CODE OF ACADEMIC FREEDOM

PREAMBLE

The constitution guarantees academia an autonomous space within which it is free to pursue academic practices according to its own criteria. This guarantee of freedom, which is provided for in Section 5 subsection 3 of the Basic Law for the Federal Republic Germany (Grundgesetz für die Bundesrepublik Deutschland, GG), therefore at the same time sets normative boundaries for interventions and hindrances of any kind, which are, however, not always respected in practice. Academics instead find themselves facing demands—from both inside and outside their institutions—that they believe have no place in academia. They are exposed to the pressure of expectations that they cannot and do not wish to accept, and are drawn into conflicts that are not appropriate by academic standards.

These areas of conflict are neither new nor surprising. After all, academia is guaranteed its freedom to produce new knowledge. Whether it is sufficiently underpinned or not, new knowledge often makes difficult demands on existing perspectives, attitudes, and practices. For this reason, acceptance at all times and across the board cannot be expected. In this respect, conflicts are neither unusual nor a threat, but rather form part of a differentiated society with multiple perspectives, in which demands for justification are also made of academia. It is also not uncommon for academia to be confronted with academic criticism, for example with questions of the risk assessment for new technologies. This is legitimate in a democratic society. As such, not every conflict presents the threat to academic freedom that it is at times framed to be.

There are nonetheless good reasons for delineating a few fundamental tenets, in order to ensure the unrestricted exercise of academic endeavors. Indeed, there are more than enough occasions to which such fundamental tenets may apply. Examples include the disruption of controversial lectures or seminars, refusal to engage in an academic debate for political or religious reasons, exertion of politically motivated pressure on academics, delegitimization of academic topics or subjects, unwillingness to engage with ideas and content perceived as inconvenient or threatening, and other structural, sometimes subtle and informal influences. From a non-academic perspective, such practices may promise success in the short term, however in the long term they threaten the production of new knowledge, which is indispensable for modern societies.

With its 11 core principles and their explanations, this code aims to clarify the indispensable basic tenets for research and teaching in the face of increasingly frequent debates on the subject of academia and academic freedom. It aims to clarify the framework within which academic freedom is to be exercised. The guarantee of autonomy comprises both an opportunity and a responsibility to shape said autonomy through productive cooperation between all members of the University, in line with Universität Hamburg's guiding principle.

I. ACADEMIC FREEDOM AS AN INDIVIDUAL AND INSTITUTIONAL RIGHT

> Individual and institutional academic freedom are guaranteed by law. Academia is an area of autonomous responsibility that is fundamentally protected from external control. This autonomy is founded in the notion that an academia free from social utilitarianism and political expediency ultimately serves the state and society best. The legal guarantee safeguards the freedom of academics without constitutional reservation to choose the subjects of their research, apply the methods they consider appropriate, and communicate their research topics and results. It also applies to the freedom of teaching with regard to the content, methods, and organization. The safeguarding of academic communication and activities also extends to the freedom and integrity of academic institutions. Here, academic freedom encompasses the obligation of state authorities and management bodies of academic institutions to pro-tect these freedoms, including from inadmissible social interference.

The University is a secular institution for research, teaching, and education that is committed to academic and ideological plurality and bound by the methods and standards of academic research and teaching. Section 5 subsection 3 GG forms the basis: "Arts and sciences, research and teaching shall be free." The Basic Law grants university teachers, research associates, and—under certain conditions—students an individual right to freedom from interference by the state in the choice of research subject and in the process of acquiring and disseminating academic findings. The University itself can also invoke the Basic Law with regard to the institutional guarantee of self-governance. The state institutions are obliged to protect and foster academic freedom and to organize the institution of higher education in such a way that ensures its functioning while safeguarding individuals' claim to freedom. Academic freedom may only be limited by other constitutionally protected legal interests.

II.   A FREE SPACE FOR ACADEMIA

> The University is committed to the pursuit of academic knowledge as an open process and must therefore be a free space for the development and investigation of new hypotheses, their consolidation, or their refutation in academic discourse. Academic positions are not bound to prevailing notions, nor are they to be interpreted prematurely. Rather, freedom is also (and especially) granted to those who develop and express divergent academic positions. Academic progress would otherwise be impossible. Academic discourse may and must therefore always be open to questioning familiar no-tions and challenging them with new ones.

Every attempt to limit the protected space of academia to the pursuit of the familiar or to specific religious, political, or ethical positions narrows the academic discourse inadmissibly and threatens to preclude creativity and innovation. The attempt to banish controversial positions in research and teaching from the academic discourse by means of pressure from positions of power or by disrupting, preventing, or scandalizing events is inimical to the inherent logic of academic discourse. Its openness must also (and especially) apply to innovative positions and to positions that diverge from the familiar. The fundamental openness to divergent positions should not be confused with a lack of criticism (see Principle VI).

