

Understanding and managing risk of sexual offenders in Germany - A criminological success story or punitive hysteria?

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Abstract

As in many other countries, sexual offenders and their recidivism risk are frequently discussed matters of public concern in Germany. An undisputed positive effect of these public discussions has been a growing clinical and scientific focus of criminal law institutions on professional risk assessment and management procedures. Today, the majority of sexual offenders received treatment during incarceration as well as after release from prison. A substantial part of these treatment efforts are following empirically sound intervention standards and are using scientifically proved risk assessment methods. Generally, there have been significant advances in research and clinical practice regarding the assessment, treatment, and management of sexual offenders in the German-speaking area and it can be concluded that we have now more knowledge about the origins, development, and prevention opportunities of sexual (re-)offending than ever before.

Keywords: Sexual Offender, Risk Assessment, Risk Management, Treatment

As in many other countries, sexual offending, sexual offenders, and the risk of recidivism of sexual offenders who were already known to the law enforcement authorities are frequently discussed and controversial matters of public concern in Germany. Because of some dramatic and tragic single cases particularly during the 1990s especially the assessment and management of recidivism risk have become a general societal issue. This development was in different European countries first initiated by the worldwide known case of the Belgian sexual murderer Marc Dutroux, followed by spectacular cases in Germany, Switzerland, and Austria. Even if these cases were not that complex as the Dutroux-case, mass media and public opinion have become increasingly convinced that sexual offenders have been a serious threat to society - even if the official statistics have repeatedly provided evidence that there has been not threatening increase in the number of sexual offenses during these years. Consequently, a substantial proportion of criminal justice policy-makers as well as many researchers interpreted the juridical and legislative changes and efforts which were implemented as a reaction to these tragic crime cases as clear indicators of a punitive turn (Sack & Schlepper, 2013). However, other authors who observed the situation from abroad have proposed that Germany has resisted the international punitive turn - at least if someone compare the situation in Germany with the (at least in some parts) excessive increases in punitivity in other countries of the Western world (Tonry, 2007)¹.

As so often in life, the truth might lie probably somewhere in between these two interpretations: On the one hand, indeed a number of legislative efforts towards an increase of the juridical opportunities of sanctioning convicted and/or released sexual offenders have been implemented (e.g., Dessecker, 2011). On the other hand, there was also a considerable increase of treatment and supervision efforts for sexual offenders during (Etzler, 2017) and after imprisonment (Gregório

Hertz, Breiling, Schwarze, Klein, & Rettenberger, 2017). This latter development contributed to the fact that we have nowadays a relatively well implemented intra- and extramural risk-management and treatment system in Germany, while the former efforts led to the public perception that societal pressure towards more repressive law enforcement and incarceration strategies could work. Unfortunately, this perceived success did not result in an easing of the public debate but contributed rather to the stabilization of it, meaning that the fear of sexual offenders is still widespread - even if recidivism rates are steadily decreasing in the German-speaking language area (Rehder & Suhling, 2008; Rettenberger, Briken, Turner, & Eher, 2015).

This divergence of objective crime and recidivism data, on the one hand, and subjective perceptions of crime which leads regularly to relatively high rates of intense feelings of insecurity, on the other hand, is of course not limited to sexual offenders but refers to virtually all kinds of severe criminal acts. But in case of sexual offending this perceptual bias has the additional problematic side effect that mental disorders which are associated with sexual offending (e.g., pedophilia) are highly stigmatized (Jahnke, Imhoff, & Hoyer, 2015). Given the obvious relationship between stigmatization and psychosocial problems in terms of social isolation, low self-esteem, and relationship problems, these results indicate the potentially negative consequences of exaggerated societal fears and public concerns for preventing future (sexual) crimes. It is only a small comfort that Germany is suffering the same fate as the neighboring countries: In Austria, Switzerland, the Netherlands, and Denmark similar developments (and similar results) were reported since the early 1990s².

