[DE] Ruling against Compuserve Managing Director Quashed

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On 25 November 1999, the Landgericht München I (First Munich Regional Court) overturned the ruling of the court of first instance against the former managing director of Compuserve (see IRIS 1998-6: 4). The AG München (Munich District Court) had imposed a two-year prison sentence, which was suspended on payment of a fine of DEM 100,000.

The case concerned child and animal pornography, prohibited in Germany, which was available on the server of Compuserve USA, and to which its subsidiary Compuserve Germany had given access. Whereas the court of first instance had found the managing director of Compuserve Germany guilty, the appeal court did not believe the accused had committed any criminal offence. Since Compuserve Germany was a genuine subsidiary of Compuserve USA, complicity was out of the question. Moreover, the lack of causation meant that abetment could not be proven, while there was no reason to suggest that the accused had broken the law by failing to act. The Regional Court also disagreed with regard to the interpretation of Article 5 of the Teledienstegesetz (Tele-Services Act - TDG); since it thought any conviction would be undermined upon examination of this particular provision. The Court ruled that the accused, as the provider of access to third-party content, could benefit from the limitation of liability set out in Article 5.3 of the TeleServices Act, whether Compuserve Germany had its own customers or not. The Munich District Court had stated that, since Compuserve Germany had no customers of its own, Article 5.3 of the Tele-Services Act did not apply.

Urteil des Landgerichts München 1 vom 25. November 1999, Az. 20 Ns 465 Js 173158/95.

Judgement of the First Munich Regional Court, 25 November 1999, case no. 20 Ns 465 Js 173158/95.

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