III.   THE BOUNDARIES OF FREEDOM

Inherent in every legal guarantee of freedom are the boundaries of that freedom—not least because it must be reconciled with other freedoms. These freedoms and boundaries apply within the institution of the University as well as with regard to the rights of external third parties. For academia, the boundaries lie where the fundamental rights of other members of the University or third parties are directly affected by academic activities and the rights of academics must therefore be coordinated with them.

The situation may present itself differently in research and in teaching. Encroachments may arise from research activities per se as well as within the framework of communicating academic findings in research and teaching. The nature and extent of encroachments may well vary and must therefore be justified in a differentiated manner.

The guarantee of academic freedom does not take precedence over other fundamental rights, such as the right to physical integrity pursuant to Section 2 subsection 2 GG. Constitutional duties of the state to protect life and health as well as other legal interests can of course justify a restriction of academic freedom. The extent of the restriction depends on the extent and specificity of the hindrance to other legal interests.

Academic debates on specific content are an exercise in academic freedom, not a restriction thereof. Where restrictions are required due to conflicting fundamental rights, appropriate strategies are needed for conflict resolution.

In the case of conflicts between members of the University, an attempt should first be made to reconcile the conflicting freedoms through internal discussions in order to reach an understanding. Since the willingness to engage in discourse is entrenched in the University's constitution, it must also constitute the primary means for reconciling conflicting positions and resolving conflicts.

Where internal conflict resolution proves unsuccessful or is not even sought, the conflicting fundamental rights are to be reconciled by the appropriate management bodies by means of suitable procedures. All members and their groups are subject to the legitimate expectations, claims, and rights of the other members, especially students. Indeed, the University's responsibility is not only to its teaching staff and early career researchers. Students are also independent participants in university-related decisions and events, and those in more advanced stages of their studies are participants in the academic discourse. Therein lies an important educational goal of the University. Regardless of whether students have a right pursuant to Section 5 subsection 3 or Section 12 subsection 1 GG, their right to active participation is bound to the principle and the mission of the University, as laid out in the Guidelines for University Teaching.

How and to what extent conflicting expectations, for example with regard to the freedom of debate, need to be reconciled depends on the state of education and, in teaching, also on the concept for the respective event. The freedom of teaching extends to freedom in its design. The discussion of different academic positions is not limited to the classroom or lecture hall. It may also take place in other venues

that are organized by students under their own authority and responsibility and that are open to the university public.

Restrictions on academic freedom in favor of other legal interests may result from the respect of the rights of third parties outside of the University, which are many in number.

Given the importance of academia to society and the unconditional guarantee of academic freedom, restrictions must always be limited to the absolutely necessary. The extent depends on the type and degree of potential harm to others. The mere supposition of possible danger does not justify a restriction.

IV.   RESPONSIBILITY FOR ONE'S OWN ACTIONS

Academic freedom goes hand in hand with responsibility for one's own actions and requires reflection thereupon. It does not grant exemption from the obligation of justifying one's position, but it does ensure that this personal responsibility can be exercised freely and independently.

Academic freedom does not release researchers from the ethical duty of accounting for the consequences of their actions. Research often has as its goal the critical questioning of social circumstances and seeks opportunities to change them. Yet even basic research always has the potential to trigger processes of change that have profound social implications. Reflection on the potential or acute consequences of one's actions as an academic is an ethical duty and includes the duty to ask oneself critical questions. The demand that a position be justified does not constitute an attack on academic freedom. Rather, it is an integral element of the discourse and prompts academics to take responsibility. It must always involve a process of autonomous reflection on one's responsibility; attempts at a heteronomous determination of "appropriate" responsibility by authorities or external bodies can, in contrast, always turn into an acute threat to academic freedom (see Principle V).

V. MISUSE OF RESEARCH RESULTS

Knowledge can be used for a variety of purposes and these are often unpredictable. The possibility of misuse by third parties of the knowledge gained by research does not justify a restriction of academic freedom. This is based on the conviction that new knowledge does no harm. As such, the debates that accompany new findings are also not a reason to restrict them.

The demand for reflection on the possible consequences of academic activity must not lead to the limitation of research subjects and findings. Any control through the establishment of approval procedures should be categorically rejected. Such procedures can only be legitimate when they are implemented in order to protect third parties from a tangible threat. A legal restriction of freedom cannot be justified exclusively with ethical considerations. This also applies to more indirect influences and to control via resource allocations.

The misuse of research results cannot be ruled out. All new findings can potentially be used for harm. This eventuality does not, however, justify the preemptive restriction of freedom of research.