Risk assessment of sexual offenders in Germany

An undisputed positive effect of the above mentioned crime- and security-centered public discussions about sexual offenders was a growing clinical and scientific focus of criminal law institutions on professional risk assessment and management procedures. Given the fact that reoffenses were, are, and will be an unavoidable consequence of democracy and rule of law, the law enforcement authorities and the prison institutions were aware that the public attention on sexual offending would lead inevitably to an intense concern and discussion about potential mistakes and system deficits which were eventually responsible for reoffenses of already known sexual offenders. Therefore, there has become a high interest in professional risk assessment and management procedures which have been gradually implemented in the last two to three decades (Rettenberger, 2016).

Nowadays scientific sound risk assessment procedures are - as in most jurisdictions of the Western countries - an integral part of the criminal justice system in Germany (Dahle, 2007). The two most important methodological approaches of risk assessment discussed in modern forensic psychology are actuarial risk assessment instruments (ARAI; Rettenberger & Craig, 2016), and structured professional judgment (SPJ; Hart & Boer, 2010). In the meantime, the internationally most important ARAIs and SPJ-instruments for sexual offenders have been translated and cross-validated for the German-speaking language area (e.g., Dahle, 2007; Rettenberger, Matthes, Boer, & Eher, 2010; Stadtland et al., 2005). Furthermore, some interesting and innovative research projects about potentially improvements of existing risk assessment instruments and approaches have been published, discussed, and adapted abroad (e.g., Dahle, Biedermann, Lehmann, & Gallasch-Nemitz, 2014; Craig & Rettenberger, 2018).

Apart from the translation, adaptation, and cross-validation of risk assessment instruments from North America, there have also been efforts to develop standardized risk assessment tools in Germany. For example, Gretenkord (2013) developed a brief actuarial risk assessment measure for forensic psychiatric patients (sexual and violent offenders) consisting of four variables: personality disorder, previous violent offenses, age, and number of institutional violent acts. In Austria,

Rettenberger, Mönichweger, Buchelle, Schilling, and Eher (2010) conducted a research project with the aim of developing a reliable and valid screening scale for the prediction of the recidivism of incarcerated violent (and sexual) offenders, to allocate treatment and management resources as exactly as possible, the 10-item *Screening Instrument for the Prediction of Violent Recidivism* (orig.: "Screeninginstrument zur Vorhersage des Gewalttrisikos [SVG-10]"). Two years later, Eher, Schilling, Mönichweger, Haubner-MacLean, and Rettenberger (2012) published a revised version, which contains only five items: the *Screening Instrument for the Prediction of Violent Recidivism* (SVG-5): number of previous violent offenses, offense frequency, homicide, psychological problems, and age at the time of first violence offense.

However, especially for risk assessment reports written by expert witnesses for courts, the clinical practice in Germany has been heavily influenced by the psychiatric tradition of intuitively made idiographic explanations of past criminal behavior derived from unstructured interview(s). Therefore, for a long time the use of ARAs was not very popular because of the limitation that ARAs provide no ideographic information about the risk and potential risk management strategies applicable to the individual case. In order to meet the requirement of a risk assessment methodology with a main focus on ideographic and individual-centered risk factors (Boetticher et al., 2007), the SPJ-approach has been used more commonly than ARAs (Rettenberger et al., 2017). Based on data of the International Risk Survey (IRiS; Singh et al., 2014) the most commonly used risk assessment instrument in Germany is the *Historical-Clinical-Risk Management-20 Violence Risk Assessment Scheme* (HCR-20; Webster, Douglas, Eaves, & Hart, 1997). An interesting finding of the German IRiS data was that the dispute between proponents of the actuarial risk assessment approach and proponents of the SPJ approach appears to be less relevant in clinical practice than in academia. In general, there are two tendencies observed with regard to this dispute in the practice of risk assessment during the past few years: First, particularly for treatment institutions such as forensic psychiatric hospitals or so-called social therapy units within the German prison system, the SPJ guidelines are somehow more established than ARAs. The main reason for this is probably that the available and commonly used actuarial instruments in Germany were second-generation instruments comprising static, unchangeable risk factors (e.g., the Static-99, the VRAG, or the SORAG). Because of this characteristic, it was inevitable that, despite the comprehensive research efforts of the Risk-Need-Responsivity-model (RNR-model) of offender rehabilitation (Andrews & Bonta, 2010), the majority of clinicians still claim second-generation instruments are not useful for treatment providers.

