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Author

KOSTORZ, Peter (OENTRICH, Kathrin)

Title

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Abstract

It is a regular occurrence during university examinations that a candidate will try to employ illicit methods in order to influence the results of an examination in his or her favour. A distinction must be made between completed deception which is discovered after the use of illicit means and the attempt of cheating which is noticed before the candidate has been able to employ the illicit method. The burden of proof is on the responsible examination office. If it cannot deliver such proof by prima facie evidence, the principle of "in dubio pro discipulo" applies. Cheating and methods of deception can be punished or sanctioned in manifold ways. Hereby, not only constitutional law and applicable regulations governing higher education must be observed but also statutory requirements that are mainly to be found in the university and course specific examination regulations. In accordance with the principle of proportionality, especially failing the candidate in the examination must be taken into consideration if the examinee has crossed the line as far as cheating is concerned. In mild or milder

24.7.2024

cases, a mere reprimand or allocation to a different seat in the examination room is often sufficient. If repeated or serious attempts at cheating occur, the candidate may be exmatriculated, may be excluded from further examinations or a fine may be imposed. In exceptional cases, cheating can lead to a criminal conviction if the candidate has untruthfully declared in an affidavit that she or he wrote the examination without the help of illicit methods. In this context, the examining office has a variety of tasks to perform, beginning with the correct announcement of disallowed means to ensuring an effective supervision with the aim of preventing cheating right through to the detection of an act of cheating and the imposition of a proportionate sanction. Important decisions (such as the detection of cheating or the consequent imposition of a so called sanction mark, i.e. marking the paper as failed) should be reserved for the board of examiners or the respective examiner. Overall, it is important that scientific misconduct during written examinations should not be trivialised – cheating and attempts to cheat at universities are not mere peccadillos and should therefore, in compliance with the constitutional principle of equal treatment and as a means of general prevention, be appropriately penalised and sanctioned. (HRK / Abstract übernommen)