The Protagonists of an infantile Cult of Honor (pdf Version)

Defamation Laws and Press Freedom in Germany

1. Introduction

1.1. The Basis for this Paper

1.1.1. The upwards trend in the cases of "defamation" in Germany continues unabated, reaching an astounding world-beating figure of 200.827 investigated cases for 2009. Whilst this trend, as merely a continuation of that, which has been observed over some years, was to be expected, there are some additional aspects, which need more discussion. An update on previous reports by the author [1] and [2] is, therefore, being provided. An overview of the international situation regarding defamation is provided by Walter Keim [17]. Since, for example, Great Britain has now abolished her laws on defamation and France as well as Ireland have undertaken to do the same, this overview may be out of date, as far as some specific countries are concerned. It demonstrates adequately, however, how far Germany is becoming isolated in the international community, as a state clinging desperately to such laws.

1.1.2. Whilst "defamation" is, according to German law, a criminal offense, it has proved in practice to be open to grave judicial abuse, as demonstrated in previous papers [1] and [2]. The list below shows some of the better known misuses:

- It is used to keep the free press under control
- It is used against political adversaries
- It is used according to the "Doctrine of Excess"
- The practice of "Injustice by Sampling".

1.1.3. This paper updates the situation as far as possible and deals with the list of points in para 1.1.2.

2. The Updated Statistics

2.1. The yearly Statistics

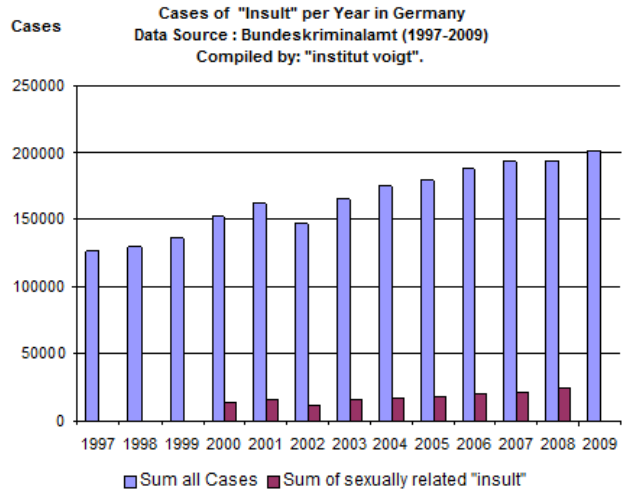


Fig. 2.1. The annual Trends in the Number of investigated Cases of Defamation

2.1.1. The cases shown in Fig. 2.1 represent investigated cases only. There are no derivable statistics, in the official GENESIS database, on how many of these cases result in convictions, because they are packaged together with all the offenses against the person, including e.g. "Assault and Battery". According to the Federal Justice Ministry the actual convictions amount to about 30.000 per year. However, in the author's experience, the overwhelming majority of the cases result in a sanction of some kind. If it should not be a criminal conviction, then very often the case will be dropped against a payment of a sum of money to a known charity. The figures for sexual molestation were not available for 2009 at the time of writing.

2.1.2. How many cases are dropped in exchange for charitable donations is still unknown. However, since even judiciaries have to base their establishments on work figures, these values must be known to the state, but not published. According to the Federal Statistics Office, there were 1.1 million convictions for criminal offenses in 2007. At the moment, the sum of all sanctioned cases of Insult would, therefore, amount to about **18-20%** of all criminal convictions in any given year.

3. Keeping the Press under Control

3.1. Behavior Model for the local Press

3.1.1. A behavior model for the local press in Germany is not difficult to construct. It is characterized by deference or outright servility towards the authorities as well as a lack of controversy or contrast in its reporting. Whilst there are exceptions to this rule, these are so rare as to be negligible. The laws against insult are a powerful influence here. The following report on the ICEUS study of the "Hohmann Affair" reveals most of that which is typical.

3.2. The ICEUS 2004 Report

3.2.1

Fig 3.2.1. Part of the Campus of the University of Applied Science in Fulda. Photo: Karol Paul Bok

The University of Applied Science in Fulda runs a master degree course which they call "Inter cultural Exchange and European Studies" (ICEUS). In 2003/2004. In the wake of the Hohmann Affair, they published a 221 page study report report entitled, "The Hohmann Affair and the role of the Media". This report [15] contains a wealth of factual information, of which, only a part was utilized in the analytic sections.

Martin Hohmann was, up to the elections in 2004, a Member of the Federal Parliament, and a former Mayor of Neuhof in Hesse. Known for his right wing Christian fundamentalist views, which he shared with many others, he did not really stand out. On German Unity Day, on 3rd October 2003, however, he suddenly broke the sound barrier, with a speech entitled "Justice for Germany" before the community of Neuhof. (The Speech has been classed as anti-semitic even, somewhat late in the day, by Hohmann's former party, the CDU.) The CDU in Neuhof, however, loyally published the speech on its website, the following day.

3.2.2. The local paper, the "Fuldaer Zeitung", was present at the speech on the 03.10.2003 and reported on it on the 04.10.2003. According to the ICEUS report (P. 191), the controversial passages in Hohmann's speech were omitted from the article. It can be safely assumed, however, that the full text had been made available to the press. It was, after all, a prepared speech.

