[DE] Federal Supreme Court Rules Internet Dissemination of Holocaust Denial Is Punishable

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The Bundesgerichtshof (Federal Supreme Court) has ruled that an Australian citizen can be punished for incitement of the people under the terms of Article 130.1 and 130.3 of the Strafgesetzbuch (Criminal CodeStGB).

The accused, a director of the "Adelaide Institute" in Australia, wrote, inter alia, articles in which he supported "revisionist" theories and which he posted on the Institute's home page on an Australian Internet server. In these articles, written under the pretext of scientific research, he denied that the murder of Jews under National Socialism ever took place, describing it as a fabrication by Jewish groups.

The Landgericht Mannheim (Mannheim District Court) had previously decided that the alleged offence was not punishable, since, although the people had indeed been incited, German criminal law did not apply to acts such as this.

After an appeal by the public prosecutor, the Federal Supreme Court ruled that German criminal law did apply, even though the accused had acted abroad, because the result of his act had affected Germany in the sense of Article 9 of the StGB. A foreigner who had published on a foreign Internet server opinions written by himself, which constituted the offence of inciting the people under Article 130.1 or 130.3 of the StGB (denial of the holocaust), was punishable if those opinions were accessible to Internet users in Germany.

This decision is of fundamental importance, since for the first time the Supreme Court has decided that a socalled abstract endangering offence, such as incitement of the people, whereby the offence does not depend on the actual consequence of the offence (such as a breach of the peace in this case) taking place, but merely being possible, can be punishable under Article 9 of the StGB.

It should be noted, however, that this ruling only applies to cases in which an author has published his own views on the Internet.

Urteil des Bundesgerichtshofes vom 12. Dezember 2000, Az.: 1 StR 184/00

Ruling of the Federal Supreme Court, 12 December 2000, case no. 1 StR 184/00

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