

Austria:

16-year-olds Prosecuted for Own Nude Pictures

A 15- and two 16-year-old teenagers sent pictures of their genitals through their mobile-phones. Vienna Prosecution Services initiated criminal proceedings against them under the Austrian child pornography law.

Extension of the severe laws against child-pornography from 14 to 18 years of age, and therefore to depictions of persons sexually of age and entitled to vote, even in the private and non-commercial sphere, has been highly controversial. The experts heard by federal parliament unanimously disapproved of this undifferentiated extension. It nevertheless, implementing an EU-framework-decision, became law in 2004 (Art. 207a Criminal Code).

One of the concerns voiced back then was that, since the age of criminal liability is 14, adolescents, which are sought to be protected by the law, could themselves be prosecuted under it for handing over to others pictures of themselves.

Austrian judiciary now confirms these concerns.

Inmates of a juvenile prison, in exchange for the (unlawful) delivery of mobile-phones, sent nude pictures and pictures of their genitals via video messaging. Most of these prisoners were adults, two however were 16 and one 15 years of age.

As expected the detainees were sanctioned under the administrative offence of unlawful communication with outsiders, the supplier of the mobile-phones, due to the three inmates under 18, for acquiring and possessing youth-pornography.

Victims in need of protection or Criminals?

At the end of June however Vienna Prosecution Services in addition even initiated criminal proceedings against the three adolescents for having produced and distributed "child"-pornography. The three teenagers get prosecuted, as child-pornographers, under Austria's child-pornography-law despite the fact that they are exactly the ones who are to be protected by this law.

Recently more and more concerns voiced against the law get confirmed.

Last March Austrian Supreme Court confirmed a conviction to 7 months imprisonment without probation for possession of 5 (!) pictures of two nude young men, according to expert evidence, aged between 16 and 21 years of age. The man got convicted for pornography with under 18-year-olds despite the fact that the expert, a well reputed paediatrician, testified that around 10% of all 18-year-olds do look like the unknown men on the pictures downloaded from the internet. Not enough the courts also refused the defendant to proof his innocence by obtaining, by way of judicial assistance, the proof of age of the models, which (according to the website) is stored in the US (OGH 02.03.2010, 14 Os 73/09f).

"It has already been excessive to generally extend the child-pornography-provision to adolescents", says Dr. Helmut Graupner, Vienna attorney and Co-President of the Austrian Society for Sex Research (ÖGS), "It seems however especially absurd to prosecute under the child-pornography-law exactly those who are to be protected by this very law."

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