

*Translation of the resolution of the senate of the Technical University Darmstadt, July 13th, 2022. This translation is for information purposes only. The legally binding document is the German version.*

## **Statutes**

### **Proceedings in cases of alleged scientific misconduct at Technical University Darmstadt**

In case of alleged scientific misconduct, the following procedural regulations apply. They replace the previously applicable regulations, published at October 1<sup>st</sup>, 2012.

#### **§ 1 Acts of scientific misconduct**

The „Recommendation of the 185. HRK plenary meeting“<sup>1</sup> published at July 6<sup>th</sup> 1998, defines scientific misconduct as follows:

1. Scientific misconduct is deemed to have occurred if, in a context relevant to science, false statements are made deliberately or through gross negligence, the intellectual property of others is infringed, or their research activities are otherwise impaired. The circumstances of each individual case are decisive.

The following, in particular, may be considered as possibly serious misconduct:

- a) False statements
    - Fabrication of data,
    - Falsifying data, e.g.:
      - by selecting and rejecting unwanted results without disclosing this,
      - by manipulating a depiction or an illustration,
    - incorrect information in a letter of application or a grant application (including false information on the publication medium and on printed publications).
  - b) Infringement of intellectual property
    - in relation to a copyrighted work created by another or to substantial scientific knowledge, hypotheses, doctrines, or lines of research originating from others,
    - unauthorised exploitation with the presumption of authorship (plagiarism),
    - the exploitation of research approaches and ideas, especially as reviewers (theft of ideas),
    - the presumption or unfounded assumption of scientific authorship or co-authorship,
    - the distortion of the content,
    - unauthorised publication and unauthorised making available to third parties while the work, the finding, the hypothesis, the teaching, or the research approach has not yet been published.
  - c) claiming the (co-)authorship of another without the latter's consent.
  - d) Sabotage of research activities (including damaging, destroying, or tampering with experimental set-ups, equipment, records, hardware, software, chemicals, or other things needed by another to conduct an experiment).
  - e) Disposal of primary data, insofar as this violates legal provisions or discipline-related recognised principles of scientific work.
2. Shared responsibility for misconduct may arise, inter alia, from
    - active participation in the misconduct of others,
    - Co-knowledge of forgery by others,

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<sup>1</sup> HRK 1998: [Empfehlung des 185. Plenums der HRK vom 6. Juli 1998. Zum Umgang mit wissenschaftlichem Fehlverhalten in den Hochschulen \(original text in German only\)](#), Bonn: S. 3-4.

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- Co-authorship of publications containing forgeries,
  - gross neglect of the supervisory duty.

## **§ 2 Initiation of a revision**

A request for a review of an alleged case of scientific misconduct can be submitted by anyone to the independent ombudspersons. If the ombudsperson addressed holds a dean's office and a case of suspected misconduct is addressed to him/her from the ombudsperson's department, he/she will hand over the review and possible further proceedings to another ombudsperson. The same applies if the ombudsperson is the professional superiors of a person involved in the proceedings. Information is treated strictly confidentially. The name of a whistle-blower will not be disclosed to third parties by the investigating body without appropriate consent. This only applies if there is a legal obligation to do so or if the person affected by the allegations cannot otherwise defend him/herself properly. The principle of presumption of innocence applies. Reports should be investigative and based on verifiable evidence that standards of good scientific practice may have been violated. Anonymous reports can only be investigated if the whistle-blower provides reliable and sufficiently concrete facts. The names, contact details and working methods of the ombudspersons are public.

## **§ 3 Consultation by the ombudspersons**

If an ombudsperson is informed of suspicions of scientific misconduct, he or she will hold an informal, confidential preliminary discussion/consultation with the whistle-blower at his or her request. The interview is not part of the preliminary examination procedure. The contents of the preliminary discussion will be documented by the ombudsperson, but they are confidential and are not subject to any reporting obligation. If the ombudsperson judges the suspicious facts to be at most less serious, then a preliminary examination by the ombudsperson can be dispensed in agreement with the whistle-blower. The case then remains undocumented.

