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Abstract

During the last two years there has been a discussion all over the media including internet blogs about legal aspects of doctoral dissertations. The emphasis has been on a political assessment of faulty quotations in doctoral dissertations. That said, it has to be stated that many of the works under public scrutiny date back to the early computer age if not the typewriter era. The authors, then still of young age, are now in the middle of their respective careers. In light of the fact that apparently none of the academic regulations on doctoral dissertations do contain provisions of limitation, the question arises how long formal flaws should have to result in legal consequences. Provided those gaps in the applicable regulations are of deliberate nature, the main reason for that might be a concept of the doctor's degree as some kind of honorary title. Historically this concept might stem in large part from the legal policy underlying the 1939 Gesetz zur Führung akademischer Grade (Law Governing the Use of Academic Titles), which has since then been abolished in the last twenty-five years by the German states as well as on the federal level. This paradigm change has so far been insufficiently

realized in the legal discussion.The applicable state law and federal law can be found in § 48 Verwaltungsverfahrensgesetz (Law on Administrational Procedure), containing a provision of limitation one year after the administrative body has full knowledge of the flawed dissertation (relative limitation), but no provision of limitation regardless of any such knowledge (absolute limitation). In stark contrast to that, most other fields of law do contain such provisions of limitation (e.g. civil law, IP law, penal law, social law, law of legal procedure, law of taxation), very often in a quite detailed way. There is, however, no considerable doubt in the German legal world that limitation as a legal principle pervades the legal order as a whole. Its legal ends a manifold: Legal certainty, legal peace, protection of confidence, prevention of selective enforcement, to name only a few.Given those legal considerations, many of them to be derived from constitutional values, it has to be asked whether it can be argued for the lack of any limitation as being a conditio sine qua non to the only constitutionally valid aim of the administrative actions under discussion: The upholding of uniform standards for the formal requirements of doctoral dissertations. The answer has to be to the negative: Because of the fact that for practical reasons only a small amount of the vast number of dissertations can be put under scrutiny, the aim of defending the aforementioned standards can be attained as well or better by reviewing a given number of dissertations from the last ten years than, e.g., a quarter of those number from each decade of the last forty years. Moreover, the risk of selective enforcement increases, the smaller the number of reviewed dissertations in a given period of time.In addition to the general legal ends of limitation as mentioned above, the constitutional rights of the author (protection of confidence, the right not to be deprived of his or her title on the deathbed, while even a murderer is protected by limitation) as well as the interests of third parties involved (e.g. faculties receiving grants according to the number of dissertations published by their students, other scientist quoting from the flawed book) strongly argue for limitation. The details of a rule of limitation can be attained by the legal principle of analogy. Most of the comparable rules from a diversity of legal fields hint to a limitation period of five to ten years. While it may be preferable to one day enact - according to the civil law tradition of German law - statutory laws of limitation on the subject under discussion, this day will very likely not be in the near future. This is due to the fact that the educational sector falls within the responsibility of the single states, and the design of the respective ex amination procedures even is part of the very core of self-government of the single

universities. Until then, we will as well live with an analogous rule of limitation, under which ten years are an appropriate limitation period. (HRK / Abstract übernommen)