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Regulation on dealing with sexualized discrimination and violence for Technische Hochschule Köln

of April 15, 2020

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TH Köln

This is a translation of the “Ordnung zum Umgang mit sexualisierter Diskriminierung und Gewalt“ which was originally issued in German. For all legal purposes, only the German version of the regulation shall be considered binding.

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By virtue of section 2 (4) sentence 1 and section 22 (1) sentence 1 no. 3 of the North Rhine-Westphalia Higher Education Act (*Gesetz über die Hochschulen des Landes Nordrhein-Westfalen - Hochschulgesetz (HG)*) of September 16, 2014 (*Gesetz und Verordnungsblatt NRW (GV. NRW)*, p. 547), last amended by the act of September 24, 2019 (GV. NRW, p. 593), Technische Hochschule Köln - University of Applied Sciences (TH Köln) has adopted the following regulations:

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Preamble

TH Köln actively promotes diversity, diversity of perspectives and equal opportunities and fosters an organizational culture, which considers individual, social and cultural diversity to be valuable, and a sign of quality. TH Köln actively opposes discrimination by releasing regulations and offering preventive measures. With this in mind, TH Köln opposes any kind of sexualized discrimination and violence.

However, universities and thus TH Köln are as a part of society and especially due to the “existing relations of supervision and dependency susceptible to various forms of abuse of power.” A particularly severe form of such an abuse of power is sexualized discrimination and violence.

Thus, TH Köln takes responsibility and complements with this regulation its possibilities and obligations to act according to the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz*, AGG) of August 14, 2006 to protect the personal rights of all members, associates and visitors of TH Köln and to protect them from sexualized discrimination and violence in situations with a university context.

Sect. 1 Objectives

- (1) TH Köln is to be a place that is free of violence and discrimination.
- (2) This regulation is intended to explicitly encourage and motivate individuals affected by sexualized discrimination and violence to exercise their rights. They are offered support and their protection is ensured.
- (3) The regulation also considers the support of the accused person. If appropriate, he*she will be held responsible. Additionally, he*she is to be given the opportunity to sustainably change their behavior.
- (4) Clearly defined procedures in the event of a violation of the prohibition of sexualized discrimination and violence and an overview of the sanctions that may be initiated are to ensure reliable procedures.

Sect. 2 Scope

- (1) The regulation applies to all members and associates of TH Köln as defined in sect. 9 of the North Rhine-Westphalia Higher Education Act (*Hochschulgesetz* - HG) including doctoral candidates (supervised at TH Köln and another university) and adjunct lecturers. It applies equally on the university's premises as well as in work-related or teaching/learning contexts off TH Köln's premises.
- (2) This regulation also applies in cases of sexualized discrimination and violence by or against third parties on the university's premises if at least one person involved is part of the group defined in sentence 1.

Sect. 3 Definition

- (1) In this regulations term “sexualized” is used in the assumption that the discrimination, harassment or act of violence described here in is in many cases not motivated by sexual desires. Sexuality or sexual actions are instrumentalized to demonstrate power and superiority.
- (2) Sexualized discrimination and violence is a (personally perceived) transgression of boundaries which violates the dignity of the person affected.
- (3) Sexualized discrimination and violence is particularly severe if an environment characterized by intimidation, hostility, humiliation, degradation or insults is created in its context. Sexualized discrimination and violence in which a relationship of dependency is exploited, personal or professional disadvantages are threatened or advantages are promised, or which it is directed towards a minor, is considered particularly reprehensible misconduct.
- (4) Sexualized discrimination and violence can manifest itself in the form of unwanted verbal or non-verbal remarks as well as unwanted physical assaults, for example:
 - jokes or remarks with sexual content
 - Showing, distributing or publicly displaying pornographic material
 - Sexually tinged gestures or behavior
 - (Digital) contents, e.g. messages or posts in social networks with sexual innuendo
 - Degrading use of language, e.g. degrading or insulting statements or assertions about a person or their body as well as remarks on physical qualities and weaknesses
 - Intrusive invitations or similar behavior which are perceived as sexual advances by the person affected
 - Following, stalking, repeatedly harassing, threatening or terrorizing a person
 - Physical closeness or assault, including sexually suggestive and embarrassing touching against a person's will
 - Proposing or engaging in non-consensual sexual activities
 - Discrimination based on gender identity or sexual orientation

Sect. 4 Principles

- (1) TH Köln prohibits any form of sexualized discrimination and violence. The university is committed to protecting its members from any form of sexualized discrimination and violence. All members and associates of the university are to contribute to a study and work climate in which the personal rights of all other members, associates and visitors are respected.
- (2) TH Köln considers the professional handling of sexualized discrimination and violence to be an important aspect of good leadership. Individuals in management positions as well as employees with teaching, training and management functions have a special obligation to take appropriate measures to prevent or eliminate sexualized discrimination and violence in their area of responsibility. Individuals in management positions have the duty to follow up

on any indications of sexualized discrimination or violence in their area of responsibility or to discuss the case with their supervisor.

