

INTRODUCTION TO SCIENTIFIC LEGAL RESEARCH
- a practical and methodological instruction
for doctoral students, master's students and young researchers -

§ 3 Intellectual standards for a scientific thesis

- note: Some intellectual standards are different for the *different types of scientific theses*: the (classical) doctoral thesis (common in most countries), the habilitation thesis (common only in some countries) and the advanced doctoral thesis (a doctoral thesis which is more similar to a habilitation thesis, common in some countries without habilitation thesis).

I. Standards of intellectual authenticity and originality

1) *Intellectual honesty*

- the main idea: no copying or leaning on without quoting!
- spectacular cases and the *rigorous fight against plagiarism in Germany*
 - the recent revocation of the doctoral degrees of two Federal Ministers and one German Member of the European Parliament for plagiarism
 - the Joint Position Paper "Good academic practice in the context of theses submitted for a degree" of three leading German academic organisations of 2012¹
 - the Recommendations of the German Law Faculties Association on scientific integrity in the preparation of texts in legal science of 2012²
- a) No presentation of information gathered by other authors as the result of one's own work
 - in particular: the duty to indicate if and to what extent one's own overview over relevant literature is based on bibliographies of other authors
 - in particular: the duty to indicate if and to what extent one's own analysis of the relevant jurisprudence is based on preparatory works of other authors
- b) No presentation of other authors' reasoning as one's own thoughts
 - the duty to inform about the reasoning of other authors and to indicate precisely, to what extent one is following it
- c) No quoting without own reading
- d) No hiding of inconvenient theories or positions
 - a widespread but very serious violation of scientific fairness
 - all positions have to be presented, even if they are not "political correct" or difficult to discuss

2) *Intellectual independence*

- a) Independent dealing with scientific literature and jurisprudence
 - not just reporting but analysing, classifying, categorizing, contextualising, assessing - and evaluating - the relevant literature and jurisprudence and their development

¹ *Deutscher Hochschulverband* (German Association of University Professors and Lecturers); *Allgemeiner Fakultätentag* (Combined Faculties Association); *Fakultätentag* (Faculties Association), Good academic practice in the context of theses submitted for a degree, 09.07.2012, www.hochschulverband.de/cms1/resolutionen0.html.

² *Deutscher Juristischer Fakultätentag* (German Law Faculties Association), Empfehlungen zur wissenschaftlichen Redlichkeit bei der Erstellung rechtswissenschaftlicher Texte, 2012, www.djft.de/Richtlinien.pdf.

b) Independent reasoning

aa) Developing one's own reasoning without regard to "authorities"

- following one's own personal way of thinking and developing one's own approach
- building up one's own complex system of thoughts and arguments
- enjoying academic freedom but with regard to academic responsibility
- note: *references to "authorities" cannot substitute one's own reasoning!*

bb) In particular: not following court decisions without own reasoning

- a court decision is an opinion about but not a source of law...

cc) Considering, integrating and modifying but not just copying the arguments of others

3) *The need for a scientific added value*

a) General remarks

- no successful scientific work without new scientific findings (see supra, § 1, I.1.b)
- science is more than a new compilation of existing knowledge
- the scientific added value can vary according to the sort of thesis; examples:
 - scientifically-based solutions for practical problems
 - new theories providing for a better (deeper, more consistent etc.) understanding of a field of law, in particular introduction of new legal notions, concepts or principles
 - proposals for improvements (in theory or practice) making use of foreign innovations well-adapted to the specific features of the national law
 - proposals for a "cleaning up" in a field of law (elimination of inconsistencies, paradoxes, unsuitable elements imported from foreign law etc.)
 - critical inventory of the existing knowledge, its limits and deficits, and of the state of science (currents, developments, deficits, inconsistencies etc.) [usually only a part of the scientific added value of a thesis]

b) Different standards according to the different types of scientific theses

- see the *diagram shown in the lecture*; see below some illustrating examples for types of scientific theses in European countries with highly developed legal systems:

aa) The scientific added value of a classical doctoral thesis

- solutions for a limited number of coherent problems
- new approach to a limited part of the relevant field of law

bb) The scientific added value of a habilitation thesis

- solutions for all classical problems in the whole relevant field of law (and in essential parts of neighbouring fields of law)
- ambitious, perfectly-founded new basic approach to the whole relevant field of law (and parts of neighbouring fields of law)

cc) The scientific added value of an advanced doctoral thesis

- solutions for most classical problems in the whole relevant field of law
- new basic approach to the whole relevant field of law (including its relations to other fields of law)
- In countries, which are still in the process of developing their legal system, often a light version of the advanced doctoral thesis will be appropriated. However, it will be shorter and less time and resources will be available for its preparation.

