[DE] Internet Demonstration Does Not Constitute Violence

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The Court of Appeal (OLG) of Frankfurt am Main in its decision of 22 May (Az: 1 Ss 319/05) overturned a ruling of the Frankfurt Magistrate's Court (AG) of1st July 2005, in which it had sentenced the instigator of an online demonstration against Lufthansa to paying a fine. Using software that they had themselves designed, the demonstrators intended to bring down Lufthansa’s server, so as to protest against the airline's involvement in deportations.

In its ruling the Frankfurt AG considered that the online demonstration constituted an act of intimidation (§ 240 StGB) against Lufthansa as a web site operator as well as against other Internet users. The instigator of the protest action was sentenced for inciting intimidation.

The OLG, in its ruling, particularly called into question the concept of violence used as a basis by the Magistrate's court.

The online protest was neither to be described as violence or a threat involving considerable harm, since its main objective was to influence opinion. For the assumption of violence within the meaning of § 240 StGB there was, despite operating the computer mouse, no display of the required show of strength, for physical strength had to be aimed at bringing about physical harm. The effect of clicking with a mouse was however restricted to the field of the Internet. Moreover the physical action required for the presumption of violence was missing, for action on a network could not be equated with action on a person or object. The fact that the victim, the user, could not, under certain circumstances, call up the Internet page, did not in itself constitute physical impairment. The intention of creating a negative image was likewise not directed at a particular action, creating harm or a specific omission, but pursued the objective of shaping opinion. This was however comparable to the mere removal of property, an action which could not be interpreted as violent.

Since the accused did not for instance make the implementation of the Internet blockade dependent on Lufthansa ending its involvement in deportations, as the action was limited in time and moreover was not accompanied by conditions, the assertion of harm as the intention of the instigator required for a threat of grievous harm did not exist.

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http://www.olg-frankfurt.justiz.hessen.de/C1256BA70030E5C7/vwContentByKey/W26QD9EA187JUSZDE/$File/Teilstrafbare%20N%F6tigung%20wegen%20Aufrufs%20zum%20Internet-Boykott_1.pdf

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