## **§ 4 Preliminary investigation by the ombudspersons**

The ombudsperson examines the suspicious facts communicated to him or her in a preliminary investigation, which also includes clarification of responsibility (for example, in the case of parallel referral to the DFG or scientific organisations or professional societies or other scientific institutions). If necessary, he or she submits proposals for solutions to the parties involved (whistle-blowers, persons affected by the suspicion, possible witnesses) and decides whether a formal procedure should be conducted in accordance with the following rules. All procedural steps are documented in writing.

Within the framework of the preliminary investigation, the ombudsperson has the possibility to convene a preliminary investigation committee in the respective individual case. This committee consists of a member of the management of the affected department – in the case of study areas, the chair of the joint commission – in whose competence the reported misconduct falls, the chair of the central ethics commission and another member appointed by the chair of the ethics commission, who should generally not belong to the affected department. The preliminary investigation committee advises and supports the decision-making of the ombudsperson.

In the case of concrete suspicions, the ombudsperson may hear the parties involved, if necessary, after consulting the preliminary investigation committee.

If, after the preliminary investigation, the ombudsperson decides to discontinue the proceedings, he or she shall inform the whistle-blower accordingly. He or she then has the right to appear in person before the preliminary investigation committee within four weeks. If such a committee did not exist until then, it is now established. After the hearing, the preliminary investigation committee advises the ombudsperson on the question of terminating the proceedings. The right to be heard is referred to in the notification of employment.

If the preliminary investigation reveals sufficiently concrete suspicions of scientific misconduct, the ombudsperson initiates the formal procedure.

The ombudsperson informs the president anonymously about the essential contents and the result of the preliminary investigation. If the ombudsperson decides to discontinue the procedure, the president may nevertheless order a formal investigation.

## **§ 5 Formal investigation**

The ombudsperson opens the formal investigation and sets up a committee of investigation. In the case of suspicions directed against several persons, he or she considers whether a joint investigation or separate formal investigation procedures are appropriate. If necessary, proceedings are separated.

The investigating committee is composed of the ombudsperson (without voting rights), the dean of the department concerned, the chairperson of the central ethics commission and another expert member, usually external, appointed by the chairperson of the ethics commission. A legally trained member of the university shall be a member of the investigating

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committee in an advisory capacity. If examination procedures are affected, the member of the dean's office responsible for the examination performance concerned is also a member of the committee in an advisory capacity. The members of the committee of investigation, who are not employees of TU Darmstadt shall be obliged in writing to maintain the confidentiality of external content to which they gain access. The duty of confidentiality precludes disclosure to third parties and own use. If one of the aforementioned persons should be conflicted or if the concern of conflicts of interest<sup>2</sup> is confirmed by the other members, he or she shall be excluded from participating in the specific case. In this case, as well as in the case of other withdrawals, a person designated in advance shall take his or her place.

The committee of investigation is responsible for the investigation. It shall conduct the investigation independently in all respects. The steps of the investigation shall take place within reasonable periods of time. It elects a chairperson from among its members and can initiate all steps necessary for the investigation, in particular research to clarify the facts, the involvement of external experts and the confidential consultation of further experts. The committee of investigation shall deliberate in closed sessions. Until possible proof of scientific misconduct has been established, the principle of confidentiality shall apply throughout the investigation regarding the persons involved and the findings to date. Those affected by the suspicion shall be given the opportunity to comment.

If suspicions become more concrete during the investigation, if they cease to exist or if new ones arise, the parties involved will be given the opportunity to comment.

The principle of the free assessment of evidence applies to the work of the committee of investigation. If the committee of investigation considers misconduct to be unproven, the proceedings shall be discontinued by means of a written decision stating the reasons for the decision. Otherwise, the committee of investigation shall submit the result of its work to the president in the form of an investigation report. The report may contain proposals for further action and possible measures.

