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## LEGAL ASPECTS OF REVOCATION OF DEGREES

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### Summary

This article discusses the legal issues regarding revocation of a diploma (degrees). As the revocation of a diploma is a matter that falls within the scope of a person's private life, the revocation must be subject to a certain regulatory framework. In Latvia, this regulation has shortcomings, so it needs to be improved. Getting acquainted with the case law of Latvia and other countries, Latvian legal regulation, legal literature and rules of other countries, problems of Latvian legal regulation have been identified and solutions have been proposed. They concern the applicable law, the competent institution, the period of time that has elapsed since the defence of the diploma.

### Introduction

When issuing a diploma, the higher education institution indicates that the graduate has completed certain tasks and has acquired a certain level of knowledge. Unfortunately, there are cases when soon after obtaining the diploma or at some later point in time it is revealed that the graduate has not performed all the necessary tasks or has not performed them with sufficient quality, therefore the award of the diploma is not justified. For example, the results of research have been fabricated or other fraudulences committed, or a plagiarism has been allowed<sup>1</sup>.

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<sup>1</sup> More about plagiarism: Sudmale S. Kompleksas plāģiāta ierobežošanas nepieciešamība Latvijas augstskolās jeb noklusētais par plāģiātu [The need to limit complex plagiarism in Latvian universities or the default for plagiarism]. *Jurista Vārds*, 2016, No. 22 (925); Gulbis R. Rēģu rakstnieku darbība akadēmiskajā jomā – autortiesību un tikumības apsvērumi [Ghost Writers in the Academic Field – Copyright and Virtue Considerations]. *Jurista Vārds*, 2016, No. 22 (925).

There are also cases when the work is original, but it has been written by another person on behalf of a student, who later submits it as his own.<sup>2</sup>

The discovery of such circumstances may lead to the revocation of the previously awarded qualifications or confirmation of a scientific degree (hereinafter – also a diploma).

This article discusses the legal circumstances to be considered when deciding to revoke a diploma. After getting acquainted with the case law of Latvia and other countries, Latvian legal regulation and legal literature (mostly foreign, as this topic is not much discussed in Latvia), the problems of Latvian legal regulation have been identified and solutions have been proposed.

## 1. Re-examination of the qualification awarded

In general, an in-depth examination of a qualification is final when the diploma is awarded. Deficiencies in the study process or final theses should be identified and most often they are identified before the decision to award a diploma is made. Judgments found in Latvian court practice, searching the website “manas.tiesas.lv” with the word “plagiarism” or “diploma revocation/cancellation”, are mostly related to non-awarding a diploma due to non-completion of the study program or use of unauthorized funds.<sup>3</sup>

However, there is also a judgment in which the plaintiff has brought an action against a service provider with whom a contract for the development of a bachelor's thesis had been concluded; the service provider had not completed the work, therefore the plaintiff had to complete it himself. It should be noted that the court in this case upheld the claim on the basis of the provisions of the Civil Law, according to which a contract that promotes something illegal, immoral or unfair does not bind, and that no one has the right to live unjustly for and at the expense of another.<sup>4</sup>

The database of court rulings also contains the decision of the Supreme Court to terminate the criminal proceedings in the case of misappropriation of copyright. It followed from the decision that the person had included a part of the original work written and defended by another person in his/her diploma thesis, making insignificant changes, but with no reference to the original work or the author, and

<sup>2</sup> For example, there are offers to buy a master's thesis on the Internet: <https://academized.com/writing-services/buy-thesis-online>, <https://thesisforme.com/purchase-phd-and-masters-thesis/> [viewed 15.10.2021.].

<sup>3</sup> See, for example, Regional Administrative Court judgement of 18 July 2014.in case no A420440911, 18 February 2014 in Case No. A420445411, Riga City Kurzeme District Court judgement of 23 December 2014 in Case No. C28242314. Available in Latvian: <https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi> [viewed 10.09.2021.].

