



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

### **REGARDING THE VIOLATIONS OF THE PROCEDURES IN ORGANIZING THE PUBLIC TENDER FOR THE POSITION OF THE DIRECTOR OF MARIJAMPOLE COLLEGE**

13 May 2016 m, No. SP- 12  
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 Subparagraph 13.1 of the provisions of the Office of the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania, approved by 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“ (hereinafter - the Provisions), by Subparagraph 13.1, and after examination of the complaint of G.S. (hereinafter - the applicant) P.K. of Vilnius University Faculty of Mathematics and Informatics (hereinafter - the applicant)<sup>1</sup> received in the Office of the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania (hereinafter - the Office) on 1 March 2016 regarding possible procedural violations in organizing the public tender for the position of the director of Marijampole College as well as the submitted material,

#### **determined that:**

The applicant in his complaint to the Ombudsman stated that “during the execution of the procedures of the public tender for the position of the director of Marijampole College, the order of organizing the tender was violated and, therefore, the other candidates could not participate in the public tender for the position of the director. <...> The candidates followed the information provided in the website of the College ([www.marko.lt](http://www.marko.lt)), in which the news about the invitation to the tender for the position of the director was announced on 14 February. After a few days the announcement was completely removed from the website of the College. According to the director’s approval order of organizing the public tender for the position of the director of Marijampole College, the candidates can submit the documents within 30 days from the date of publication in the press and in the website of the College“.

The applicant requests the Ombudsman “to cancel the held tender and organize a new public tender for the position of the director of Marijampole College, because the other candidates were misled by the provided information and did not manage to submit the documents for the participation in the tender on time“.

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<sup>1</sup> “Applicant” in the text of the Ombudsman’s decision is given generally as a noun of masculine gender without linking it to the sex of the applicant

The Ombudsman, by the letter No. S-147 of 17-03-2016 addressed to Marijampole College and requested: 1) to provide the order of organizing the public tender for the position of the director of Marijampole College and the approval of the director; 2) to specify the circumstances of the public tender for the position of the director of Marijampole College, i.e. the date, place and requirements of the announcement of the tender and other information; to provide the supporting documents.

Marijampole College, by the letter No. KS-88 of 23-03-2016, that was signed by the acting director V. Viliūnas, provided to the Office the following:

1. The order of organizing the public tender for the position of the director of Marijampole College and the approval of the director, approved by the protocol No. KT-1 of 20-01-2016 of the meeting of the Council of Marijampole College.

2. The announcement published in the daily newspaper "Lietuvos rytas" of 22 January 2016 "The tender for the position of the director of Marijampole College".

3. The announcement published in the newspaper of Marijampole "Miesto laikraštis" of 22-28 January 2016 "The tender for the position of the director of Marijampole College".

4. The announcement published in the website of Marijampole College [www.marko.lt](http://www.marko.lt) "The tender for the position of the director of Marijampole College"; the following is stated at the announcement: "The record is created on: 21 January 2016".

The Ombudsman, by the letter No. S-159 of 30-03-2016, addressed to the applicant and requested to specify when, to his knowledge, the announcement about the public tender for the position of the director of Marijampole College was removed from the website of the College, and to indicate the reasons why he or other candidates were not able to participate in the mentioned tender. Also, the Ombudsman, by the letter No. S-160 of 30-03-2016, addressed to G. A., who was indicated in the applicant's complaint as the person who is able to confirm the appealed actions, and requested him to indicate the circumstances, known to him, related with the organization of the public tender for the position of the director of Marijampole College.

G. A., by the letter of 31 March 2016 to the Office, replied that the date of publication of the mentioned tender in the website of the College was 14 february 2016, however, "there was no information about the final date for the submission of the documents. Therefore, in accordance with the tender approved by the Council of the College, the documents could be submitted within 30 days, i.e. until 14 March". G. A. stated that "the announcement in the website of the College, which I saw myself, later, in my opinion, was deliberately removed <...>. I think that the information on the invitation to the tender was made in error, because I know the competent person, who has the scientific degree and management experience, who planned to participate in the tender but could not do this, because due to the information provided in error, he could not submit the documents required for the tender on time and could not participate in the tender." (language unedited).

The applicant did not submit the required information to the Office.

The Ombudsman, taking into account the received information, by the letter No. S-161 of 30-03-2016, requested Marijampole College to specify, for how many days the announcement about the public tender for the position of the director of Marijampole College had been published in the website of Marijampole College, and to submit the supporting data.

Marijampole College, by the letter No. KS-95 of 04-04-2016, replied to the Office:

" – after the meeting of the Council that took place on 20-01-2016, it was announced about the tender for the position of the director of Marijampole College on the website of the College on

21-01-2016 (the announcement with “The record is created on 21 January 2016” printed from the website of the College is attached);

– The College for its website management uses the content management system “Joomla 3.1.5” and the website’s column “News” and the older records are transferred to the second or subsequent pages. In order to ensure that the information regarding the ongoing tender for the position of the director of the College would be seen by the persons who are concerned and interested immediately, by opening the first page of the website of the College, the publication of the announcement was raised above the other articles in the column “News”, i.e. to the to the main page of the website of the College. In order to raise the news to the above, it is necessary to change the date of the news publication and creation. In order to transfer this information to the above, the change of the date of the publication and creation of the announcement article was made as for the date of 14-02-2016 (attached);

– On 24-02-2016, the announcement about the public tender for the position of the director of the College was turned off, removed from the website of the College“ (language unedited).

