

**CODE OF PROCEDURE
IN CASE OF
SUSPECTED SCIENTIFIC MISCONDUCT**

**adopted by
the Scientific Council of the MDC
on May 29, 2002, updated January 2011**

Preamble

This Code of Procedure makes it possible to immediately investigate allegations regarding the scientific conduct of employees of the MDC, and in doing so, to take into account the interest in clarification as well as in the protection of falsely accused persons.

Thus, the following interests must be balanced against each other and must be considered in each phase of the procedure:

- the immense importance of verifiable scientific achievement that is honestly carried out
- the good reputation of the MDC as a research institution of international standing
- the protection of all honestly working employees against unjustified allegations
- the protection against repression for persons who report misconduct
- internationally acknowledged standards of scientific ethics, with which the MDC complies and to the development of which it contributes

In order to be able to enforce these interests as effectively as possible, the implementation of the investigation procedure is oriented on the regulations of the Code of Criminal Procedure, unless the MDC Code of Procedure stipulates more specific regulations. In addition, the federal and state regulations of the Civil Service Law and disciplinary procedure also apply.

I. Preliminary Inquiry

I. Initiation of Preliminary Proceedings

In case of specific suspicious facts indicating scientific misconduct according to the Catalog of Behavior (Appendix 1), the MDC Board of Directors must be informed, as a rule by the ombudsman. The Board in turn shall immediately inform the responsible coordinator as well as the affected group supervisor. The information shall be given in writing; in case of oral information, the Board shall make a written record.

In exceptional cases that require justification, the relevant coordinator can be informed directly or solely.

II. Opportunity to Make a Statement

The person suspected of misconduct (hereinafter referred to as "the Respondent") shall be granted the opportunity to make a statement by the Board of Directors or the coordinator, with a specification of the incriminatory facts and evidence. The statement shall also be made in writing. The period for this shall be two weeks. In this phase of the proceedings, the name of the person who reported the suspicion of misconduct (hereinafter referred to as "the Complainant" shall not be disclosed to the Respondent without the Complainant's consent.

III. Decision on the Continuation of the Proceedings

Following the receipt of the statement by the Respondent or at the end of the two-week period, the Board of Directors and the responsible coordinator shall make a decision within a period of another two weeks on whether the preliminary inquiry shall be ended, specifying the reasons to the Respondent, or whether a formal investigation shall be initiated.

The proceeding must be ended without further investigations if the raised suspicion can be completely disproven or if it already becomes evident at this stage that the suspicion was unfounded.

If the suspicion could not be completely dispelled, the Board shall initiate a formal investigation. The Board shall notify the management staff and the Legal Department of this.

IV. Head of Preliminary Proceedings

In case of more extensive investigations, the MDC Board of Directors can appoint an individual to head the preliminary proceedings who is assigned with the verification of the raised accusations. The head of preliminary proceedings can conduct the necessary inquiries, especially the interrogation of witnesses and the inspections of written documents. The head of the preliminary proceedings shall be supported in this task by all employees of the MDC. The head of the preliminary proceedings is not limited to the two-week period but shall accelerate the proceedings, if possible.

II. Formal Investigation

I. Scope of Competence of the Investigation Committee

An Investigation Committee shall be responsible for the formal investigation. It shall be made up of the chairman and/or the vice chairman, the responsible coordinator, two mediation advisors who should belong to different coordination fields, the MDC ombudsman and one representative of the Legal Department. The chairman and vice chairman, both of whom shall not belong to the MDC, shall be elected by the MDC

Board of Trustees for a period of three years; re-election shall be possible. The other members shall be commissioned by the Board of Directors for the respective proceeding in consultation with the permanent chairman.

II. Powers of the Investigation Committee

In individual cases, the Investigation Committee can engage expert consultants from the scientific field of the case to be assessed, as well as experts for handling such cases as auxiliary members with an advisory vote. It has the right to hear witnesses and to inspect all documents that are relevant for clarification of the accusations and other notes. All MDC employees shall assist the Investigation Committee in its task.