3.2.3. The local press had thus - so far - fulfilled its traditional role, which the mainstream Germans sarcastically describe as "Hofberichterstattung" (= Royal Palace Reporting). In another equally sarcastic version, they refer to the local press as the reporters for the "Karnickelverein" (= Rabbit Breeders Association). Unfortunately for those involved in the cover-up, a survivor of the concentration camp in Theresienstadt, a woman living in the USA, had stumbled on the text of the speech on the Internet. Thereupon, she informed "Hessischer Rundfunk", the radio station in Hesse, which reacted on 30.10.2003 with a full report of the facts, thus breaking the scandal, which subsequently acquired a momentum of its own. The CDU, Hohmann's party at the time, which had been loyally rejecting calls for his expulsion from the party up to the 10.11.2003, made an embarrassing u-turn on the 11.11.2003 and acquiesced to the demand. Hohmann has, in the meantime, been expelled from the party and he is no longer an MP.

3.3. Press Censorship though "Exemplary Triviality"

3.3.1. The ICEUS report, contains multiple aspects, of which only its role as a confirmation of the local press model is being considered here. Anyone wanting information on corruption or political scandals will have to concentrate on what is not being said at local level or learn to "read between the lines", as once did the Soviet citizens reading "Pravda". This is brought about by the atmosphere of mistrust in which the free press has to operate. Here, the defamation laws as well as the excess to which they are used in Germany, play an important part in this disgraceful suppression of free speech. Censorship is the order of the day with th local press. It is not immediately apparent but manifests itself in several forms. Germany's laws against defamation are the most visible form of censorship, which are or were also in force in other lands, notably France, Great Britain and the Republic of Ireland. In the three countries mentioned there have been only a negligibly small number of cases recorded in recent years. By contrast, the "Doctrine of Excess" (see section 5 below), generates over 200.000 cases per year. These include the "peanuts cases", which Erich Schwinge referred to in 1927[1] as:

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

Erich Schwinge was, by no means, a shining example as a judiciary, but he hit the nail on the head here. However, he overlooked the effects on press freedom, as experienced today, otherwise he would probably have welcomed these paragraphs, as a later Nazi judiciary. The excessive interpretation of defamation is also a signal to journalists "look here, if we can interpret the law as we like it, you had better be careful what you say". The more critical aspects of insult, such as libel, are subtly covered by such "exemplary triviality".

3.4. Press Freedom and secret Defamation Trials

3.4.1. In [2], the legitimacy of the "Strafbefehl" the "Summary Penalty Order" (SPO), was analyzed, concluding that, as a court verdict, it does not fulfill the public right to information under Art. 6 of the European Convention for Human Rights. The "Dresdner Bank Affair" of 1999, where bank managers were allowed to draw lots on an SPO, containing a fine of 47 million marks (= 23 Million EURO) was quoted as a spectacular case. It was a trial in secret, where neither the public nor the press were properly informed.

3.4.2. The Committee of Minsters of the Council of Europe adopted a resolution on 10.07.2003 [7] containing recommendations to member states on press reporting on criminal proceedings. In particular:

> *"Principle 1 - Information of the public via the media*
>
> *The public must be able to receive information about the activities of judicial authorities and police services through the media. Therefore,*

journalists must be able to freely report and comment on the functioning of the criminal justice system, ...

Principle 12 - Admission of journalists

Journalists should be admitted to public court hearings and public pronouncements of judgements without discrimination and without prior accreditation requirements. They should not be excluded from court hearings, unless and as far as the public is excluded in accordance with Article 6 of the Convention."

The cases of defamation are normally, in the first place, dealt with by SPO, in Germany. This enables the justice to practice "injustice by sampling" as explained in para. 6.1.1. Such secret defamation trials are neither, with respect to the Convention, in any way legitimate nor do they comply with the above principles.

3.5. The "Kölnische Rundschau" and the white Roses

3.5.1. At the trial of dissident attorney Claus Plantiko [1], there was a substantial protesting public, using a white rose as its symbol. The "White Rose" was a student's resistance movement against Hitler in the 40s and many of the protesters, rightly or wrongly, saw in Claus Plantiko's campaign much that is equivalent. The "Kölnische Rundschau" (=Cologne Daily) newspaper reported, "*Amongst the public there were protests against the the verdict as well as praise for the fair process. And even two white roses for the judge"*.

Grammatically, this statement is ambiguous, but packaged in that sequence, it gives the impression, that the judge had received two white roses for conducting a fair process. This was, of course, certainly not intended by the protesters. The use of an orphaned sentence (beginning with "And") was hardly professional work and it seems incredible that a journalist could make such a mistake. The impression of "Royal Palace Reporting" was compounded, when the Paper refused to publish a reader's letter correcting the report on the grounds that the content had been "insulting".

3.5.2. The matter of the reporting by the *"*Kölnische Rundschau*"* was the subject of a complaint on the 11. December 2006 to the Press Council. The complaint was thrown out. After a little more research, the complainant discovered that a member of the Council was a member of the same concern, in which "Kölnische Rundschau" resides. So much for the Press Council in Germany.

