



Rules of Procedure in Cases of Suspected Scientific Misconduct

*- adopted by the Senate of the Max Planck Society
on November 14, 1997, amended on November 24, 2000 -*

I. Preliminary enquiry

1. The Managing Director of the Institute concerned must be notified of any significant indication that scientific misconduct within the meaning of the catalogue of misconduct (Appendix 1) has occurred. He must immediately inform the Vice President representing the Section to which his Institute belongs. Notification should be in writing; if it is by word of mouth, the Managing Director must make a written record of it. In well-founded, exceptional cases, the relevant Vice President may be notified directly and he decides alone in the preliminary enquiry when the Managing Director is himself affected by the enquiry.
2. Should, based on the information available to them, the Managing Director and the relevant Vice President be of the opinion that there is significant indication that scientific misconduct has occurred, they must then inform the Head of the Department of Personnel and Legal Affairs in the Administrative Headquarters and keep him or her up-to-date on all further developments in the enquiry. The Board of Directors of the Institute is also to be informed at a suitable point.
3. The Managing Director or the Vice President acquaints the suspect with the incriminating facts and evidence, observing the requirements as to written and oral communications stated in no. 1 sent. 2 (supra) which apply mutatis mutandis. The suspect is given a period of two weeks at the maximum in which to respond. Without the informant's consent, his or her name is not disclosed to the suspect at this stage.
4. After receipt of the suspect's response or the passing of the deadline, the Managing Director of the Institute and the relevant Vice President decide without delay whether further investigation is necessary in the preliminary enquiry, and if so, what measures are to be taken.

5. Once the further investigation procedures have been completed or in the case that further measures are not necessary, the Managing Director and the relevant Vice President shall decide without delay as to whether the preliminary enquiry should to be terminated or transferred to a formal investigation.
 - a) The preliminary enquiry is to be terminated, and the suspect notified of the reason, should the grounds for suspicion not have been sufficiently substantiated or have been disproved.
 - b) If the preliminary enquiry shows proof of misconduct, the Managing Director and the relevant Vice President shall without delay give a recommendation on any sanctions or consequences (Appendix 2) they consider necessary and they shall close the preliminary enquiry. The relevant sections of the Statutes of the Max Planck Society shall apply to the implementation of the recommendation.
 - c) Should the preliminary enquiry have confirmed adequate grounds for suspicion in the matter, but not at the same time have proven any misconduct, the Managing Director and the relevant Vice President shall without delay decide to assign the matter to a formal investigation.
6. At every stage in the preliminary enquiry the suspect shall be given the opportunity to state his or her case, insofar as this is not thought to adversely affect the enquiry procedures, the latest opportunity for this being before the final decision in the preliminary enquiry.
7. A written record should be kept of the directions and results of the individual steps in the preliminary enquiry, and of the conclusion of the preliminary enquiry, together with the essential reasons behind the conclusion. A written statement of the final result of the preliminary enquiry and the essential reasons behind it, should be sent to the suspect, the Head of the Department of Personnel and Legal Affairs within the Administrative Headquarters, the Board of Directors of the Institute and, should it be requested, to the informant.
8. Until culpable misconduct has been proven, the details of the enquiry participants and the intermediate results of the preliminary enquiry shall be treated in strictest confidence. Information on the current status or the results of the preliminary enquiry are to be authorised jointly by the Managing Director of the Institute and the Vice President responsible for the Section.
9. If the Managing Director and the Vice President cannot reach agreement on a decision within the framework of the preliminary enquiry, the Vice President alone shall decide.

II. Formal investigation

1. Jurisdiction

The formal investigation will be conducted by an investigating committee which consists of the standing chairperson, the Vice President representing the relevant Section, three conciliators from different Sections as advisers, and the head of the Department of Personnel and Legal Affairs within the Administrative Headquarters. The standing chairperson and a deputy, neither of whom should be a member of the Max Planck Society, are elected by the Senate for three-year terms, with the possibility of re-election. The remaining members are appointed for the particular proceedings by the President in agreement with the standing chairperson.

In individual cases the investigating committee may co-opt, as non-voting advisers, experts from the relevant scientific field as well as people who are expert in dealing with such cases.

