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Committee convened in accordance with Art. 13 para. 2 of the ETH Professors' Ordinance

Recommendation

In the matter pertaining to Professor [REDACTED] X in the former Institute for Astronomy

1. Procedure

In a ruling dated 29 October 2018, the ETH President set up a special Committee pursuant to Art. 13 para. 2 of the ETH Professors' Ordinance, together with Art. 10 para. 3 letters a and b and Art. 10 para. 4 of the Federal Personnel Act (BPG), to review whether the dismissal of a professor is appropriate. The Committee comprises the following members:

Professor [REDACTED] Z [REDACTED] (Chairman)
Professor [REDACTED]
Professor [REDACTED] ETH Zurich
Professor [REDACTED], ETH Zurich
Professor [REDACTED], [REDACTED]
Professor [REDACTED] ETH Zurich

Members of the Committee all confirmed that they were independent and unbiased in this matter.

The Committee held a constitutive meeting on 23 November 2018 at which it defined the procedure to be followed. The secretariat gave Committee members access to the relevant files for the administrative investigation conducted into the former Institute for Astronomy of the Department of Physics (D-PHYS) at ETH Zurich (hereinafter: "administrative investigation"). Towards the end of 2018 the Committee members took time to study and familiarise themselves with these documents.

The facts of the case under review are taken from the final report of the administrative investigation and its respective attachments. The actual contents of the report are not presented again at this point. The relevant documentation, including the written statements of Professor [REDACTED] X and her legal counsel, have been made available to the Committee and have been assessed during the course of their deliberations.

On 23 January 2019, Professor X [REDACTED] attended a formal hearing,

accompanied by her legal counsel, during which she had the opportunity to give her personal response to the allegations made. In addition, the Committee asked her a number of supplementary questions. The findings of the hearing were minuted. Prior to the meeting, the Committee had already posed a number of additional questions to the investigator, Dr Y, about his report dated 3 October 2018, and he provided written answers to these questions on 21 January 2019.

Based on the available documents and the questions put to Professor X and Dr Y, the Committee was able to form a picture regarding the facts to this case and the various allegations made. In formulating the following recommendations, the Committee's first deliberation was straight after questioning Professor X on 23 January 2019 and this was followed by a meeting on 5 February 2019 for another thorough and final consultation at which the Committee decided on the key points of the deliberations and recommendations that follow hereafter, as well as agreeing the final wording by circular. The Committee reached their resolutions unanimously and without abstentions.

The work of the Committee received administrative support from the attorney's practice. Professor did not take part in the Committee's deliberations.

2. Matters to be considered

The Committee's task is to form a picture of the events that occurred at the former Institute for Astronomy and to make a recommendation to the ETH President as to whether it is appropriate to end Professor X's employment relationship with the university. Based upon the Committee's recommendation, but without being bound by it, the President can then submit a request to the ETH Board for Professor X's employment relationship to be terminated. The principles of the Committee procedure are outlined in the President's ruling of 29 October 2018.

In studying the documentation, the Committee found that the report produced by the investigator Dr Y did not always paint an impartial picture. Rather, some aspects of the report convey the impression that too much weight was given to negative and detrimental comments about Professor X's conduct towards her doctoral students and assistants. By contrast, statements providing neutral or positive comments about Professor X featured only occasionally (or not at all) in the investigation report. Furthermore, certain comments quoted verbatim in the report seem to be taken out of context or cited in isolation, and it is noticeable that the investigator formulated a number of questions during the interviews in such a way as to give the impression that he was expecting an answer to be in a certain direction ("leading questions"). In light of the above, the Committee believes that as a result of this procedure, it is impossible to rule out that the overall picture of the circumstances in the former Institute for Astronomy may have been presented in a somewhat distorted light.

In addition, the documentation also suggests there may have been certain failings on the part of ETH Zurich. For example, it apparently failed to investigate previous complaints made by doctoral students over the course of many years. This situation only changed at the start of 2017, with the intervention of the Ombudsperson involved at the time. This gives rise to the impression that ETH initially underestimated or marginalised the problems, only to make a sudden U-turn at the end of 2016 and start of 2017 in resorting to fairly drastic measures.

It is not the Committee's task to judge the quality of the administrative investigation or the appropriateness of the measures taken by the department or Executive Board. Nor is the Committee in a position to conduct its own investigation into events at the former Institute for Astronomy. Their deliberations and recommendation must be based on the relevant documentation, as well as the impressions they gathered from the written questions and answers from Dr Y and the personal hearing of Professor X. But it is also important to note that the aspects mentioned above definitely play a certain role in the Committee's formulation of their recommendations.

The allegations of misconduct made against Professor X are serious. The investigation report, for example, refers to gross violations against the ETH Code of Conduct, as well as against the Professors' Ordinance and the Personnel Ordinance for the ETH Domain. Some of the allegations made against Professor X include poor leadership, a lack of respect towards staff, a very controlling management style, applying (excessive) pressure to perform, the (continuous) expectation that staff should also be contactable on their days off, unwillingness and inability to discuss matters openly, and more besides. Ultimately the report paints the picture of a professor with an excellent academic record but significant shortcomings in the area of social skills. From the documentation it also appears that Professor X apparently had a very "close relationship" with some of her doctoral students, a connection which subsequently reversed into very strong mutual dislike. The need to maintain an appropriate distance between teachers and doctoral students did not always seem to be observed.