<sup>4</sup> Riga City Pardaugava Court judgement of 13 September 2018 in Case No. C-1934-18/25. ECLI: LV:RPPT:2018:0913.C68518617.5.S Available in Latvian: <https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi> [viewed 10.09.2021.].

in year 2007 defended this work at the Faculty of Economics and Management of Rēzekne Academy of Technologies.<sup>5</sup>

No information has been found that any of these individuals have subsequently been deprived of their qualifications. It is possible that this has happened, only this fact has not been made public. At the same time, it cannot be ruled out that these persons continue to enjoy the benefits of unfoundedly obtained diplomas.

Later examination after obtaining a diploma is often in the interest of others. For example, a person whose work has been used illegally, may draw the university's attention to the fact that someone has received a university or doctoral diploma unreasonably (as may have been done by the above-mentioned author, whose work was used at the Rezekne Academy of Technologies).

Attention may also be drawn by the graduate's political competitors or other people with a negative attitude. For example, working in the politics gives others a reason to look and examine the work of a person that has been defended a long time ago.<sup>6</sup> For example, in Germany in 2011 the review of the dissertation of the Minister of Defense Karl-Theodor zu Guttenberg and in 2012 the review of the dissertation of the Minister of Education Annette Schavan was initiated by their political competitors. In the first case, the dissertation was largely copied from another source, while in the second case, several parts of the dissertation coincided with the works of other authors or closely resembled them.<sup>7</sup> The University of Latvia also received two applications of a possible plagiarism in the final thesis of a graduate (who completed his master's studies 10 years ago), as a result of which the commission decided that the bachelor's thesis contained plagiarism and that the author of the thesis had seriously violated the principles of academic integrity.<sup>8</sup> Quite possibly, the authors of the revealing applications were driven by goals that were not of the noblest nature, because the said graduate was a prosecutor investigating the activities of one of the applicants.<sup>9</sup>

However, if the reviewed thesis had significant flaws, because of which the applicant should not have been awarded the diploma in the first place, the circumstances of why the examination was initiated is not significant.

<sup>5</sup> Decision of the Supreme Court of 12 March 2014 in Case No. 11330035509. Available in Latvian: <https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi> [viewed 10.09.2021.].

<sup>6</sup> Bailey J. Revoking Degrees: How and Why Schools Do It. Why schools bother revoking degrees... Available: <https://www.plagiarismtoday.com/2018/09/27/revoking-degrees-how-and-why-schools-do-it/> [viewed 15.10.2021.].

<sup>7</sup> Brumfield B. German education minister loses Ph.D. over plagiarized thesis. Available: <https://edition.cnn.com/2013/02/06/world/europe/german-minister-plagiarism/index.html> [viewed 15.10.2021.].

<sup>8</sup> Par LU Juridiskās fakultātes Domes 15. marta lēmumu [On the decision of the Council of the Faculty of Law of the University of Latvia on March 15]. Available in Latvian: <https://www.jf.lu.lv/lv/par-mums/mediji/zinas/zina/t/65260/> [viewed 15.10.2021.].

<sup>9</sup> Leitāns L. Prokurora Cinkmaņa akadēmiskos darbus LU vērtēja arī pēc viņa apsūdzētā Sprūda iesniegumiem [The academic works of the prosecutor Cinkmanis at the University of Latvia were also evaluated according to the submissions of his accused Sprūds]. Available in Latvian: <https://www.lsm.lv/raksts/zinas/zinu-analize/prokurora-cinkmana-akademiskos-darbus-lu-verteja-ari-pec-vina-apsudzeta-spruda-iesniegumiem.a398478/> [viewed 15.10.2021.].

## 2. Legal considerations for revoking a diploma

It is harder to revoke a diploma than not to award one.<sup>10</sup> The withdrawal of a diploma from the addressee of this decision could have a serious impact on his or her life – career or education. The European Court of Human Rights has recognized that the annulment of a diploma is a matter which falls within the scope of a person's privacy.<sup>11</sup>

Thus, a decision to revoke a diploma, even if the diploma has been awarded unfoundedly, must pass a human rights restriction test.

First of all, the restriction has to be set by a law.