At the latest after the end of the investigation proceedings, the ombudsperson identifies – if necessary, after consultation with the university executive board – all persons involved in the case and advises the persons who may have been affected by the misconduct through no fault of their own. If necessary, the ombudsperson also forwards the result of the proceedings to other bodies that are to be involved, for example to the DFG. The documents of the formal investigation are archived with the ombudspersons for 30 years. The documents do not constitute administrative files that may be viewed.

#### **§ 6 Protection of whistle-blowers and those affected by allegations**

In cases of alleged scientific misconduct, all members or affiliates of TU Darmstadt are obliged to protect the whistle-blower, but also the person concerned, as well as witnesses and other parties involved, from indiscretions, exposure, and from public pre-judgement. This also applies in the case of unproven scientific misconduct.

Neither whistle-blowers nor the person affected by the allegations shall suffer any disadvantages as a result of a report of scientific misconduct.

#### **§ 7 Communication of investigation results, dealing with public interest and public media**

The communication of the results of the investigation to the public shall be carried out in an orderly and transparent manner and in consultation with the chairperson of the investigation committee by the university executive board. The investigation report shall provide for a summary passage to facilitate the establishment of transparency regarding the result of the investigation.

Communication by university members as well as dealings with the public interest and public media (including online communication in so-called social media) are oriented towards the protection of those affected (cf. § 6). Particular consideration must be given to the fact that statements in the public media may infringe on the personal rights of those concerned. In addition, the duty of confidentiality in service and due to committee work must be respected.

TU Darmstadt expressly recognises the legitimate interest of the professional and general public in incidents of possible scientific misconduct. Representatives of the public media who make unauthorised recordings, e.g. film recordings, on campus or in university rooms are nevertheless violating the university's tenant's rights. Members of TU Darmstadt are therefore entitled to ask media representatives for permission from the Office of Communication before speaking to them. Communication within and outside the university is exclusively carried out by the executive board or the office commissioned by it.

#### **§ 8 Measures in case of scientific misconduct**

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<sup>2</sup> Possible reasons for conflict of interest can be: a supervisory or evaluation relationship, a superior function, personal relationships/conflicts, common economic interests. For details, see DFG 2015: [Guidelines for Avoiding Conflicts of Interest](#), Bonn.

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In the event of an appropriate outcome of the formal investigation, the university executive board shall initiate measures against those responsible for the misconduct based on the results of the investigation. These may include the aspect of preventing renewed misconduct, the revocation of unlawfully acquired degrees/titles or funds as well as personal punishment.

If necessary, further measures will be initiated by the competent bodies with corresponding procedures regarding labour law, disciplinary law, civil law, examination law, criminal law, or administrative law.

Consequences under examination law would be e.g.:

- Withdrawal of an academic degree (Diplom, Magister, Bachelor, Master)
- Withdrawal of a doctorate
- Withdrawal of a habilitation or withdrawal of the *venia legendi*.

Consequences under labour and disciplinary law would be e.g.:

- Warning or disciplinary reprimand
- Termination of employment by extraordinary/regular notice/termination of contract
- Fine or reduction of remuneration
- Removal from civil service
- Reduction/withdrawal of pension.

Consequences under civil law would be e.g.:

- Claims for removal and injunctive relief under copyright law, personal rights law, patent law and competition law
- Claims for restitution (grants, third-party funds or similar)
- Claims for restitution against the person affected/the person concerned
- Claims for compensation.

In addition, consequences under criminal law or administrative law may be in order, e.g.:

- Copyright infringement
- Forgery of documents (including falsification of technical records)
- Damage to property (including data alteration)
- Property crime (including fraud and embezzlement)
- Violation of personal life or secrecy
- Offence against life and/or bodily harm.

Darmstadt, August 22<sup>nd</sup>, 2022

The President of the Technical University Darmstadt

gez. Professor Dr Tanja Brühl