

## *The Protagonists of an infantile Cult of Honor*

# Germany risks the Wrath of the Council of Europe with her arbitrary and childish "Insult" Laws

by Peter Briody, [institut voigt](#)

## Introduction

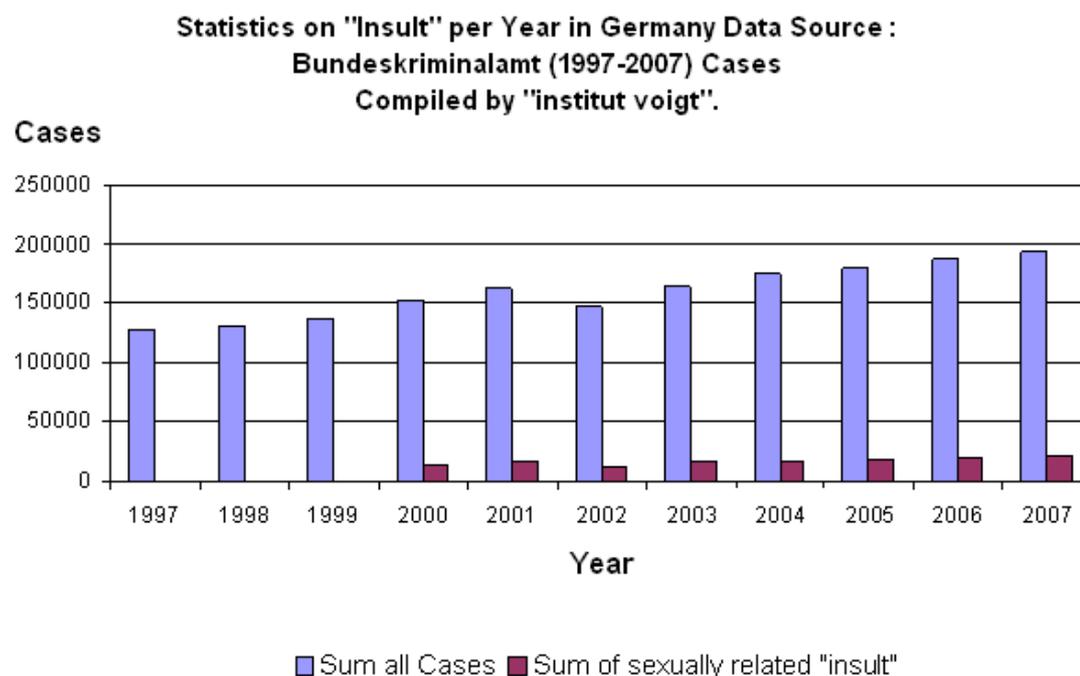
Although Erich Schwinge, made a case for stronger protection of politicians in his book "Ehrenschutz heute (1987)", this is contrary to the rulings of the European Court of Human Rights. His commentary on so-called "peanuts" cases of 1927 is, however, of interest here. He said,

*"The majority of these court cases on "Insult" were small matters, nothing but verbal abuse, trash and junk, which were not worthy of the attention of the justice."*

Eugen Schiffer wrote in his book "Die deutsche Justiz. Grundzüge einer durchgreifender Reform (1928)" about the attitude of the English law, where mere abuse or otherwise derogatory remarks were not as a general rule prosecuted as offences. He went on to say,

*"There prosecutions for "insult", in particular due to mere abuse, are excluded or very seldom. Despite this, there is no murder and mayhem among men as would be predicted here, if the courts would not step in."*

What has happend as a result of these words of wisdom from 1927/1928 ? According to Reichskriminalstatistik of the year 1927 there were 50.000 cases of "insult" tried. In the year 2007 it was over 190.000 with an upwards trend. The statistic 1997-2007 are shown below:



As can be seen, the courts in Germany, instead of reducing the rates, have made a flourishing "insult" industry, built on the foundations of this infantile cult of honor. At the same time Great Britain has, according to the trends they set in 1927, drastically cut down its laws against "insult" to "criminal libel", which is hardly ever used. In 2005 they had only one case, for example. Because the British cases are so small in number they cannot

be put in a comparative diagram - at least not with the German figures. They are placed instead in the following table.

