



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

REGARDING CERTIFICATION AND EXECUTION OF THE PUBLIC TENDER IN THE STATE SCIENTIFIC RESEARCH INSTITUTE CENTER FOR PHYSICAL SCIENCES AND TECHNOLOGY

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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“, by Subparagraph 1 of Paragraph 13, after examination of the complaint of A.S. (hereinafter - the applicant ¹) received in the Office of the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania (hereinafter - the Office) on 31 March 20 and the material provided by the State Scientific Research Center for Physical Sciences and Technology (hereinafter - the VMTI FTMC),

determined that:

The applicant requests “to oblige the management of the VMTI FTMC to cancel unreasonable and inconsistent with the actual data decision of the Committee on the fact that I do not satisfy the requirements for chief researchers.”

By the order No. A-88 of 9 September 2015, the director of the VMTI FTMC there were announced the extraordinary certification of the chief researchers, senior researchers, researchers and junior researchers and the tender.

In the extraordinary certification of the chief researchers which took place on 9 November - 1 December 2015, and in the tender for the positions of the chief researchers of 9 December 2015, the applicant also participated.

¹ “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 results of the tender and the meeting of the certification commission (hereinafter - the Commission) of 22-12-2015 show that the votes of the Commission's members, in voting on the applicant's compliance with the requirements applied to the chief researchers, were the following: the applicant "satisfies" - 5 votes, "does not satisfy" - 6 votes.

The letter No. SR-4600-227 of 12 April 2016 of VMTI FTMC states that the applicant "participated in the extraordinary certification, his qualification was certified, i.e. accepted as being eligible for the position of the chief researcher by the decision of the Commission. [The applicant] participated in the tender for the position of the chief researcher, which he did not win." Also the attention was drawn to the fact that "in execution of the tender for the position of the chief researcher, the Commission, in assessing the eligibility of the candidates for the position of the chief researcher and their ability to win the tender, draw the special attention to the analysis and the assessment of the following criteria ensuring the proper scientific activity in respect of the particular candidate [applicant], i.e.:

1. The candidate's potential to continue and extend the ongoing scientific work;
2. The candidate's potential to develop and extend the ongoing scientific topic or to formulate the new promising research topic;
3. The candidate's potential to organize the group of researchers for the proper execution and development of the scientific work and scientific topic.

From the submitted documents, the Commission found that [the applicant] did not perform any International projects or projects with the Scientific Council, and with the economic entities in the last 5 years. It should also be noted that during the last 5 years, he did not provide any topics for the doctoral tenders, he did not involve the students for the conduct of the final bachelor and master thesis, he did not submit applications for the students' practice, in 2013 submitted application for the doctoral topics, however, he had not doctoral students for the date of the tender, also he did not provide the data on whether [the doctoral student] <...> indicated in the certification card completed the doctoral studies. According to the data available to the institution, [the doctoral student] did not defend the doctoral thesis during the doctoral studies, because he did not harmonize it with the supervisor, i.e. with [the applicant].

Taking into account the above facts, during the secret vote the Commission expressed the opinion that the candidacy [of the applicant] did not meet the above-mentioned tender criteria, and taking this into account, the Commission adopted the decision not to assign [the applicant] to the tender position of the chief researcher.

On 04-01-2016 [the applicant] submitted the request to the Commission for reconsidering his candidacy for the position of the chief researchers. Given the fact that the institution's Order does not provide the opportunity of the appeal and reconsideration of the candidate and his

submitted data in the case of the tender for the position of the chief researchers, the procedures of consideration of the additional documents provided [by the applicant] on 04-01-2016 were not initiated. The documents submitted [by the applicant] on 04-01-2016 were examined in the separate meeting of the Commission, in which it was repeatedly decided that his candidacy for the position of the chief researcher is inappropriate. <...>” (the information provided in the square brackets is our) (underlined by us).

After the analysis of the information provided in the letter No. SR-4600-227 of 12-04-2016 of the VMTI FTMC, the Ombudsman addressed to the VMTI FTMC regarding the adjustment of the following circumstances:

„1. You indicated in the letter that in execution of the tender for the position of the chief researcher, the Commission, in assessing the eligibility of the candidates for the position of the chief researcher and their ability to win the tender, draw the special attention to the analysis and the assessment of the following criteria ensuring the proper scientific activity in respect of the particular candidate, i.e.