A second aspect is that, until today, the majority of clinicians, policymakers, and legal practitioners still prefer the risk communication provided by SPJ guidelines in terms of a low, moderate, or high risk of recidivism compared with the numerical and probabilistic risk communication provided by actuarial risk assessment instruments. As Varela, Boccaccini, Cuervo, Murrie, and Clark (2013) wrote in an article about this topic, innumeracy might be a possible explanation for the preference for the use of nominal categories such as high or low risk. Another important reason might be that it is much easier to justify decisions and judgments for legal decision makers when using risk labels such as high risk or low risk instead of probability numbers. However, the problem is that there exists convincing empirical data that the meaning of labels such as high risk or low risk could vary substantially between different persons, and are highly susceptible to different kinds of biases (e.g., Hilton, Carter, Harris, & Sharpe, 2008). This finding was also replicated in the German IRiS data set. The numerical thresholds where risk assessment experts recommended using the label high risk varied from 5% to 80%. The same result was found for the label low risk, where the probabilistic estimates ranged from 0% to 51% (Rettenberger et al., 2017). However, despite this last-mentioned result, in general the German IRiS results suggest the use of empirically based risk assessment instruments is still an integral part of clinical practice in forensic settings in Germany.

A further relevant development refers to the consideration of protective factors and resilience-related aspects which could lead to a more holistic assessment and treatment approach in the next few years. For treatment providers in Germany, the so-called Good Lives Model (GLM) of rehabilitation developed by Ward and colleagues (Ward, Mann, & Gannon, 2007), plays an increasing role in the rehabilitation of sexual offenders; the GLM suggested that the goal of any treatment should be to provide (sexual) offenders with constructive suggestions for a fulfilling life and to explore personal needs and goals in their lives rather than to solely focus on the deficits of an individual. Therefore, identifying empirically supported risk and protective factors in the individual might be beneficial for successful interventions in offenders. One instrument which has been designed to capture particularly protective factors is the Structured Assessment of PROtective Factors (SAPROF) for violence risk (de Vogel et al., 2009). The SAPROF was originally developed in the Netherland as a structured assessment guideline for protective factors against future violent (including sexually violent) behavior in criminal offenders and forensic-psychiatric patients. In the meantime, the instrument was also translated into German and was evaluated in different German-speaking samples (e.g., Yoon et al., 2018). However, it has to be stated clearly, the influence of resilience- or desistance-related ideas and concepts is still low in the German criminal law system. Until now, these ideas are playing only a relevant role for treatment providers and risk assessment experts who are interested in more balanced assessment procedures.

Risk management systems, policies, and practice in Germany

As already mentioned above from a juridical point of view in Germany only an individual-centered professional risk assessment approach is acceptable which has to focus not only on risk assessment per se but also on risk management (Boetticher et al., 2007). Therefore, risk assessment reports should be closely linked to risk management efforts which led to the fact that SPJ-approaches have been widely accepted (Rettenberger et al., 2017). But independently of discussions about strengths and weaknesses of different risk assessment approaches it is important to note that in the meantime the majority of sexual offenders received mandatory treatment (intra- and/or extramural; Etzler, 2017; Gregório Hertz et al., 2017). In the last decade there was successive expansion of special outpatient clinics providing (mandatory) aftercare treatment for released sexual offenders which led to a further significant reduction of recidivism rates in (treated) sexual offenders (Keßler & Rettenberger, 2017).

