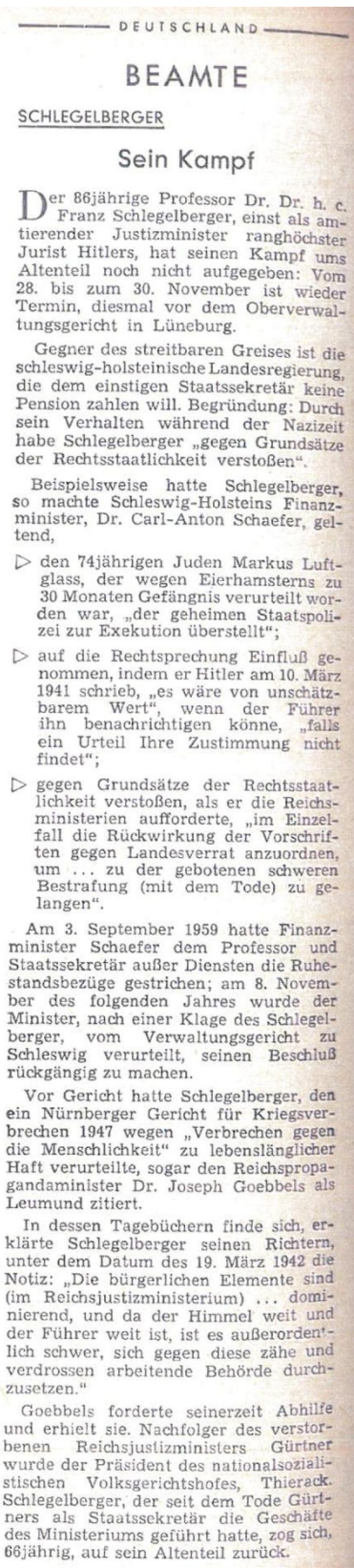


## Article in the German weekly "Der Spiegel" on a court ruling on Schlegelberger's pension



### GERMANY OFFICIALS

#### SCHLEGELBERGER

#### His Struggle

The 86-year-old Professor Dr. Dr. h. c. Franz Schlegelberger, who once served as acting Justice Minister and thus as Hitler's highest ranked lawyer, has still not given up his struggle for a pension: the latest hearing will take place between 28 and 30 November, this time at the Higher Administrative Court in Lüneburg.

The disputatious old man's opponent is the state government of Schleswig-Holstein, which is unwilling to pay the former State Secretary a pension on the grounds that Schlegelberger's actions during the Nazi era were "in breach of the fundamental principles of the rule of law".

Schleswig-Holstein's Finance Minister Dr. Carl-Anton Schaefer alleged that Schlegelberger had, for example:

→ committed the 74-year-old Jew Markus Luftglass, who had been sentenced to 30 months' imprisonment for hoarding eggs, "to the Gestapo for execution";

→ impinged on the dispensation of justice by writing to Hitler on 10 March 1941 that "it would be invaluable" if the Führer could inform him "should a judgement not meet with his approval";

→ acted in breach of the fundamental principles of the rule of law by inviting Reich Ministries "to apply the prescriptions against treason retrospectively on a case by case basis to enable...

the necessary severe penalty (the death sentence) to be carried out."

On 3 September 1959, Finance Minister Schaefer had struck off the Professor and former State Secretary's retirement income; on 8 November of the following year, following a complaint from Schlegelberger, the minister was ordered by the Schleswig Administrative Court to revoke his order.

In court, Schlegelberger, sentenced in 1947 to life imprisonment for "crimes against humanity" by a Nuremberg court, even cited Reich Propaganda Minister Dr. Joseph Goebbels as a character witness.

Schlegelberger declared to his judges that Goebbels' diary entry for 19 March 1942 includes the note that: "The bourgeois element dominates (the Reich Justice Ministry)... and because heaven and the Führer are very far away, it is extraordinarily difficult to prevail against these tough and sullenly working officials."

At that time, Goebbels asked for relief, and was given it. The deceased Reich Justice Minister Gürtner was succeeded by the President of the National Socialist People's Court, Thierack. Schlegelberger, who as State Secretary had been running Ministry business since Gürtner's death, retired at the age of 66.



Ex-Staatssekretär Schlegelberger  
Ein Goebbels-Persilschein ...

