



THE OMBUDSMAN FOR ACADEMIC ETHICS AND PROCEDURES OF THE REPUBLIC OF LITHUANIA

REGARDING THE FORMATION OF THE COUNCIL OF KAUNAS UNIVERSITY OF TECHNOLOGY

5 May 2016, No. SP-11

Vilnius

The Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania (hereinafter - the Ombudsman), in accordance with Part 1 of Paragraph 18 of the Law on Higher Education and Research of the Republic of Lithuania and with the Resolution No. XI-1583 of the Seimas of the Republic of Lithuania of 15 September 2011 “Regarding the establishment of the Office of the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania and the approval of the provisions of the Office of the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania“, approved by Subparagraph 1 of Paragraph 13 of the provisions of the Office of the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania, after the investigation initiated by the Ombudsman on 13 April 2016 on the basis of the resolution adopted on 13-04-2016 at the meeting of the Committee on Education, Science and Culture of Seimas of the Republic of Lithuania intended to “request the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania to investigate the circumstances of the election and approval of the Council of Kaunas University of Technology“, concerning the legitimacy of the formation of the Council of Kaunas University of Technology, and taking into account the material provided by Kaunas University of Technology (hereinafter - KTU), Association of Trade Unions of Lithuanian Higher Education Schools (hereinafter - LAMPSS), the data received from KTU during the analysis of the formation of councils of the state higher schools performed in the Office of the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania (hereinafter - the Office) in 2015-10-05–2016-01-15,

determined that:

By the letter of 3 February 2016 No. S-66 “Regarding the results of the analysis of the formation of the Councils”, the Ombudsman provided KTU the following conclusions made on the basis of the aforementioned analysis:

“1) Raimondas Kuodis was approved “from already assigned lecturers or researchers“ (in accordance with Part 4 of Article 24 of MSĮPPI of 2012), although Raimondas Kuodis was assigned as the member not belonging to the university staff and students by the order of the Minister of the Education and Science of the Republic of Lithuania;

2) Sigitas Stanys was approved “from already assigned lecturers or researchers“ (in accordance with Part 4 of Article 24 of MSĮPPI of 2012), although, as it is stated in the Order of the Minister of the Education and Science of the Republic of Lithuania, Sigitas Stanys was assigned by the administration and other personnel;

3) From the start of publication, the Council composition was the following: 5 members not belonging to the university staff and students, 4 members belonging to the academic community of the university.”

Moreover, by the mentioned letter, the Ombudsman requested to inform the Council regarding the adopted decisions on formation of the Council and the terms for their deadlines.

KTU, by the letter of 01-03-2016, No. DV10-193 “Regarding the results of the analysis of the formation of the Councils“ responded that “<...> At the adoption of the resolution of 20 June 2012, No. No. V3-S-47, the Senate assessed the compliance of the members of the Council R. Kuodis and S. Stanys with the requirements to be the lecturers or researchers of the University, and decided that they satisfy this requirement.“

By the letter of 8 March 2016, No. S-131 “Regarding the explanation of the results of the analysis of the formation of the Councils“, the Council addressed to KTU with the explanation that:

“<...> Raimondas Kuodis was approved “from already assigned lecturers or researchers“ (in accordance with Part 4 of Article 24 of [the Law No. XI-1987 on amending and supplementing Articles 7, 10, 12, 17, 19, 20, 21, 22, 23, 43, 44, 47, 48, 51, 55, 57, 66, 69, 70, 71, 73, 75, 95 of the Law on Higher Education and Research of the Republic of Lithuania], although, Raimondas Kuodis was assigned as the member not belonging to the university staff and students by the order of the Minister of the Education and Science of the Republic of Lithuania. Thus, this person was approved as not belonging to the members of the higher education school. Therefore, this person could not be confirmed and elected in accordance with Part 3 of Article 20 of MSĮPPI. Raimondas Kuodis could be approved only in that case, if this person would be indicated in the Order of the Minister of the Education and Science of the Republic of Lithuania as assigned from the lecturers and researchers.

