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Dossier "Academic Cyberplagiarism"

Cyberplagiarism in University Regulations

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Abstract

The article examines the legal framework for plagiarism, and its twofold nature of illicit appropriation (from the author of the plagiarized work) and fraud (with regard to the target audience of the plagiarism). Based on these premises, academic cyberplagiarism is analysed as a form of plagiarism carried out using electronic tools in the university setting. The question of responsibility (who can regulate the legal consequences of plagiarism?) before and after the Ley orgánica de universidades (organic law on universities, LOU) is studied, as is the disciplinary handling of cyberplagiarism with the limited regulations currently in place at universities.

Keywords

plagiarism, cyberplagiarism, disciplinary system, academic regulations

Resum

L'article examina, en primer lloc, el règim jurídic del plagi en general, en el doble vessant d'apropiació il·lícita (contra l'autor de l'obra plagiada) i de frau (respecte dels destinataris de l'obra feta amb plagi). Amb aquestes premisses s'analitza el ciberplagi acadèmic com una forma de plagi portada a terme amb eines electròniques en l'àmbit universitari. S'estudia la situació competencial (qui pot regular les conseqüències legals del plagi?) abans i després de la Llei orgànica d'universitats, i també el tractament disciplinari del ciberplagi amb la normativa limitada de què disposen actualment les universitats.

Paraules clau

plagi, ciberplagi, règim disciplinari, reglament acadèmic



1. Legal framework for plagiarism: an intertwining of regulations

1.1. Plagiarism as illicit appropriation and fraud

A. Plagiarism: a double-edged sword

Let us assume that plagiarism means “stealing from the author and deceiving the target audience of the plagiarism”. An act of plagiarism affects two groups of interests: a) the interests of the author (and, where applicable, the owner of the exploitation rights of the work; for example, the publisher) and, b) the interests of the target audience of the work, who is deceived into thinking that the work belongs to the plagiarizer.

In this article, only the second aspect of plagiarism will be studied: as fraud for the target audience of the work.

B. Prejudicing the target audience of the work

Plagiarism, as we have said, is not only detrimental to the author of the plagiarized work, but is also a fraud that is detrimental to the target audience. Regardless of the fact that this fraud is at the expense of the author, the truth of the matter is that the harm to them is instrumental, a necessary evil to achieve the main objective, which is to deceive the target audience of the plagiarism.

In terms of private law relationships, both the publisher or the person who has requested the work, and the person who finally acquires it could end up affected, as all of them are deceived with regard to the authenticity of the work.

In terms of public law, the deceit could lead to the plagiarizer appearing to have greater merits than those that they actually have, by claiming the authorship of another person's work or part thereof. This way they could, for example, fulfil the requirements for obtaining a degree or certificate, pass an exam or gain a civil service position, etc.

In some cases (particularly civil service examinations), the interests of the public and those of the other candidates that are excluded due to the false merits shown by the plagiarizer could be affected.

1.2. Regulations applicable to plagiarism as fraud

The regulations applicable to the other aspect of the plagiarism – plagiarism as fraud – vary according to whether it is considered from a civil, administrative or criminal viewpoint.

From a civil or private law position, plagiarism, firstly, could lead to actions that protect against non-compliance from the defrauded consumers who acquired a work by someone other than its real author. Secondly, the publisher or producer of the plagiarized work would be able to bring actions derived from the breach of contract (termination of the contract and/or compensation for damages and losses) against the alleged author¹

From an administrative perspective, the verification of the plagiarism could result in the annulment of any action based on the mistaken attribution of authorship of a work, in accordance with article 62 of Act 30/1992, for the legal system governing Public Administrations and the common administrative procedure, either in terms of section E, which refers to the acts “undertaken totally and absolutely disregarding the legally established procedure or the regulations included in the main rules to ensure goodwill among constituent bodies”, or section F, regarding “express or alleged acts against the legal system by which they acquire faculties or rights when they lack the essential requirements for their acquisition”.