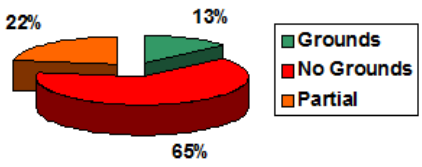
3.6. Concluding the "Wacky" Case

3.6.1. Michael Naumann, then the owner of "Die Zeit", a weekly German newspaper, was convicted in 2004 of insult. He had referred to the Attorney General in Berlin as "durchgeknallt" (= wacky) in a television talk show[1]. Now 5 years later, he finally got acquitted by the Federal Constitutional Court (FCC) in Karlsruhe. Whilst most people, outside Germany, would find the the thought of so many grown-up people, busying themselves with the notion "wacky", more than a little hilarious, there are wider implications: Many believe the Naumann case to be "window dressing" and, indeed, there is much justification for this. Looking at the figures below, we see an overall 87% denial of due process by the FCC in 2009. For every case properly heard, 4-5 are thrown out arbitrarily. Roughly the same proportions could probably be read across to defamation.

Fig. 3.5.1. Michael Naumann, Photo: Karin Rocholl

3.6.2.

Fig. 3.6.2. Denial of due Process by the Federal Constitutional Court 2009 Source: FCC. Compiled: "institut voigt"



The pie chart shows that only 13% (782) of all cases recorded in 2009 were properly heard at all by the FCC. This means that **87%** are denied due process. This is not a measure of the "success" of a constitutional complaint, rather the grant of due process in its consideration. There was a 65% (3733) share of the cases arbitrarily dismissed without any reason as well as 22% (1294) dismissed with "partial justification", so-called "Tenorbegründung". The partial justification is considered worse than no justification at all, since it enables arbitrariness in the guise of legality. No doubt German judiciaries would define "Tenorbegründung" as "damned nearly a hearing". Since no sane person inside or outside Germany would understand what this means, it is considered to be also denial of due process. The 13% of cases properly heard yield an adequate possibility to "window dress" cases for propaganda purposes

These statistics show, to what extent the constitution contains only hypothetical rights, which are, in practice, for the normal German citizen, completely unattainable. It also shows how the German judiciaries license perversion of justice, since there is virtually no recourse to any remedies.

4. The political Nature of the Laws against Defamation

4.1. The political Factor

4.1.1. Political meddling has been a disease of German judiciaries since at least the pre-Bismark days. This tradition still holds today at all levels. A judiciary in the local court in Recklinghausen, for example, was a politician, until recently, holding about 15 political or commercial offices. The president of the District Court in Stuttgart is a member of the supervisory board of a commercial foundation, which makes it its business to recruit its very own own judiciaries. At the top of the tree, 3

Judges of the FCC, all card carrying members of political parties, including the president, gave political speeches in 2009 to party gatherings. In one of his most recent public utterings, in a newspaper interview, Prof. Dr. Papier, FCC President, spoke out against the plebiscite as an instrument of democracy. (He could, of course, be tasked in his official capacity to make a judicial ruling on matters associated with plebiscites.That bothers nobody in Germany, least of all, apparently, Prof. Papier himself). While he is busying himself with politics, the FCC is falling apart, as the statistics in Fig. 3.4.2 demonstrate. In Great Britain and many other countries these people would face instant dismissal for their political activities. The British "Guide to Judicial Conduct"[10], Para 3.3, reads:

> *"A specific application of that principle is that a judge must forego any kind of political activity and on appointment sever all ties with political parties. An appearance of continuing ties such as might occur by attendance at political gatherings, political fundraising events or through contribution to apolitical party, should be avoided. "*

Even though Germany does not have such clauses regulating political activities, one would hope that judiciaries would have the right instincts for such things and a sense of propriety. The fact they they do not, reflects on the extremely poor quality of very many of Germany's judiciaries.

4.1.2 The interdependency of the judicative, legislative and executive in Germany is a fact often denied by representatives of these three elements of state, but is formally demonstrated by the party quota selection basis for judiciaries in Germany, at the very least. The resulting networks are breeding grounds for corruption and malfeasance, which are known collectively as the the "Swamp" in colloquial German.

4.2. Defamation as a political Crime

4.2.1. Germany has a lot of reasons for maintaining laws against defamation and none of these are good. "Defamation", for example, is a good way of dealing with political adversaries. It is quite easy to provoke them and then interpret what they say, in reply, as defamation. The profiles of the cases of Claus Plantiko and Helmut Palmer[1] have the appearance of such systematic campaigns. Taking Claus Plantiko, the dissident attorney, the Cologne Chamber of Attorneys described him in 2002 as a "Querulant" and and ordered him to visit a named psychiatrist, at his own expense, to determine his fitness to continue in his profession. Fearing the "chumminess" between experts and their tasking agencies, as well as the poor work quality[4] of the experts themselves, Plantiko refused to comply. Immediately afterwards, a train of convictions[1] for defamation followed. Such convictions have the effect of discrediting a person and would certainly have helped the Cologne Chamber of Attorneys in their efforts to brand him with psychiatric disorders.

4.2.2. The case of Helmut Palmer[1] shows largely the same pattern, but includes another interesting aspect, para 188 of the Criminal Code which prescribes extra penalties for the defamation of "important" personalities. The European Court of Human Rights forbade this type of discrimination in its Judgment [5](*Application no. 9815/82)* of 08.07.86. Three years later the, Federal Republic of Germany was still using this principle[1], as shown by Helmut Palmer's conviction on 29.06.89 under the predecessor paragraph. Germany was thus, as usual, in contempt of the European Court. On 14.10.2004 she formalized this contempt by derogating the European Convention of Human Rights altogether in her FCC Judgment [6]. This international offense by Germany is regularly covered by falsehoods and relativism in Government statements.