III. Proceedings

1. Meetings of the Investigation Committee

The Investigation Committee shall deliberate in oral proceedings that are not open to the public. It shall assess whether scientific misconduct has occurred in a free consideration of evidence. The research area affected by a possible misconduct shall receive an appropriate means of making a statement. On request, the Respondent shall be granted an oral hearing; he/she may call on the assistance of a person he/she trusts; the latter also applies to all other testifying persons.

The Investigation Committee shall conduct its proceedings within the shortest possible period in order to clarify whether actual misconduct has occurred or not. The Investigation Committee shall adopt rules of procedure to carry out the tasks entrusted to it. A confidential record shall be made of its meetings.

2. Confidentiality

The deliberations of the Investigation Committee as well as the justifications of the decisions it reaches shall be confidential as a matter of principle; however, the MDC Board of Directors shall be informed about all relevant findings.

It may become necessary to disclose the name of the Complainant if the Respondent cannot otherwise properly defend himself or herself, in particular because the credibility of the Complainant is of great importance for determining the misconduct. Otherwise, this information shall remain confidential as a matter of principle. Another rule is possible if it becomes clear that the raised accusation was baseless after the end of the investigation; in this case, the Board shall make the necessary decisions.

3. Conclusion of the Proceedings

If the majority of the Investigation Committee regards a case of misconduct to be sufficiently proven, it shall submit the result of its investigation to the Board with a recommendation for further action for the Board to decide on; this recommendation shall also contain an appropriate sanction.

If no misconduct has been substantiated or if the accusation against the Respondent proves to be wrongful, the proceedings shall be closed.

4. Concluding Communication

The important reasons which have led to the closure of the proceedings or for their referral to the Board shall be communicated in writing without delay to the Respondent as well as to the Complainant.

5. Right of Appeal

There is no internal complaints procedure against the decisions of the Board or of the Investigating Committee at MDC.

Appendix 1

CATALOG OF POSSIBLE SANCTIONS and/or CONSEQUENCES IN CASES OF SCIENTIFIC MISCONDUCT

Without claiming to be complete, the following catalog of possible sanctions and/or consequences in cases of scientific misconduct should be understood as a first orientation. Since each case is different, and also since the seriousness of the proven scientific misconduct is relevant, there are no uniform guidelines for adequate reactions; rather, they depend on the circumstances of the individual case. The Legal Department is available for consultation.

I. Consequences According to Labor Law

Because in cases of scientific misconduct at the MDC it can primarily be expected that the Respondent is an MDC employee, it must be a priority to examine the consequences with respect to labor law.

1. Warning Notice

The warning notice must be made in writing and must be kept in the personnel file. It is a preliminary stage to termination, thus it only applies in cases of minor scientific misconduct. In case of repetition, the employee may be terminated following a second written warning notice.

2. Extraordinary Termination

An extraordinary termination requires that a continuation of the employer-employee relationship is no longer reasonable according to the circumstances of the individual case and after due deliberation of both parties' interests. In serious cases of scientific misconduct, it is clear that this will apply as a rule to the working relationship between a research institution and a scientific employee there. The termination must be submitted within a period of two weeks. The period begins when the legally terminating party gains knowledge of the facts decisive for the termination. This does not already apply to the suspicion of scientific misconduct but rather the moment at which the scientific misconduct has been proven and has been communicated to the Board of Directors – i.e. at the conclusion of the formal proceedings.

An extraordinary termination due to other pertinent causes remains unaffected by this.

As a rule, the preparation of an extraordinary termination requires a legal consultation with regard to the pertinent labor laws.

Especially in cases of very strong suspicion, such a consultation should immediately take place in order to clarify whether or not also a so-called termination due to sus-

picion is possible; this can prevent the risk in individual cases with respect to the labor law that a court views the moment of knowledge of strong suspicion already as the start date of the aforementioned two-week termination period.

3. Ordinary Termination

An ordinary termination which must comply with the usual termination periods stipulated by labor law will probably be considered less frequently in the cases discussed here. The reason is that as a rule either extraordinary termination or a contract cancellation will be preferred in cases of scientific misconduct.

4. Contract Cancellation

Aside from ending the employer-employee relationship by means of ordinary or extraordinary termination, the possibility to end the employer-employee relationship by mutual agreement – while taking the two-week period for extraordinary terminations into account – should be considered.