Neither Law on Higher Education Institutions<sup>12</sup>, nor Law on Scientific Activity<sup>13</sup> regulate issues related to the consequences in the event of a serious breach of academic integrity. Art. 17 of the Law on Scientific Activity only mentions that the Latvian Council of Science is entitled to raise questions, in accordance with the procedures specified in laws and regulations, in the responsible institutions regarding the withdrawal of a doctoral degree. Although the law states that questions are raised in accordance with the procedures specified in regulatory enactments, such a specified procedure cannot be found in the database. As also noted by *Dr. iur. I. Veikša*, the Law on Higher Education Institutions does not envisage any obligations for a student – either studying in good faith, or acquiring knowledge, skills, achieving competence in the chosen study programme and profession, or anything else. Educational institutions try to fill this gap by adopting internal regulations, but this is not always sufficient.<sup>14</sup>

With the amendments to the Law on Higher Education Institutions of 16 August 2021, Art. 15<sup>1</sup> has been included, para. 6 of which mentions that the Senate of a higher education institution shall determine the requirements and procedures related to the observance of academic integrity.<sup>15</sup>

Looking at the regulatory enactments of three higher education institutions, it can be concluded that the issues regarding the possibility to inspect the work after its defense are provided in two of them.

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<sup>10</sup> Bailey J. Revoking Degrees: How and Why Schools Do It. Why schools bother revoking degrees... Available: <https://www.plagiarismtoday.com/2018/09/27/revoking-degrees-how-and-why-schools-do-it/> [viewed 15.10.2021.].

<sup>11</sup> See ECHR judgment of 3 March 2020 in Case *Convertito v, Rumania* (application No. 30547/14). para. 37. Available: <https://hudoc.echr.coe.int/> [viewed 15.10.2021.].

<sup>12</sup> Law on Higher Education Institutions. Available in English: <https://likumi.lv/ta/en/en/id/37967-law-on-higher-education-institutions> [viewed 15.10.2021.].

<sup>13</sup> Law on Scientific Activity. Available in English: <https://likumi.lv/ta/en/en/id/107337-law-on-scientific-activity> [viewed 15.10.2021.].

<sup>14</sup> Veikša I. Plāģiātisms un akadēmiskais godīgums studējošo darbos Latvijas augstskolās [Plagiarism and academic honesty in students' work in Latvian universities]. *Acta Prosperitatis*. 9. Journal of Turība University, Riga: Turība, 2018, p. 75.

<sup>15</sup> Amendments to the Law on Higher Education Institutions. The law of 08.06.2021. Available in Latvian: <https://likumi.lv/> [viewed 15.10.2021.].

It follows from para. 24 of the Regulations on Academic Integrity at the University of Latvia<sup>16</sup> that, if an application is received concerning a violation of academic integrity in the final thesis after a person has been awarded a degree or qualification, an examination is performed and the application is reviewed in accordance with the Administrative Procedure Law. Pursuant to Clause 6.3.3.1 of the document “Academic Integrity Policy” of Riga Stradiņš University<sup>17</sup>, in cases when a serious violation of academic integrity has been established after awarding a diploma, the university may decide to annul the diploma in accordance with the procedures specified in regulatory enactments.

The regulations of the Turība University on academic honesty and plagiarism<sup>18</sup> include norms only for actions in cases if dishonesty is established during studies, but do not provide for actions to be undertaken after the person’s graduation.

However, the fact that the withdrawal of a diploma is not provided for in the special norms regulating education does not in itself mean that such a possibility is not provided by law. Namely, if the qualification awarded with a diploma is recognized by the state, the decision on awarding the relevant qualification is considered an administrative act and the legal norms included in the Administrative Procedure Law<sup>19</sup> apply to it, insofar as the related procedural issues are not regulated by other laws. Thus, the provisions of Art. 86, para. 2, Clause 4 of the Administrative Procedure Law are applicable, which provide that a favourable unlawful administrative act may be revoked if the addressee has obtained it by providing false information or other unlawful actions. It should be noted that in Germany the withdrawal of a diploma is also based on Art. 48, para. 1, Clause 1 of the Administrative Procedure Law, which regulates essentially the same issues as Art. 86 of the Latvian Administrative Procedure Law.<sup>20</sup>