5. The "Doctrine of Excess"

5.1. The Application to Defamation Cases.

5.1.1. The statistics in Fig. 2.1. are clearly part of the "Doctrine of Excess "(DoE) since effectively it represents nearly 18-20% of all criminal cases punished. Even if one accepts the government conviction figures, it is still excessive. Even when Great Britain had defamation laws, they were hardly ever used. For example, there was one case in 2005 which compared with 180.000 in Germany.

5.1.2. The persistence and extent to which the justice system in Germany prosecutes defamation cases is quite breathtaking, and against which, no adult arguments have any effect. As far as we can determine, Germany has the doubtful honor of being the undisputed leader in Europe in the field. The arguments for the laws are put forward in all seriousness in [9] as justification. The basis of defamation, as put forward, is the "Ehrverletzung" (=wounding of honor), which is difficult to translate in modern terms, because German law has an anachronistic understanding of the word. "Ehrverletzung" was a notion for combat between knights, dueling - and comic operas.

5.1.3. According to [9] almost anything can be interpreted as an defamation. For example to describe an airline pilot as a "bus driver" or to wish an opponent in an argument "all the best for a speedy recovery" can be punishable under perverted German law. Standard expressions, such as "Depp"(=Dolt), "Bulle"(=cop) are included in the "rationale". Such epithets, are certainly not defamations but could be so defined in the elastic paragraphs. Such elastic paragraphs rely, in other countries, that value the rule of law, on the good sense of prosecutors and judiciaries for their application.

Recent cases, that somehow evaded the the 87% mark of the constitutional court, and were heard (see 3.6.2.), were "Dummschwätzer" (=blatherer) and "Durchgeknallt"(=wacky. See 3.6.1.). The thought of so many adults, taking "blatherer" and "wacky" so deadly seriously, is quite hilarious, on the one hand, the doctrine of excess, that lies behind it, is quite another matter. Bearing in mind Germany's history, stretching back to the days before the German Reich, the persistence of the doctrine of excess is quite a chilling notion.

5.2. The Beneficiaries of the Doctrine of Excess.

5.2.1. Defamation is only prosecuted on application. If the DA's office considers that it is in the public interest then the case will be prosecuted. Experience has shown that the beneficiaries of this "service" fall mainly into one or more of the following main categories:

- Officials or those performing official tasks.
- Private persons
- Persons holding an important position in public life or industry

5.2.2. The category "Official" includes people who take themselves more seriously than the quality of their performance in their pubic duties. Experience shows that the defamations come mostly from exasperation at the incompetence and the arrogance of office. In some cases, there lies systematic provocation behind the action. Private persons have to submit in person an application to prosecute within a given deadline. Officials, however, are treated differently and enjoy special protection against defamation and criticism. This finds expression in the method of submission of the application to prosecute. The application, in such cases, comes from the superior of the alegedly defamed official, which underscores his or her special status. The president of the District Court Zweibrücken, for example, saw it as her "welfare duty" to raise such an application for her subordinate judiciary, whom a litigant had accused, by letter, of a "pathetic display of incompetence".

5.2.3. It is very much a different story, if the application comes from private persons, who do not belong to the "swamp" (see 4.1.2.) structures. In the case of Claus Plantiko[1], the presiding judiciary used invective against assembled members of the public and referred to them as "Vollidioten"(=complete idiots). Applications for prosecution of this man went unheeded. If, on the other hand, the private person is a member of the "chummy" structures, the "chums" go into action. A third variant is the submission of an application by a private person against a political opponent of the structures. That invariably brings results.

5.2.4. The third category, the beneficiaries of paragraph 188 (see 4.2.2.). These people are protected with increased penalties for defamation. However, the Judgment of the European Court of Human Rights of July 1986 says quite the opposite:

> *"The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance. No doubt Article 10 para. 2 (art. 10-2) enables the reputation of others - that is to say, of all individuals - to be protected, and this protection extends to politicians too, even when they are not acting in their private capacity; but in such cases the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues.*"

This bothers no judiciary in Germany. The Federal Constitutional Court unilaterally abolished the European Convention of Human Rights for Germany on the 14.10.2004, anyway [6] (Bookmark 18).

5.3. The "Osterhase" Searches

5.3.1. Included in the Doctrine of Excess are the so-called "Osterhase" (=Easter Hare) searches. The easter hare is a basically a children's game, in which the children go searching for chocolate eggs, hidden by grown-ups for Easter Sunday. Many German judiciaries are prepared to order an "Osterhase" search of a person's apartment in order to obtain evidence to prove defamation. There is no balancing between the right to privacy and the seriousness of the crime in Germany. This is another indication, of how hypothetical the rights listed in the basic law as well as the European Convention for Human Rights are and just how unattainable they are.

6. Injustice by Sampling

6.1. Hand in Hand with the Summary Penalty Order(SPO)

6.1.1. 
Fig. 6.1.1 Injustice by Sampling Model Click to Enlarge

In order to pursue a "Doctrine of Excess" [2] , of which "injustice by sampling" (IBS) is a part, it is necessary to make use of some defects of the justice system. Fig. 5.1.1 shows the model which is most often used. In this case the Summary Penalty Order(SPO) is usually applied. The SPO was discussed in [2].