The Ombudsman, by the letter No. S-175 of 08-04-2016, once again addressed to Marijampole College and, taking into account the information provided in the mentioned letter of the College, that due to the features of the content management system of the website “it is necessary to change the date of the news publication and creation“, requested to explain why the date, until which the persons who want to participate in the tender can submit the documents, is not indicated in the announcement about the public tender for the position of the director of the Marijampole College that is published in the website of Marijampole College.

Marijampole College, by the letter No. KS-116 of 15-04-2016, replied to the Office that in the announcement about the public tender for the position of the director of the Marijampole College there was indicated that “the documents of the candidates shall be accepted within 30 calendar days from the date of announcement of the tender. When the record about the tender for the position of the director of the Marijampole College was updated in the website of Marijampole College, by raising the announcement above other news articles, the content of the announcement and the deadline for the acceptance of the documents were not changed“.

Paragraph 8 of the order of organizing the public tender for the position of the director of Marijampole College and the approval of the director, approved by the Council of Marijampole College on 20 January 2016 (the protocol No. KT-1) 8 sets that “The Council, by announcing about the tender for the position of the director of the College, indicates the title of the College, position title, requirements for the candidates, general information about what documents must be submitted and by when they must be submitted by the persons wishing to participate in the tender, as well as the specific requirements and the place where the documents of the candidates are accepted. It also indicates where you can get more detailed information on the announced tender“ (underlined by us). Paragraph 11 of this order determined that “the candidates can submit the documents indicated in Paragraph 9 of the order personally or send by registered mail before the date specified in the announcement” (underlined by us).

The announcements about the tender for the position of the director of the Marijampole College, which were published in the daily newspaper “Lietuvos rytas” of 22 January 2016, in the newspaper of Marijampole “Miesto laikrastis” of 22-28 January 2016 and in the website of Marijampole College [www.marko.lt](http://www.marko.lt), include the following: “The candidates submit the indicated documents personally to the Personnel, Law and Procurement Department of Marijampole College at the address P. Armino str. 92-4, 105 cabinet, Marijampole, or send to the indicated address by the

registered letter <...>“. The content of these announcements shows that **the date until when the candidates can submit the necessary documents is not indicated in the announcements**. It is indicated in the announcement that “the documents of the candidates shall be accepted within 30 calendar days from the date of announcement of the tender“. Attention is drawn to the fact that the date of the public tender for the position of the director of Marijampole College varied, as it was indicated by Marijampole College in the letter No. KS-95 of 04-04-2016, due to the loading of the news about the public tender for the position of the director of Marijampole College into the to the main page of the website of Marijampole College.

On 19 April 2016, the Office send the e-mail to Marijampole College requesting to indicate “<...> how many candidates applied to the College from 24 February 2016 to 14 March 2016 by wishing to submit or submitting the documents for the public tender for the position of the director of the College? Was it replied to them? <...>“.

In the e-mail of 26-04-2016 of Marijampole College it was answered that “<...> during the period from 24 February 2016 to 14 March 2016 nobody applied in order to submit and nobody submitted the documents for the public tender for the position of the director of Marijampole College.” Marijampole College confirmed the answer by the data of the submitter register of the candidates for the position of the director of Marijampole College.

*In view of the foregoing, it must be concluded that, due to the fact that the change of the date of the announcement of the public tender for the position of the director of Marijampole College (from 26-01-2016 to 14-02-2016) and that the date until which the documents could be submitted were not indicated in the announcement, there occurred the obstacles for the persons wishing to participate in the tender, to determine the last day of the period of 30 calendar days, until which it was allowed to submit the documents, and it can be stated that Marijampole College violated Paragraph 8 of the order of organizing the Public tender for the position of the director of Marijampole College and the director’s approval. Such unequal conditions for the candidates to receive the information about the period of validity of the announcement are assessed as contradictory to the principle of the equal rights to participate in tenders, the implementation of which must be ensured by the Ombudsman in accordance with Subparagraph 1 of Paragraph 13 of the Provisions, as well as to the principle of the public tender.*

After analysis of the complaint material and legislation regulating the order of the organization of the tender, the provisions, after evaluation of the influence of the determined violations on the decisions regarding the organization of the tender, their causal connection, the circumstances on the basis of which it would be possible to call into question the legality of the winner of the tender are not determined.

After evaluation of the information provided by the applicant, Marijampole College and the supporting documents as well as legal regulation, and in accordance with Paragraph 1 of Part 12 of Article 18 of the Law on Higher Education and Research, the Ombudsman

**decided:**

To inform Marijampole College and the Ministry of Education and Science of the Republic of Lithuania about the violation of the order of the organization of the public tender for the position of the director of Marijampole College 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.

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