Thus, it can be concluded that in Latvia, in principle, the possibility to withdraw a diploma is provided by a legal norm. At the same time, it should be noted that the law states “may be revoked”, not “revoked”. This means that the authority

<sup>16</sup> Noteikumi par akadēmisko godīgumu Latvijas Universitātē [Regulations on Academic Integrity at the University of Latvia]. [Regulations on Academic Integrity at the University of Latvia]. Available: [https://www.lu.lv/fileadmin/user\\_upload/LU.LV/www.lu.lv/Par\\_mums/Akademiskas\\_etikas\\_komisija/SL\\_2-3-48-2021\\_akd\\_godigums\\_noteikumi.pdf](https://www.lu.lv/fileadmin/user_upload/LU.LV/www.lu.lv/Par_mums/Akademiskas_etikas_komisija/SL_2-3-48-2021_akd_godigums_noteikumi.pdf) [viewed 15.10.2021.].

<sup>17</sup> Akadēmiskā godīguma politika [Academic Integrity Policy]. Approved by the minutes of the meeting of Riga Stradins University No. 16-1 / 6/2020 of June 16, 2020. Available: [https://www.rsu.lv/sites/default/files/imce/Dokumenti/RSU\\_Akademiska\\_godiguma\\_politika.pdf](https://www.rsu.lv/sites/default/files/imce/Dokumenti/RSU_Akademiska_godiguma_politika.pdf) [viewed 15.10.2021.].

<sup>18</sup> Biznesa augstskolas Turība nolikums par akadēmisko godīgumu un plaģiātismu [The regulations of the School of Business Administration Turība on academic honesty and plagiarism include norms only for actions if dishonesty is established during studies, but do not provide for actions after graduation]. Approved by the Senate on 24.04.2019, Protocol No. 4. Available: [https://www.turiba.lv/lv/Reglamentējošie\\_dokumenti](https://www.turiba.lv/lv/Reglamentējošie_dokumenti) [viewed 15.10.2021.].

<sup>19</sup> Administrative Procedure Law. Available: <https://likumi.lv/ta/en/en/id/55567-administrative-procedure-law> [viewed 15.10.2021.].

<sup>20</sup> See, for example, the Law on Universities in North Rhine-Westphalia [Gesetz über die Hochschulen des Landes Nordrhein-Westfalen] Art. 66, para. 4. Available: [https://recht.nrw.de/lmi/owa/br\\_text\\_anzeigen?v\\_id=1000000000000000654](https://recht.nrw.de/lmi/owa/br_text_anzeigen?v_id=1000000000000000654) [viewed 15.10.2021.].

may issue an administrative act of choice but not a mandatory one. Accordingly, the decision must be made by evaluating the usefulness of issuing an administrative act in accordance with the provisions of Art. 66 of the Administrative Procedure Law. That is, the institution must decide on the necessity of the administrative act to achieve the legitimate aim, the suitability to achieve this aim, the need to achieve the revocation of the diploma and proportionality, balancing the interests of the individual and society.

There is no doubt that the restriction has a legitimate aim. As stated in an Ohio Supreme Court judgment, academic degrees are a university's certification to the world at large of the recipient's educational achievement and fulfilment of the institution's standards. To hold that a university may never withdraw a degree, effectively requires the university to continue making a false certification to the public at large of the accomplishment of persons who in fact lack the very qualifications that are certified. Such a holding would undermine public confidence in the integrity of degrees, call academic standards into question and harm those who rely on the certification which the degree represents.<sup>21</sup>

A degree from a university is supposed to indicate to those outside it that the person had completed some level of work and achieved some level of expertise. If students who do not meet that criterion hold degrees, then it devalues the degree for other students who have completed what has been demanded of them. When a school rescinds a degree, it is done not to retroactively punish the student involved, but to preserve the integrity of their institution and the degrees it issues. In short, it is done for the students who have earned their degrees. For students, earning an academic degree typically involves years of work and many thousands spent. In exchange for that, they expect a degree that will help them in their careers.<sup>22</sup>

As recognized in German case law, a university may rely on academic integrity as a public interest when withdrawing a diploma. The issue is extremely important for the protection of the functionality of the scientific process, which is constitutionally enshrined in the first sentence of Art. 5, para. 3 of the German Basic Law (guarantees the freedom of art and science, research and learning).<sup>23</sup>

There is no doubt that the legitimate aim of withdrawing a diploma is achievable, hence, it is appropriate.