1. the candidate's potential to continue and extend the ongoing scientific work;
2. the candidate's potential to develop and extend the ongoing scientific topic or to formulate the new promising research topic;
3. the candidate's potential to organize the group of researchers for the proper execution and development of the scientific work and scientific topic” (underlined by us).

Your letter also states that “from the submitted document, the Commission found that [the applicant] did not perform any International projects or projects with the Scientific Council, and with the economic entities in the last 5 years. It should also be noted that during the last 5 years, he did not provide any topics for the doctoral tenders, he did not involve the students for the conduct of the final bachelor and master thesis, he did not submit applications for the students’ practice, <...> he had not doctoral students for the date of the tender, also he did not provide the data on whether the doctoral student <...> indicated in the certification card completed the doctoral studies. “. <...> Taking into account <...> the above facts, during the secret vote the Commission expressed the opinion that the candidacy [of the applicant] did not meet the above-mentioned tender criteria <...>“ (underlined by us).

[The applicant] indicated in the description of the Scientific activity and the plans for the future that he engaged in researching and he is planning to write the textbook of electrochemical kinetics. It is indicated in the certification card [of the applicant] that he supervises the doctoral studies [of the doctoral student], consults and examines the doctoral students.

Please explain what relation is between the indicated criteria, specifically applied [to the applicant], with the criteria listed in Paragraph 1 of Qualification requirements for the positions of

the researchers, approved in the meeting of the Science Council of the State Scientific Research Center for Physical Sciences and Technology of 7 October 2010. Please justify the basis on which the individual criteria were applied [to the applicant] by the Commission of the tender and certification. Please provide the arguments of non-compliance [of the applicant] with the mentioned criteria.

2. You stated in the letter that “the institution's Order does not provide the opportunity of the appeal and reconsideration of the candidate and his submitted data <...>“. Please indicate the cases of application of the provision of Paragraph 17 of the order of the organization of the certification of the researchers and tenders for this positions approved in the meeting of the Science Council of the State Scientific Research Center for Physical Sciences and Technology of 7 October 2010, that “the disputes (disagreement with the decision of the Commission, violations of the provisions, etc.) are settled by the Central Science Council which may delegate the Commission to conduct the repeated evaluation of the employee”. Why it was not followed in [the applicant's] case?

3. Please submit the material of other candidates who participated in the tender for the position of the chief researcher together with [the applicant], and indicate what criteria and requirements were applied to these candidates (including the winner). <...>“ (the information provided in the square brackets is ours).

VMTI FTMC, in its letter No. SR-2400-262 of 25-04-2016 explained that „<...> the certification of the researchers and the tender <...> are conducted in compliance with the requirements and procedures established in the Order of the organization of the certification of the organization of the certification of the researchers of the State Scientific Research Center for Physical Sciences and Technology and the tenders for these positions <...> and in the qualification requirements of the positions of the of the researchers of the State Scientific Research Center for Physical Sciences and Technology <...>.

<...> The Commission for tenders and certification (hereinafter - the Commission) assessed the candidates participated in the tender according to the eligibility of the candidates to carry out the scientific activity, i.e., according to the data provided by the candidate, it analyzed the candidate's potential to continue and extend the ongoing scientific work, it assessed the candidate's potential to develop and extend the ongoing scientific direction or to formulate the new promising research activity topic, it took into account the candidate's potential to organize the group of researchers for the proper execution and development of the scientific work and scientific topic.

<...> The Commission in assessing the [applicant's] candidacy followed the Order and Requirements, it assessed the data provided [by the applicant] in accordance with the criteria defined in the mentioned orders. <...> the Commission determined that [the applicant] at the time of the submission of the documents for the tender did not lead any scientific project <...> did not have

and did not plan to lead the doctoral studies <...>. According to the Commission, the person who seeks for the position of the chief researcher, must initiate the institution's participation in new research projects, he must initiate the preparation and submissions of the applications for the participation in the scientific projects that are financed by the Lithuanian Science Council, the Science and Innovation Agency and other institutions, he, on his own will, must offer the project topics that may settle the appropriate problems, on the basis of which it would be possible to participate in collaborative project activity with the Lithuanian or foreign partners.