<b>The "Criminal Libel" cases per Year in UK</b>								
1997	1998	1999	2000	2001	2002	2003	2004	2005
5	3	4	2	3	2	0	0	1

Germany maintains the following Paragraphs against "insult".

<b>Para</b>	<b>Type</b>	<b>Remarks</b>
§90	Denigration of the President of State	
§90a	Denigration of the State and its Symbols	These paragraphs contain the same ingredients of an offence against Art. 301 of the Turkish Criminal Law. Germany has severely criticised Turkey for this, which is being used as one of the reasons for blocking Turkey's entry into the EU.
§90b	Unconstitutional denigration of the Organs of the Constitution	
§185	"insult"	"insult"
§186	Defamation of character	No distinction between libel and slander.
§187	Defamation with deliberate untruths	No distinction between libel and slander.
§188	Political defamation with increased penalties for offending against paras 186 and 187.	This paragraph constitutes an offence against the decisions of the European Court of Human Rights, which forbids this kind of discrimination..
§189	Denigration of the dead.	
§190	Defamation by means of a non-proven criminal conviction.	
§191	Not used	
§192	"insult" despite proven facts.	
§193	Claim to defamation by rightful interests.	
§194	The Application for a criminal prosecution under these paragraphs	

§195	Not used	
§196	Not used	
§197	Not used	
§198	Not used	
§199	Exchange of verbal abuse.	
§200	Proclamation of court judgements.	

The memorandum of the Commission on Security and Cooperation in Europe volume 35 No 12 of May 24, 2002 contains the following statement:

***"Criminal defamation and "insult" laws are often defended as necessary to prevent alleged abuses of freedom of expression. They are not, however, consistent with OSCE norms and their use constitutes an infringement on the fundamental right to free speech".***

Germany not only holds and cherishes such laws, but also drives them, in their application, to excess. This infantile cult of honor is symptomatic of a backward state and of the immaturity of its stateswomen and statesmen.

### ***The Significance for the Citizen.***

„Why should laws, which were considered in 1927 - quite rightly - to be a waste of time, be driven with such ferocity in 2005 ? The answer lies perhaps in the letter, which Attorney X wrote on 11.01.2001. A relevant extract is set out below:

***"According to the jurisdiction of the Supreme Constitutional Court, just about anything goes. On could even say critically, that good taste and decency are being sacrificed, in the interests of freedom of expression, artistic effect and that sort of thing. However, this has to be, if dictatorship and censorship are to be avoided."***

***According to the jurisdiction of the lower courts, from magistrates', district and regional courts up to the Federal Court, the citizen catches it in the neck as soon as he expresses an opinion forcefully. These courts do not care, what the Supreme Constitutional Court's jurisdiction says.***

***These courts know that access to the Supreme Constitutional Court is practically barred for the normal citizen. There is generally a wait of more than 5 years until a hearing can take place.***

„What Attorney X is saying, is that in the majority of cases of "insult", justice is regularly perverted by the lower courts. ( In case this can be proved, German judges can generally - uniquely in the world - plead "Rechtsblindheit"- legal blindness - or even "perversion by oversight" ). Such cases generally do not come before court, making perversion of justice the near perfect crime in Germany.

