

A Higher Regional Court in Germany Orders Professor Alexander Lerchl to Retract his Falsification Allegations Against the REFLEX Study.

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A long story comes to an end

The legal dispute before the Hanseatic Higher Regional Court of Bremen against Alexander Lerchl, Professor of Biology and Ethics at the private Jacobs University in Bremen, was about the final clarification of the question of whether he can prove his allegation – constantly repeated since 2008 – that the results of the REFLEX Study funded by the EU Commission from 2000 to 2004 are falsified. The finding that mobile phone radiation can damage genes in isolated human cells obviously exceeded his ability to understand. To lend credibility to his claim he accused Elisabeth Kratochvil of falsification, a technical assistant at the Medical University of Vienna (MUV) who had contributed significantly to the REFLEX results. His aim was twofold. On the one hand, he wanted to prevent the REFLEX follow-up study, which had been highly rated by the EU Commission's experts, from also being funded. In this he was successful. On the other hand, he wanted to have the REFLEX papers withdrawn from the scientific literature. In this he failed. He could not convince the editors of the journals in which they had been published with his allegation of falsification. They noticed his intention and were not willing to be misused for the purposes of a lobbyist of the mobile phone industry, as he was already known at that time.

Though Prof. Lerchl had already been ordered to cease and desist by the Regional Court of Hamburg in 2015 together with the *Laborjournal*, in which he had portrayed Elisabeth Kratochvil as a criminal forger in a defamatory manner [1], he continued his defamation. Because he mostly interprets everything in his favor, he also interpreted the verdict in the sense that the Regional Court had only forbidden him to mention the name of the falsifier, but not to claim that the REFLEX results were falsified. In the meantime, he could do without the further disparagement of Elisabeth Kratochvil, who from the beginning had only been a means to an end for him in order to make his falsification allegation convincing at all. This was ensured, without any further action on his part, by his falsification reports, which he has only partially retracted despite his conviction by the Hamburg Regional Court. They continue to be disseminated worldwide and are accessible to everyone. Prof. Lerchl, who at his university represents not only the subject of biology but also ethics, was – obviously – totally indifferent to the suffering and damage he had done to the young technical assistant [2].

The reason for the continuation of the lawsuit in Bremen were Prof. Lerchl's video appearance on YouTube "Pick Up The Phone" and his report "Lerchl: Cell Phone Radiation, Strand Breaks and Court Rulings" on www.ots.at, Austria's press portal for the German-speaking countries. On YouTube, he claims "and these studies we are talking about, from 2005 and 2008, they are fabricated ... also according to the conclusion of the Medical University of Vienna, which still keeps this information available on its websites." This refers to the MUV's press releases concerning the the REFLEX Study. On www.ots.at he comments on a film by Klaus Scheidsteger, which reports on the REFLEX results as follows: "The verdict [of the Hamburg Regional Court] merely speaks of the fact that the name of a certain person may not be mentioned in connection with the accusations of falsification that I have made against the REFLEX studies. The accusation of fabrication of the results remains valid, of course, ... especially since the Medical University in Vienna also continues to make the accusations available online in a press release!" The MUV's press releases were indeed still online when Prof. Lerchl's two statements were published, but were deleted shortly thereafter on the instruction of the new rector of the MUV, because the statements contained therein do not correspond to the truth. Prof. Lerchl was not willing to comply with the request of Elisabeth Kratochvil's legal representation to refrain from the falsification accusations in the future and to withdraw the reports, because they violated her

client's personal rights and honor. Following the advice of her legal representation, Elisabeth Kratochvil filed a lawsuit with the Regional Court of Bremen on November 8, 2016.

The Bremen Regional Court dismissed Elisabeth Kratochvil's lawsuit as unfounded on October 12, 2017 [3]. This was justified as follows: The MUV's press releases had still existed at the time of Prof. Lerchl's statement. Since the statement had been factual in the past, there was no unlawful act of infringement inducing a risk of repetition. With regard to the first claim "and these studies, we are talking about, from the years 2005 and 2008, they are fabricated ..." the Regional Court was of the opinion that this is not a punishable statement of fact, but a permissible expression of opinion. An average public understands "fabricated" to mean that the studies were produced in a makeshift or amateurish manner, or that they had been painstakingly tinkered with. Such an understanding would contain a predominantly evaluative character, as in the case of expressions of opinion. In the view of the Regional Court, the second point of the complaint "the accusation of data fabrication remains valid, of course," also meets the criteria of a statement of opinion. In the context of a scientific debate such remarks are commonplace. Elisabeth Kratochvil's legal representation considered this argumentation of the Court to be legally erroneous, because it contradicts highest court rulings. Therefore, they strongly advised an appeal, which Elisabeth Kratochvil then filed with the Hanseatic Higher Regional Court of Bremen on October 20, 2017.

