

Legality of diagnostics and therapy with «virtual reality» - virtual child pornography and Art. 197 SCC

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Introduction

Virtual child pornography could be used to accurately diagnose people with a paedophilic disorder² and to train non-offensive behaviour patterns.¹

However, under current Swiss Criminal Law, all acts concerning child pornography are incriminated under **Art. 197 para. 4 SCC**.

Para. 9 does establish an **exception**:

“Items or recordings [...] are **not** regarded as pornographic if they have a cultural or **scientific value that justifies their protection by law.**”



Figure 1: Doctor in handcuffs.⁵

Material and Methods

- The existing law
- Legal case law
- The doctrine on national and international level
- A functional comparison with Germany
- Existing legal regulation of similar phenomena, where an exception from incrimination is made to enable medical treatment⁴



Figure 2: Virtual characters used as sexual stimuli; from left to right, 6-7 year-old, 10-12 year-old, 16-17 year-old and 22-25 year-old.⁶

Discussion / Research Questions

- What kind of therapy is covered by the exception clause in Art. 197 para. 9 SCC?
- Are there other legal rules that allow psychiatrists to use VR child pornography?
- How do other countries regulate the use of VR child pornography in therapy?

¹ Fromberger P./Jordan K./Müller J. L., Anwendung virtueller Realitäten in der forensischen Psychiatrie, Ein neues Paradigma?, in: Der Nervenarzt, Vol. 85, 2014, S. 298 ff.

² DSM-5, Paraphilic Disorders, Pedophilic Disorder 302.2 (F65.4).

³ Cf. Art. 20 and Art. 5 para. 2 Federal Constitution of the Swiss Confederation.

⁴ Cf. methadone programmes, Art. 3e Swiss Narcotics Act, in connection with Art. 2 lit. b and Art. 6 ff. Betäubungsmittelsuchtverordnung.

⁵ Figure 1: <https://www.lto.de/recht/hintergruende/h/gesetzgebung-sterbehilfe-tatbestandsmerkmale-analyse/>, last visited 30.05.2018.

⁶ Figure 2: Renaud P./Rouleau J.-L./Proulx J./Trottier D./Goyette M./Bradford J. P./Fedoroff P./Dufresne M.-H./Dassylva B./Côté G./Bouchard S., Virtual characters designed for forensic assessment and rehabilitation of sex offenders: Standardized and made-to-measure, in: Journal of Virtual Reality and Broadcasting, 7(2010), Vol. 5, September 2010.