On frequent occasions the possibility of annulling university or public examinations or appointments as doctor has been considered, due to the declaration that all or some of the merits of the person were the result of plagiarism.

The legal response² can be summarized along the following lines:

- Initially, the annulment is accepted as possible, conditional of the accreditation that we are faced with a real case of plagiarism. A mere “functional” or partial imitation is not usually considered sufficient.
- The assessment of the plagiarism must be reconciled with the discretion of the public examination or doctorate boards. The “technical discretion” factor is of particular importance when it is not a “slavish copy” or when the plagiarized work is not the only object assessed.
- Legitimization to dispute the corresponding appointments has been widely recognized. For example, the possibility for a professor from the same area of knowledge and a different university to dispute the appointment of a doctor has been recognized.

Lastly, from the criminal viewpoint, in extreme cases the possibility of a crime of fraud concurring with that of plagiarism could arise. However, I am not aware that such a case has been brought to court, and it is more than likely that the affected third parties – rather than the actual plagiarized author – are content with filing a civil or administrative claim.

1. As in SAP Madrid, February 25 2005 (AC 2005\340).

2. STSJ Galicia, April 17 2002 (JUR 2002\184238); STSJ Galicia, October 17 2001 (JUR 2002\16098); STSJ Valencia, November 13 2000 (JUR 2001\92534); STSJ Valencia, March 15 2006 (JUR 2006\243488); and STSJ Castile-León, April 30 2007 (JUR 2007\131995).



2. Legal framework for cyberplagiarism in universities

2.1. Introduction

Having examined the general legal framework for plagiarism, we will now look at the peculiarities presented when it takes on the form of “academic cyberplagiarism”.

We can already reveal that these characteristics will come from two points common to this sort of plagiarism: that it occurs in the academic university environment and is carried out using electronic means.

Again, in terms of the twofold aspect of plagiarism, as illicit appropriation (at the expense of the author) and fraud, here we will only deal with the second, cyberplagiarism as fraud.

2.2. Applicable regulations

A. Introduction

As previously explained, plagiarism does not only mean a violation of the author's rights, but it is also deception of the target audience of the plagiarism, which could warrant its own legal consequences.

It is this aspect of plagiarism that is most visible in academic plagiarism. The student intends to be assessed for the plagiarized work as if it was their own creation. We therefore find ourselves in the field of assessment fraud, which forces an examination of the particular disciplinary system for university students, as the acts of fraud in assessments tend to entail an administrative sanction.

On examining said sanctioning system and its possible application to academic plagiarism we should differentiate, for reasons that will be explained later, two different periods: before and after the Organic Law 6/2001, of December 21, for Universities (hereafter, the LOU).

B. Before the LOU

Prior to the LOU, the university student offences and sanctions system was governed by a decree of September 8 1954, the Regulation for Academic Discipline in Official Centres of Higher Education and Technical Education that are the Responsibility of the Spanish Ministry of Education (hereafter, the Regulation for Academic Discipline, 1954).

It is important to stress that the Organic Law 11/1983, of August 25, for University Reform (hereafter, LRU) had “frozen” *de facto* any possibility of substituting the Regulation for Academic Discipline, 1954, either by the universities or by the Autonomous Communities. Article 27.3 of the LRU stated that “the universities, at the request of the University Council, will establish rules that regulate the responsibilities of students with regard to compliance of their academic obligations”. Given that said proposal by the University Council never took place in the eighteen years that the LRU was in force, the universities – and probably the Autonomous Communities – lacked the legal support to regulate their academic disciplinary system. This is why the regulation drawn up by Franco's government has been applied until current times.

