

Tragicomedy in the Bavarian Alps

By Lizas Welt

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It is well known that anti-American jokes are in fashion nowadays here in Germany. Whoever, for example, pokes the usual fun at George W. Bush can be more or less sure to have the laughs on his side. And then those “Amis” have such absurd laws: in America, for example, one can sue the tobacco industry for damages if one gets lung cancer from smoking too much. The [average] German just shakes his head, because *that* he finds crazy. When, however, what goes on in his own country is far more bizarre, he barely takes notice. This although hardly anything could surpass the tragicomedy involved in three neo-Nazis who use the phrase “Glory and Honor of the Waffen-SS!” being acquitted of charges of having violated paragraph 86a of the German Criminal Code, which prohibits the “use of symbols of unconstitutional organizations,” while a declared anti-Nazi who wanted to distribute leaflets promoting a talk *against* Nazism and Islamism is found guilty on the very same charge.

The contemplative little German town of Mittenwald is a magnet for tourists from just about all over the world. But it is not only vacationers and sightseers who enjoy coming to Mittenwald. Wehrmacht veterans and former SS men also gather there every year for the last 50 years, usually around the Pentecost, on the backdrop of the Karwendel mountain range. Together with former and current Bundeswehr soldiers, they come as members of the Mountain Troops Association [*Kameradenkreis der Gebirgstruppe*: literally the “Circle of Comrades of the Mountain Troops”] to commemorate their “fallen comrades” at the “Mountain Troops Memorial” that was inaugurated in 1957 at the Hohe Brendten mountain knoll. The crimes committed by mountain troop units in the context of the National Socialist war of extermination and under the pretext of “anti-partisan campaigns” or “retaliatory actions” have never yet been a topic at these reunions: neither the over 50 massacres committed in Greece, Italy, France, Finland, Yugoslavia, Poland, Albania and the Soviet Union; nor the murder of 317 civilians in the Greek village of Kommeno; nor the slaughter of over 4000 unarmed Italian troops at Kefalonia, an island near Corfu.

But since 2002, the traditional meetings of the “circle of comrades” at least do not come off as smoothly as before. For starting in that year, a “[Work Group on Assailable Tradition](http://www.nadir.org/nadir/kampagnen/mittenwald/)” [http://www.nadir.org/nadir/kampagnen/mittenwald/] [this and all subsequent links in German] organizes protests against the reunions of the German heroes, if albeit frequently under difficult conditions. In Mittenwald, you see, one is less put off by the yearly nostalgia-fests of the National Socialist war criminals than by the demonstrations

of those who refuse to let such meetings take place undisturbed. Again and again, demonstrators have been arrested and prosecuted, while the friends of the mountain troops are left unmolested. In 2002, for example, the public prosecutor's office shelved [a case against two Austrian WWII veterans](http://www.merkur-online.de/regionenalt/gap/art47,49642.html?fCMS=399eb82322cb018eaf67dd2f16d924a3) [http://www.merkur-online.de/regionenalt/gap/art47,49642.html?fCMS=399eb82322cb018eaf67dd2f16d924a3] who had worn medals with swastikas during the reunion of the "comrades" in Mittenwald. The prosecutor's office cited the case's "triviality" as justification. And in summer of last year, [someone who has significantly more to show for himself](http://www.indynews.net/gegenrechts0/article/2272/978/e05050e67e/) [http://www.indynews.net/gegenrechts0/article/2272/978/e05050e67e/] than the medal-wearers likewise got away with a suspended prosecution: in 1943, Ottmar Mühlhauser assembled the commando group and ordered the shooting of the above-mentioned 4000 captured Italian soldiers and officers on Kefalonia. But apparently this is not of any importance for the Munich Public Prosecutors Office, on whose reckoning the crime committed by the Wehrmacht, "evaluated from an ethical standpoint, is not necessarily of the basest sort," since it occurred without "political motives": "it was more a matter of military considerations that led to the shooting." The perpetrators, moreover – [who executed helpless prisoners of war](http://www.indynews.net/gegenrechts0/article/2276/978/2f287bd3c8/) [http://www.indynews.net/gegenrechts0/article/2276/978/2f287bd3c8/] – could plead "human weakness" on their behalf, such that they could not be suspected of murder. One way or another, the German myth of the *untainted, upstanding Wehrmacht* [i.e. as opposed to the criminal SS – translator's note] has, after all, also to be legally secured.