Steps 1 and 2 are routine. If the accused opts for self-defense, he will generally be refused insight into the prosecution files. If he knows what is in §147 of the Rules of Procedure, he can apply for an extract, not a summary, of evidence. No prosecutor in Germany takes his burden of production seriously.

If the accused has an attorney, step 4 works in most cases, and the attorney can view the evidence. The way is then clear for the issue of the SPO, which the judge in step 6, of course, signs without even looking,

The SPO is a "try on", and forms the fist stage of IBS. (Naumann, see para 3.6.1.ff, also received an SPO). If the accused has been sufficiently intimidated he will accept it. The SPO is final in two weeks (step 9), if no objection is registered. If the penalty is set at more than 90 day units, then a conviction is also centrally recorded. At that stage, the IBS is complete and, in the majority of cases, successful. Thus irregular justice (IJ) has been accomplished without the embarrassment of a trial which public and press might have attended.

If the accused does not accept the SPO then the court may offer to drop the case in exchange for a donation to a recognized charity. This is, of course, not quite what IJ would want, but is nevertheless, a success for IBS. If the accused does not agree, or this step is omitted, then the case goes for trial (step 8). In most cases the same judiciary who signed the SPO will preside over the trial. They consider this to be perfectly in order in Germany, in other countries, it is a serious breech of the rule of law. Since there is no rule of law in Germany, it is logical that nobody could be accused if its breech.

Since probably none of the over 200.000 cases per year would hold water at the ECtHR, the whole procedure constitutes IBS. The question is, how quickly can the injustice be achieved?. Steps 11, 12 and 14 will produce the desired results. Acquittals are rare at this stage.

The further stages of the injustice-by-sampling procedure are based on assumptions: The first being, that after the first instance, the accused will make mistakes somewhere in the higher instances and the matter will become final. (In his critical book [8] Rolf Bossi, an attorney, explains some of the tricks employed by judiciaries to ensure this.). There exists the possibility of submitting a constitutional complaint. In this case, if he is not an important person, like Michael Naumann, the chances are 87% that the case will be thrown out arbitrarily, without a hearing (see Fig. 3.6.2).

6.1.2. There are other factors of misuse and many would also apply to cases other than defamation. One of the most notorious is the handling of the prosecution files. The presiding judiciary, if the case goes to trial, usually comes into the courtroom with a file under his arm. This file will invariably contain information prejudicial to the accused, including an extract from criminal records. This custom is also in force in some other countries. However, in the countries where there is any due regard for the rule of law, there are regulations governing the issue of files to judiciaries. These regulations lay down the circumstances under which the president of a court can view the files in advance, how such evidence, as is documented in the files, is to be evaluated, what evidence is to be discarded etc. Under no circumstances is viewing of evidence, which the accused has not been given the chance to see, permissible. The presence of hearsay evidence on the files cannot be regulated because there is, otherwise, no regulation governing this type of evidence. In GB, for example, this is regulated by the Civil Evidence Act[11] and The Criminal Procedure Rules (Part 34) [11] . Nobody cares about such things in Germany.

It is quite likely, that the file is important for a judge, because of deficiencies and omissions in the presentation of the prosecution case. Ambush prosecutions (and ambush defenses) are the order of the day, without anybody apparently noticing. To cap it all, the verdict and sentencing phases are run concurrently, causing a mass pile-up of vital justice principles, which the judiciaries fumble and fudge until it fits, like a right handed glove on the left hand.

Since the average German citizen is becoming more aware of the European Convention for Human Rights, and how this is being violated by the judiciaries in Germany, an upward trend in the number of complaints to the European Court of Human Rights can be expected. The German authorities will know, however, just how to selectivly deal with these. They control the registries for dealing with complaints from Germany as well as the translation of the selected enlosures on the files.

7. The Interdependencies and the Chilling Effects

7.1. The Interdependency Diagram

7.1.1. For the abuses, highlighted above, to work effectively, it is necessary to have a justice system, which is inherently decrepit and out of control. This is most easily recognizable in the "Injustice by Sampling" method, described in Para 6ff. In a correctly functioning system, it does not work, as was shown in the figures for GB over the years[1] as she had defamation laws but hardly ever made use of them. The same applies to France, which also had these laws and used them somewhat more frequently, but in the hundreds compared to Germany's hundreds of thousands.

It is also necessary to have the "right" mentality to drive the "Doctrine of Excess" to its limits. This is done, of course by ignoring every principle of the rule of law, and also showing contempt for the defunct (in Germany) European Convention of Human Rights.

7.1.2. In order to be able to draw an interdependency diagram, it is necessary to summarize the abuses: The justice system is full of major defects and deficiencies, only some of which are covered in [2] and in this paper. If these shortcomings, which have been encountered, in connection with defamation, are added to the lack of regulation of hearsay evidence in both criminal and civil processes, then we have the following list:

- The abolition of the European Convention for Human Rights since 2004 (4.2.2)
- No separation of verdict and sentencing phases in criminal trials. (5.1.2).
- Secret trials, made possible by the SPO (3.4.1). This would mean close proximity to Stalinist Russia.
- Ambush prosecutions(5.1.2)
- No regulation of hearsay evidence (5.1.2).
- No safeguards covering judicial impartiality. Most judiciaries are members of political parties and are allowed to take an active part in politics(4.1.1).