It is common knowledge that research results can also have a disruptive effect. An associated debate can itself be the subject of research, though this should primarily be achieved by engaging society and not by limiting research.

A discussion of the Civil Clause or of security-relevant research as determined by ad hoc commissions t must be viewed critically with regard to academic freedom. If the primary aim of a Civil Clause is to prompt self-reflection among academics in order to sensitize them to the responsible handling of new findings and the appropriate supervision of their implementation, then it is legitimate. However, should it be the cause of particular research subjects being ruled out altogether, then this type of voluntary control defeats its own purpose.

The example of mathematical research can be taken by way of illustration: Given that mathematics is the language in which technical or scientific problems can most efficiently be expressed and solved, it is almost always relevant to security. An atomic bomb cannot be constructed without mathematical methods. Nevertheless, no one would describe mathematics per se as security-relevant research. Ultimately, the boundaries can only be drawn through self-reflection by academics and not through externally imposed norms.

VI.   OPENNESS AND INCLUSIVENESS OF ACADEMIA

> The openness and inclusiveness of academic discourse is a fundamental element of the guarantee of freedom. It also includes the openness to criticism and to the rejection or refutation of one's positions.

We may speak of a "guarantee of freedom," as actions that threaten to prevent that freedom can be averted using legal means. The "openness" of academic discourse includes the right to question past results, to use academic means to critically examine them, and to bring new findings and justifications to the fore. "Inclusiveness" means that all claims to knowledge are subject to scrutiny and to the methodological generation of knowledge, and that they can thus in turn become the subject of academic criticism. Academic work is based on the continual critical consideration of claims to validity and insight, and thrives on the casting of doubt on the status quo and on the disruption of routines that escape scrutiny under the mantle of being self-evident. It is for this reason that an openness to criticism is necessary in those situations where one's perspective, world view, or subjective judgment is scrutinized. Falsification, contradiction, and refutation are means of gaining knowledge. The relationship between academia and freedom is tested the most when they do not come easily in the mode of permanent self-correction and the research results and objections of others contradict one's own convictions.

The University therefore also keeps the space for critical debate open where the democratic public, faced with the questioning of long-standing convictions, responds with aggression or even belligerence. Criteria that are inadmissible in academic discourse are a lack of self-criticism, nonchalance for the relevant state of the debate, or assertions without justification, but not the demystification of the self-evident.

VII.   RESEARCH AS A SUBJECT OF SOCIAL DEBATE

> Academia is always a participant in the social discourse. Academics are drawn into social debates or participate in these of their own accord. The logic of academic communication and the logic of media attention are not necessarily compatible. Hence academic assessments do not always have to meet with the sympathetic understanding of other social stakeholders. When academics experience criticism, it must be endured as an essential element of academia, even if it does not meet the requirements of objectivity that apply in academic discourse. Either way, the criticism is to be accepted as long as its actual goal is not to compromise personal integrity or other legal interests.

Academia must be involved in social discourses—not least because many academic questions have their origins in past societal problems, but also because of the foreseeable or potential consequences all research has for society. If certain consequences that are problematic—or are perceived as such—become apparent to society, the result will necessarily be critical questions or debates. Academia is not oblivious to these discourses, nor should it attempt to close itself off from them. While academia at times proactively intervenes in social debates, at others it is also drawn into such debates by third parties. Researchers must then confront the debate, which by no means represents a threat to academic freedom. That being said, the logic of academic communication diverges greatly from that of public debate in the media, which can alienate or unsettle academics who are not familiar with media attention. There is no escaping this tension. Academics must also confront the impositions of public debates staged by the media, not least because of the necessity of justifying their positions to the public. The basic conditions for constructive criticism in the interest of the knowledge process may not always be maintained, and researchers must reckon with forms of subjective and one-sided, distorted criticism. Academia must endure these forms of public criticism. The demands of knowledge-based communication cannot be applied to public debates; researchers must learn to deal with this tension. Academic freedom is only threatened when one-sided, biased criticism, exploited by positions of power in society, threatens to restrict the intrinsic autonomy of research or when researchers are personally attacked for their positions and their personal integrity is compromised.

VIII.   INSTITUTIONAL PROTECTION OF INDIVIDUALS

Academics can confidently counter debates and attacks individually or together with their professional communities. Where those affected or their institutions can reckon with serious hindrances or face exclusion or threats of personal disadvantage, they need the solidarity of their institutions. Academics must be able to rely on support and protection, regardless of their academic position.

Academic freedom requires reliable protection from anti-academic and non-academic interference. Academics must be able to rely on the University as an institution that fulfills its duty to resolutely protect their academic freedom, which is constitutionally guaranteed and morally well-founded. This protection must apply as a matter of principle and may not depend on status, the type of employment, or political expediency.