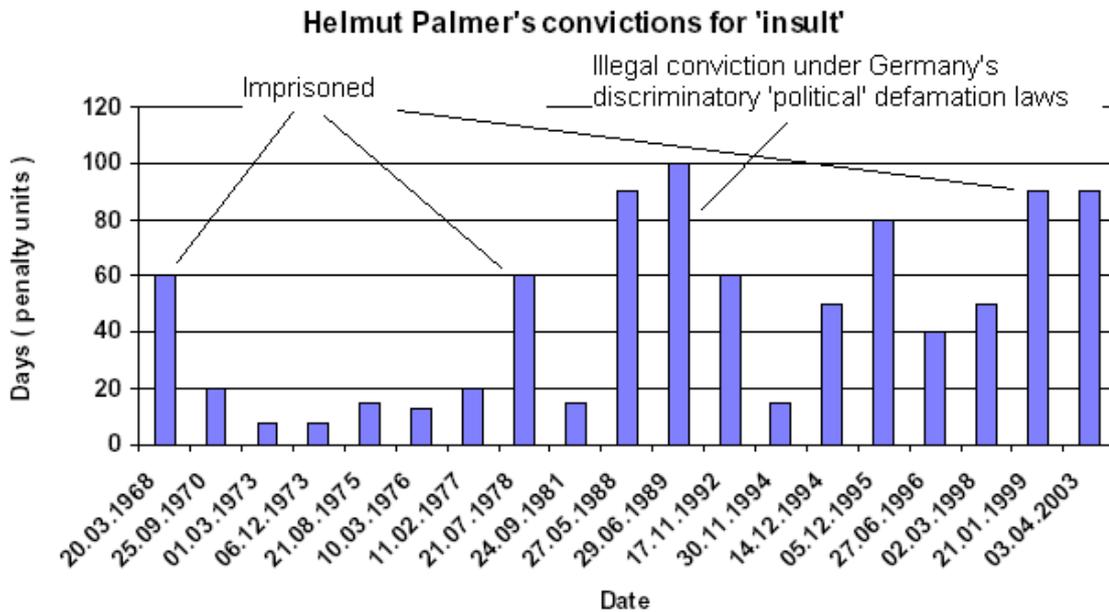
The laws on "insult" can be very useful for irregular elements in the administration, justice and industry for the purpose of entrapping a citizen, who has his own views on their doings. As soon as he reacts to a provocation with a forceful expression, then they have him. In a "pervertible" justice that is all that is necessary to settle matters to the satisfaction of everyone, except, of course, the victim.

### ***The Case of Helmut Palmer***

Helmut Palmer, who died in 2004, was of mixed Aryan and Jewish parentage. He had to put up with the taunts of his contemporaries as a child and this could have influenced his attitude to the procedures of the authorities in which he saw the still present Nazi mentality. At least in the matter "insult" it would be possible to say that he was right. The following diagram shows Palmer's convictions



for "insult"



„It is of interest that Mr. Palmer was imprisoned three times for these offences. In one case the paragraph prescribing stiffer penalties for "insult" of people in political life was used against him, although a ruling by the European Court of Human Rights makes this illegal.

### ***Dr. Michael Naumann***



Dr. Michael Nauman is a former Minister of Culture and Media in the government under Gerhard Schröder. Up to 2004 he was the Chief Editor of "Zeit", the weekly newspaper. At the time of writing, Naumann commands a clear majority in his party (SPD) for the Hamburg State Election in 2008.

In 2004 Naumann had to pay EUR 9000 for "insulting" the Berlin Attorney-General Dr. Hansjürgen Karge in a hosted television show (NTV). Now Karge is a controversial figure who, according to the respected journalist and former prosecutor Heribert Prantl, once said that there would be "not enough arrests" and that "in the justice there would be too much talking". On taking office, he compared himself to the "captain of a battle cruiser" who would cut his way through "the expert evidence circus". Probably with such talk in mind, the Senate decided on 29. Aug. 2002 to relieve Karge of his duties. Karge, however, fought the decision before the administrative court and won on a technicality. ( With effect from 31. May 2006 he finally retired ).

With this background in mind, Dr. Naumann referred to Karge as "durchgeknallt" (= wacky) during the interview. Karge filed criminal charges and the courts of Berlin, apparently with nothing better to do, than to wipe the tears from the Attorney-General's eyes, prosecuted Naumann. The irony of the story is, that before the trial Dr. Karge was virtually unknown outside Berlin, but after it, everyone throughout the republic knew what kind of an Attorney-General Naumann had been talking about.

