



Appendix 5

Recommendation by the Rector's Office of the University of Stuttgart concerning questions of bias in appeal proceedings

(to be forwarded to the members of the Appeal Committee as well as to the expert reviewers)

I. Criteria for apprehension of bias

1. Criteria for apprehension of bias

Absolute grounds for bias excluding a participation as a member of the Appeal Committee resp. as an external expert reviewer, exist, for example, for the participation of:

- Applicants
- Persons who could obtain a direct advantage or disadvantage through the work or through the decision
- Relatives of applicants
- Persons who are employed by an applicant or by a member of the Appeal Committee against remuneration or by them as a member of the board, the supervisory committee or a similar body
- Persons who have submitted an expert opinion regarding the same matter apart from the involvement in the Appeal Committee
- Former holders of the professorship to be filled.

2. Participating in the Appeal Committee resp. as an external expert reviewer is likewise not possible pursuant to § 21 of the Administrative Procedure Act (LVwVfG) if there are grounds to justify mistrust in the impartial exercise of an office. In this respect it is to be observed on the one hand that grounds for exclusion do not prerequisite that the concerned party is actually biased. It is rather the case that even the "apprehension" of bias, i.e. circumstances existing that are suitable to justify mere "mistrust" against an impartial exercise of office on the part of the concerned party. In this respect it is sufficient that the participation by the concerned party externally creates a "bad impression". On the other hand, however, focus should always be on the concrete circumstances of the individual case and it should be reviewed whether in the person of the concerned party there are individual reasons making his participation in the proceedings open to attack. On the basis of objectively ascertainable circumstances, apprehension must be able to arise to the effect that the concerned party does not make impartial, unprejudiced or unbiased decisions regarding the matter. The following cases **can** justify the apprehension of bias, whereby the list is not conclusive and the focus has to be on the concrete circumstances of the individual case:

- Close scientific cooperation within the last 10 years
- Belonging to or a pending change of a member of the Appeal Committee resp. an expert reviewer to the same extramural facility of the applicant
- Cooperation with applicants who work in the same institute at which the post is to be filled as an administrator in the professorship or who have worked there within the last 10 years
- Teacher or pupil relationship through the function of direct supervisor in the dissertation resp. the expert reviewer in the habilitation within the last 10 years
- Dependent employment relationship within the last 10 years
- Present or past work on consultancy committees of the facility of applicants, e.g. on scientific advisory boards
- Participation in mutual expert opinions in the past 12 months

- Scientific staff belonging to the same institute as that of the professorship to be filled if the posts of the professorship are directly allocated
 - A member of the committee chairing in the Appeal Committee who belongs to the same institute as the professorship to be filled
3. Furthermore, the following points are to be observed in appointing expert reviewers:
- a) Applicants may not propose expert reviewers themselves,
 - b) Applicants are not to be requested to send documents necessary for the expert opinion directly to the expert reviewer,
 - c) The expert reviewers are already to be commissioned with the expert opinion for reasons of impartiality before the Appeal Committee has determined the list of three candidates and the sequence,
 - d) The expert reviewers should attach to their expert opinion an explanation on the aforementioned bias criteria, in particular whether and to what extent they participated in the doctoral work or habilitation of the applicant to be assessed.

II. Reviewing and dealing with bias in appeal proceedings

Cases of bias are to be excluded with the following procedure:

1. Bias review when setting up the Appeal Committee:

Persons who are excluded from participating in the Appeal Committee according to the aforementioned criteria or with whom apprehension of bias could exist may not be proposed to participate in the Appeal Committee. The dean is to be immediately informed in detail of persons proposed by the faculty to participate in the Appeal Committee have reasons that according to the aforementioned criteria are opposed to the participation in the Appeal Committee or who can justify an apprehension of bias. The faculty board will decide, if need be after consulting the faculty council and on the basis of the aforementioned criteria whether an apprehension of bias exists and how to proceed. This is a legally binding decision that can be fully reviewed by the court for legitimacy. Corresponding procedures are to be taken if there is otherwise doubt as to whether grounds for an exclusion or prejudice exist.

2. Bias review after setting the Appeal Committee:

Members of an Appeal Committee who after setting up the Appeal Committee ascertain that they are excluded from participating in the Appeal Committee due to the aforementioned criteria or that there could be apprehension of bias in their case are to report this immediately and comprehensively to the chairman of the Appeal Committee. The Appeal Committee shall decide on the basis of the aforementioned criteria whether an apprehension of bias exists and how to proceed. This is a legally binding decision that can be fully reviewed by the court for legitimacy. Corresponding procedures are to be taken if there is otherwise doubt as to whether there are grounds for an exclusion or bias on the part of applicants or if it is claimed of another member of the Appeal Committee or if there if there is otherwise doubt as to whether grounds for an exclusion or bias exist.

3. Dealing with bias:

If grounds for an exclusion or bias exist according to the aforementioned criteria and if no Appeal Committee has as yet been set up, in this case another member is to be proposed to the Rector's office by the faculty in place of the member of the Appeal Committee considered to be biased. If doubt has arisen as to whether there are grounds for an exclusion or bias for a member proposed by the faculty and if the faculty does not consider such reasons to exist, the Rector's office is to be informed in detail

about the facts of the case and the decision of the faculty. On condition that neither national nor international experts from the relevant specialist field are available and who may act as replacements, in this case the persons considered to be biased may at most work in an advisory function for the Appeal Committee.

If grounds for an exclusion or bias exist according to the aforementioned criteria and if an Appeal Committee has already been established, in this case the Appeal Committee shall decide on the exclusion of the member. The member considered to be biased may no longer participate in this decision. The faculty shall propose to the Rector's office another person to replace the excluded member who shall participate as quickly as possible in the Appeal Committee if a new member in the Appeal Committee cannot be waived in agreement with the Rector's office in the individual case.

4. Transparency and information:

If in appeal proceedings exclusion or bias grounds have been asserted or there is otherwise doubt as to whether an exclusion or bias grounds exist, the significant facts are to be ascertained by the chairman of the Appeal Committee and to be documented together with the decision reached and to be filed. The Rector's office is to be informed in detail of all cases of possible bias and the decisions made. Information by the faculty council and senate remain unaffected by this.

If a member considered to be biased has participated in a decision by the Appeal Committee, this decision is illegal. The Rector's office shall decide on how to proceed in such cases. The same applies to an apprehension of bias of expert reviewers; relevant expert opinions may not be utilised.

5. Bias review in the choice of expert reviewers:

In the consultation on the selection of expert reviewers, the aforementioned criteria on the exclusion and the apprehension of bias are to be correspondingly applied.

Since a conclusive statement is not possible, in cases of doubt please contact Mr Kloor, Legal Administrative Department, Tel. 685-82220, wilhelm.kloor@verwaltung.uni-stuttgart.de