The most difficult question to answer is whether the objective cannot be achieved by less restrictive means and whether it is always proportionate.

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<sup>21</sup> The Supreme Court of the State of Ohio decision 95.02. of 05.02.1986. in case 22 Ohio St.3d 55, 488 N.E.2d 850, WALIGA Bd. of Trustees of Kent State Univ, No. 85-133 Available: <https://www.ahcuah.com/lawsuit/newsuit/ohio/waliga.htm> [viewed 15.10.2021.].

<sup>22</sup> Bailey J. Revoking Degrees: How and Why Schools Do It. Why schools bother revoking degrees... Available: <https://www.plagiarismtoday.com/2018/09/27/revoking-degrees-how-and-why-schools-do-it/> [viewed 15.10.2021.].

<sup>23</sup> See Judgment of the Administrative Court of Düsseldorf of 20 March 2014 in Case 15 K 2271/13 (Schavan), paragraph 170. Available in German: <https://openjur.de/u/685638.html> [viewed 15.10.2021.].

As already mentioned, the withdrawal of a diploma can have serious negative consequences for the individual. Therefore, it is not enough that there have been some shortcomings in the scientific work to recognize that the diploma is revocable because its award was unjustified. It is necessary to assess the significance of these shortcomings and whether they call into question the qualifications of the person awarded the diploma.

In German case law, the following considerations need to be considered: the social and professional disadvantages suffered by the person concerned, the public interest, the time that has elapsed since the diploma was awarded and the possibility of more lenient means, such as the possibility to rework the work.<sup>24</sup>

Plagiarism is the most common reason for revocation of the diploma. According to a German study on the case law concerning plagiarism disputes, it is difficult to draw an objective line when it comes to plagiarism. It goes without saying that the omission of individual references alone does not indicate this. It is usually assessed how much text there is without references, as well as how this has affected the work as a whole.<sup>25</sup> There is a consensus in German case law that scientific papers must contain references, if the text is taken from another source. It should be clear from the work when the author of the work speaks to the reader himself, expresses his thoughts, and when he uses what someone else has to say. Therefore, mentioning another author in the bibliography is not enough. Any text that has been changed, supplemented or translated must always be clearly indicated. Using content, paraphrasing text in other words is a violation.<sup>26</sup> The objections that the dissertation is written on the basis of the author's knowledge and in good faith without the intention of misleading are irrelevant. It is important that a scientific paper that meets the requirements of independent work is submitted.<sup>27</sup>

In this context, it should be noted that a group of Russian scientists fighting for academic integrity has recently reported the creation of a plagiarism database containing at least 11 000 doctoral dissertations. In the experience of researchers, such dissertations are usually ordered for money on the black market. This summer, a Latvian judge, who is also a lecturer at Daugavpils University, also was included in the Russian plagiarism database. In his doctoral dissertation, 75% of the text was found to be plagiarism. There were only three references, but more than 100 pages had been copied. However, the author of the work considers that the content of this dissertation is different, because in his opinion the main ones

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<sup>24</sup> Esposito A.C., Schäfer A. Überblick über die Rechtsprechung zu Plagiaten in Hochschule und Wissenschaft, [Overview of the jurisprudence on plagiarism in universities and academia]. S. 27. Available in German: [https://kops.uni-konstanz.de/bitstream/handle/123456789/37223/Esposito\\_0-393641.pdf?sequence=7](https://kops.uni-konstanz.de/bitstream/handle/123456789/37223/Esposito_0-393641.pdf?sequence=7) [viewed 15.10.2021.].

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid., S. 25.

are references, but the regulatory enactments do not specify how many references there should be.<sup>28</sup>

In such a situation, only a rhetorical question should be asked: what is the quality of the works supervised or reviewed by the students of this docent, if this lecturer has once considered that such a practice is permissible?