During her hearing, Professor X failed to show any awareness of the problem and displayed very little willingness to call her own behaviour into question. Furthermore, she seemed to show no insight into the fact that her conduct might have been incorrect. In her statements to the Committee, she focused instead on the repeated mistakes and lack of professionalism on the part of certain doctoral students. She also stressed her good relationship with the majority of doctoral students and postdocs under her supervision, and drew attention to their successful scientific careers. She portrayed herself as the victim of a campaign launched by an unsuccessful doctoral student, (Ms ..). After the professor told this student in autumn 2016 that her poor performance was putting her doctorate at risk, the student turned against the professor and supposedly encouraged other employees to destroy the professor's reputation in the institute. Ultimately the facts were decisive – and she claimed they all argued in her favour. When asked what, in retrospect, she would have done differently today, she told the Committee in so many words that she would encourage doctoral students to define and

articulate their goals sooner, and also ask her research team every six months whether they were happy with their work situation, so as to identify any problems at an early stage. She would also document her behaviour in greater detail, to provide better protection against unfounded allegations. Lastly, she would ask the Executive Board about its expectations, especially regarding how to deal with poorly performing doctoral students given the university's aspiration that its professors should strive for excellence in international research.

In the light of the professor's hearing and their own deliberations, the Committee came to the conclusion that there is strong evidence to suggest that the allegations made against Professor [REDACTED] X are in essence (but not in every detail) mostly accurate, despite some occasionally biased reporting during the administrative investigation. Professor [REDACTED] X came across as a controlled, competent, high-performing personality who demanded others perform well too. In view of the numerous reproaches from various doctoral students – even if certain anecdotal events may have happened differently or were taken out of context – it does seem credible that Professor [REDACTED] X may have spoken disrespectfully or behaved unprofessionally, particularly during difficult or stressful moments. She also seems to show little empathy for doctoral students who are not part of an elite circle or who are unable to meet (occasionally or repeatedly) her demands. She is also at least partly unable to respond appropriately to such situations.

Although ETH Zurich is well known for the excellence of its teaching and research, and the academic performance of Professor [REDACTED] X is not open to question, the Committee considers the type of conduct of which Professor [REDACTED] X is accused to be unacceptable. On the one hand, it should be noted that doctoral students are in a heavily dependent relationship with their supervising professors. If this relationship breaks down, the students often have no other option than to abandon their academic studies and re-plan their entire careers. On the other hand, ETH also needs to remain attractive for young talents, and this includes providing the best possible support for its young scientists.

The Committee therefore thinks there is urgent need for action in the case of Professor [REDACTED] X. Although it is not the duty of the Executive Board or the President to guarantee a "feelgood environment" for students and doctoral students, they must be quick to identify any lapses such as those that the Committee believes occurred (without evidence to support every single allegation) in the case of Professor [REDACTED] X. They should consistently apply the necessary sanctions and if possible prevent such incidents arising in future.

At the same time, the Committee cannot – and must not – ignore the question of the legal appropriateness and tenability of a dismissal. Their recommendation is made to the best of their knowledge and belief, but ultimately also in the light of employment legislation. Article 10 of the Federal Personnel Act (BPG) stipulates that dismissal can only take place for "objectively sufficient reasons". Furthermore, it is common practice for dismissal on grounds of misconduct to usually be preceded by an official warning. Moreover, an employer cannot invoke the loss of trust in the relationship with an

employee as grounds for dismissal if his own conduct contributed to the conflict situation, in other words as a result of management failings on his part.

Given the stringent criteria that apply in practice to employee dismissal, the Committee has insurmountable reservations whether sufficient legal evidence in support of dismissal can be found in the case of Professor X. The arguments against dismissal include the long period during which the department and Executive Board failed to take action – despite the complaints apparently lodged with certain university entities – as well as the lack of any (official) warning and failure to set a probationary period for the professor to redress the underlying shortcomings. The lack of objectivity – at least on occasion – in the final investigation report is also likely to be viewed in a negative light under further legal scrutiny. The Committee therefore regards it as overwhelmingly probable that any court asked to hear the case would consider the possible termination of the employment relationship with Professor X to be unjustified (or at best against the law). In carrying out their mandate, the Committee could also not overlook the associated legal consequences, as well as the unavoidable publicity resulting from a court case.

In spite of the management style of Professor X, which was incompatible with the function and responsibility of a professor employed by a Swiss university and cannot be justified even making allowances for the strong pressure to perform, the Committee is unable to determine any reliable legal grounds for dismissal, based upon the available documentation. At the same time, the Committee members came to the unanimous decision that Professor X should no longer be allowed to supervise doctoral students, as she did before the proceedings. One of the university's top priorities is to protect the character and interests of young scientists.

The Committee is aware that it will be difficult for Professor X to resume her research activity following the disbanding of the Institute for Astronomy and given the media reports that have also attracted international attention. At the same time, the principle of proportionality dictates that any sanctions for this misconduct should be commensurate and not extend beyond what is required to restore the legal status.

3. Recommendation

Based on the above considerations, the Committee recommends that:

- (a) Professor X should not be dismissed.
- (b) Professor X should be permanently barred from supervising doctoral students. If this bar is not permanently possible or expedient due to employment law provisions or any other grounds, the ban should be compulsory for at least two years. In any case, Professor X should be prevented in future from supervising doctoral students on her own, so that any activity by the professor connected with doctoral supervision is always limited

to working as part of a team or committee, or acting as joint advisor.

- (c) Professor X should be obliged to undergo coaching by an experienced professional. The details of the coaching must be defined in an agreement with the coach, which must in turn be approved by the ETH President.
- (d) Professor X must be granted a probationary period of at least two years. If employees make any justified complaints against her during this period, the option of dismissal should be considered.
- (e) The continuation and success of the existing measures are to be reviewed and documented (during the probationary period, at least) by means of six-monthly assessments. If still warranted following these measures, suitable controls and documentation should continue for a certain term even after the end of the probationary period.

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Zurich/ , 12 February 2019

On behalf of the Committee

Professor Z