[DE] Sado-masochistic Advertising on Internet - no Offence Comitted, Says Court

IRIS 1998-5:1/1

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In a judgment given on 7 April 1998, the First Criminal Chamber of the Federal Court (Strafsenat des Bundesgerichtshofs - BGH) upheld an earlier judgment by the Traunstein Regional Court (Landesgericht - LG), acquitting two accused persons of conspiring to commit crimes involving kidnap, murder, sexual abuse of children, rape and sexual violence.

Using the pseudonyms "Leather Witch" and "Sado-Hangman", the accused operated a so-called "S/M studio", which they advertised on the Internet. Via E-mail, they offered to provide an undercover investigative journalist with a child for use in sadistic practices. In later conversations, they said that it would be "no problem" if the victim "ended up dead" - for another 3,000 DM. they would get rid of the body. The Federal Court agreed with the lower court that the requirements of conspiracy to commit an offence were not subjectively present, since it could not be shown, to the court's satisfaction, that a serious intention of committing the offence existed.

The Federal Court further held that the accused could not be charged, under Article 111 of the Criminal Code (Strafgesetzbuch - StGB), with public incitement to commit an offence. The mere fact of advertising an "S/M studio" did not constitute such an offence. The offence itself was not sufficiently ascertainable, since it had not, in legal terms, been sufficiently realised. Nor did the communication between the accused and the witness concerning sadistic abuse of an under-age victim constitute such an offence, since, after the first Internet contact, the accused had communicated individually with the witness.

Bundesgerichtshof, Urteil vom 7. April 1998 Gesch.-Nr.: 1 StR 801/97

Federal Court, judgment of 7 April 1998 Case No.: 1 StR 801/97-

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