[CH] Mailbox Operator Convicted of Distributing Pornography

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The High Court of the Zurich Canton, in a revolutionary judgement concerning the dissemination of pornography via the Internet, has established a legal precedent. The operator of a mailbox was fined for giving unrestricted access to pornographic material to any user, including children under the age of 16. After viewing the material, which was transferred into the mailbox not by the defendant himself but by other users, he had moved it to the appropriate section, created by himself, and had failed to delete it, leaving it on file sometimes over a period of years. Under the terms of Art. 197.1 of the Criminal Code, anyone who offers, shows or gives pornographic literature, photographs or images to a child under the age of 16, makes them accessible or broadcasts them on radio or television, is punishable by law. In the High Court's opinion, the defendant, as the mailbox operator, made the stored pornographic material accessible under the terms of Art. 197.1 of the Criminal Code. The Court based its decision partly on the Federal Court's judgement no. BGE 121 IV 109 ff, under which the part of the national telecommunications company (PTT-Betriebe, now known as Swisscom AG) responsible for introducing "Telekiosks" (a pornographic telephone service) had been found guilty of aiding and abetting pornography by offering to the "Telekiosks" company equipment which it had known would be used to disseminate pornographic recordings accessible to people under the age of 16. In the present case, the Court went one step further and deemed the mailbox operator not only as an abettor, but as an accomplice, because he had the power to cut access to the material. Since the defendant had the equipment needed to operate the mailbox and had connected it up to the electricity and telecommunications networks, users had been given access to the mailbox, which was why the defendant was responsible and punishable as an accomplice. He could have avoided committing a criminal offence by turning off the equipment. The judgement is not yet final since a nullity appeal has been lodged with the Federal Court.

Urteil des Obergerichts des Kantons Zürich vom 7. Dezember 1998; SB980616/yb.

Judgement by the High Court of the Zurich Canton on 7 December 1998, no. SB980616/yb.

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