II. Standards of intellectual accuracy, consistency and precision

1) *Accurate information based on references*

- general rule: *every single information* in the whole thesis which is not evident (obvious) *must be backed by a reference which allows to verify it*

2) *Logically and dogmatically consistent structure*

- a) The importance of the structure for the quality of a scientific thesis
 - the scientific thesis as a "house of cards": one gap or flaw in the reasoning might make it collapse
 - the *structure reflects the ability to think correctly and precisely* - and therefore the intellectual capacity of the author
 - a convincing, consistent structure provides for an easy access to the reasoning of the author and may have the effect to conceal shortcomings in the argumentation; a defective structure leads a skilled reader directly to the weak points
 - the necessity of a detailed structuring
- b) The standards of a logically consistent structure
 - in particular: no dealing with sub-subjects at the same level as the main subject
 - in particular: no introduction of a new subordinated level within the structure if there are not two or more subordinate points
 - in particular: the need to identify any remarks outside the line of thoughts as "excursus"
- c) The standards of a dogmatically consistent structure
 - the whole structure must *strictly* follow the dogmatic structure of the relevant field (or sub-field) of law as it is understood by the author
- d) Standards for correct titles within a consistent structure
 - precise reflection of the content in the correct dogmatic context
 - systematic coherence; in particular: homogeneity of titles at the same level
 - note: the titles should be formulated extremely carefully in order to make the line of thoughts transparent and to avoid misunderstandings

3) *Precise and logical reasoning in accordance with the laws and principles of legal methodology*

- transparent reasoning indicating which legal method is applied in which context with which results
 - indicating in particular, at which points the conclusion could have been different
 - indicating in particular subjective elements in the reasoning (which are unavoidable but must be disclosed)
- discussing and justifying the method if it is not generally acknowledged or not generally acknowledged in the relevant context
- precise reasoning taking into account all relevant differences and distinctions
- no reasoning which is incompatible with the laws of logic (→ absolutely inadmissible in any scientific work!)
- a widespread mistake: presenting logically possible as logically compelling conclusions

4) *Intellectual coherence*

- a) Use of a coherent terminology
 - which often first has to be developed by the author
- b) Coherent use of legal methods
- c) Coherence and consistency of the developed theories and positions
 - in particular: no combination of incompatible elements adopted from theories of different authors

III. Standards of intellectual thoroughness

- 1) *Comprehensive consideration and appreciation of all relevant jurisprudence and literature*
 - a) Complete consideration and appreciation of all jurisprudence and literature on the subject of the thesis
 - in particular of the newest jurisprudence and literature (check before presenting your thesis!)
 - *Every single publication* which directly concerns the subject must be consulted and mentioned. Every idea in these publications which concerns the subject must be taken into consideration and related to one's own reasoning. For this reason, the careful determination (and limitation) of the subject is crucial!
 - *Foreign legal literature* must be taken into consideration, if the dogmatic structures of the relevant fields of law are comparable and the same arguments can be effective in both legal orders and the foreign discussions and perspectives can be useful for the development of one's own national law. With regard to the flood of legal literature in various countries, it is not possible to take into account all foreign publications. However, at least fundamental or important foreign publications which directly concern the subject of the thesis must be consulted and discussed.
 - b) Adequate consideration and appreciation of all important jurisprudence and literature on basics and backgrounds
 - in particular: of all *fundamental theories* (theories of domestic or foreign authors which are fundamental for the basic understanding of the relevant field of law) if they have an impact on the subject of the thesis
 - the standards inevitably vary according to the different types of scientific theses:
 - aa) Classical doctoral thesis: short presentation and discussion of the fundamental theories, short presentation and explanation of one's own position
 - bb) Habilitation thesis: exhaustive presentation and discussion of the fundamental theories, comprehensive, detailed presentation of one's own position, thorough justification of one's own position by unassailable reasons
 - cc) Advanced doctoral thesis: comprehensive presentation and discussion of the fundamental theories, comprehensive presentation of one's own position, thorough justification of one's own position by sound reasons
- 2) *Comprehensive discussion of all relevant aspects and arguments*
 - a) Comprehensive discussion of all relevant aspects
 - consideration of every single aspect which has been mentioned in jurisprudence or literature or becomes evident during the studies (→ the need for a *multi-perspective approach*); note: one of the most common deficiencies of scientific theses is a one-sided, too narrow perspective
 - consideration of old and new aspects (including the possible impact of new legislation - check before presenting your thesis!)
 - consideration of aspects with regard to all fields of law (in national law, international law, foreign law, legal history etc., in Europe also in European law), including the inter-connections between different fields of law (primacy of constitutional law over civil, criminal and administrative law, primacy of supranational law over national law etc.)
 - the quantity of aspects to be considered varies according to the limitation of the subject; it is usually much smaller in a classical doctoral thesis and much larger in an advanced doctoral thesis or habilitation thesis
 - consideration of all aspects with all their connections at the same time (→ the need for a *well-balanced approach*); this will often lead to a *high degree of complexity* of one's own argumentation
 - b) Comprehensive discussion of all relevant arguments
 - arguments which are difficult to rebut must not simply be ignored...

3) *Getting to the bottom of the questions...*

- thorough thinking without limits...
- in particular: foreseeing (and considering or even discussing in advance) any possible objections and counterarguments (including those which might appear absurd!)
- also considering all *possible consequences* of a proposed solution in advance (and checking compatibility with *ethical standards*)

More information on this course at www.thomas-schmitz-hanoi.vn For any questions, suggestions and criticism please contact me in my office (room A.603) or via e-mail at tschmit1@gwdg.de.