

**Westfahl Spilker Wastl
Rechtsanwälte**

**Legal Considerations on the Fight against Sexual Abuse of Children and
Protected Persons**

- 15 Theses and Requirements-

A Position Paper on the Occasion of the New York
World Law Congress on July 20-21, 2023

Attorney at Law Dr. Ulrich Wastl, Munich

As of: July 20th, 2023

**Westfahl Spilker Wastl
Rechtsanwälte**

Attorney at Law Dr. Ulrich Wastl, Munich

**Legal considerations in the fight against sexual abuse of children
and protected persons***

- 15 Theses and Requirements-

After years of dealing with child sexual abuse and institutional failures that often make these acts possible, my conclusion as a lawyer and jurist is this:

Goal

The goal of the following theses/requirements is,

- to create the basis for a transparent and independent, as well as continuous reappraisal,
- to optimize prevention, among other things, on the basis of independent and unsparing reappraisal of sexual abuse and a description of the systemic causes that is thus imperative,
- to clarify the importance of compliance and internal investigations in this regard from the perspective of affected institutions,
- to promote adequate compensation for victims of sexual abuse, which has often been prevented for far too long,
- to identify ways in which the structural inferiority of victims of sexual abuse can be eliminated, or at least significantly reduced.

*This position paper will be expanded into a more comprehensive essay/manuscript based on the results of the discussions in the relevant panel of the World Law Congress and other discussions held in the follow-up to its presentation. It is planned to publish this paper at the end of September 2023 – in all likelihood - via our website (www.westfahl-spilker.de). The comments that we receive on this by 31.08.2023 will, if necessary and as far as possible, be incorporated into the further legal considerations.

**Westpfahl Spilker Wastl
Rechtsanwälte**

The State

Thesis 1

In this context, the state is and remains called upon to promote the development of standards for prevention in the area of sexual abuse, to guarantee them where necessary, and to ensure that non-compliance with such standards entails serious consequences under liability and criminal law.

Thesis 2

Accordingly, it is also required to create the basis for a completely independent processing of sexual abuse in the past, but also in the future; this, of course, also with regard to its own possible role in this context.

Thesis 3

Finally, with the authority vested in it, it must also contribute to eliminating the structural inferiority of victims. Measures required in this context range from the need for an equal position of the victim in judicial (criminal) proceedings to the implementation of fully independent and adequately equipped interest groups for victims and their specific concerns.

The Legislator

Thesis 4

Legislators should first extend, as far as at all possible, both the criminal statute of limitations and, in particular, the statute of limitations for claims for damages under civil law. Only this will do justice to the specifics of sexual abuse of children, adolescents, and persons under their protection.

Thesis 5

Rules on the burden of proof that do justice to the victims must be standardized, particularly with regard to compensation proceedings. How is it possible and/or permissible for an institution that failed to take protective measures and, perhaps, even covered up what happened to be able to secure the fruits of its own legally abusive actions with hindsight by referring to the victim's burden of proof?

Thesis 6

The punishability of even mere negligent behavior on the part of those to whom the victims were entrusted must be explicitly codified if and to the extent that they have not fulfilled their duties to protect children, adolescents and their charges.

**Westfahl Spilker Wastl
Rechtsanwälte**

Thesis 7

Legislators are also called upon to provide the best possible support for the necessary transparent and public processing of sexual abuse cases by victims or their stakeholders. Clear and unambiguous legal foundations must be created, insofar as legally justifiable and possible, that allow victims access to all information in their fight for justice and reappraisal. Or should affected institutions and even the perpetrators continue to be able to spread legal uncertainty only by mentioning buzzwords such as "data protection law," "archive law," etc., and thus torpedo a transparent and public reappraisal from the outset?

Thesis 8

The rights of victims in state investigation and criminal proceedings must be continuously strengthened. They must be granted the opportunity to actively participate in the respective proceedings, as well as a right to information and disclosure that is as comprehensive as possible and secured by procedural law, and a corresponding right to inspect files.