Also Sigitas Stanys was approved “from already assigned lecturers or researchers“ (in accordance with Part 4 of Article 24 of 2012 [the Law No. XI-1987 on amending and supplementing Articles 7, 10, 12, 17, 19, 20, 21, 22, 23, 43, 44, 47, 48, 51, 55, 57, 66, 69, 70, 71, 73, 75, 95 of the Law on Higher Education and Research of the Republic of Lithuania], although, Sigitas Stanys was assigned by the administration and other personnel in the Order of the Minister of the Education and Science of the Republic of Lithuania. Thus, this person was not proposed from the academic community, because, in accordance with Part 1 of Article 53 of the Law on Higher Education and Research of the Republic of Lithuania, the members of the academic community are the students, lecturers, researchers, other investigators and professors emeritus of the scientific and educational institutions. The employees holding the positions of the administration are not included into the concept of the academic community. Therefore, in accordance with Part 4 of Article 24 of 2012 [the Law No. XI-1987 on amending and supplementing Articles 7, 10, 12, 17, 19, 20, 21, 22, 23, 43, 44, 47, 48, 51, 55, 57, 66, 69, 70, 71, 73, 75, 95 of the Law on Higher Education and Research of the Republic of Lithuania], Sigitas Stanys could not be approved as the lecturer or researcher. Sigitas Stanys could be elected in accordance with Part 3 of Article 20 of 2012 [the Law No. XI-1987 on amending and supplementing Articles 7, 10, 12, 17, 19, 20, 21, 22, 23, 43, 44, 47, 48, 51, 55, 57, 66, 69, 70, 71, 73, 75, 95 of the Law on Higher Education and Research of the Republic of Lithuania], and represent the academic community in the current position belonging to the academic community but such will was not expressed. Thus, instead of Sigitas Stanys there must be elected a new member of the Council who belongs to the academic community, i.e. lecturers or researchers, or the same member can be elected but the election procedures must be fulfilled.“ (the information provided in square brackets is ours).

The letter No. DV10-307 of 7 April 2016 of KTU “Regarding the results of the analysis of the formation of the Councils“ states that „<...> By approving the candidacies of R.Kuodis and S. Stanys, the Senate were assessed whether they belong to the lecturers and researchers of the University and decided whether they comply the requirements set by the law and whether they are attributable to the lecturers and researchers of the University. The Senate was granted with such right by the Replacement Law which did not provide such limitation as it was specified by you – i.e. the Senate could confirm only those members who were indicated as in the Order of the Minister of Education and Science of the Republic of Lithuania as assigned from the lecturers and researchers. <...> The Senate of the University used the right granted to it by both the Replacement Law and Constitutional Court interpretation in order to approve, by its own decision, the composition of the Council of the University, assessed the belonging of its two members - S.Stanys and R.Kuodist - to the lecturers and researchers of the University, and decided that they can be the members of the Council of the University.“

By the letter No. S-185 of 14-04-2016 “Regarding the initiation of the investigation and the provision of the information”, the Ombudsman addressed to KTU with the request:

“<...> 1) to provide documents supporting the provision of the mentioned consultations¹, and the content of the consultations;

2) to explain and justify the compliance of the members of the Council R.Kuodis and S.Stanys with the requirement to be the lecturers or researchers of the University or its (requirement) satisfaction;

3) explain and justify the difference between the dates of the end of the Council’s cadency set by the aforementioned resolutions No. V3-S-66 and No. V3-S-58 <...>“