Apart from the formal shortcomings, listed above, we have encountered the following "cultural" defects, which are caused by mentality and politicized judiciaries:

- The "Doctrine of Excess" (5. ff)
- Injustice by sampling.(6.ff)
- Suppression of the Free Press by copious cases of "Exemplary Triviality"(3.3.)
- The denial of due process by the Federal Constitutional Court. (3.6.2.).

This list is by no means complete. It reflects only the flaws that were met within the limits of the defamation laws.

7.1.3. The content of 7.1.1 and 7.1.2 can be summarized in the following diagram:

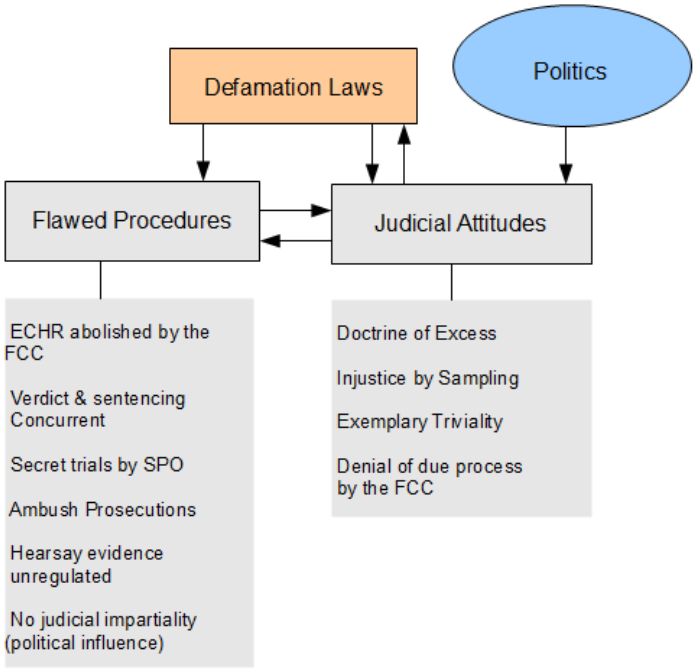


Fig. 6.1.1. The interdependencies.

7.1.4. The interdependency makes clear that abolition of the defamation laws will not stop all the abuses over night, since flawed procedures and judicial attitudes have intersection sets with other areas. However, with 200.000 cases in a year less, it would relieve the Justice authorities of about 20% of their workload. The fact that they do not put a stop to it, indicates how ernestly they cherish these infantile laws.

7.2. The Chilling Effects on the Media and Free Expression

7.2.1. The Organization "Article 19" in a paper entitled "Defining Defamation" [13] refers to the "Chilling Effect" in an exemplary way as:

> *"In many countries, criminal defamation laws are abused by the powerful to limit criticism and to stifle public debate. The threat of harsh criminal sanctions, especially imprisonment, exerts a profound* ***chilling effect*** *on freedom of expression. Such sanctions clearly cannot be justified, particularly in light of the adequacy of non-criminal sanctions in redressing any harm to individuals' reputations. There is always the potential for abuse of criminal defamation laws, even in countries where in general they are applied in a moderate fashion. The illegitimacy of the use of criminal defamation laws to maintain public order, or to protect other public interests, has already been noted. For these reasons, criminal defamation laws should be repealed."*

In Germany, the chilling effect is amplified by "Exemplary Triviality" which is expressed by the cases in the "Wacky" category. The message is quite simple, the authorities are saying "Look, if we can punish you just for referring to someone as 'wacky', just think, what we could do, if you should really criticize someone in office".

7.2.2. In Germany, the chilling effect is less noticeable, the more the media functions in a supra regional environment. For example the "Hessische Runfunk" (=Radio Hesse) covering a complete province , broadcast the full details of the "Hohmann Affair" immediately after they had been contacted by a survivor of the Theresienstadt Concentration Camp. This occurred 27 days after Hohmann's speech, which the local newspaper had reported in true "Royal Palace Reporter" fashion. Had it not been for the outcry, external to Germany, the affair would probably not have been uncovered and Hohmann still in office. The conjunctive of the affair is, however, unfortunately, the more frequent case, so that virtually no information normally gets out at local level. The affair also makes the reporting by the local papers a key factor in discovery, but also shows, how far this is a chilled press area.

Abolition of the defamation laws would probably only have a moderate initial reduction in the chilling effects because the habits of more than about 200 years would be hard to break.

7.2.3. The chilling effect on individual freedom of expression is difficult to define. A lack of experience may mean that the deterrent effects are reduced and a private person may blunder into the trap. The person that used the term "Blatherer" cannot have expected that adult people, all the way up to the FCC, would take the matter so deadly seriously.

Another category is the "Justice Victim", who after years of fighting a justice of the quality reported here, but in other areas, lets fly with a few choice phrases. The justice gratefully prosecutes these individuals since a few convictions can reduce their credibility, especially if they are jailed. Another trick up the sleeve of the justice is the psychiatrization. The manner in which this works is adequately described in [18]. It is very effective, very secret and, because of the appalling quality or workmanship of both the justice and psychiatrists, open to collusion.