2. Procedure

- a) The investigating committee conducts oral proceedings that are not open to the public. By unfettered weighing of the evidence it seeks to establish whether scientific misconduct has occurred. The Institute which would be affected if misconduct were established, must, in an appropriate way, be given an opportunity to comment. The suspect must be granted an oral hearing if he or she desires it and may call on the assistance of a person whom he or she trusts. Other persons being heard may also enlist such assistance.
- b) The disclosure of the name of an informant may become necessary if the suspect cannot otherwise defend himself or herself effectively, in particular because the credibility of the informant has an important bearing upon a finding of misconduct.
- c) If the investigating committee decides by a majority that scientific misconduct has been sufficiently established, it submits the result of its investigation, together with a recommendation for the further conduct of the proceedings, to the President for a decision. Otherwise the proceedings are terminated.
- d) The essential reasons which have led to the termination of proceedings or the submission to the President must, without delay, be communicated in writing to the person affected and to the Institute involved, as well as to the informant if he or she requests it.
- e) There is no internal procedure for a complaint concerning this decision.

Appendix

- 1) Catalogue of conduct to be regarded as scientific misconduct
- 2) Catalogue of possible sanctions or consequences in cases of scientific misconduct

Appendix 1

CATALOGUE OF CONDUCT TO BE REGARDED AS SCIENTIFIC MISCONDUCT

- I. Scientific misconduct occurs when in a scientifically significant context, false statements are made knowingly or as a result of gross negligence when the intellectual property of others is infringed, or if their research work is impaired in some other way.

In particular, the following may amount to misconduct:

< False statements >

1. the fabrication of data;
2. the falsification of data, *e.g.*
 - a) through the undisclosed selective reporting and rejection of unwanted results,
 - b) through the manipulation of a representation or illustration;
3. incorrect statements in a letter of application or in an application for support (including false statements concerning the publication in which work is said to have appeared, and concerning work accepted for publication);

< Infringement of intellectual property >

4. with respect to a copyright work of another person or the significant scientific findings, hypotheses, theories or research methods of others
 - a) the unauthorized exploitation involving usurpation of authorship (plagiarism),
 - b) the misappropriation, particularly in an expert opinion, of research methods and ideas (theft of ideas),
 - c) the usurpation of scientific authorship or co-authorship, or the unjustified acceptance thereof,
 - d) the falsification of the contents or
 - e) the unauthorized publishing and making accessible to third persons of work, findings, hypothesis, theory or research method not yet published;
5. the assertion of the (co-)authorship of another person without his or her consent;

< Impairment of the research work of others >

6. the sabotage of research work (including damaging, destroying or manipulating experimental arrangements, equipment, documents, hardware, software, chemicals or other items required by another person for carrying out an experiment).

< Joint accountability >

II. Joint accountability may, *inter alia*, be the result of

1. active participation in the misconduct of others;
2. having knowledge of falsification committed by others;
3. co-authorship of falsified publications;
4. gross dereliction of supervisory duties.

Final decisions must depend upon the circumstances of each case.

Appendix 2

CATALOGUE OF POSSIBLE SANCTIONS OR CONSEQUENCES IN CASES OF SCIENTIFIC MISCONDUCT

The following catalogue of possible sanctions for or consequences of scientific misconduct is intended as an initial guide, not an exhaustive enumeration. Because no two cases are likely to be the same, and because the seriousness of any established scientific misconduct must be taken into account, there is no uniform guide to appropriate reactions; rather, these must be tailored to fit the circumstances of each case. The Administrative Headquarters, in particular its Department of Personnel and Legal Affairs, is available to give advice.

I. Labour law consequences

It must be expected that, in almost all cases of scientific misconduct within the Max-Planck-Gesellschaft, the person involved will be an employee of the Max-Planck-Gesellschaft in a Max Planck Institute. It follows that labour law consequences should be considered first.

1. Reprimand

A reprimand - to be given in writing and entered into the personnel file - is a precursor to a dismissal and thus only appropriate in less serious cases of scientific misconduct in which dismissal is not yet to be resorted to.

2. Extraordinary dismissal

Extraordinary dismissal requires that, in all the circumstances of the individual case and after weighing the interests of both parties to the contract, continued employment cannot reasonably be expected. This is likely to be so, considering the nature of the employment relationship between a research institute and a scientist employed there, if very serious scientific misconduct has occurred. The notice of termination must be given within two weeks from the time at which the party entitled to give notice gained knowledge of the facts crucial to the termination. It is not the mere suspicion of scientific misconduct that is relevant in this respect; it is rather the time of determination of scientific misconduct (No. II.2, letter c of the Rules of Procedure) and its communication to the Managing Director.