By the letter No. DV10-357 of 20-04-2016 “Regarding the provision of the information”, KTU explained and provided the documents supporting the explanations, except the explanation of 2012 of the Legal Department of the Office of Seimas mentioned by the representative of KTU at the meeting of the Committee on Education, Science and Culture of Seimas. “In autumn of 2012, after that, when in accordance with Part 4 of Article 24 of the Law No. XI-1987 on amending and supplementing Articles 7, 10, 12, 17, 19, 20, 21, 22, 23, 43, 44, 47, 48, 51, 55, 57, 66, 69, 70, 71, 73, 75, 95 of the Law on Higher Education and Research of the Republic of Lithuania (hereinafter - the Amendment of the Law), the Council of the University was formed, we addressed in writing to the Ministry of Education and Science of the Republic of Lithuania, asking to provide the recommendation opinion regarding the term of cadency of the approved members of the Council (Appendix 1). On 6 November 2012 we received the letter No. SR-5463 from the Ministry of Education and Science of the Republic of Lithuania “Regarding the application of the Law on Education and Studies of the Republic of Lithuania” (Appendix 2), in which it was stated that: “Taking into account the above considerations, we think that the cadency of the member of the council of the high school should be counted from the date of the conclusion of a new composition of the council of the high school“. Moreover, in the letter No. V-2016-1691 of 14 March 2016 of the Legal Department of the Office of Seimas “Regarding the term of cadency of the high schools” (Appendix 3) there was expressed the legal opinion: „(...) in accordance with the principles of reasonableness and legal consistency, the term of cadency of any formed institution should be counted from the last legal action (act) which concludes the procedure of the institution building (formation). In our opinion, in accordance with Part 3 of Article 20 of the Law on Education and

¹ The consultations provided by the Legal Department of the Office of Seimas and other competent institutions of the Republic of Lithuania regarding the formation of the Council of Kaunas University of Technology.

Studies No. XI-242 20, as such action (act) it should be considered the public announcement about the final composition of the formed council carried out by the chair of the Senate (academic council). Accordingly, from this public announcement, the term of the cadency of 5 years of the newly assigned council of the high school should be counted.“ After the announcement of 1 October 2012 about the composition of the newly formed Council of KTU, KTU, by the letter No. DV4-92-65 of 28 November 2012 (Appendix 4) informed about this the Ministry of Education and Science and any comments or questions about the composition of the Council were not received from the institution implementing the founder's rights and obligations.

<...> The compliance of R. Kuodis and S. Stanys to the requirement to be the lecturers or researchers of the University <...> was assessed on 20 June 2012 by the Senate of the University, by approving the list of the members of the Council of KTU. In addition, we note that S. Stanys <...> held various academic positions <...> R. Kuodis <...> held the position of the associate professor at the time of approval as the member of the Council <...>.

On 20 June 2012, the Senate of KTU approved 9 members of the Council of KTU in accordance with the rules of Article 24 of 24 April 2012 [Replacement Law]. Later, on 24 September 2012, other 2 members of the Council were approved in accordance with the order set by the University's students. On 1 October 2012 the Chair of the Senate announced the resolution about the announcement of the newly approved composition of the Council of KTU. This resolution indicates the end of the cadency of KTU - 24 September 2017, however, taking into account that the Council of the University is considered to be formed and its cadency had to be started from that moment when the Chair of the Senate announced its composition, this date unreasonably shortened the cadency of the Council of KTU by 6 days. Due to this reason, the Senate, by additionally assessing the legitimacy, composition and the term of cadency of the Council of KTU, by its resolution No. V3-S-58 of 18 November 2016, pointed out that the cadency of the Council of KTU continues until 30 September 2017 - i.e. 5 years from that moment when, on 1 October 2012, the Chair of the Senate announced the full composition of the Council of KTU of 11 members. Such validity and legitimacy of counting the term of the Council's authorizations is also confirmed by the <...> legal argumentation set in the letter No. V-2016-1691 of 14 March 2016 of the Legal Department of the Office of Seimas of the Republic of Lithuania “Regarding the term of cadency of the high schools”.

By the order No. V-455 of 18 March 2011 of the Minister of Education and Science of the Republic of Lithuania “Regarding the Council of Kaunas University of Technology” (hereinafter - the order of 18-03-2011), the Minister of Education and Science announced “<...> the Council of Kaunas University of Technology of this composition:

2.1. assigned by the Student Representation of Kaunas University of Technology – Martynas Ubartas, the student;

2.2. assigned by the lecturers and researchers of Kaunas University of Technology:

2.2.1. Ramutis Petras Bansevicius – Director of the Mechatronics Centre for Science, Studies and Information;

2.2.2. Giedrius Antanas Kuprevičius – Dean of Faculty of Humanities;

2.2.3. Algirdas Šačkus – Director of Institute of Synthetic Chemistry.

2.3. assigned by the administration and other personnel of Kaunas University of Technology – Sigitas Stanys, Vice Rector for infrastructure;