At the appeal hearing on February 16, 2018, the presiding judge explained that, independently of the verdict of the Regional Court, the Higher Regional Court had considered the question of whether the prohibition statement "the accusation of data fabrication remains valid, of course" was a value judgment, i.e. a statement of opinion, or a factual assertion. Since the text with the prohibition statement – which obviously escaped Prof. Lerchl's attention – also includes "falsification accusations", the meaning can actually only be understood as a falsification charge. Under no circumstances should this variant of interpretation be excluded. In addition, the "Stolpe ruling" of the Federal Constitutional Court asserted by Ms. Kratochvil had to be taken into account. In this view, the falsification accusations are factual allegations, for which Prof. Lerchl has to bear the burden of proof. In its decision of March 9, 2018, the Higher Regional Court ordered that evidence be taken on Prof. Lerchl's allegation "that the REFLEX studies conducted in 2005 and 2008 with the participation of Elisabeth Kratochvil as co-author and first author, respectively, were falsified, which resulted from the fact that the data shown in the studies could never have originated from real experiments for statistical reasons or reasons of mathematical probabilities, but only allowed the conclusion that they were invented."

The expert, who was commissioned by the Hanseatic Higher Regional Court, at the suggestion of Prof. Lerchl, is a German university professor for applied statistics, but without any understanding of the biological test procedure used by Ms. Kratochvil at the MUV. In his report of July 1, 2019, he came to the conclusion, that the objections to the REFLEX results were understandable, but in no way do they allow the conclusion that they had been falsified. In his supplementary expert opinion of November 26, 2019, which seemed necessary to the court due to criticism presented by Prof. Lerchl, the expert addressed Prof. Lerchl's remarks in detail, but remained unreservedly with his own statement. The Higher Regional Court rejected Prof. Lerchl's demand to dismiss the expert on grounds of concern of partiality. On December 11, 2020, it announced the following decision [4]:

"On appeal by Elisabeth Kratochvil the verdict of the Bremen Regional Court is amended. Prof. Lerchl is ordered to refrain from publishing and/or having published his allegations of falsification with reference to the plaintiff, to avoid an administrative fine of up to EUR 250,000 for each case of infringement and, in the event that this cannot be recovered, of detention or of up to six months' detention. Prof. Lerchl is ordered to pay the costs of the lawsuit. The verdict is provisionally enforceable. The amount in dispute is set at EUR 20,000. The appeal is not admitted."

The lesson from the story

Since Prof. Lerchl has been convicted by the Hamburg Regional Court, he attempted to convert his factual claims about the REFLEX Study, which had been subject to criminal prosecution, into not punishable statements of opinion. On December 30, 2016, he affirmed *in lieu* of an oath that he had

merely “expressed the suspicion, substantiated by expert opinions, that the results of the REFLEX study ... were falsified.” As someone to whom truth means little, he accepted that this was a false statement made under oath, which the vernacular calls perjury [5]. At the Bremen Regional Court, his attempt of deception was successful. Since the verdict in his favor, however, proved to be a judicial error, it was therefore replaced by the Bremen Higher Regional Court by a new one, in which Elisabeth Kratochvil was helped to her right. The following letter, which Prof. Lerchl had submitted to the court through his legal representation in the final stage of the lawsuit, reads like the appeal of a crook who asks the court to show mercy before justice because of his earlier merits. The hope for effect failed to materialize.

„The defendant is a nationally and internationally recognized expert in the field of research on biological effects of magnetic fields and electromagnetic radiation for 30 years. He can show over 100 peer-reviewed publications in English. In 2008, he was appointed member of the Commission on Radiological Protection by the then Federal Minister for the Environment, Sigmar Gabriel, and assigned chairman of the Committee on Non-Ionising Radiation (Annex B60, SSK Lerchl Gabriel.pdf). In 2010, he was appointed member of the Commission on Radiological Protection for a further two years by the then Federal Minister for the Environment, Dr. Norbert Röttgen (Annex BGV SSK Lerchl Röttgen.pdf). Dr. Röttgen wrote: „Let me take this opportunity to thank you most sincerely for your excellent work so far, especially as chairman of the Committee on Non-Ionising Radiation.“ In 2012, the then Federal Minister for the Environment Peter Altmaier wrote (Annex B62, SSK Lerchl Altmaier.pdf): “After successful work in the Radiation Protection Commission you will leave this body at the end of the current year. For your long and dedicated participation in the deliberations of the Commission I wish to thank you very much.”

The defendant has served and continues to serve in numerous advisory boards, including the WHO. The defendant was awarded the contract for a recent public tender called ‘Policy advice report to assess the need for regulation in the transition area of the occupational health and safety regulations for electromagnetic fields and artificial optical radiation’ by the Federal Institute for Occupational Safety and Health. The defendant is therefore undoubtedly a scientifically recognized expert.

The findings published by the plaintiff and her co-authors on alleged damage to the genetic material (DNA) caused by mobile communications (Annexes B1 and B2) would be of great importance for all people who use a mobile phone or smartphone, since the alleged damage, if real, would present an immediate threat to health and life as DNA damage results in cancer. Thus, the defendant's critical statements are of paramount public interest.”