The Courts and Investigative Authorities

Thesis 9

At the level of courts and investigative authorities, it shall be ensured the proceedings in connection with sexual abuse of children, adolescents and persons under protection are conducted by specially trained persons who are familiar with the psychological, psychiatric and other special features. Continuing education and training of these persons based on the current state of science shall be provided. Any specific restraint in dealing with misconduct on the part of specially recognized institutions, such as churches, is prohibited from the outset.

Thesis 10

The courts and investigating authorities should not only have the latest findings with regard to the assessment of evidence from the perspective of testimonial psychology and forensics, which is usually as important as it is complex in cases of sexual abuse. Rather, they should also actively incorporate these into their evaluation of evidence within the framework of existing law, and develop appropriate rules on the burden of proof, insofar as this is legally permissible.

**Westfahl Spilker Wastl
Rechtsanwälte**

**The Institutions Concerned in the Areas of Child and Youth Welfare
and Education**

Thesis 11

Institutions (governmental, non-profit organizations (NPO) and religious communities) that are regularly active in the field of work with children, adolescents and those under their protection in the broadest sense must be aware that there are now standards with regard to preventing sexual abuse and dealing with this phenomenon, which is as sad as it is frightening. These standards are also constantly being optimized. Informing oneself about these standards and implementing them, especially from the point of view of prevention, is one, if not the primary duty of these institutions and those responsible for their actions, at least for the time being. The legal tendency to increasingly tighten liability and personal responsibility with regard to the actions of such institutions and their representatives should be heeded and taken seriously by them.

Thesis 12

For NPOs in particular, the procurement of the necessary financial resources depends, or will depend, to an ever greater extent on proof of appropriate adequate protection and compliance management systems (CMS).

Thesis 13

One of the essential components of a CMS, especially in this highly sensitive area, is the establishment of an emergency system and the immediate conduct of internal investigations that are as independent as possible. Of particular importance in this context is the question of an obligation to report such acts to the relevant state investigative authorities. This should only be done without the consent of the respective victim in very exceptional cases.

The Public

Thesis 14

The public also has a crucial role to play in the fight against sexual abuse. However, this means that the public must be informed independently and openly about relevant events and responsibilities. Previous cases of systemic sexual abuse of children, adolescents, and persons under protection have shown that without the support of the press, and thus ultimately the public, many of the positive developments achieved so far with regard to combating sexual abuse would not have been possible.

Thesis 15

Against this background, the limits of corresponding (press) publications must be explored and, if necessary, expanded. The importance of the victims' fight for

Westpfahl Spilker Wastl Rechtsanwälte

justice must be emphasized again when weighing it against the individual interests of the perpetrators of the institutions concerned and those responsible for them. This applies, for example, with regard to calls to victims of a perpetrator who has in principle already been identified to come forward for the purpose of prosecuting the injustice committed against them. The possibilities associated with public crowdfunding to support victims in their struggle for justice and to improve their position in this respect as well should also be mentioned as examples in this context.

The Hope

In many countries, but also on the part of a steadily increasing number of other institutions, it has already been recognized that the issue of "sexual abuse of children, adolescents and protected persons" must be given top priority. This realization is also becoming increasingly widespread in a large number of countries.

But there is still a lot to do!

The Vision

All parties involved, the state, the legislature, the courts and investigative authorities, as well as the public, pull together in the same direction, eliminating the injustice that has occurred and ensuring, to the extent at all possible, that it cannot happen again in the future.

An initial professional overview of some of the theses described here contains: Wastl / Pusch, Missbrauchsgutachten für die Erzdiözese München und Freising vom 20.01.2022 - Gedankenskizze: Methodology as well as legal and further problem areas <https://westpfahl-spilker.de/pusch-wastl-the-munich-abuse-report-2022-a-cursory-overview-of-methodology-results-and-implications-for-further-reappraisals-efforts/>