2.4. assigned by the Minister of Education and Science together with the Senate of Kaunas University of Technology – Arūnas Laurinaitis, vice-president of the JSC Concern “Achema Group”;

2.5. assigned by the Minister of Education and Science:

2.5.1. Regimantas Buožius – Director of the Limited Liability Company “Acme Computer Components”;

2.5.2. Gintautas Galvanauskas – General Manager of Danske Bank A/S Lithuania Branch;

2.5.3. Mindaugas Glodas – General Manager of UAB “Microsoft Lithuania” for Baltic countries;

2.5.4. Arvydas Janulaitis;

2.5.5. Raimondas Kuodis – Director of the Economics Department of the Bank of Lithuania.

<...>“

The Senate, in accordance with Part 4 of Article 24 of the MSIPPI of 2012, decided to approve ”<...> the members assigned from the lecturers and researchers working at Kaunas University of Technology:

prof. Ramutis Petras Bansevicius, Professor of the Mechatronics Centre for Science, Studies and Information;

prof. Rimantas Gatautis, Director of the Electronic Business Research Centre of the Faculty of Economics and Management;

prof. Algirdas Šačkus, Director of Institute of Synthetic Chemistry;

prof. Sigitas Stanys, Vice Rector for International Relations and Development;

dr. Raimondas Kuodys, Board Vice Chairman of the Bank of Lithuania, lecturer at Kaunas University of Technologies.”

The content of the Order of 18-03-2011 shows that lecturers and researchers assigned the following persons to the members of the Council of 2011: Ramutis Petras Bansevicius (Director of the Mechatronics Centre for Science, Studies and Informatio), Giedrius Antanas Kuprevicius (Dean of Faculty of Humanities) and Algirdas Šačkus (Director of Institute of Synthetic Chemistry), the administration and other personnel of Kaunas University of Technologies - Sigitas Stanys (Vice Rector for infrastructure), Raimondas Kuodis (Director of the Economics Department of the Bank of Lithuania) assigned by the Minister of Education and Science. However, from the resolution No. V3-S-47 of 20-06-2012 of the Senate “Regarding the approval of the list of the members of the Council of Kaunas University of Technology“, it follows that the members of the Council Sigitas Stanys and Raimondas Kuodis were approved as the members assigned “from the lecturers and researchers”.

Attention is drawn to one of the discussed questions of the protocol No. V1-S-8 of 20-06-2012 of the meeting of the Senate of Kaunas University of Technology (hereinafter – the Protocol) regarding the composition of the Council of Kaunas University of Technology. The speaker Rector prof. Petras Baršauskas stated that “<...> Today we are talking about the transitional period, i.e. the remaining four years of the cadency of this Council. <...> The Rector emphasized that there are two variants: one of them is very radical – to elect the Council again, without waiting for those four years, or to use the another variant – to re-approve the Council in the Senate. <...> The discussion arises regarding two members of the Council: Sigitas Stanys and Raimondas Kuodis. Sigitas Stanys is the lecturer, however, he was assigned from the administration and other personnel. The same story is with Raimondas Kuodis, who has always been the hourly paid lecturer, participated in defenses and lectures, had the 0.25 part-time work as a lecturer. All other external members of the

Council must be assessed by the Senate in order to consider whether they are suitable to continue the cadency or not. If this variant is appropriate for the Senate, then it is necessary to vote, approve the members of the Council and continue to work. <...> Doc. [G. D.] offered to vote for individual persons [the members of the Council], because, for example, Raimondas Kuodys himself had not been raised by the personnel of the University, he was delegated by the Lithuanian Confederation of Industrialists.

Prof. Petras Baršauskas noticed that the same situation was with Sigitas Stanys, who was raised not by the lecturers and researchers, but by the administration. If the Senate votes “against” one or the other candidate, the situation would not be very pleasant and beautiful.

<...> The lawyer [T. B.] commented that “the law providing the procedure of approval of the re-election of the Council does not specify what kind of voting should be <...>“ (underlined by us) (the information provided in the square brackets is ours).