5. Distinctive Features in Employment Contracts Analogous to Civil Service Law

For scientists with whom the MDC has entered into an employment contract that is analogous to civil service law, the civil service law which applies to comparable university teachers in the State of Berlin shall be applied. One can assume that serious scientific misconduct constitutes a reason for dismissal from service according to Berlin civil service legislation and thus that it justifies an extraordinary termination of that employee; an ordinary termination does not come into question here.

II. Academic Consequences

Academic consequences in the form of revocation of academic degrees cannot be imposed by the MDC itself, but only by the bodies who have awarded these degrees, i.e. as a rule the universities. These must be informed of the grave academic misconduct if it has occurred in the context of the pursuit of an academic qualification.

In particular, the revocation of the doctorate degree and/or of the teaching authorization (*venia legendi*) can be considered.

III. Civil Law Sanctions

The following sanctions under civil law can be considered:

1. Ban from the premises
2. Claim for surrender against the Respondent, e.g. for the return of stolen research material or comparable items

3. Rights to removal and injunctive relief due to intellectual property rights, personal rights, patent law and competition law
4. Repayment claims, e.g. of scholarships, grants or similar funds
5. Claims for damages by the MDC or by third parties in case of personal damages, property damage or the like.

IV. Criminal Law Sanctions

Criminal law sanctions can always be considered when the suspicion exists that scientific misconduct simultaneously constitutes an offense according to the German Criminal Code (StGB) and/or of other penal norms or infringements. The calling of investigative authorities is carried out solely by the Board of Directors. Among others, possible punishable acts are:

1. Offenses against public order

§ 132 a StGB	Abuse of titles, professional titles and insignia
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2. Violation of privacy

§ 202a StGB	Data espionage
§ 203 StGB	Violation of private secrets
§ 204 StGB	Exploitation of the secrets of another
3. Offenses against life, against the person

§ 222 StGB	Negligent manslaughter
§§ 223, 229 StGB	Negligent or intentional causing of bodily harm
4. Theft and unlawful appropriation

§ 242 StGB	Theft
§ 246 StGB	Unlawful appropriation
§ 263 StGB	Fraud
§ 263 a StGB	Computer fraud
§ 264 StGB	Subsidy fraud
§ 266 StGB	Breach of trust
5. Forgery

§ 267 StGB	Forgery
§ 268 StGB	Forgery of technical records
§ 269 StGB	Forgery of data intended to provide proof
§ 270 StGB	Deception in the context of data processing
§ 271 StGB	Causing wrong entries to be made in public records
§ 274 StGB	Suppression of documents; changing a border mark
6. Criminal damage

§ 303 StGB	Criminal damage
§ 303a StGB	Data tampering
7. Bribes and corruption

	§§ 299, 332 StGB	Taking and offering a bribe
	§ 331 StGB	Acceptance of a benefit
	§ 353 b StGB	Breach of official secrets and special duties of confidentiality
8. Violations of copyright law		
	§ 106 UrhG	Unauthorized exploitation of copyrighted works

V. Revocation of Scientific Publications/Informing the Public/Press

Scientific publications that contain errors due to scientific misconduct must be withdrawn as long as they are still unpublished, or must be corrected if they have been published (revocation); if necessary, cooperation partners must be informed in appropriate form. The author(s) and involved publishers are principally obligated to do so; if they do not become active, the MDC shall take the possible and appropriate actions.

In cases of serious scientific misconduct, the MDC shall inform other affected research institutions or scientific organizations. In justified cases, informing professional associations may be predicated.

In the general common interest and to protect third parties, maintain trust in scientific honesty, restore its scientific reputation and prevent consequential damages, the MDC may be obligated to inform the affected third parties.

In cases of proven misconduct, the Board shall decide after consulting the Investigation Committee and the MDC Press and Corporate Communications Department on whether and in which form the public shall be informed. In doing so, the protection of such persons must be ensured who have been affected by the proceedings with no fault of their own. Investigation reports may not be made available to the public, except to authorities with right of access.

This document is an English translation of the original German text *Verfahrensordnung bei Verdacht auf wissenschaftliches Fehlverhalten*. In case of discrepancy between the English and German versions, the German version shall prevail.