The answer to the question of the necessity and appropriateness of withdrawing the diploma thus obtained does not seem to raise any questions. However, the question arises as to whether and to what extent the time elapsed since obtaining the diploma should be taken into account.

### 3. The time elapsed since obtaining the diploma

Section 86 of the Latvian Administrative Procedure Law, which provides for the annulment of an administrative act, does not provide for an absolute limitation period for the annulment of a decision to award a diploma. As the purpose of withdrawing a diploma is not to penalize a student, the time that has elapsed since obtaining the diploma should also be considered as one of the circumstances.

The problem is that plagiarists who are detected promptly, typically get punished much less severely than those who are caught much later. If plagiarism is detected in a dissertation during the editing process, depending on severity, the student may be reprimanded or ordered to rewrite relevant portions. However, if it is detected years later, the same plagiarism can result in the degree be revoked and that, in turn, can put the work the former student has put into their career since college to waste. This can create a strange situation where a lucky plagiarist is one whose misdeeds are recent, but the further away in time one gets from their actions, the worse the potential threat grows.<sup>29</sup>

As mentioned above, in Germany, too, the time that has elapsed since the award of the diploma is one of the factors to be assessed. The laws of at least some German states provide for a limitation period of five years for the re-examination of bachelor's and master's theses.<sup>30</sup> The statute of limitations for

<sup>28</sup> Pētnieki no Krievijas atklāj, ka tiesnesim un universitātes pasniedzējam no Daugavpils doktora disertācijā 75% teksta veido plāgiāts [Researchers from Russia reveal that 75% of the text of a doctoral dissertation for a judge and a university lecturer in Daugavpils is plagiarism]. Available in Latvian: <https://skaties.lv/zinas/latvija/neka-personiga/petnieki-no-krievijas-atklaj-ka-tiesnesim-un-universitates-pasniedzejam-no-daugavpils-doktora-disertacija-75-teksta-viedo-plagiats/> [viewed 15.10.2021.].

<sup>29</sup> Bailey J. Should There Be a Statute of Limitations on Plagiarism Claims? Available: <https://www.plagiarismtoday.com/2013/03/19/should-there-be-a-statute-of-limitations-on-plagiarism-claims/> [viewed 15.10.2021.].

<sup>30</sup> For example, Gesetz über die Hochschulen des Landes Nordrhein-Westfalen [Law on the universities of the state of North Rhine-Westphalia], Art. 66, para. 4. Available in German: [https://recht.nrw.de/lmi/owa/br\\_text\\_anzeigen?v\\_id=10000000000000000654](https://recht.nrw.de/lmi/owa/br_text_anzeigen?v_id=10000000000000000654) [viewed 15.10.2021.].



the evaluation of bachelor's and master's degrees in the University of Heidelberg<sup>31</sup>, North Rhine-Westphalia<sup>32</sup> is also five years.

On the other hand, there has been a debate about the limitation period for withdrawing doctoral degrees in Germany, but the limitation period is only provided for in the regulations of some universities.<sup>33</sup> Shavan, whose case was mentioned above, had 33 years between defending her doctoral dissertation and being deprived of her diploma. She also mentioned this fact in the administrative court, appealing the decision of the university. However, the court rejected this argument, acknowledging that the withdrawal of a diploma also has a deterrent effect. Therefore, the risk of detecting plagiarism persists over time. The higher education institution may also rely on this preventive objective, unless other circumstances to be taken into account in the case are insignificant.<sup>34</sup> The university would be vulnerable to deliberate fraud if the sword of Damocles did not hang over dishonest dissertations.<sup>35</sup>

In Russia, there is a limitation period of 10 years for revoking a doctoral degree. An application for revocation of an academic degree may be submitted by a person to the Ministry of Science and Higher Education of the Russian Federation within 10 years from the day when the dissertation council has made a decision on awarding the degree.<sup>36</sup> Discussions have taken place in Russia and a bill to abolish this statute of limitations has even been tabled<sup>37</sup>, but so far it has not been repealed. Thus, at least in Russia, the decision to revoke the doctoral degree of the mentioned lecturer at Daugavpils University cannot be made due to the statute of limitations. At the same time, however, this does not mean that a Latvian institution that has recognized a diploma obtained in Russia unreasonably could never overturn its decision. The decision to award a diploma and the decision to recognize it in another country are interlinked, but separate decisions.