Whilst we have a behavior model for justice victims, more work needs to be done on it. The list, which follows, shows some

of the major categories of people who get prosecuted for defamation :

- Political opponents of the system
- Anti-corruption workers
- People who submit complaints against authorities.
- People accused of driving offenses
- Justice victims
- Other categories

Exactly why Michael Naumann was prosecuted, nobody knows. It may have been due to his considerable political activities. No professional prosecutor could possibly have classed "wacky" as defamation and no proper court could have convicted him.

8. Germany Today

8.1. The Germans display their Mentality

8.1.1. The Fall of the Berlin Wall in 1989 showed the world that a dictatorship could be toppled using peaceful means and without anybody getting seriously hurt. Old notions about the blind obedience to authority of German citizens rapidly dissolved. At the latest, the World Cup 2006 showed the world an outward-looking and positive mentality, and that nothing would ever be the same again in Germany. The same outward-looking mentality was apparent in a night of support for Haiti, when more than 20 Million Euro donations were received by "Bild Zeitung" and "ZDF"

8.4. The Mentality confirmed by Surveys

8.4.1.

Fig. 8.4.1. A jubilant Crowd atop the Berlin Wall 10.11.1989: Photo Sue Ream, San Franzisco

The Institute of Demographics, Allensbach, has confirmed in 420.000 interviews, conducted since 1990, a new composure and self-confidence in the German way of thinking. In a presentation by Prof. Dr. Renate Köcher, the Managing Director of the Institute, she reported, that Germans are less interested in ideological debates than they were in the past and concentrate more on factual issues. The nationalistic fringes of politics do not enjoy much support.

Arrogance being unknown, the Germans rather give the impression of an unruffled and self-confident nation. They have become popular in the world, and that is the way they want to keep it, according to the survey.

The move from Bonn to Berlin is seen as the right decision, for Berlin is seen as a radiant city, which is the home of the government. The federal authority is seen as surplacing the federal states in importance. The notion "Berlin Republic" is rapidly gaining acceptance.

The introduction of the Euro is seen as a watershed in contemporary history. Germany is regarded as the economic motor of Europe.

A presentation given by Prof. Köcher to launch the new almanac 2009 can be viewed under [16]. There are many interesting statements to be gathered from the statistics, which are included in the report.

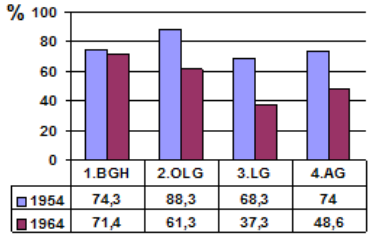
9 The unwanted Influence in today's Germany

9.1. The Tradition of Perversion.

9.1.1. The mentality, which produces over 200.000 defamation cases per year can be traced back to the Prussian Militarism of the19th Century. The situation just before WW1 is described by James W. Gerard, US Ambassador to Germany 1913-1917 [14].

Whilst the Nazi era is often blamed for the qualities of the German justice today, the system was already in place in 1933 for them to take over. The National Socialists were certainly responsible for the bestial perversions, a further development of the Doctrine of Excess, of the system, but not necessarily for its systematic defects.

Fig. 8.1.1 Proportion of former Nazis occupying Positions in 4 levels of Courts in 1954 and 1964
Data Source: FU Berlin Dr. Hubert Rottleuttner
Compiled by: "institut voigt"



	1.BGH	2.OLG	3.LG	4.AG
1954	74,3	88,3	68,3	74
1964	71,4	61,3	37,3	48,6

For the postwar era, the statistics of Fig. 8.1.1 are of special interest. They show the 4 levels of court together with the proportions of ex-Nazi judiciaries occupying positions in them for the years 1954 and 1964. The statistics show an overwhelming majority of these people in the year 1954 and still a significant presence in 1964. The downward trend over the 10 year period is representative of natural wastage.

Nazi judiciaries were not selected by the Nazis because they respected the rule of law, rather on the basis of their willingness to pervert the course of justice. That perversion of the course of justice should become a way of life in postwar Germany, is a fact that need surprise nobody. For example, none of the 160 professional judges and 179 prosecutions who had been active in 5,243 death

sentences, partly for "Hitler Jokes", by the notorious "Volksgerichtshof", was ever put on trial. There is the question of more than 22,000 death sentences passed on members of the Wehrmacht, which were also never prosecuted in postwar Germany.

The present trends in the application of Germany's defamation laws (Fig. 2.1.) are indicative of deeper sicknesses in the system. Comparing these trends to the negligible showing in the statistics of Britain [1], one must conclude that, if Britain can only justify one or two cases, the German figures must represent, for the most part, mass perversion of justice on an unprecedented scale.

9.2. An anachronistic and isolated Mentality

9.2.1. The mentality, which is associated with the Defamation Laws of today (see Fig. 9.1.1), is, as a line of extrapolation stretching back to the years before the founding of the German Reich, when it had other surrogates but essentially the same structures. Germany has never achieved separation of powers and thus the justice is at the mercy of all kinds of irregulars.