Given all this understanding shown for ex-Nazis, anyone daring to detract even a little from the graveyard-like peace and quiet must be ready for anything in a place that is above all concerned about preventing disturbances of the pastoral idyll – and does not perceive the presence of the old "comrades" as one. And the 28-year-old political scientist and declared anti-Nazi, David Goldner, knew what to expect when he set off to participate in last year's protest against the comrades' reunion in late May. But the fact that the police, during one of their numerous inspections, took 150 leaflets from his knapsack and kept them surprised even him. The leaflets were seized, Goldner was informed, because they represented a violation of Paragraph 86a of the German Criminal Code inasmuch as unconstitutional symbolism was to be seen on them. What was meant by this is a photo that appears on a book cover and that shows Arab Islamists giving the Hitler salute. The photo was used for [the book *Feindaufklärung und Reeducation: Kritische Theorie gegen Postnazismus und Islamismus*](http://www.ca-ira.net/verlag/buecher/grigat-feindaufklaerung.reeducation.html) [http://www.ca-ira.net/verlag/buecher/grigat-feindaufklaerung.reeducation.html] [Reconnaissance and Reeducation: Critical Theory Against Post-Nazism and Islamism], published by the Ça-Ira publishing house. The book's editor, Stephan Grigat, [was supposed to present it at a book-reading](http://www.ca-ira.net/verlag/sonstiges/pe-feindaufklaerung.2.html) [http://www.ca-ira.net/verlag/sonstiges/pe-feindaufklaerung.2.html] shortly after the protest against the mountain troops. David Goldner wanted to publicize the event with his leaflets, which featured an image of the book cover. That it was a matter of an appeal that was unambiguously *opposed* to Nazism and Islamism was also obvious to the police. But they were sure that this point was irrelevant. The district court of Garmisch-Partenkirchen was of the same opinion and summoned Goldner to pay [a fine at](#)

a rate of 40 euros a day for 60 days [<http://www.isf-freiburg.org/verlag/sonstiges/pe-feindaufklaerung.html>] or 2400 euros in all: an illegal use of unconstitutional symbols had, on the Court's judgment, occurred. The accused contested the decision, and thus it came to pass that his case was heard before the said court earlier this month, on January 10.

Barely six months earlier, the Federal Court of Justice [Germany's supreme court for criminal and civil matters – translators note] ruled that the use of the phrase “Glory and Honor of the Waffen-SS!” is not punishable and found three neo-Nazis from Karlsruhe who had used the motto on the answering machine of their “National Info Line” **not guilty of having violated Article 86a** [<http://www.hrr-strafrecht.de/hrr/3/05/3-60-05.php>]. The Court's reasoning? The formula was not identical either with the motto of the Waffen-SS (“Our Honor is Loyalty”) or with that of the Hitler Youth (“Blood and Honor”), nor was it sufficiently similar to them. And thereby the three fascists were home free. The fact that they had glorified a National Socialist organization was of no concern to the judicial organs of the state.

By contrast, a 22-year-old, who last March **finally got back a button that was seized from him ten months before** [<http://www.spiegel.de/unispiegel/wunderbar/0,1518,407112,00.html>] had considerably more trouble obtaining his acquittal. A crossed-out (!) swastika was depicted on the button. The youngster was originally supposed to pay a 200 euro fine – for having used an unconstitutional symbol. That there was a thick red stripe over the swastika, thus making clear that the wearer of the button was an *anti*-Nazi, was of no interest to the Tübingen District Court. The judge did reduce the fine to 50 euros, but she upheld the conviction and she justified her ruling by the argument that a Japanese tourist would not be able to recognize that a crossed-out swastika was an antifascist symbol. The tourist would just see the Nazi symbol. The appeals court, then, had a somewhat more favorable opinion of the powers of judgment of Asian vacationers. Perhaps the Federal Court of Justice ought to have called on the services of this target group and let them hear the energetic staccato on the answering machine of the Karlsruhe neo-Nazis.

But back to David Goldner, on whom the Court was sitting in judgment in Garmisch-Partenkirchen earlier this month following the filing of his appeal. The proceedings lasted some 45 minutes. That is all it took for **Judge Dieter Klarmann to uphold the fine** [<http://www.ca-ira.net/verlag/sonstiges/pe-feindaufklaerung.2.html>], while merely reducing the daily rate from 40 euros to 10. The Hitler salute was clearly to be recognized on the leaflets and the text of the appeal had not distanced itself explicitly enough from the salute – thus the reasoning of the Judge, as related by Goldner to Lizas Welt. It would seem that the Judge must not have read the leaflet, since otherwise he could hardly have overlooked **how the editor's lecture was presented in it** [<http://cliffcosmos.blogspot.de/2007/01/11/anti-faschismus-bizarr-in-bayern/>]:

The radicality of the best products of critical theory consists in the fact that the critique of a capitalist society becomes conscious of the necessity of defending against what is a both compulsive and voluntary reaction to such a society: the exterminationist delirium of regressive anti-capitalists that targets Jews. Thus, the experience of the National Socialist persecution became the foundation of the critique of these left intellectuals who had to leave Marxism behind in order to be able still to conceive of emancipation with Marx's critical theory. The whole actuality of these thinkers in a post-Nazi society lies therein.