The majority of intra- as well as extramural treatment efforts are based on group psychotherapy programs derived from North America (Hanson, Bourgon, Helmus, & Hodgson, 2009; Schmucker & Lösel, 2015). Additionally, many treatment institutions provide individual therapy sessions for their clients, in order to identify and work on individual dynamic risk factors (Gregório Hertz et al., 2017; Keßler & Rettenberger, 2017). Psychopharmacological treatment could be part of the general treatment plan if indicated (Turner, Gregório Hertz, Sauter, Briken, & Rettenberger, in press). Nowadays, the surgical castration of sexual offenders does not play anymore a relevant role given the ethical, juridical, and clinical problems of this kind of "degrading treatment" (Pfäfflin, 2010, p. 179).

A special treatment program in Germany is provided by institutions which are part of the so-called Prevention Project Dunkelfeld (PPD) network (Beier et al., 2009). Since 2005, the PPD has offered preventive treatment to persons who describe themselves as pedophilic (or hebephilic) but who were not officially registered as offenders because their offenses have been remained unknown by the law enforcement authorities, or because they have not committed any offenses but they are concerned about committing offenses in the future. The first evaluation data showed mixed results

about the effectiveness of PPD project (Beier et al., 2015).

Good and bad examples

As the previously discussed issues indicated there are a number of different initiatives and developments which can be regarded as "good examples" for professional management policies which are meeting legislative, ethical, and treatment-related standards: First, the majority of sexual offenders received different treatment options, during incarceration (Etzler, 2017) as well as after release from prison (Gregório Hertz et al., 2017). Second, a substantial part - but still not all - of these treatment efforts are following empirically sound intervention standards like the RNR-model (Andrews & Bonta, 2010; Hanson et al., 2009) and are using scientifically proved risk assessment methods to plan treatment and to manage risk (Gregório Hertz et al., 2017; Keßler & Rettenberger, 2017; Rettenberger et al., 2017). Third, persons who are at risk becoming a sexual offender but who have not committed an offense yet can get help by specialized treatment institutions (Beier et al., 2009, 2015). These developments and efforts might have altogether contributed to the steady decrease in sexual offender recidivism rates (Rettenberger et al., 2015).

However, there is still work to do: First, there are still some groups of pre-selected high-risk sexual offenders with virtually no prospect of release - to be clear, these offenders are mostly indeed high risk but even in the highest risk groups the recidivism risk rates are below 50 % within conventionally used follow-up frames (Hanson, Thornton, Helmus, & Babchishin, 2016). Taken into account that even these high-risk persons might not remain high-risk forever (Hanson, Harris, Helmus, & Thornton, 2014) we still have to focus on the development of treatment and aftercare intervention programs to provide them a personal perspective for a life outside prison or forensic psychiatry. Second, regarding risk assessment and management policies there is still a tendency observable to focus biasedly on mental health issues rather than on empirically established dynamic risk factors even if the current state of research is relatively clear that the latter should be given priority compared to the former (Mann, Hanson, & Thornton, 2010). However, in general, there have been significant advances in research and clinical practice during the last few decades, so we can conclude that we know more about the etiology and development of sexual offending than ever before and we are doing a better job in assessing and preventing the recidivism risk of sexual offenders than ever before. Even if there are regularly some hysterically expressed setbacks, the positive aspects are prevailing.

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Footnotes

¹A specifically for Germany interesting and historically highly relevant aspect refers to the process of reunification in the early 1990s: On the one hand, serious offenses like violent and sexual offenses were in the former Socialistic States even more tabooed than in the Western countries which leads to lack of interest in the prevention and public discussion of sexual offending. On the other hand, classical criminological theories - like, for example, Émile Durkheim's anomie theory or Robert K. Merton's strain theory - have stated that political revolutions and the related societal disintegration processes could foster deviant and delinquent behaviors.

²This fact might be regarded as a counterargument concerning the special influence of the reunification. Indeed and even if there is still a lack of forensic and criminological research about sexual offending in East Germany, the current research literature indicates especially an influence of the reunification process towards the development of right-wing extremism and politically motivated violence but not on the development of specific sexual offending patterns.

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