NJW 1980, 1761.

⁴⁵ ECtHR, NStZ 1999, 47 (48); ECtHR JR 2015, 81 (84); ECtHR NJW 2021, 3515 (3518 ff.).

⁴⁶ BGHSt 60, 276 (290 ff.).

yet been conclusively clarified, probably because case law has so far had to deal with clear cases of attributable actions by undercover investigators or confidants, there is no basis for attribution in the case of Pedo Hunters. Their actions are neither demanded nor rewarded by the state, but rather, criminal investigations are initiated against the provocateurs. The mere acceptance of evidence cannot suffice as grounds for attribution, as this is required by law under the principle of legality—however, there can be no such thing as “imposed attribution.”

4.2 Prohibition of the use of evidence?

Having established that criminal proceedings can in principle be brought against those provoked into committing the act, the next step is to examine the admissibility of the evidence generated by the Pedo Hunters. The above considerations have shown that Pedo Hunters can only be prosecuted in certain constellations of real-time communication when it comes to recording communications. However, court rulings and legal literature only discuss the inadmissibility of evidence in cases where the evidence was obtained in a criminal manner.⁴⁷ It follows that communications recorded without criminal liability can be used as evidence in any case. Purely civil law claims for injunctive relief or deletion, which may go further than criminal prohibitions,⁴⁸ are not sufficient.

There is a wide range of opinions on evidence obtained by private individuals in a criminal manner, which can only be addressed here with a focus on judicial practice. As a starting point, the courts, including the Federal Constitutional Court, assume that the circumstances of private evidence gathering are irrelevant, as the prohibitions on evidence in the Code of Criminal Procedure only apply to the state. The state, for its part, is obliged to investigate criminal offenses and has created a provision in Section 244 (2) StPO that allows the introduction of evidence of any kind in the main hearing.⁴⁹ An exception to this rule is only recognized in case law if the evidence was obtained in

⁴⁷ BGHSt 27, 355 (357); BGHSt 36, 167 (172); *Stoffer*, Wie viel Privatisierung „verträgt“ das strafrechtliche Ermittlungsverfahren?, 2016, p. 428 ff.

⁴⁸ Cf. BGH NJW 2016, 1094 (1095) regarding claims for deletion of images after the end of a relationship.

⁴⁹ BGHSt 27, 355 (357); BGHSt 36, 167 (172); BVerfG NJW 2011, 2417 (2420): “This means that crimes committed by the informant alone do not have to be taken into account from the outset when assessing a possible prohibition of use.” (own translation).

a manner that blatantly violated human dignity.⁵⁰ In addition, some court rulings, in line with a large part of the literature, point out that the state's act of prosecution, i.e., the introduction of the main hearing, may only be carried out in accordance with fundamental rights. It is therefore necessary to weigh up the interests involved within the scope of the so-called three-stage theory in order to take appropriate account of the general right of personality (Art. 2 (1) GG in conjunction with Art. 1 (1) GG) of the accused.⁵¹ Accordingly, a distinction must be made as to whether the content concerns the social sphere, the private sphere, or the core of human dignity of the general right of personality. While interference in the social sphere is generally justified and interference with human dignity is always excluded, in the private sphere a careful weighing of the importance of the interference against the state's interest in effective criminal prosecution must be carried out. Even if this constitutional starting point deserves approval, the significance of the three-stage doctrine tends to be overestimated when applying it to the secret recording of conversations.⁵² There is no infringement of human dignity, as the accused has consciously revealed his thoughts to another person. However, the outcome of the weighing of interests at the level of privacy is largely predetermined by the fact that the legislature has a margin of appreciation when it comes to determining which behavior is so socially harmful that it must be addressed by means of criminal law.⁵³ In principle, therefore, the state's interest in a comprehensive investigation of the facts in criminal law carries great value when weighing up the interests involved. Unless the individual case is absolutely trivial, the intrusion into the sphere of privacy will generally be justified. This applies even more so when the legislature provides for an increased minimum penalty, as in the case of cybergrooming. It is not permissible to disregard this assessment in view of the further extension of criminal liability. Rather, it must be accepted as long as the

⁵⁰ OLG Hamburg, NJW 2005, 2326 (2329 f.); *Eisenberg*, Beweisrecht der StPO, 10th Ed. 2017, marginal no. 397.