- (3) TH Köln provides its members and associates with up to date information on the topic of sexualized discrimination and violence. There are mandatory pre-defined training courses for individuals in management positions and employees with teaching, training and management functions as well as for the counseling and complaint management services mentioned below.
- (4) For the best possible protection of the personal rights of all parties involved, only the persons contributing to the process detailed below are to be involved. Names of the person affected and the person accused are to be anonymized as far as possible and only to be disclosed if this necessary for further proceedings.
- (5) This may not cause any disadvantages for the person who makes a complaint as part of the informal or formal process and the counseling service that may be involved.
- (6) The right of the affected person to initiate legal actions or report violations of their right of self-determination in sexual matters under the terms of criminal law, civil law, administrative law or other laws remains unaffected by this regulation.
- (7) The university's Executive Board provides the resources for the process detailed below as well as the measures defined in the annex.

Sect. 5 Prevention and awareness raising

- (1) TH Köln commits to implement precise measures aiming at preventing and raising awareness for sexualized discrimination and violence.
- (2) A catalog of preventive and awareness raising measures is adopted in a separate annex no later than six months after this regulation has come into force and is to be reviewed and updated regularly every three years. The *Arbeitskreis gegen sexualisierte Diskriminierung und Gewalt* (Working group against sexualized discrimination and violence) is charged with this task and is supported through appropriate evaluations of the individual prevention and awareness-raising measures.

Sect. 6 Initial contact and counseling services

- (1) The initial contact provides the affected person with information on possible support and further action and is used to report an incident. After the initial contact, the affected person may decide if they want to leave it at a counseling session or if they want to seek additional counseling, or whether they want to pursue the case further by following the informal procedure (sect. 7) or formal procedure (sect. 8).
- (2) During counseling, the affected person has the unconditional right to stay anonymous.
- (3) The following counseling services are available at TH Köln:

For students:

- Equal Opportunities Officers of the faculties
- University Equal Opportunities Officer

- General Students' Committee (AStA), particularly the LGTB* department
- Central Academic Advising Office
- Representative for Students with Disabilities
- Representative for Cases of Sexualized Discrimination and Violence (sect. 10)
- Anti-Discrimination Office of the faculties (if available)

For employees:

- Equal Opportunities Officers in the faculties
- University Equal Opportunities Officer
- Staff Council for employees of technical and administrative services
- Staff Council for academic and artistic employees
- Representative of Student Assistants' Interests
- Youth and Apprentice Representative
- Special Needs Representative
- Representative for Cases of Sexualized Discrimination and Violence (sect. 10)

For visitors:

- University Equal Opportunities Officer

- (4) For the purpose of prevention, all counseling services are required to report the number of suspected cases, which have been brought to their attention, as well as the number of counseling sessions to the Representative for Cases of Sexualized Discrimination and Violence at the end of each semester in anonymized form.

Sect. 7 Informal procedure

- (1) The informal procedure offers the possibility to cope with cases of sexualized discrimination or violence on an informal level.
- (2) After the initial contact (sect. 6) the following steps are possible as part of the informal procedure:
- Personal conversation between the affected person and a counseling service or a counseling service and the accused person where it is pointed out that sexualized discrimination and violence is prohibited.
 - Personal conversation between the affected person and a counseling service or a counseling service a supervisor and the accused person where it is pointed out that sexualized discrimination and violence is prohibited.

If the affected person is not present during the conversation, he*she is to be informed of the content and outcome of the conversation.

- (3) For the purpose of prevention, all counseling services are required to report the number of suspected cases, which have been brought to their attention, as well as the number of

informal procedures to the Representative for Cases of Sexualized Discrimination and Violence at the end of each semester in anonymized form.

Sect. 8 Formal procedure

- (1) The formal procedure expands the Right of Appeal as defined in sect. 13 of the General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz, AGG) of August 14, 2006 to include the persons described in sect. 2. It is a two-stage process which aims at notifying the competent department and, if applicable, to impose appropriate sanctions.
- (2) The formal procedure may be initiated by a previous informal procedure (sect. 7) or by directly submitting a complaint to one of the following complaint management services:
 - a) Head of the Department of Legal Affairs
 - b) Representative for Cases of Sexualized Discrimination and Violence (sect. 10)

(3) The affected person may also consult the counseling services (sect. 6 (3)) for support.