<sup>31</sup> Abgabe von Prüfungsunterlagen [Submission of examination papers]. Available: <https://www.uni-heidelberg.de/uniaarchiv/pruefabgabe.html> [viewed 15.10.2021.].

<sup>32</sup> Löwer W. Verjährungsfrist für Plagiatsvergehen? [Statute of limitations for plagiarism?] Available in German: [https://www.wissenschaftsmanagement-online.de/sites/www.wissenschaftsmanagement-online.de/files/migrated\\_wimoarticle/forschung-und-lehre\\_07-2012\\_Dannemann.pdf](https://www.wissenschaftsmanagement-online.de/sites/www.wissenschaftsmanagement-online.de/files/migrated_wimoarticle/forschung-und-lehre_07-2012_Dannemann.pdf) [viewed 15.10.2021.].

<sup>33</sup> Rieble V. Plagiatverjährung. Zur Ersitzung des Doktorgrades [Statute of limitations for plagiarism. To determine the doctoral degree]. Available in German: [https://ordnungderwissenschaft.de/wp-content/uploads/2020/03/03\\_rieble\\_plagiatverjaehrung\\_odw\\_ordnung\\_der\\_wissenschaft\\_2014.pdf](https://ordnungderwissenschaft.de/wp-content/uploads/2020/03/03_rieble_plagiatverjaehrung_odw_ordnung_der_wissenschaft_2014.pdf) [viewed 08.11.2021.].

<sup>34</sup> Düsseldorf Administrative Court judgement of 20 March 2014 in Case 15 K 2271/13 (Shavan), paras 176–177, with reference to the Federal Supreme Administrative Court judgement of 21 October 1980 in Case 1 C 19/78. Available in German: <https://openjur.de/u/685638.html> [viewed 15.10.2021.].

<sup>35</sup> *Ibid.*, para. 178.

<sup>36</sup> Postanovlenie Pravitel'stva RF ot 24 sentjabrja 2013 g. N 842 "O porjadke prisuzhdenija uchenyh stepenej" c. 66 [Decree of the Government of the Russian Federation of September 24, 2013 N 842 "On the procedure for awarding academic degrees" para. 66]. Available in Russian: <https://base.garant.ru/70461216/> [viewed 15.10.2021.].

<sup>37</sup> U plagiata ne budet sroka давности [Plagiarism will not have a statute of limitations]. Available in Russian: [https://thallophyta59.rssing.com/chan-39100210/all\\_p4.html](https://thallophyta59.rssing.com/chan-39100210/all_p4.html) [viewed 15.10.2021.].

In Latvia, as already mentioned, there is no deadline for the cancellation of a diploma certifying the acquisition of higher education, nor a diploma certifying a doctoral degree. That fact must therefore be assessed in the light of both the principle of legal certainty and the public interest in the award of a diploma to a person who has not earned it properly.

#### 4. Competent authority

Pursuant to Art. 85, para. 3 of the Administrative Procedure Law, an administrative procedure may be re-initiated by the institution to which the matter is competent, regardless of which institution has issued the relevant administrative act in the initial administrative procedure. Thus, the decision to award a diploma is revoked by the higher education institution that awarded it or its successor.

At the same time, the question of what to do if the higher education institution that awarded the diploma in question has been wound up without a successor is not regulated. Nor is the issue of who can take such a decision resolved if the diploma is manifestly unreasonably awarded by a higher education institution in another country where the procedure for revoking the diploma is not or cannot be initiated due to legal circumstances (e.g., time limitation). The question of revoking a diploma recognition decision could be raised by the higher education institution where the person concerned is continuing his or her education or teaching, but this higher education institution may not always be interested in doing so.