The Justice as well as key areas of the administration are largely out of step with German society. Alone the lack of "German Thoroughness" in these areas, is an isolation factor making the mentality different to that found in other areas. The appalling quality of work by the justice and its experts, reported in [4], is another indicator

9.3. Dangerous Resistance

9.3.1. There is, of course, wide-spread resistance to the anachronistic presence in German society. The statistics in Fig. 2.1 indicate that the Doctrine of Excess is creating about 200.000 enemies of the system per year. Unfortunately the resistance consists largely of all the wrong people, resisting for the wrong reasons, for example the Neo-Nazis as well and right- and left-wing radicals. There is also a Fourth Reich Movement, which even pronounces death sentences on the defamation-judiciaries. Those motivated by humanitarian considerations are a very small, almost negilgible, minority in this group. The bottom line is, therefore, a substantial threat to national stability, should any cataclysmic events take place in the future.

10. Summary and Conclusion

10.1. The Restrictions on the Free Press

10.1.2. By no stretch of the imagination does Germany have a free press. Whilst the situation is somewhat better at higher levels, where the media has more commercial independence, these elements cannot cover everything.The important local press is subject to subtle but iron censorship *(see "Exemplary Triviality"* 3.3.).

10.1.3. The model, "Royal Palace Reporting" was confirmed by the ICEUS report. This is the reason why, corruption and nepotism can flourish at communal level in Germany. Because corruption brings economic stability (of a kind), nobody asks questions and transparency is not generally given.

10.1.4. The extensive use of the SPO means that there are secret trials [2] being held in Germany. This in turn means that press and public are denied information from them. Not only that, they are illegal court verdicts signed by a judge, the SPOs, which is e.g. not comparable with traffic tickets since these are limited in scope and not signed by a judge.

10.2. The Justice System

10.2.1. As explained in [3], the German justice system is a fossil dating back to the Prussian Military Dictatorship pre-1873, along with its attitudes and mentalities. The excess to which the defamation laws are applied, is a product of those times. The only difference today is that, of necessity, "Majestätsbeleidigung") (=Defamation of a royal person) has been abolished, only because such people do not exist any more. At the time, it was allowed to cut a person down with a saber, if he or she criticized an officer [3] and was below officer status. Today, the "Doctrine of Excess" (5) silences criticism of those people, who are immature enough not to be able to deal with it. They are mostly people, whose performance in office is, in any case, wanting, to say the least. There are 19 paragraphs[1], covering defamation, to chose from in Criminal Law[1]. This lends enormous flexibility to the modes of abuse.

10.2.2. The application of defamation laws is a very visible sign of the abuses and the lack of integrity which are characteristic of the German Justice System. This means that just abolishing the defamation laws, will go a long way to bringing legal integrity and the confidence in justice, which is so necessary in a civilized society. It will only solve a fraction of the problems, however. Looking at Fig. 6.1.1 we can see why: The mentality of the judiciaries as well as the procedural, defects which appear under defamation, also manifest themselves in all other other areas of the justice system.

Indeed, it is doubtful, whether the "German Justice System" can really qualify for that description: Certainly it is a system of arbitration that occasionally works. Consider, however, litigating against the commercial foundation in the Stuttgart area, where the President of the District Court is also a member of the supervisory board of that same foundation. Consider also any form of litigation in a system infested with political judiciaries, should the litigant not be on the "right" side.

10.2.3. It is really astonishing that the international community should be prepared to cooperate with German justice without knowing, with what they are cooperating. Family courts, for example have "marsupial" characteristics where, particularly, Germany's notorious Jugendamt (Youth Office) is de facto the judge. The quality of the court is mainly determined by the

lack of a regulation on hearsay evidence (5.1.2). These are courts where anything goes and the documentation of the hearings, including the verdicts, is about the same quality as is their tasking of the experts [4].

10.3. The unwanted Mentality

10.3.1. German Judiciaries try to cover up their denial and betrayal of the European Convention for Human Rights. If necessary they will resort to pseudo-judicial verisimilitude to declare black to be really white. A sample of this was given in [4] as the justification for the derogation of the European Convention for Human Rights by the FCC[6] on the 14.10.2004 :

> *"As a result of the status of the European Convention on Human Rights as ordinary statutory law below the level of the constitution, the ECHR was not functionally a higher-ranking court in relation to the courts of the States parties. For this reason, neither in interpreting the European Convention on Human Rights nor in interpreting national fundamental rights could domestic courts be bound by the decisions of the ECHR".*

The kind of argument used here is the necessary relativism attached to their ECHR denial. They relativize the convention to their own hierarchy and then conclude that because it allegedly has a lower ranking, it is not mandatory. Art 46 of the Convention, however, does not tell Germany, how to rank the Convention - nobody outside Germany cares, where they put it in the hierarchy, as long as the decisions of the European Court of Human Rights are obeyed in accordance with Art 46. Germany is, therefore, by reason of her default, not fulfilling her international obligations and at the same time exposing her extreme aversion to anything to do with human rights. As a facade to cover this, she puts up the Federal Constitutional Court (FCC), an impoverished tribunal, which only serves to compound the human rights violations of the lower courts.

10.3.2. The attitudes and mentality shown in the matters of defamation and press freedom are diametrically opposed to those shown by mainstream Germans. They form an isolated culture within German society, which neither sets a good example nor shows any other tendencies other than the need for self-sustainance. It is a parasitic influence, producing oppositions, which contain little humanitarian motivations and increasingly vociferous extremism. The "defamation cult" is thus part of a latent threat to peace and stability, which is only waiting for the right kind of cataclysm to occur and help it to bring the system down.

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Reason: I am the author of this document
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Date: 05/22/10 09:43:26

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01.05.2010

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