Case-law³ has had the opportunity to pronounce on the validity of this regulation, in terms which can be summarized as follows:

- In spite of the fact that a fair part of its precepts should be understood as subsequently revoked by the Spanish Constitution,⁴ those that cannot be considered unconstitutional remain in force. In particular, courts have considered the serious offence called “lack of integrity” to be valid and have applied it in cases of fraud in assessments.
- Although the sanctions are constitutionally subject to the need for an Act of parliament and the Regulation for Academic Discipline, 1954, is merely approved by decree, said constitutional requirement is not applied retroactively. Therefore, the regulation is not affected by said need for an Act.
- Although the Regulation for Academic Discipline, 1954, has an obvious lack of specification – see, for example, the aforementioned “lack of integrity” –, the courts have considered it sufficient.

The majority of sentences analyse sanctions lodged for fraud in examinations, either for impersonation, for substituting the exam for one done previously, for conveying answers from outside or, lastly, for entering offices to obtain the text of the exams or to modify the results. The sanctions applied vary between the disqualification from studying at university for life and the temporary suspension for studying at a specific university or in a specific centre for a certain number of years.

It is worth observing that, given that the Regulation for Academic Discipline, 1954, does not establish special periods of limitations, those in article 132 of Act 30/1992, regarding

3. Only the most recent cases are mentioned: STSJ Galicia, March 31 2004 (JUR 2004\260143); STS, March 7 2002 (RJ 2002\5077); STS, December 15 2000 (RJ 2000\9853); STS, June 7 1999 (RJ 1999\5018); STSJ Navarre, December 21 1996 (RJCA 1996\2596).

4. This occurs, with complete certainty, with the serious offences consisting of “demonstrations against the Catholic religion and morals or against the principles or institutions of the State...” (article 5.a. 1.), or the less serious such as “indecorous words or events or any act that notably disturbs the order that should exist in educational establishments, inside or outside the classrooms” (article 5.b. 1.).



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the legal system for Public Administrations and of the common administrative procedure are applied. A serious offence such as the "lack of integrity", applied to fraud in examinations, expires after a period of two years.

In the application of the sanction, the constitutional presumption of innocence until proven guilty is applied in a watered-down version, typical of administrative sanctions.

With regard to the sanctioning procedure, all the constitutional guarantees should be fulfilled, which is achieved by combining the procedural rules of the Regulation for Academic Discipline, 1954, and the aforementioned Act 30/1992.

CC. After the LOU

The LOU has done away with any express allusion to the disciplinary system for university students. Thus, the path is clear for the Regulation for Academic Discipline, 1954, to be substituted for another which is more appropriate to our times.

However, difficulties still exist. The main one consists in the need for an Act of parliament to establish a law setting the main lines of any sanctioning system, although the actual law could delegate to the Administration, so that it regulate the detail afterwards.

As if things were not sufficiently complicated, a progressively more diverse line of case-law with little doctrinal support has made the administrative relationships of special subjection exempt from the principle of legality – the very relationship that exists between students and universities.

An impeccable application of the principle of legality would, in my opinion, prevent universities from being able to regulate, even in their statutes, offences committed by students and their corresponding sanctions.

Responsibility would probably therefore reside in the parliaments of the Autonomous Communities, which I understand would be responsible for establishing this sanctioning system for students, without prejudice to their being able to refer the regulation of the disciplinary system to the universities themselves.

However, only the regulatory law of the Basque Country's university system makes a mention of the student disciplinary system: "The disciplinary regulations that the universities draw up and approve will sufficiently guarantee the specification of offences and sanctions, the proportionality between them and the right to a hearing of any expelled student so that declarations may be formulated and proof put forward, prior to the resolution applicable, with regard to the conduct with which they are charged" (article 42.2 of Act 3/2004, of February 25, for the Basque University System). It is unlikely that such an imprecise delegation would satisfy the aforementioned need for an Act of parliament.

Despite the complete absence of an authorizing law that covers the aforementioned need for an Act of parliament and with the possible case-law protection of the relationships of special subjection, some university statutes have regulated the student disciplinary system or, rather, have in turn delegated the university government bodies to regulate it. This is the case, for example, of the university statutes of Malaga (article 183 d.), Alcalá (article 146.3) or the Complutense (article 152). I am not aware, however, that these universities have used this self-attributable regulatory faculty.