At the end of the legal battle against Prof. Lerchl's handling of the REFLEX Study, the ruination of which he had taken upon himself – either on his own initiative or on behalf of others – the following conclusions emerge:

1) The REFLEX results must get back its original significance.

As results of basic research, the REFLEX findings point to a genotoxic potential of mobile phone radiation. In the meantime, this effect has been confirmed several times with different methods. The *Bioinitiative* report, a general overview of the state of research in the field of electromagnetic fields (updated 2014), shows that out of 76 papers in which the same test procedure was applied as at the MUV, genetic damage was detected in 49 ones. In 27 papers, the results were negative [5]. Together with the already available results from animal experiments and epidemiological studies, they must be regarded as evidence that mobile phone radiation can cause cancer in humans – as at least considered possible by the International Agency for Research on Cancer (IARC) of the WHO since 2011. Thus, they contribute significantly to the still ongoing discussion about the biological effects of mobile phone radiation. In any case, the REFLEX results have unjustly lost their scientific significance due to the falsification story invented and spread worldwide by Prof. Lerchl. Because he could not provide proof for the falsification, what had been predicted to him many times years in advance, he was ordered by the Regional Court of Hamburg in 2015 and by the Higher

Regional Court of Bremen in 2020 to cease and desist the falsification allegations. This justifies the demand that the results of the REFLEX Study must get back their original scientific significance.

2) The critical comments of the expert appointed by the court about the REFLEX results are owed to his ignorance of the applied test system.

The expert ordered by the Hanseatic Higher Regional Court did indeed make critical comments about the REFLEX results, but in doing so not only exceeded his mandate, but also his competence. His report is suitable for clarifying the question whether the REFLEX results are falsified or not, but cannot answer the question whether the REFLEX results are correct or incorrect. The anomalies criticized by Prof. Lerchl, which also did not escape the expert's attention, are simply inherent to the biological test procedure, which has been internationally established for more than 20 years and was also applied by Elisabeth Kratochvil. The test system consists of two components, an objective one, which is used to determine whether gene damage is present or not, and a subjective one, which is used to estimate the severity of the gene damage. The objective approach is crucial; the subjective approach is a desirable complement. Therefore, the expert's criticism of the REFLEX results, who as a statistician was certainly not aware of these biological-psychological correlations, must be dismissed as unfounded.

3) A workshop of the mobile phone industry to ruin the REFLEX results informs about Prof. Lerchl as a person and scientist.

On September 22, 2009, a workshop was held in Vienna under the title *Serious Research or Junk Science*, which was organized by the PR organizations of the mobile phone industry from Germany and Austria, with the aim to finally ruin the REFLEX results. Prof. Emilio Bossi, President of the Commission "Scientific Integrity" of the Swiss Academy of Arts and Sciences, was invited to give a lecture on the fatal consequences of scientific misconduct. Prof. Lerchl then reported on a particularly serious case of fraud, namely the falsification of the REFLEX results he had uncovered single-handedly. In the discussion that followed, Prof. Bossi was asked whether he was also aware of cases in which data fabrication had been claimed only to get rid of unwelcome research results. This was Prof. Bossi's answer: Such thing happens and is of particular infamy, because something always remains of such slander, which can even lead to irreparable damage of the results. Of course, the person who is guilty of such a thing – in this case Prof. Lerchl – must be treated in the same way as a falsifier [6].

4) The German saying "Tell me who you are associating with and I will tell you who you are" also applies to the politicians responsible for the radiation protection of the people.

Within the framework of the German Mobile Telecommunication Research Program from 2002 to 2008, no one was promoted by politics and the mobile communication industry as generously as Prof. Lerchl [7]. Due to misguided planning, misguided execution and misguided evaluation of his research projects, he succeeded in achieving the zero result he probably desired. Thus, he delivered his clients what was needed in order not to have to change the guidelines for the radiation protection of the people [8]. Only recently, the German Federal Office for Radiation Protection provided Prof. Lerchl with another € 1.1 million to study the effects of 5G radiation on human cells. Again, he will probably not disappoint them. On YouTube, uploaded by the *Forum Mobilkommunikation* (FMK), an Austrian PR organization of the mobile communications industry, he already knew in advance that from a scientific point of view even with 5G there is no reason for concern because of health risks. Over the years, he has obviously learned that the best recipe for personal success is to find nothing in one's own research that contradicts the harmlessness of cell phone radiation and to prevent others from doing the opposite. After the verdict of the Hanseatic Higher Regional Court in Bremen, politicians committed to the welfare of the citizens must ask themselves whether they can afford to cooperate with a man who has been exposed as an unscrupulous slanderer [9]. Otherwise, it could turn out one day that they fell for a fraud when they accepted any longer his story about the harmlessness of mobile phone radiation.

Referenzen

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