The content of the mentioned Protocol shows that:

1) it was decided “to re-approve the Council in the Senate”, although in Part 4 of Article 24 of the MSİPPI of 2012 there is set the possibility of approval of only certain members of the Council; the missing members of the Council had to be elected and assigned in accordance with Part 3 of Article 20 of the Law on Education and Studies;

2) such position was held that the Council is re-approved because, according to the lawyer T. B., the MSİPPI of 2012 provided “The procedure of approval of the re-election of the Council“. However, the legal regulation shows that Part 4 of Article 24 of the MSİPPI of 2012 regulated not the procedure of the re-approval of the Council, but the procedure of the formation of the new Council, by approving some members of the Council, the others - by electing and assigning in accordance with the common procedure of the formation of the Council set in Part 3 of Article 20 of the Law on Education and Studies. The MSİPPI of 2012 did not authorize the Senate to approve the re-election of the Council;

3) the participants of the meeting were aware that Raimondas Kuodys was raised not by the personnel of the University and was delegated by the Lithuanian Confederation of Industrialists, and Sigitas Stanys was raised not by the lecturers and researchers, but by the administration, however, at the meeting with a vote on the wording “To approve the members of the Council of Kaunas University of Technology, assigned from the lecturers and researchers working in Kaunas University of Technology” the Senate decided that dr. Raimondas Kuodys and prof. Sigitas Stanys were assigned to the Council of 2011 from the lecturers and researchers, although the MSİPPI of 2012 did not authorize the Senate to re-elect the Council by voting, nor approve the re-election of the Council, nor express the will of the academic community regarding the approval of Raimondas Kuodis and Sigitas Stanys to be the members of the Council as already assigned from the lecturers and researchers. It should be noted that KTU did not provide the documents supporting the fact of executed election procedures for the expressed will of the academic community of KTU to assign the mentioned members of the Council to the Council of 2012;

4) at the meeting it was talked about “the transitional period, i.e. the remaining four years of the cadency of this Council”, however, the Chair of the Senate, by the resolution No. V3-S-66 of 01-10-2012 “Regarding the announcement of the composition of the Council of Kaunas University of Technology” decided “to announce the composition of the Council of Kaunas University of Technology by delegating it to carry out the duties till 24 September 2017”. After more than 3 years from the announcement of the composition of the Council of KTU, i.e. since the date of the resolution No. V3-S-58 of 18-11-2015 of the Senate “Regarding the date of the end of the cadency

of the Council Of Kaunas University of Technology of 2012”, based on Part 3 of Article 20 of the Law on Education and Studies, in which the procedure of the formation of the newly formed Council is regulated, the date of the end of the cadency of the Council Of Kaunas University of Technology of 2012 was set - 30 September 2017. This date is counted from 1 October 2012 (at the statutory term of the cadency), when the Council of Kaunas University of Technology was announced;

5) it was intended “to re-approve the Council in the Senate” without the formation of the Council in the order set by the legislation, however, the decision “to approve the list of the members of the Council of KTU” was adopted.

Moreover, it is noted that, by te resolution No. V3-S-47 of 20-06-2012 of the Senate “Regarding the approval of the list of the members of the Council of Kaunas University of Technology” dr. Raimondas Kuodis was approved as the lecturer of KTU. But, on 01-10-2012 (i.e. after 3 months and 10 days), in the resolution No. V3-S-66 of the Senate “Regarding the announcement of the composition of the Council of Kaunas University of Technology”, in the announced composition of the Council, dr. Raimondas Kuodis is indicated as the associate professor of the Economics and International Trade Department of the Economics and Management Faculty of KTU.