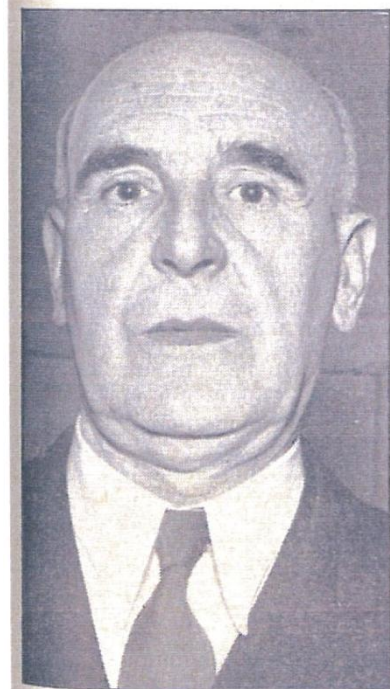
Angesichts des Goebbels-Urteils, das sie als Persil-Schein für den greisen Kläger werteten, mochten die Schleswiger Verwaltungsrichter den Franz Schlegelberger nicht abweisen. Zwar, so befanden sie, habe Schlegelberger „Pflichtwidrigkeiten“ begangen. Aber: „Die Besonderheit seines Verhaltens besteht ... darin, daß er in einem Konflikt pflichtwidrig in der Absicht han-

[Photo]

Ex-State Secretary  
Schlegelberger

A denazification certificate from Goebbels ...

Given this judgement of Goebbels', which they considered equivalent to a denazification certificate for the elderly plaintiff, Schleswig's administrative judges were unwilling to turn Franz Schlegelberger down. Admittedly, they considered, Schlegelberger had committed "violations of duty." But: "The peculiarity of his behaviour is... that in a conflict he acted against his duty with the intention of preventing worse injustice."



Kieler Finanzminister Schaefer  
... sicherte die halbe Pension

[Photo]

Kiel Finance Minister  
Schaefer

... secures half his pension

## CHLAND

delte, schlimmeres Unrecht zu verhüten.“ Dieser von allen angeklagten Nazi-Größen strapazierten Schutzbehauptung hängten die Verwaltungsrichter noch den Nachsatz an: „Dem... Kläger hat... das Bewußtsein der Pflichtwidrigkeit gefehlt.“

Überdies sprachen die Richter in Schleswig den Schlegelberger auch von der Anklage des Nürnberger Gerichtes frei: Hätte dieses Gericht damals das Goebbels-Diarium gekannt, „wäre es nicht zu der Verurteilung (Schlegelbergers wegen Verbrechen gegen die Menschlichkeit) gekommen“.

Ergebnis des Rechtsstreits in Schleswig: Das Land wurde angewiesen, dem von nahezu jeder Schuld gesäuberten Schlegelberger die gestrichene Pension nachzuzahlen, zuzüglich vier Prozent Zinsen. Zudem seien für den einstigen Staatssekretär Hitlers aus der Staatskasse fortan monatlich 2894,08 Mark als Pension bereitzustellen.

Finanzherr Schaefer legte Berufung ein. Zur Begründung verwies der Minister auf ein Grundsatzurteil des Bundesgerichtshofes, nach dem Zweifel an der Rechtmäßigkeit einer Entscheidung „durch Nachdenken oder Erkundigung zu beseitigen“ seien.

„Hierzu“, so hatten die Bundesrichter philosophiert, „bedarf es der Anspannung des Gewissens; ihr Maß richtet sich nach den Umständen des Falles und nach dem Lebens- und Berufskreis des Einzelnen.“

Weiter: „Mit Gewissensanspannung... ist gemeint, daß der Täter verpflichtet sei, alle seine Erkenntniskräfte und alle seine sittlichen Wertvorstellungen einzusetzen, wenn es gilt, sich über die Rechtmäßigkeit eines bestimmten Verhaltens ein Urteil zu bilden.“

Diesen höchstrichterlichen Beschluß im Rücken, stellte das Kieler Finanzministerium die Zahlungen an Schlegelberger mit dem 31. Dezember 1960 abermals ein. Indes, der juristisch versierte Ex-Staatssekretär dachte nicht daran, die Entscheidung des Kieler Ministeriums widerspruchslos hinzunehmen. Schlegelberger klagte wieder — und wieder mit Erfolg.

Am 27. März 1961 entschied das Oberverwaltungsgericht in Lüneburg in einem Teilurteil: Der Kläger Schlegelberger habe auch weiterhin, bis zum endgültigen Urteil des Gerichts, Anspruch auf 50 Prozent seiner Ruhestandsbezüge als Staatssekretär.

Während der für die kommende Woche anberaumten Verhandlung vor der abschließenden Entscheidung des Lüneburger Oberverwaltungsgerichts will der Bonner Rechtsanwalt Dr. Konrad Redeker, den die Landesregierung Schleswig-Holsteins mit der Wahrnehmung ihrer Interessen betraut hat, nun weiteres, zum Teil erstmals vom SPIEGEL veröffentlichtes Material gegen Schlegelberger präsentieren (SPIEGEL 12/1961).

In Redekers Dossiers findet sich beispielsweise eine von Schlegelberger an seinen Führer adressierte Mitteilung vom 27. April 1943, der zufolge er gegen eine Jüdin wegen Betrugs ermittelte. Die Nichtarierin hatte ihre Muttermilch einer arischen Kinderärztin verkauft.