<...> the indicated [by the applicant] textbook that is planned to be published, in the Commission's opinion, was unequalled in its value to the article having high citation index. <...> In carrying out the tender, the Commission followed the provision that the working expertise held by the candidate participating in the tender was assessed by certifying, i.e. checking the person's qualification eligibility for the corresponding position of the researcher, whereas, during the tender it was focused on assessing the candidate's potential to carry out the scientific activity during the period of new cadency the requirements for which are provided in the Order and Requirements approved by the institution.

<...> Given the fact that the secret method of the voting of the Commission's members is provided in the Order, we are not able to provide any specific arguments why the relevant member of the Commission expressed his approval/disapproval in voting on the [applicant's] candidacy in the tender for the position of the chief researcher. <...> the data submitted [by the applicant] on 04-01-2016 were examined in the separate meeting of the Commission, in which it was repeatedly decided that, although [the applicant] formally satisfies the certification requirements for the chief researcher, his candidacy for the position of the chief researcher is not appropriate. <...>“ (the information in the square brackets is our) (underlined by us).

At the meeting of the Scientific Council on 14 January 2016, the Chair of the tender-certification commission L.Vaitkūnas presented the results of the tender of the researchers of the VMTI FTMC and introduced the principles according to which the commissions considered the documents of the candidates for the positions. “<...> it was focused on the viability and relevance of the topic. Therefore, not necessarily all the designated positions of the tender had to be occupied. <...> the Commission received the appeals of some employees who did not pass the tender <...>. The Commission met and discussed this issue and decided not to change the results of the tender. One of the most important arguments was the absence of the appeal procedure in the provisions of the tender .“ (the protocol No. 6 of the meeting of the Scientific Council of 14-01-2016) (underlined by us).

Paragraph 6 of the order of the organization of the certification of the researchers of the VMTI FTMC and the tender (approved at the meeting of 7 October 2010 of the Scientific Council

of the VMTI FTMC; the adjustments approved at the meeting of 17 November 2011) (hereinafter - the Order) sets that “the tenders for the researchers and the certifications for these positions are organized by the Centre's tender and certification commission”. Paragraph 8 of the Order states that the Commission is guided by the qualification requirements for the positions of the researchers approved by the Central Science Council.“

Subparagraph 1 of the qualification requirements of the positions of the of the researchers of the VMTI FTMC (approved at the meeting of 7 October 2010 of the Scientific Council; the adjustments approved at the meetings of 17 November 2011 and 11 December 2014) (hereinafter - the Requirements) sets that “in conducting the certification (ordinary, extraordinary), and the tender for the position of the researcher in the State Scientific Research Center for Physical Sciences and Technology (hereinafter - the Center), the personal work results are evaluated according to the following basic criteria:

- 1.1. Publishing of scientific articles in periodical publications <...>.
- 1.2. Publishing of scientific articles in continuous or non-periodic publications <...>.
- 1.3. Inventive activity - patents <...>.
- 1.4. Writing of monographs, textbooks and teaching aids.
- 1.5. Works of experimental development and other applied science activities.
- 1.6. Citing of the author's scientific papers in the global scientific literature.
- 1.7. Participation in the international research programs and the received financial support for their implementation.
- 1.8. Participation in studies and scientific training.
- 1.9. Participation in scientific conferences.
- 1.10. Announcements in the scientific seminars organized by the Center.
- 1.11. Educational and science popularization activities.” (underlined by us).

Paragraph 2 of the Requirements sets “the minimal qualification requirements for the persons who claim for the position of the researcher:

2.1. The position of the chief researcher can be held by a scientist. The chief Researcher must prepare scientists, lead the researches and/or experimental development, publish the research results. The scientists who have fulfilled at least one of the following requirements can claim for the position of the chief researcher:

2.1.1. published a total of at least 30, and in the last 5 years, not less than 10 scientific articles in international scientific journals;

2.1.2. carried out significant experimental development works (value of € 30 thousand/year) and published a total of at least 15, and in the last 5 years at least 5 scientific articles in international scientific journals;

2.1.3. published a total of at least 15, and in the last 5 years at least 5 scientific articles in international scientific journals and peer-reviewed scientific monograph.<...>“

Paragraph 4 of the Requirements sets that “next to the quantitative assessment of the results of the scientific production or experimental development, the Commission must take into account the certified employee’s or the applicant’s scientific qualification, the contribution to the previous research activities and the potential to carry out the scientific work in the future. In assessing the number of scientific publications, the Commission takes into account the scientific value of the publications and the contribution of each author.”