Part 4 of Article 24 of the Law No. XI-1987 on amending and supplementing Articles 7, 10, 12, 17, 19, 20, 21, 22, 23, 43, 44, 47, 48, 51, 55, 57, 66, 69, 70, 71, 73, 75, 95 of the Law on Higher Education and Research of the Republic of Lithuania (hereinafter – the MSĮPPI of 2012) sets that “the Senate (academic council) without complying with the order of the formation of the council of the high school set in this law, can approve the members as the members of the council of the high school who are already assigned from the lecturers and researchers. Student Representation, if it is absent, – a general meeting of students (conference) - can approve the member as the member of the state high school who is already assigned from the students. The Senate (academic council) can approve 3 or 4 members of the Council respectively as the members of the Council of the state high school out of the persons offered by the Minister of Education and Science together with the Senate of the high school (academic council) or out of the persons not belonging to the personnel and students of the high school, and the Student Representation, if it is absent, - a general meeting of students (conference) - one member of the Council. The authorizations of the unapproved members of the Council of the state high school expire from the adoption of decisions regarding the approval of the new Council by the Senate (academic council) and the Student Representation or a general meeting of students (conference) respectively. The missing members of the Council of the state high school are elected and assigned in accordance with this Law”. (underlined by us).

Attention is drawn to Part 3 of Article 24 of the MSĮPPI of 2012 m., in which the formation and approval of the Councils are distinguished, although Parts 1, 2 of Article 24 of the same Law deals only with the formation, Part 4 of Article 24 sets the approval of the members of the Council, although in the same part there is established the provision that “the authorizations of the unapproved members of the Council of the state high school expire from the adoption of decisions regarding the approval of the new Council by the Senate (academic council) and the Student Representation or a general meeting of students (conference) respectively. However, taking into account that such legal regulation followed after the adoption of the resolution of 22 December 2011 of the Constitutional Court of the Republic of Lithuania, in which there was formed the constitutional doctrine of the academic community self-government the provisions of Article 24 of

the MSİPPI of 2012 should be explained in accordance with the provisions of the resolution of the Constitutional Court.

In Part 1 of Article 53 of the Law on Higher Education and Research it is set that “the academic community is comprised of students, lecturers, researchers, other investigators and professors emeritus of the scientific and educational institutions.” “Administration and other personnel” are not the members of the academic community. In this regard, it must be concluded that the persons assigned to be the members of the Council by “the administration and other personnel” can not be considered as assigned by the academic community and as the representatives of the academic community in the Council.

The Constitutional Court in its resolution of 22 December 2011 noted that “the self-government of the academic community of the high schools is related with, inter alia, the principles of democratic governance. These principles in Part 3 of Article 40 of the Constitution in the context of the guaranteed autonomy of the high schools include, inter alia, the direct participation of the academic community, the decisive influence on the formation of the governing institution(s) of the high school having the greatest authorizations <...>“. Also, the Constitutional Court stated that “the strategic and other key decisions of governance of the state high school should be made by such governing body (council), the majority of which would be comprised of the members directly assigned by the academic community, and in formation of which the members directly assigned by the academic community would have the decisive influence in adoption the decisions of this body <...>. <...> in accordance with Part 3 of Article 20 of the Law on Higher Education and Research, the academic community of the state high school can assign 3 of 9 or 4 of 11 members of the Council (one member of the Council is the representative of the students, two or three members - the representatives of lecturers and researchers). <...> Other 6 of 9 or 7 of 11 members of the Council of the state high school are not directly assigned by the academic community:

- one member of the Council is assigned by the administration or other personnel <...>;
- other 4 of 9 or 5 of 11 members of the Council are also assigned by the Minister of Education and Science out of any candidates offered by the legal and natural persons who do not belong to the personnel and students of the high school (inter alia, to the academic community) <...>“ (underlined by us).

In order to obtain an explanation of the legislature, the Office, by the letter No. S-385 of 7 October 2015, addressed to the Committee on Education, Science and Culture of Seimas of the Republic of Lithuania, requesting “to provide the explanation on how should be understood the procedure of the approval of the members of the Council set in Part 4 of Article 24 of the Law on amending and supplementing Articles 7, 10, 12, 17, 19, 20, 21, 22, 23, 43, 44, 47, 48, 51, 55, 57, 66, 69, 70, 71, 73, 75, 95 of the Law on Higher Education and Research of the Republic of Lithuania in the scope, in which it is set that “the Senate (academic council) without complying with the order of the formation of the council of the high school set in this law, can approve the members as the members of the council of the high school who are already assigned from the lecturers and researchers”. In connecting Part 4 of Article 24 of the aforementioned Law with Part 3 of Article 20 of the Law on Higher Education and Research (12-05-2009), there arises the question: how to interpret the phrase „the members <...> who are already assigned from the lecturers and researchers” (underlined by us). If, in this case, the members of the Council formed until 2012 are: 1) assigned from the persons who, except other positions in the high school, held the positions of the lecturers or researchers; or 2) assigned by the lecturers or researchers as it was set in Part 3 of Article 20 of the Law on Higher Education and Research of the version of 12-05-2009 “.