Academics must be able to trust that their immediate colleagues and superiors as well as University management will support them in their exercising of the legally guaranteed freedom of teaching and research and defend them against attacks. In cases of physical violence, disparagement, insults, intimidation, bullying, etc., collegial support for those affected must be a given and not something they first have to fight for.

Especially for academics in the qualification phase, who have not yet established their position in the academic system, personal attacks with the threat of professional consequences can pose a major threat to the autonomy of research and thus to academic freedom. In such cases, the academic institution must defend its members.

Collegial support also means defending against secondary effects: academics who are attacked should not have to fear being shunned as academic partners for discussion and cooperation.

IX.   SPACE FOR EXPLORING NEW HYPOTHESES

> Attacks on the freedom of academics from within the University must also be prevented. The state's and the presidium's, rectorate's, and dean's duty to protect also applies in this situation. They must work to ensure that the University remains an open space for exploring preliminary and diverging hypotheses. This openness is greatly hindered when events or research formats are disrupted or blocked. Hindrances also exist when people are defamed because of their position or the discourse space is constricted by a climate of moral or sociopolitical condemnation.

The reference to ensuring the necessary space for exploring hypotheses must take into account the fact that teaching also contributes to the academic pursuit of knowledge. Academic findings must be communicated; whether these are comprehensible is only apparent in the addressees' reaction. It must be possible for academics to test the comprehensibility of their findings. Communications can vary depending on whether they are aimed at students at the start or end of their studies or at other experts.

The university can only fulfill its tasks in a space where a non-violent, rational academic exchange that meets academic standards is possible. This is incompatible with all forms of intimidation by individuals or groups.

Practices such as the public dissemination of preliminary hypotheses under the guise of substantiated ones, the distortion of hypotheses, allegedly verbatim quotations, or more or less deliberate misrepresentation are also likely to seriously damage an academic's reputation. Such actions also indirectly exert pressure, which can in turn be detrimental to spontaneity and the willingness to take risks in the debate. All those involved in the academic process bear a responsibility not to disrupt this protected space unnecessarily. This also includes maintaining the confidentiality of consultations and decision-making processes.

X.   SIGNIFICANCE OF RESOURCE ALLOCATION DECISIONS

Academic freedom reaches practical limitations when research questions cannot be pursued at all or only to a limited extent due to a lack of or insufficient funding. Regardless of the unavoidable setting of priorities in the financing of research and teaching, the thematic and institutional diversity of financing and funding options is an important condition for academic freedom.

The availability of resources directly influences whether, in which way, and to what extent academic freedom in research and teaching can actually be exercised. Resources must be allocated in a manner that upholds academic freedom. Safeguarded areas must remain for basic research, in the same way that the necessary diversity of academic disciplines must be guaranteed. Research control, priority setting, and the earmarking of funding or conditions for use as these are permitted and required by academic freedom are legitimate; they can reflect important societal needs and requirements. However, such decisions must be made in a transparent manner adapted to the respective decision-making level using appropriate participation procedures and take the resulting opportunities for freedom into account.

XI.   RESPONSIBILITY OF ACADEMIC SELF-GOVERNANCE

Within academic self-governance, the members of the University and its bodies are required to oppose non-academic considerations in their decision-making processes as well as non-academic procedures and strategies of quality assurance. Similarly, they are tasked with preventing the abuse or accumulation of power by individuals or certain academic currents in decision-making bodies through appropriate structural measures.

The autonomy of academia granted by Section 5 subsection 3 GG establishes a responsibility of academic self-governance to protect and foster this autonomy. This responsibility applies particularly with regard to non-academic influences on research and teaching. The plurality of persons and positions is as important for autonomy as the preservation and fostering of different approaches to research. As such, sustainability also means diversity. New momentum for research and teaching does not arise from the standardization of academia, but rather from the fruitful tension between different approaches and notions. This diversity should also be emphasized vis-à-vis the procedures of quality assurance, which are by all means important but which can exacerbate unjustified standardization through inadequate criteria.

The emergence of focus areas is undoubtedly important, however it is equally important to ensure structural openness, for example through risk funds for the development of new lines of research. This also applies to the institutions' own decision-making processes. As helpful and unavoidable as standardization by the administration may be, the specifics must be continuously reviewed. Departmental traditions are justified and their well-founded logic should be acknowledged.

The procedures to safeguard against academic misconduct make clear that unfair practices and abuses of power are a problem in academia and can affect and destroy the careers of young academics as well as damage the reputation of institutions and undermine the trust in academia. It is the task of all academics and also the responsible management bodies on all levels at the University to confidently counter such misconduct and to maintain the institution's openness. The procedures foreseen for this purpose must be strengthened and their independence safeguarded.

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