[SE] Child Pornography and Depictions of Violence against Children in the Media - a Recent Court Decision

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In its decision of May 20, 1996 (Case No. B 1442/95), the Göta Appeal Court (Göta hovraett) in Jönköping, Sweden, ruled on inter alia the interpretation of the term "child" (barn), "sexual violence or coercion" (sexuellt vaeld eller tvaeng) and "circulation" (spridning) in the context of the child pornography offence (barnpornografibrott) and the offence of unlawful depiction of violence (olaga vaeldsskildring), laid down in Chapter 16, 10a and 10b, respectively, of the Swedish Penal Code (BrB). The Court's decision was not appealed to the Swedish Supreme Court (Högsta domstolen). "Child": The Court ruled that this term must - in the context of BrB 16:10a - be so interpreted as to harmonize with the meaning of the term under the UN Convention on the Rights of the Child, which has been ratified by Sweden. Therefore, "child" should normally mean any person under the age of 18. "Sexual Violence or Coercion": The public prosecutor had argued that this term should - for the purposes ob BrB 16:10b - include any instance of vaginal or anal intercourse between a grown man and a child. The Court stressed that whereas all pornographic pictures depicting children are subject to punishment under the child pornography offence in BrB 16:10a, only clear and identifiable depictions - with of without children - of sexual violence or coercion, in the sense normally attributed to these terms, are punishable under BrB 16:10b as unlawful depictions of violence. The Court went on to describe and analyze the sexual activities - clearly and actively involving children - shown in the film in question and concluded that these, although they are found to be a "flagrant exemple" of a child pornography offence, could not be characterized as containing violence or coercion and therefore did not entail an unlawful depiction of violence under BrB 16:10b. "Circulation": The Court found that, since the defendant had kept videotapes that had been advertised by him available to anyone who wished to contact him - thus, to "the public" - and since he had sent videotapes to at least, "some ten people" that he did not personally know but had come to know through their mutual interest in child pornography, "circulation" in the sense referred to in BrB 16:10a of said videotapes had taken place and that therefore these actions in connection with the videotapes were punishable as a child pornography offence under BrB 16:10a.

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Decision of the Göta Appeal Court in the Case No. B 1442/95 of 20 May 1996.

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