### ***Dissident Attorney Claus Plantiko***

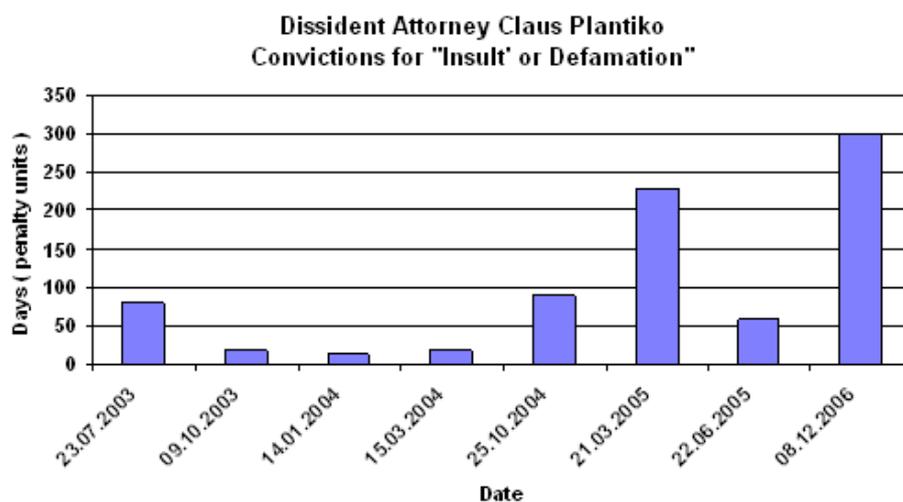


In the case of the dissident attorney, Claus Plantiko - if you believe how the press interprets it - he insulted judges in court ("Richterbeleidigung"). There is, however, no such offence in German law: Judges do not have any special protection against "insult". As in most other countries disruptive behavior before court is punishable.

Mr. Plantiko is campaigning for the partitioning of the judicial and the executive power, with judges being elected for life by popular vote. This he sees as a safeguard for judicial independence. For this purpose, he uses court hearings to point out the failings

█ of the present party quota system for the election of judges and the resulting influence on judiciaries. Occasionally, he uses quite drastic comparisons to make his point, which the Justice authorities seize upon to discipline him. For this purpose, disruptive behavior would be difficult to prove and the resulting scale of available punishments would, in any case, be seen as inadequate. As a result they use the old German "evergreen" and charge him with "insult" - The lower courts can always find the ingredients of an offence, whether this is legal or not..

A principle attached to the infantile cult of honor has it, "I am indignant, therefore, the man must be punished for what he is saying". If you have the right connections you do not actually have to produce evidence in support of this: German courts will always oblige - if necessary, with perversion of justice. If you are lucky, you can suitably intimidate the "insulter", so that he will not turn to the higher courts. The least you can do is perform "injustice by sampling" and wait. By the time that the case has been through all the necessary stages up to a hearing by the Supreme Constitutional Court - about 5 years - all kinds of things can happen: E.g the victim could give up, could collect another string of convictions or could be interned in a psychiatric hospital. At the moment, all kinds of attempts are being made to drag Plantiko to a psychiatric specialist, so that he can be struck off the list of attorneys.