The Committee on Education, Science and Culture of Seimas of the Republic of Lithuania, in response to the above request, on 10 November 2015 provided in writing the opinion of the Legal Department of the Office of Seimas of the Republic of Lithuania that “in assessment of the meaning of the expression “the members assigned from the lecturers and researchers”, it is appropriate to systematically analyze all the provisions of the Law on Education and Studies that regulate the order of the formation of the Council of the high schools. It should be noted that Part 3 of Article 20 of the Law on Higher Education and Research of the version of 12-05-2009 sets only the subjects authorized to elect (assign) the members to the Council of the high schools, but there are not indicated the persons who can be elected (assigned) to the mentioned governing body of the high school. However, it should be noted that, although the Law does not precisely indicate the persons who may be assigned by the researchers and lecturers in accordance with the common principles of representation in governing bodies, exactly these persons assign to the Council of the high education [to the Council of the high school, our note] the representatives from among themselves, i.e. the researchers and lecturers who represent the common interests of this academic community <...>“ (underlined by us).

The systemic assessment the provisions of the mention resolution of the Constitutional Court, that are related with the representation of the academic community in the Council, and the provisions set on its basis in Part 4 of Article 24 of the MSĮPPI of 2012, it is noted that the composition of the Council is clearly related with the representation of the academic community. The mentioned position of the Constitutional Court regarding the members directly assigned by the members of the academic community to the Council emphasize the importance of the choice of the academic community with respect to the member of the Council. In such case, in formation of the Council, it is important that the assignment of the members of the academic community to the members of the Council would come from the will and choice of the academic community. Part 3 of Article 20 of the Law on Education and Studies, on the constitutionality of which the Constitutional Court spoke in 2014, confirms and explains the importance of the representation of the academic community in the Council. Part 3 of Article 20 of the mentioned Law provides that “<...> other members of the academic community <...> assign respectively no more than 4 or 5 members <...>“ (underlined by us) the Senate, by ensuring the compliance with the principle of self-government of the academic community, not exceeding the authorizations, could approve only those members of the Council who were directly assigned by the lecturers and researchers, and who were assigned to represent the interests of the academic community, expressing the will of the academic community by the procedure of voting. Part 4 of Article 24 of the MSĮPPI did not authorize the Senate to elect the representatives of the academic community in the procedure of election and assignment of which the academic community did not participate and did not directly assign them to the Council. Therefore, it is reasonably assumed that the ability to assign members as the members of the Council, who already were assigned from the lecturers and researchers should be based on the constitutional doctrine of the self-government of the academic community and on the principles of the formation of the Council set in Part 3 of Article 20 of the Law on Education and Sciences on its basis and should be directed to the legitimate composition of the Council.

It should be noted that the right of the Senate (academic council), set by the legislature, to form the Council in breach of the order of the formation of the Council established in Part 3 of Article 20 of the Law on Education and Studies, does not deny the obligation to form the legal Council, i.e. in the formation of the Council there should be taken into account the principles of the formation of the Council established in Part 3 of Article 20 of the Law on Higher Education and

Research and the position laid down in the resolution of 22 December 2011 of the Constitutional Court so that there would be ensured the Council the majority of which would be composed by the members directly assigned by the academic community and in formation of which the members who were directly assigned by the academic community would have a decisive influence in adoption of the decisions of the Council (the resolution of 22 December 2011 of the Constitutional Court). This position is also confirmed by the provisions provided in the explanatory letter of the MSİPPI project of 14-03-2012: “to specify the concept and competence of the Council, as of the collegiate governing body of the state high school, by excluding the provisions that contradict to the Constitution of the Republic of Lithuania or by choosing such structural model of the government of the state high school, according to which the council would also be the collegiate governing body representing the academic community (i.e. the academic community of the high school would have a decisive influence in its formation) and implementing its self-government <...> (underlined by us).