⁵¹ BGHSt 36, 167 (173); BayObLG NJW 1994, 1671; *Godenzi*, Private Beweisbeschaffung im Strafprozess, 2008, p. 231; *Kölbel*, NSTZ 2008, 241 (242); *Hoven/Wiedmer*, StV 2022, 247 (253).

⁵² Skeptical also *Kudlich*, in: Münchener Kommentar zur StPO, Vol. 1 2nd Ed. 2023, Einleitung, marginal no 482 (footnote 1107).

⁵³ BVerfGE 96, 56 (64); BVerfGE 121, 317 (356); BVerfGE 153, 182 (268).

legislature remains within its margin of appreciation.⁵⁴ Secretly made, criminal recordings of communications are therefore also regularly admissible as evidence.

However, the situation is different if a confession obtained through coercion during a confrontation is to be introduced in criminal proceedings. Although, it should also be noted that Section 136a (1) StPO prohibits the use of coercion and threats not provided for by law only by the state and not by private individual,⁵⁵ the situations addressed by this provision are significantly more likely to constitute a flagrant violation of human dignity. Nevertheless, the violation does not automatically result from an interrogation method pursuant to Section 136a StPO and is particularly unlikely in cases of mere deception. However, the core of human dignity includes protection from torture-like situations or threats to physical integrity that are not entirely insignificant.⁵⁶ The behavior of the Pedo Hunters can often be understood as an implied threat of physical assault in order to obtain a confession (see II.3. above), which means that evidence obtained in this manner is inadmissible.

Although German criminal procedure law does not recognize the “fruit of the poisonous tree doctrine,” but rather determines the extent of the exclusionary rule on a case-by-case basis, a violation of Section 136a StPO nevertheless has a certain far-reaching effect, since statements obtained by prohibited means may not be introduced into the main hearing by other means of evidence.⁵⁷ There is no apparent reason why a violation of human dignity by private individuals should lead to a different result, so that a confession obtained under duress may not be introduced into the main hearing even by questioning the Pedo Hunters as witnesses.

CONCLUSION AND OUTLOOK

With the progression of digitalization, some sexual offenses have also shifted to the digital realm. However, it is not only perpetrators who now have opportunities that

⁵⁴ Dissenting *Hoven/Wiedmer*, StV 2022, 247 (253) with additional reference to the false incentives that arise from such an investigative routine.

⁵⁵ BGH NJW 2017, 1828 (1830); *Diemer*, in: Karlsruher Kommentar zur StPO, 9th Ed. 2023, § 136a marginal no. 3;

⁵⁶ Also *Kudlich*, in: Münchener Kommentar zur StPO, Einleitung, marginal no 482; *Rogall*, in: Systematischer Kommentar zur StPO, 6th Ed 2023, § 136a marginal no. 15.

⁵⁷ BGHSt 32, 68 (71); BGHSt 34, 362 (364 f.); more extensively *Schuh*, in: Münchener Kommentar zur StPO, § 136a marginal no. 98.

seemed unthinkable a few decades ago; the amount of potential digital evidence has also increased significantly. Even private individuals can generate large amounts of evidence without significant technical effort. Pedo Hunters take advantage of this opportunity to track down suspected pedophiles. The article has shown that, although this approach is a legal gray area in many respects, the often internet-effective confrontation of the accused can lead to crimes such as deprivation of liberty or coercion, which can also lead to the classification of Pedo Hunters as a criminal organization. The latter may also open up the possibility of banning the association (Section 3 (1) of the Association Act - VereinsG). An even clearer disapproval of the Pedo Hunter's activities could probably be achieved by extending the provisions on usurpation of authority although this does not seem advisable because of the many everyday situations in which the state relies on the support of private individuals in regard to criminal prosecution. However, it seems extremely difficult to distinguish between undesirable criminal hunts and desirable civil courage on the basis of an abstract, generally formulated norm.

From a procedural point of view, the most serious legal violations committed by Pedo Hunters, in particular coerced confessions, are not admissible as evidence. In principle, however, the state can and must prosecute the reported crimes using the evidence provided.

Overall, the German legal system has effective mechanisms in place to respond appropriately to the phenomenon of pedo hunting: It does not ignore the fact that those who were provoked did commit significant (attempted) crimes, although the provocation can be taken into account when determining the sentence. At the same time, the actions of Pedo Hunters are subject to strict criminal law limits, and those responsible can face significant sanctions if they exceed these limits, especially if they deliberately place themselves above the law⁵⁸.

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⁵⁸ The author would like to thank Ms. *Julia Hau* for her valuable linguistic advice.

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