Plantiko's convictions for "insult" since 2003 can be seen in the above curves. The last punishment of 300 day's pay, was on 08.12.2006 - it should be noted that 90 days are sufficient for the entry of a conviction in criminal records. This last case was the subject of an appeal procedure before the District Court in Bonn on 09.03.2007. It was, as is frequently the case in Germany, a very primitive affair. There was the by now traditional disrobing of Plantiko ( which he says is illegal ) as he was not supposed to have been there in his capacity as an attorney, as German courts see it. As he opened his mouth to say that he had applications to make, the judge, named Eugen Schwill, a chairman of the court, said that no applications would be allowed and that the defendant should sit down. Schwill read from the files and rebuked Plantiko for several "insults" in previous cases. ***He also rebuked Plantiko for attacking the justice structure. In Germany this would be the best, as the number of files lying here on the desk would prove. Anyone seeking justice in Germany would find more Laws and ways to a solution, than in any other country.*** ( Ed: One must only read the foregoing paragraphs to contradict this assertion. The Author, as a foreigner, has experienced much better quality of justice in other countries.)

In the discussion on Judge Fühling ( previous case ), the defence recapitulated that Plantiko had begun a sentence, ***"The parallels to the special courts of Stalin and Hitler ..."***, which Fühling had cut off, confiscated the script, which Plantiko had been using and had read and recorded it for himself. Attorney Plantiko stated that a witness from the public gallery, who was present, could confirm this in evidence. ***"The court will decide, which witnesses to call"*** said Schwill and did not call the witness. (Ed. Certainly what Schwill said was right, but only after examining the witness for his suitability, which he neglected to do.)

Now Plantiko sensed that Schwill wanted to put him in prison ( a fact, which Schwill later confirmed ), so he

withdrew his appeal, with the agreement of the prosecutor, in the court recess.

As one of the 30 members of the public remarked on a case of "perversion of justice", Schwill tried to clear the court for questioning of the culprit, unsuccessfully at first. As his order was not heeded immediately, he called the assembled public "**complete idiots**" and called the armed watch personnel to forcibly evacuate the building. The questioning of the member of the public, did not produce any charges.

## Remarks on the Hearing of 09.03.07

The judicial calmness and eloquence which are part and parcel of court proceedings in other countries are generally lacking in Germany. A judge like Eugen Schwill, who conducts court hearings in the manner of that of the 09.03.2007, certainly does not belong on the bench. The failure to hear a material witness, without even a preliminary examination, is behaviour which falls into categories other than merely a lack of courtroom manners. It is almost unbelievable that this man, who had just tried a case of "insult", should call members of the public "**complete idiots**". (Several members of the public have filed criminal charges against Schwill for "insult").

## Concluding Remarks

As can be seen above approximately 20% of all criminal court cases have to do with "insult" ( about 180.000 ). It is a mystery, why the German law makers hang on to these laws, which were regarded in 1927 as a complete waste of time. Doing away with them would result in a saving of 20% of criminal cases and release capacity for other purposes. Instead they are prepared to be subjected to the OSCE disapproval as well as universal derision for their immaturity.

In view of the unmistakable jurisdiction of the Supreme Constitutional Court, it is reasonable to assume that the majority of convictions ( about 60-70% ) are the result of either perversion of justice or judicial incompetence. The search warrants issued in cases of "insult" as well as the DNA tests ( about 1400 according to "Spiegel" ) carried out, would complete the picture of a complete persiflage of justice, if it were not such a waste of effort. The German authorities are also misleading their allies with their phantom criminal records. Nobody abroad will be able to differentiate between childishness and serious offences: They are all convictions, which in these days of heightened security could present difficulties with the immigration authorities at airports - and all maybe just for the words e.g. "cop", "asshole" or "wacky" at some time.

It is abundantly clear that the NGOs must do more to raise awareness abroad to the quality of German Justice. This will take place in a first phase soon. Secondly, the NGOs will need their own limited criminal records, which will be a correction of those of the German authorities, e.g. for potential employers. The task is, however, enormous: Alone for "insult" there would be upwards of 100.000 entries, which would exceed the capacity of the NGOs, particularly as it is not just a question of entering in records, but of a careful consideration of the procedures used. A bulk statement would have to be substituted in such cases, which will need careful wording. Thirdly the application of quality management (QM) to leading aspects of German Justice is running as a project.

peter briody

"institut voigt"

20.07.2007 ( Revised 09.07.2008)