The Cabinet of Ministers of Ukraine has recently approved regulations governing the issue of revocation of a diploma and they also address the issue of the competent authority. The regulations stipulate that in cases where an educational institution has been liquidated without transfer of rights, the higher education institution, which must consider issues related to the revocation of the higher education degree, shall be determined by the Ministry of Education.<sup>38</sup>

A similar regulation should be adopted in Latvia, stipulating that in the event that information is received that suggests that one of the holders of a higher education or doctoral degree has been unduly awarded, the Ministry of Education or the State Education Quality Service shall determine the competent higher education institution for examination and decision. Alternatively, *ad hoc* council may be set up. At the same time, it is important that the ministry or the inspectorate is not given any rights other than initiation, leaving the assessment and decision-making to the respective higher education institution or council.

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<sup>38</sup> C.9, Porjadok skasuvannja rishennja pro prisudzhennja stupenja vishhoi osviti ta prisvoennja vidpovidnoi kvalifikacii. Zatverdzheno postanovoju Kabinetu Ministriv Ukraïni vid 26 serpnja 2021 r. # 897. [The procedure for revoking the decision on awarding a degree of higher education and awarding the appropriate qualification. Approved by the resolution of the Cabinet of Ministers of Ukraine of August 26, 2021]. Available in Ukrainian: <https://zakon.rada.gov.ua/laws/show/897-2021-%D0%BF#Text> [viewed 15.10.2021.].

## 5. Judicial review of the decision

Like any administrative act, the addressee may appeal against the decision to revoke the diploma to an administrative court. The typical type of application in such a case is the annulment of the decision to restore the annulled administrative act.

However, the scope of judicial review is lower than in typical cases. Firstly, it is because the provision confers a discretion, the right to annul an administrative act, rather than an obligation to do so. Secondly, the higher education institution has a relatively wide discretion (freedom of appreciation) in assessing the shortcomings. In most cases, the court can only verify that the procedural requirements have been met.

German case law also recognizes that the institution deciding on the withdrawal of a diploma has a wide margin of appreciation as to the extent or weight of the plagiarism and the consequent harm to the public interest.<sup>39</sup> The conclusions of a competent higher education institution can be reviewed by the court only if the text coincides with the text of another author one by one or with very slight differences. However, if only the ideas are rewritten without reference and not the text, the court will normally recognize the examiners' discretion (freedom of appreciation). The same applies to whether an infringement exceeds a threshold where it is considered to be serious.<sup>40</sup>

## Conclusion

1. As the withdrawal of a diploma is a matter which falls within the scope of a person's private life, the withdrawal must be prescribed by law, necessary to achieve a legitimate aim and be proportionate.
2. There are no special legal norms in Latvia that would provide for revocation of a diploma, therefore the provisions of Art. 86, para. 2, Clause 4 of the Administrative Procedure Law apply, which provides that a favourable unlawful administrative act may be revoked if the addressee has obtained it by providing false information or other unlawful activities.
3. Latvia has no limitation period for withdrawing a diploma, so the time that has elapsed since the diploma has been awarded must be assessed taking into account both the principle of legal certainty and the public interest that the diploma should not be awarded to a person who has not earned it properly.

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<sup>39</sup> Düsseldorf Administrative Court judgement of 20 March 2014 in Case 15 K 2271/13 (Shavan), para. 129. See also: Esposito A. C., Schäfer A. Überblick über die Rechtsprechung zu Plagiaten in Hochschule und Wissenschaft, S. 29. Available in German: [https://kops.uni-konstanz.de/bitstream/handle/123456789/37223/Esposito\\_0-393641.pdf?sequence=7](https://kops.uni-konstanz.de/bitstream/handle/123456789/37223/Esposito_0-393641.pdf?sequence=7) [viewed 15.10.2021.].

<sup>40</sup> Supreme Administrative Court of Lower Saxony judgement of 15 July 2015 in Case 2 LB 363/13, ECLI:DE:OVGNI:2015:0715.2LB363.13.0A. Available in German: <https://www.rechtsprechung.niedersachsen.de/jportal/portal/page/bsndprod.psm1?doc.id=MWRE150002198&st=null&showdoccase=1> [viewed 15.10.2021.].

4. The law should provide for the competent authority to refer the re-examination of a diploma to a higher education institution or to a specially constituted council.

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