(4) The two-stage process includes the following steps:

1. Investigation of the facts and circumstances:

The Head of the Department of Legal Affairs is to conduct an investigation of the facts and circumstances. For this purpose, the affected person is to be questioned as a first step, unless this was already done during the initial contact. The accused person is offered the opportunity to respond to the accusation verbally or in writing. Additionally, third parties from the affected and/or accused person's environment may be questioned (always with reference to the Prohibition of Victimization according to sect. 16 of the AGG) and evidence may be brought in.

While the facts and circumstances are being investigated, the Head of the Department of Legal Affairs is to work on proposals to remedy the situation if a violation of the prohibition of sexual discrimination and violence has occurred. The Department of Legal Affairs documents all steps of the investigation of the facts and circumstances and informs the university's Executive Board, which is the decision-making authority, with regard to the possible initiation of sanctions as well as the complainant and the accused person of the outcome of the investigation.

2. Sanctions in case of a violation of the prohibition of sexualized discrimination and violence:

In case of a violation, the university's Executive Board is obligated to take reasonable and appropriate action to eliminate the discrimination on a case by case basis. Disciplinary sanctions against staff members are imposed within the scope of the law and irrespective of the person or their position.

Possible sanctions against the accused person depending on their status and the severity of the violation of the prohibition of sexualized discrimination and violence include:

- Verbal or written instruction
- Formal official conversation ("Dienstgespräch")
- Formal written warning ("Abmahnung")

- Initiation of disciplinary proceedings (“Disziplinarverfahren”)
- Revocation of supervisory responsibilities
- Relocation of the accused person
- Termination with or without notice
- Exclusion from TH Köln’s services
- Exclusion from a course
- House ban
- Removal from the student register (“Exmatrikulation”)

Depending on the circumstances, several sanctions may be imposed to punish one particular offense.

- (5) A complaint can be withdrawn at any time and without giving reasons, and the complaint procedure will thus be discontinued. However, in this case the complaint management service is still required to continue the investigation of the facts and circumstances if it considers it necessary to fulfill TH Köln’s duty of care.
- (6) If the affected person agrees, TH Köln, represented by its President or its Vice President for Financial Affairs and Human Resource, reserves the right to file a criminal complaint in cases of severe sexualized discrimination and violence.
- (7) For the purpose of prevention, all complaint management services are required to report complaint procedures, including the outcome of the investigation, to the Representative for Cases of Sexualized Discrimination and Violence at the end of each semester in anonymized form. The following information is to be forwarded:
 - Result of the investigation
 - If the investigation concludes that sexualized discrimination and violence occurred, also:
 - Status of the affected and the accused person
 - Severity of the incident (verbal, non-verbal statement, statement involving media or physical assault, e.g. rape)
 - Place where the harassment occurred
 - Measures taken, if applicable

Sect. 9 Additional protective regulations

- (1) The privacy protection and personal rights of everyone involved are respected.
- (2) TH Köln has a duty of care and protection for its members, associates and guests. Thus, it ensures that a person who has been wrongly accused, as well as individuals who have provided information, do not experience any disadvantages.

Sect. 10 Representative for Cases of Sexualized Discrimination and Violence

- (1) The Executive Board appoints a Representative for Cases of Sexualized Discrimination and Violence and a deputy. To this end, the Executive Board shall submit a staff proposal to the Senate. If the Senate does not have any objections, the Executive Board approves the appointment and sends a letter of appointment to the representatives. The representatives are to be of different genders.
- (2) The representatives fulfill the tasks assigned by this regulation and report regularly to the Executive Board and at least once a year to the Senate.
- (3) When carrying out the assigned tasks, the representatives are subject to exceptional confidentiality.

Sect. 11 Entry into force

These regulations enter into force the day after their publication in TH Köln's *Amtliche Mitteilungen*. At the same time, the "Guideline for the prevention of sexual harassment and violence at Cologne University of Applied Sciences of December 21, 1999" ("*Richtlinie zur Vermeidung von sexueller Belästigung und Gewalt an der Fachhochschule Köln vom 21. Dezember 1999*", *Amtliche Mitteilung* 2000 - Special publication no. 1 of January 14, 2000) expires.

These regulations are issued based on the decisions of TH Köln's Senate of December 27, 2019

Cologne, April 15, 2020

President

of Technische Hochschule Köln

Prof. Dr. Stefan Herzig