Dieser Verkauf, so argumentierte der Staatssekretär des Reichsjustizministeriums damals, sei rechtlich als Betrug zu würdigen, denn „Muttermilch einer

To this well-worn self-justification, made by all indicted Nazi grandees, the administrative judges added the appendix that: “the... plaintiff had... not been aware that he had failed in his duty.”

Moreover, the Schleswig judges also absolved Schlegelberger of the indictment of the Nuremberg Court: If that court had then known of Goebbels’ diary, “it would not have reached the judgement (that Schlegelberger had committed crimes against humanity)”.

The outcome of the legal dispute in Schleswig: the state was ordered to repay Schlegelberger, cleansed of nearly all guilt, his cancelled pension plus four per cent interest. In addition, Hitler’s former State Secretary was to be paid a pension of DM 2,894.08 per month from state funds from now on.

Finance Minister Schaefer appealed on the grounds that a judgement made by the Federal Court of Justice had established the principle that doubts about the legitimacy of a decision were to be “resolved through thought or enquiry”.

“To that end,” the Federal Judges had philosophised, “it is necessary to exert the conscience; in a degree determined by the circumstances of the case and the sphere of life and professional circles in which the individual moved.”

Furthermore: “By exerting the conscience... we mean that the perpetrator is obliged to make use of all his powers of cognition and all his ethical and moral values when it comes to forming a judgement on the lawfulness of a

certain behaviour.”

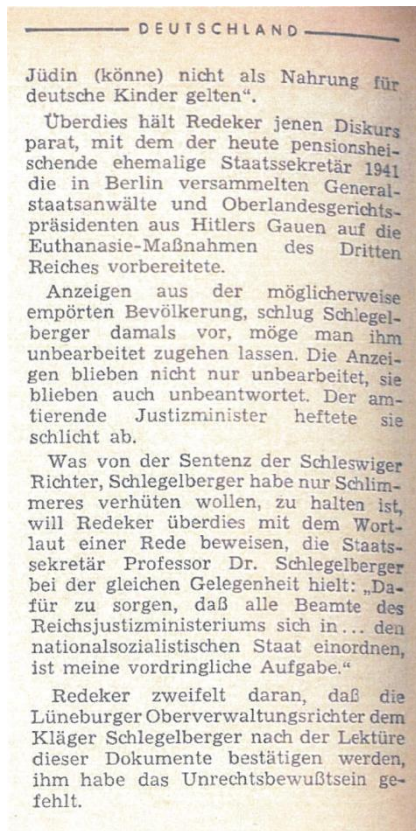
With this high court decision at its back, the Finance Ministry in Kiel once more suspended payments to Schlegelberger as of 31 December 1960. However, the ex-State Secretary was too well versed in law to contemplate accepting the decision of the Ministry in Kiel unchallenged. Schlegelberger complained again — and again he was successful.

On 27 March 1961, the Higher Administrative Court in Lüneburg ruled in a partial judgement that the plaintiff Schlegelberger would continue to have the right to half of his retirement income as State Secretary until the court had made a final judgement.

In the course of the trial scheduled for the coming week, ahead of a final decision by the Higher Administrative Court in Lüneburg, the Bonn lawyer Dr Konrad Redeker, appointed by the state government of Schleswig-Holstein to represent its interests, is now seeking to present further material against Schlegelberger, some of which was first published by the SPIEGEL (SPIEGEL, 12/1961).

Redeker’s dossier includes, for example, a message from Schlegelberger of 27 April 1943, addressed to his Führer, according to which, he was investigating a Jewish woman for fraud. The non-Aryan had sold her breast milk to an Aryan paediatrician.

This sale, argued the then State Secretary of the Justice Ministry, could legally be considered fraud because “breast milk from a Jew (could) not be considered food for German children.”



Redeker is also prepared to use the 1941 speech in which the former State Secretary, now seeking his pension, prepared the attorneys general and presidents of regional appeal courts in Hitler's Gaus for the Third Reich's euthanasia measures.

Complaints from a possibly outraged population, Schlegelberger suggested, could be sent on to him unprocessed. The complaints did not only remain unprocessed, they went unanswered. The acting Justice Minister just filed them.

Redeker will also quote a speech made by Professor Dr Schlegelberger on the same occasion to demonstrate what we should make of the Schleswig judges' maxim that Schlegelberger had only wanted to prevent worse injustice: "My most urgent priority is to ensure that all officials within the Reich Justice Ministry... align themselves with the National Socialist state."

Redeker doubts that after reading this document the Higher Administrative Court in Lüneburg will agree that the plaintiff Schlegelberger was unaware of his wrongdoing.

Source: Der Spiegel, 47/1962, 22 November 1962.