

Information Technology - Switzerland

Cyber-mobbing: court convicts Facebook user for posting insults

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Until recently no case law existed on so-called 'cyber-mobbing' – the intentional insulting, threatening, exposure or harassment of others by means of electronic communication devices – in Switzerland. This update considers the first Swiss case of its kind in which a young woman was convicted for insulting a neighbour on Facebook.

Facts

Noise emissions from a public meeting place in St Gallen led to a dispute with a local resident. The local resident took legal action against the owners of the meeting point and litigated successfully against the nightly parties that were held there. Supporters of the meeting point founded a Facebook group on the pages of which they expressed their resistance to the closure of the meeting point. In May 2010 several people posted serious insults and threats directed at the local resident on the pages of the Facebook group. Among the Facebook group members was a young woman who - using her real name - insulted the local resident with the terms 'sad man' and an idiomatic expression similar to 'idiot'.

The local resident filed a criminal complaint. Three members of the Facebook group who had posted insults were identified and, in December 2010, without judicial process, each was given a conditional fine of Sfr210 and an additional (unconditional) forfeit of Sfr100. Two of the three group members accepted their punishment. However, the third group member appealed to the St Gallen Trial Court. The appellant's trial lawyer pleaded for his client's acquittal by arguing that she had apologised in writing since the insults were posted and had labelled her statement as "totally imprudent". However, on May 9 2011 the judge of that court confirmed the conditional fine of Sfr210 but annulled the (unconditional) forfeit of Sfr100. In addition, the appellant was ordered to pay procedural costs of Sfr1250. The conviction, once final, will be listed in the appellant's criminal record. The judgment is subject to appeal.

Analysis

This ruling constitutes the first time that the Swiss courts have handed down a conviction in relation to insults posted on Facebook. Some commentators consider the ruling to be a precedent in relation to 'cyber-mobbing'.

It is acknowledged that cyber-mobbing exists and that people are generally less careful about what they say on the Internet than they are when using other means of communication. However, it is doubtful whether this case constitutes an adequate precedent for cyber-mobbing.

There was no systematic badmouthing by the appellant in this case. Media reports suggest that the woman called the neighbour only a 'sad man' and an 'idiot'. 'Sad man' cannot necessarily be considered to be an insult. 'Idiot' is an insult, but it is open to debate whether its use is serious enough to merit criminal prosecution.

The fact that people in the same Facebook group who posted much more serious insults and death threats were not prosecuted is unsatisfactory. Some of the people who posted such insults and threats were not identified because they had used fictional user names and the police had declined to request their IP addresses from Facebook or internet service providers. Such a position would appear to encourage people to use fictional names or fake accounts.

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Others were not further prosecuted because they ended their insulting statements with an emoticon. Consequently, the law enforcement authorities concluded that these statements were not meant seriously and that there was no wilful intent. Such a line of argument is unconvincing, since it would appear to imply that insults and threats can safely be posted on the Internet provided that they are followed by an emoticon.

It also seems that the appellant was convicted only because:

- she used her real name on the pages of the Facebook group; and
- she was honest enough to admit that she had, in fact, posted the insults in question.

Had she denied her authorship and claimed that the messages were posted from a false account, the law enforcement authorities would probably not have endeavoured to obtain her IP address from Facebook or the internet service provider.

Comment

This judgment cannot be seen as a first step towards building a framework within which to prosecute cyber-mobbing. Although insults posted on the Internet must be prosecuted against the same standards as they are for those expressed elsewhere, this case is an inappropriate example for a precedent in that regard.

It will be interesting to track further developments regarding insults and threats posted on Facebook. Not yet decided is the question of whether approval of an insulting statement through the use of the 'Like' button can result in criminal proceedings. A complex question in that context relates to whether joining a Facebook group such as 'Let's Kick XY's A**' will be punishable, since the motivation for joining such a group will not always be the same. Another interesting question is whether a call to report an unpopular group member to the Facebook administrator can qualify as a criminal act.

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