

GERMAN CRIMINAL CODE

Criminal Code in the version promulgated on 13 November 1998, Federal Law Gazette [Bundesgesetzblatt] I p. 3322, last amended by Article 3 of the Law of 2 October 2009, Federal Law Gazette I p. 3214

(...)

Section 9

Place of the offence

(1) An offence is deemed to have been committed in every place where the offender acted or, in the case of an omission, should have acted, or in which the result if it is an element of the offence occurs or should have occurred according to the intention of the offender.

(2) Acts of secondary participation are committed not only in the place where the offence was committed, but also in every place where the secondary participant acted or, in the case of an omission, should have acted or where, according to his intention, the offence should have been committed. If the secondary participant to an offence committed abroad acted within the territory of the Federal Republic of Germany, German criminal law shall apply to the secondary participation even though the act is not a criminal offence according to the law of the locality of its commission.

(...)

(3) Audiovisual media, data storage media, illustrations and other depictions shall be equivalent to written material in the provisions which refer to this subsection.

(...)

Section 11

Definitions

(...)

(3) Audiovisual media, data storage media, illustrations and other depictions shall be equivalent to written material in the provisions which refer to this subsection.

...

Section 86

Dissemination of propaganda material of unconstitutional organisations

(1) Whosoever within Germany disseminates or produces, stocks, imports or exports or makes publicly accessible through data storage media for dissemination within Germany or abroad, propaganda material

1. of a political party which has been declared unconstitutional by the Federal Constitutional Court or a political party or organisation which has been held by final decision to be a surrogate organisation of such a party;

2. of an organisation which has been banned by final decision because it is directed against the constitutional order or against the idea of the comity of nations or which has been held by final decision to be a surrogate organisation of such a banned organisation;

3. of a government, organisation or institution outside the Federal Republic of Germany active in pursuing the objectives of one of the parties or organisations indicated in Nos 1 and 2 above; or

4. propaganda materials the contents of which are intended to further the aims of a former National Socialist organisation, shall be liable to imprisonment not exceeding three years or a fine.

(2) Propaganda materials within the meaning of subsection (1) above shall only be written materials

(section 11(3)) the content of which is directed against the free, democratic constitutional order or the idea of the comity of nations.

(3) Subsection (1) above shall not apply if the propaganda materials or the act is meant to serve civil education, to avert unconstitutional movements, to promote art or science, research or teaching, the reporting about current or historical events or similar purposes.

(4) If the guilt is of a minor nature, the court may order a discharge under this provision.

Section 86a

Using symbols of unconstitutional organisations

(1) Whosoever

1. domestically distributes or publicly uses, in a meeting or in written materials (section 11(3)) disseminated by him, symbols of one of the parties or organisations indicated in section 86(1) Nos 1, 2 and 4; or 2. produces, stocks, imports or exports objects which depict or contain such symbols for distribution or use in Germany or abroad in a manner indicated in No 1, shall be liable to imprisonment not exceeding three years or a fine.

(2) Symbols within the meaning of subsection (1) above shall be in particular flags, insignia, uniforms and their parts, slogans and forms of greeting. Symbols which are so similar as to be mistaken for those named in the 1st sentence shall be equivalent to them.

(3) Section 86(3) and (4) shall apply mutatis mutandis.

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Section 111

Public incitement to crime

(1) Whosoever publicly, in a meeting or through the dissemination of written materials (section 11(3)) incites the commission of an unlawful act, shall be held liable as an abettor (section 26).

(2) If the incitement is unsuccessful the penalty shall be imprisonment not exceeding five years or a fine. The penalty must not be more severe than if the incitement had been successful (subsection (1) above); section 49(1) No 2 shall apply.

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Section 130

Incitement to hatred

(1) Whosoever, in a manner capable of disturbing the public peace

1. incites hatred against segments of the population or calls for violent or arbitrary measures against them; or

2. assaults the human dignity of others by insulting, maliciously maligning, or defaming segments of the population, shall be liable to imprisonment from three months to five years.

(2) Whosoever

1. with respect to written materials (section 11(3)) which incite hatred against segments of the population or a national, racial or religious group, or one characterised by its ethnic customs, which call for violent or arbitrary measures against them, or which assault the human dignity of others by insulting, maliciously maligning or defaming segments of the population or a previously indicated group

(a) disseminates such written materials;

(b) publicly displays, posts, presents, or otherwise makes them accessible;

(c) offers, supplies or makes them accessible to a person under eighteen years; or

(d) produces, obtains, supplies, stocks, offers, announces, commends, undertakes to import or export them, in order to use them or copies obtained from them within the meaning of Nos (a) to (c) or facilitate such use by another; or

2. disseminates a presentation of the content indicated in No 1 above by radio, media services, or

telecommunication services
shall be liable to imprisonment not exceeding three years or a fine.

(3) Whosoever publicly or in a meeting approves of, denies or downplays an act committed under the rule of National Socialism of the kind indicated in section 6 (1) of the Code of International Criminal Law, in a manner capable of disturbing the public peace shall be liable to imprisonment not exceeding five years or a fine.

(4) Whosoever publicly or in a meeting disturbs the public peace in a manner that violates the dignity of the victims by approving of, glorifying, or justifying National Socialist rule of arbitrary force shall be liable to imprisonment not exceeding three years or a fine.

(5) Subsection (2) above shall also apply to written materials (section 11(3)) of a content such as is indicated in subsections (3) and (4) above.

(6) In cases under subsection (2) above, also in conjunction with subsection (5) above, and in cases of subsections (3) and (4) above, section 86(3) shall apply mutatis mutandis.

Section 130a

Attempting to cause the commission of offences by means of publication

(1) Whosoever disseminates, publicly displays, posts, presents, or otherwise makes accessible written material (section 11(3)) capable of serving as an instruction for an unlawful act named in section 126(1) and intended by its content to encourage or cause others to commit such an act, shall be liable to imprisonment not exceeding three years or a fine.

(2) Whosoever

1. disseminates, publicly displays, posts, presents, or otherwise makes accessible written material (section 11(3)) capable of serving as an instruction for an unlawful act named in section 126(1); or

2. gives instructions for an unlawful act named in section 126(1) publicly or in a meeting, in order to encourage or cause others to commit such an act, shall incur the same penalty.

(3) Section 86(3) shall apply mutatis mutandis.

Section 131

Dissemination of depictions of violence

(1) Whosoever

1. disseminates written materials (section 11(3)), which describe cruel or otherwise inhuman acts of violence against humans or humanoid beings in a manner expressing glorification or which downplays such acts of violence or which represents the cruel or inhuman aspects of the event in a manner which violates human dignity;

2. publicly displays, posts, presents, or otherwise makes them accessible;

3. offers, supplies or makes them accessible to a person under eighteen years; or

4. produces, obtains, supplies, stocks, offers, announces, commends, undertakes to import or export them, in order to use them or copies obtained from them within the meaning of numbers 1 to 3 above or facilitate such use by another, shall be liable to imprisonment not exceeding one year or a fine.

(2) Whosoever disseminates a presentation with a content indicated in subsection (1) above by radio, media services, or telecommunication services shall incur the same penalty.

(3) Subsections (1) and (2) above shall not apply in cases of reporting about current or historical events.

(4) Subsection (1) No 3 above shall not apply if the person authorised to care for another person acts; this shall not apply if that person grossly neglects his duty of education by offering, giving, or making them accessible.

(...)