Of course, it is also possible that these lines simply exceeded Klarmann's horizon. Nonetheless, it is really not so difficult to recognize the "exterminationist delirium of regressive anti-capitalists" in the form of the Islamists giving the Hitler salute in the photo, and to find the demand to defend oneself against such delirium in the text, and finally, in light of the book's title, to make the logical connection between the former and the latter. It likewise should not have been too much of a problem to find out that the book has long been distributed and sold without the slightest objection. David Goldner reports: "At least twice he called the book 'Reconnaissance and Reduction' rather than 'Reeducation'. That alone shows how little he had considered it." A propos, Klarmann must have himself had at least a bit of such re-education in his younger years. But, of course, it is well known that you quickly forget what did not have a great impact on you in the first place.

But even if one does not want to take notice of a book published by a small independent publisher from Freiburg, one could at least take notice of the tabloid newspaper with the largest circulation of any paper in Germany. For the latter had committed a "crime" just like that of the political scientist – as Goldner made clear in his presentation in his own defense:

On Wednesday, July 26, 2006, the BILD-Zeitung published on page 2 of its daily edition a 30 centimeter by 15 centimeter photo that shows children of the Lebanese Hezbollah raising their right arms in a salute that strongly resembles the Hitler salute. I have the page in question with me. According to Wikipedia, the BILD-Zeitung currently has a paid daily circulation of around 3.8 million copies (2005). Thereby, it reaches some 18.8% of the German population over 14 years of age, which makes 12,110,000 persons. As far as I know, no German public prosecutors office – and likewise no Bavarian public prosecutors office – has charged the Axel-Springer publishing house with using symbols of unconstitutional organizations.

But it was all of no use. Besides, as David Goldner relates, the prosecutor deflected his observation with the argument: "Concerning the BILD-Zeitung, unfortunately, I cannot comment, since this newspaper does not figure among the newspapers that I read." Goldner's conviction was upheld. Displaying a truly fascinating sense of logic, Judge Klarmann noted that the accused had, in the first place, participated in the protests against

the mountain troops reunion and, in the second place, some of the latter – nota bene! – had taken part in war crimes. Which, once and for all, goes to show that Goldner had wanted to hand out flyers during the demonstrations and the persons depicted on these leaflets are giving the Hitler salute. Just like the mountain troop divisions once did, this is presumably meant to imply. (And whoever has trouble following such argumentative rigor should not despair, but just be amazed.)

It was David Goldner's bad luck to have his case heard before a typical German provincial court. And when such a court wants to play an important political role, rather than being incessantly occupied with smiting traffic violations, the result is frequently a botched job. During last year's controversy over the Mohammed cartoons, for example, the District Court of Lüdingshausen sentenced a man to a year in prison with probation because he had distributed rolls of toilet paper with the word "Koran" printed on them. Now another bizarre chapter in German legal history had been written by Dieter Klarmann: a judge who, as the daily the *Süddeutsche Zeitung* has noted (May 9, 2003), is notorious in the Bavarian countryside for "a certain roughness in his dealings with trial participants who, for whatever reason, displease him, whether they be defendants, witnesses or defense lawyers":

Once, in the year 2000, he himself was put in the dock, because he had described a defendant as "thick-headed" [*saudumm*: literally "dumb as a pig"]. He avoided a conviction only because he apologized in court and the plaintiff withdrew his complaint. When the local paper reported on the episode, a lawyer from Garmisch-Partenkirchen sent a letter to the editor relating further bloopers: once Klarmann called the arguments of a defense lawyer "feeble-minded"; another time he treated an inn-keeper to the remark "whoever will do nothing with their life becomes an inn-keeper." An Iraqi, who had been naturalized a year earlier and who was stopped by the police in Garmisch for speeding, got to hear from Klarmann that "in the desert you can drive as fast as you like."

Yet [another complaint caught up with the judge](http://www.rgt-stiftung.de/agr/gelesen.php) [http://www.rgt-stiftung.de/agr/gelesen.php] because he is supposed to have described two Turkish men as "cattle, oxen, and cows." In another case, he [found a 41-year-old medical school student guilty](http://www.rgt-stiftung.de/agr/gelesen.php) [http://www.rgt-stiftung.de/agr/gelesen.php] of aiding her Nigerian husband to stay in the country illegally. The judge's ruling explained that in light of his "appearance" and "origins," and despite her "being in love" with him, the woman must have suspected that her husband had obtained his residency "by trickery." Because she consciously neglected to look into the matter, she was required to pay a fine of 2,550 euros. The woman's defense lawyer was left aghast, spoke of discrimination in the case and considered taking legal steps against the headstrong jurist.

David Goldner, Klarmann's latest victim, is far from ready to concede defeat and looks upon the grotesque ruling with a certain serenity. "When all is said and done," he told *Lizas Welt*, "one can't take it seriously. I hope the appeals court will rule differently.

Otherwise, I'll have to take the matter to the Federal Court of Justice if necessary." And the Federal Court will have indeed a great deal to set right.

This article originally appeared on the pseudonymous German blog Lizas Welt [<http://lizaswelt.blogspot.com/>]. Since its launch in February 2006, Lizas Welt has quickly established itself as one of the most influential "essay blogs" in German. The English translation is by John Rosenthal.

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