Extraordinary dismissal for other significant reasons remains unaffected.

Normally a decision concerning an extraordinary dismissal can only be made after individual counseling concerning its labour law implications has been received.

Particularly in cases involving a very strong suspicion of scientific misconduct, such legal advice should be sought immediately in order to determine whether a so-called termination based upon suspicion seems appropriate. This type of dismissal should be carried out to forestall the legal risk that, in a particular case, a court might regard the two-week period as having commenced at the time when the circumstances causing the strong suspicion became known.

3. Ordinary dismissal

Ordinary termination, which is subject to the usual periods for giving notice under labour law, will rarely be appropriate in the cases under discussion here, for either extraordinary notice of termination of employment will usually have to be given in cases of relevant scientific misconduct, or rescission of the contract by agreement will be more preferable.

4. Mutual rescission

Apart from the ending of the employment relationship through ordinary or extraordinary dismissal the possibility of mutual rescission - while observing the prescribed two-week notice period for extraordinary dismissal - should be considered.

5. Special features of employment contracts modelled after German law regulating the rights and duties of civil servants

Civil service-type contracts of employment with scientists of the Max Planck Society are subject to the provisions of federal civil service law as applicable to comparable university teachers in government employment. It must be assumed that very serious scientific misconduct is a reason for dismissal from service under federal civil service law, and that it would therefore justify extraordinary termination of employment with the Max Planck Society; an ordinary dismissal would not be a possibility in such a case.

II. Academic consequences

Academic consequences in the form of withdrawal of academic degrees are not within the power of the Max Planck Society, but are solely under the control of the bodies which conferred the degrees, usually the universities. These bodies must be notified in cases where serious scientific misconduct has had some connection with the acquisition of an academic qualification.

Possibilities, in particular, are

1. the withdrawal of the doctoral degree or
2. the withdrawal of the licence to teach.

III. Civil law consequences

The following civil law consequences may be taken into consideration:

1. a court order not to enter the premises;
2. restitutory claims against the person concerned, *e.g.* claims for the restitution of stolen scientific or other similar material;
3. claims to abatement and cessation under copyright law, the law relating to personal integrity, patent law and competition law;
4. claims for the surrender of grants, *e.g.* scholarships, third-party funds or the like;
5. damage claims asserted by the Max Planck Society or by third persons in cases of personal injury, property damage or the like.

IV. Penal consequences

Penal consequences are always to be considered if it is suspected that the scientific misconduct also amounted to an offence under the Criminal Code (*Strafgesetzbuch*, StGB) or under other penal norms or that it constituted an administrative offence. The prosecuting authorities may, in principle, only be called in with the agreement of the Administrative Headquarters.

Inter alia, the following are possible offences:

1. Infringement of the private sphere or of personal secrets
 - § 202a StGB: the spying out of data
 - § 204 StGB: exploitation of secrets belonging to others
2. Criminal offences involving death and bodily injury
 - § 222 StGB: negligent homicide
 - §§ 223, 230 StGB: intentional or negligent bodily injury
3. Offences against property
 - § 242 StGB: theft
 - § 246 StGB: embezzlement
 - § 263 StGB: fraud
 - § 264 StGB: subsidy fraud
 - § 266 StGB: breach of trust

4. Falsification of documents

- § 267 StGB: falsification of documents
- § 268 StGB: falsification of technical records

5. Damage to property

- § 303 StGB: damage to property
- § 303a StGB: alteration of data

6. Infringement of copyright law

- § 106 Copyright Law: unauthorized use of works protected by copyright

**V. Withdrawal of scientific publications /
information to the public / press**

Scientific publications which are erroneous due to scientific misconduct must be withdrawn if they have not yet been published, and must be corrected if they have been published (retraction); collaborators must, as far as is necessary, be notified in an appropriate manner. In principle, the author/s and any publishers involved are obliged to do this; if they take no action, the Max Planck Society will initiate whatever suitable measures may be available to it.

In cases of serious scientific misconduct, the Max Planck Society will notify other affected research institutions or scientific organizations. Professional organizations may also be notified where this is justified.

In order to protect third persons, to preserve trust in scientific probity, to restore its scientific reputation and to prevent consequential damage as well as to serve the public interest, the Max Planck Society may be obliged to notify third persons who have been affected and inform the public.