In Part 2 of the Academic Ethics Code of Kaunas University of Technology (hereinafter - the Code), approved by the resolution No. V3-S-1 of 25 January 2012 of the Senate of Kaunas University of Technology, it is set that “the University recognizes the Great Charter of European Universities and the European Charter for Researchers, declarations and provisions of general study and research space of the European Union, the competence, professionalism, initiative and responsibility are developed and respected“, and in Part 3.2. it is set that “Each member of the community of the University: 3.2.1. respects the general interests of the University and helps as much as he can to implement the objectives raised by the University <...>“. In Part 2.2 of the TUA-MCO guidelines of the Code of Ethics of the high schools (hereinafter - the Guidelines; Engl. *Magna Charta Observatory*) it is set that “Code of Ethics should uphold the following principles: <...>

- ii) impartiality, justice and non-discrimination;
- iii) responsibility, transparency and independence;
- <...>“ (underlined by us).

Limitation of the academic community to express its will is contrary to the principle of the academic freedom and responsibility of the Code and to the principles of justice, responsibility and independence of the Guidelines.

In view of the foregoing, it must be concluded that, in execution of the procedure of the approval of the list of the members of the Council of 2012, the procedure of the formation of the Council set in Part 4 of Article 24 of the MSİPPI of 2012 and in Part 3 of Article 20 of the Law on Higher Education and Research was not followed, and it can be stated that:

1) The approval of Sigitas Stanys and Raimondas Kuodis to be the members of the Council of 2012 in the Council of KTU contradicted to the order of the formation of the Council set in Part 4 of Article 24 of the MSİPPI of 2012 and in Part 3 of Article 20 of the Law on Higher Education and Research in the scope, in which is set that “The Senate <...> can assign members as the members of the Council of the state high school, who already were assigned from the lecturers and researchers. <...> The missing members of the Council of the state high school are elected and assigned in accordance with this Law“, and to the principle of the self-government of the academic community explicated in the resolution of 22 December 2011 of the Constitutional Court of the Republic of Lithuania;

2) The Chair of the Senate, by the resolution No. V3-S-66 of 1 October 2012 “Regarding the announcement of the composition of the Council of Kaunas University of Technology”, by assigning the Council of Kaunas University of Technology to perform duties until 24 September

2017, i.e. by establishing the cadency of the Council, and ignoring the will of the academic community to assign representatives to the Council for the cadency of 5 years as well as the position expressed by the speaker Rector prof. Petras Baršauskas to relate the re-approval of the Council in the Senate with the transitional period, i.e. the remaining four years of the cadency of the Council, exceeded the authorizations set in Part 3 of Article 20 of the Law on Higher Education and Research for the Chair of the Senate;

3) The Senate, by the resolution No. V3-S-58 of 18 November 2015 “Regarding the date of the end of the cadency of the Council of Kaunas University of Technology approved in 2012”, by establishing the date of the end of the cadency of the Council of Kaunas University of Technology approved in 2012 and by explaining the start and the end of the cadency of 5 years of the Council set in Part 6 of Article 20 of the Law on Higher Education and Research, exceeded the authorizations set for the Senate and limited the possibility of the academic community to express its will.

After evaluation of the documents submitted by KTU and legal regulation, taking into account the resolution of 13-04-2016 adopted at the meeting of the Committee on Education, Science and Culture of Seimas to “request the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania to investigate the circumstances of the election and approval of the Council of Kaunas University of Technology” and in accordance with Part 1 of Article 18, Paragraph 1 of Part 12 of Article 18 of the Law on Higher Education and Research, the Ombudsman

decided:

To inform Kaunas University of Technology and the Ministry of Education and Science about the violations of the academic ethics and the procedures determined by the Ombudsman.

The Ombudsman’s decision may be appealed in the order set by the Law on Administrative Proceedings of the Republic of Lithuania.