In some academic regulations (for example, University of the Balearic Islands, Jaume I University) a rule is included according to which "regardless of the disciplinary procedure against the offending student which could follow, the demonstrably fraudulent realization of any of the exercises required in the assessment of any subject will be given the grade of 0 in the corresponding exam".⁵ The regulations of the assessment system of the University of Cantabria is still more precise, by alluding almost explicitly to plagiarism: "Any student who has or uses illicit means during an exam, or who illegally attributes to himself or herself the authorship of academic works required for the assessment, will be given a qualification of 'failed' or '0', according to whether they be literal or numerical qualifications, respectively".⁶

2.3. Disciplinary handling of plagiarism

A. Application of the Regulation for Academic Discipline, 1954

Even today, cases of academic plagiarism have to be examined under the light of that included in the Regulation from 1954.

The "lack of integrity" categorization is sufficiently lax to include cases of cyberplagiarism.

Naturally, a distinction must be made between cases in which the student negligently omits citing the source of some of the information included in their works and others in which the omission is fraudulent and consciously intends to attribute the works as their own. The fraudulent character of the plagiarism will be more obvious if the teacher (or centre) has sufficiently informed the student about the handling of external sources.

Both "slavish" and "partial" or functional plagiarism (see the categories in 1. 2.) could be considered, according to the circumstances, as "lack of integrity".

B. Application of academic regulations with rules regarding fraud in assessments

Although academic regulations do not include specific rules regarding plagiarism or cyberplagiarism, the application to the

5. Art. 40 UIB Academic Regulations.

6. Art. 10.



latter of rules for fraud in assessment covered by some academic regulations⁷ seems easy and does not require the text of the same to be forced. However, the nature of these rules lies somewhere between “policing” and, strictly speaking, sanctioning. If the latter is considered, its application would require the start of a penalization process. The rule's sanctioning powers would be more obvious if applied to partial plagiarism in a test in which the rest of the student's work is correct and has been carried out personally, or if the plagiarism occurs in only one of the tests subject to assessment.

C. Evaluation and “undercover” sanctions

Lastly, one might consider the introduction, in subject programmes, of evaluation criteria that deduct some or all marks for plagiarism.

References to the negative character of plagiarism will always be instructive and prevent students from using a supposed ignorance to protect themselves.

A different matter is the possibility that behind these evaluation criteria there is an authentic sanction which the professor has no authority to impose, as the corresponding disciplinary process must be followed. In my opinion, it would be an assessment and not a sanction in the following two cases:

- If the deducting of marks for a subject or work is proportional to the part of the work or works affected by the plagiarism.

- If the deduction is not proportional, but the recognition of the authorship and the authenticity in the work constitute express objectives of the subject. This would, in my opinion, justify a deduction of marks proportionally higher than the “extent” plagiarized, as the plagiarism would directly affect one of the course's objectives.

D. Conclusions

Now that the difficulty existing in the disciplinary regulation of student offences has been overcome, the moment seems to have arrived to tackle the regulation of the student disciplinary system, either by the universities or the Autonomous Communities.

It would be reasonable to include fraud in exams and in other assessment elements in the offences specified, and to consider plagiarism and cyberplagiarism as forms of fraud. This way the lecturing staff and the academic authorities can deal with cyberplagiarism with more legal security and the students would have maximum guarantees.

The disciplinary handling of cyberplagiarism does not, obviously, exhaust all the university policy destined to reduce cyberplagiarism. The success of university regulations on cyberplagiarism require at least two complementary policies: student education, which should include a definition that is sufficiently clear of what cyberplagiarism is and is not; and faculty training, so that they define cyberplagiarism in a uniform way and suitably evaluate the cyberplagiarized tests or exercises.

7. For example, article 40 of the academic regulations of the University of the Balearic Islands: “Regardless of the disciplinary procedure that could follow against the offending student, the demonstrably fraudulent realization of any of the exercises required in the assessment of any subject will be given a grade of 0 in the corresponding exam”.



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