In view of the foregoing actual circumstances and legal regulations, it is determined that:

The applicant was certified and, by the decision of the Commission, his qualification was accepted as being eligible for the position of the chief researcher, but he did not win the tender for the position of the chief researcher, because, at the time of the tender, the applicant did not satisfy the set requirements that are applied to the chief researchers. During the secret vote, the Commission expressed the opinion that the candidacy of the applicant did not meet the tender criteria, and taking this into account, the Commission adopted the decision not to assign the applicant to the tender position of the chief researcher. It is set in the Requirements that in conducting of the certification and the tender for the position of the chief researcher in VMTI FTMC, the personal work results are evaluated according to the basic criteria set in the Requirements. “Next to the quantitative assessment of the results of the scientific production or experimental development, the Commission must take into account the certified employee’s or the applicant’s scientific qualification, the contribution to the previous research activities and the potential to carry out the scientific work in the future. In the Commission’s opinion, the textbook planned to be prepared by the applicant was unequalled in its value to the article having high citation index. <...> during the tender it was focused on assessing the candidate's potential to carry out the scientific activity during the period of new cadency the requirements for which are provided in the Order and Requirements approved by the institution.

In addition, as it was indicated by the VMTI FTMC, the Commission in assessing the applicant's candidacy followed the Order and Requirements, it assessed the data provided by the applicant in accordance with the criteria defined in the mentioned orders. According to the Commission, the person who seeks for the position of the chief researcher, must initiate the institution's participation in new research projects, he must initiate the preparation and submissions of the applications for the participation in the scientific projects that are financed by the Lithuanian Science Council, the Science and Innovation Agency and other institutions, he, on his own will,

must offer the project topics that may settle the appropriate problems, on the basis of which it would be possible to participate in collaborative project activity with the Lithuanian or foreign partners.

It should be noted that the procedure of the tender organization and execution, in addition to the principle of publicity, is related with the principles of the rule of law, responsibility and accountability to the public, equal rights for participation in tenders, fair competition, objectivity, fairness and transparency, and the scientific and research institution that organizes the tenders must ensure the implementation of these principles.

Attention should be paid to the provision set in the Requirements that in conducting of the certification and the tender for the position of the chief researcher in VMTI FTMC, the personal work results are evaluated according to the basic criteria set in the Requirements. Moreover, as it was mentioned, the Commission must take into account the certified employee's or the applicant's scientific qualification, the contribution to the previous research activities and the potential to carry out the scientific work in the future. In this case, in the analysis of the certification and tender procedures, the scientific qualification and the contribution to the previous scientific activities are related with the personal work results, and the procedures for determining the potential to conduct the scientific work in the future are not regulated, however, in the present case, the main condition for winning the tender is the candidate's potential .

In assessing the legal regulation and the determined circumstances of the complaint, it can be reasonably stated that the decisions of the members of the Commission "Satisfies" or "Does not satisfy", established in the protocol No. 1 of the Commission on counting the votes at the meeting of the Tender and certification Commission, can not be equated to the opinions. Commission's status and the procedures of the tender organization and execution presuppose an obligation to express the will by voting in accordance with the validated data, own qualification and the provisions of the legislation. The member of the Commission who executes the authorizations set in the legislation and expresses his will by voting, must follow the provisions of the legislation and the principles of objectivity, justice, transparency. Only based on the provisions of the legislation, competent, objective, fair and transparent assessment of the candidates presupposes reasonable, objective, fair and transparent results of the tender.

Interpretation of the content of the minimal qualification requirements, basic criteria and the provision "The chief researcher must prepare scientists, lead the researches and/or experimental development, publish the research results" and its extension to the obligations of the candidates to initiate the institution's participation in new research projects, initiate the preparation and submissions of the applications for the participation in the scientific projects that are financed by the Lithuanian Science Council, the Science and Innovation Agency and other institutions, on their own will to offer the project topics that may settle the appropriate problems,

on the basis of which it would be possible to participate in collaborative project activity with the Lithuanian or foreign partners, **and the tender criteria that are not established in any legislation of the VMTI FTMC:** 1) the candidate's potential to continue and extend the ongoing scientific work; 2) the candidate's potential to develop and extend the ongoing scientific topic or to formulate the new promising research topic; 3) the candidate's potential to organize the group of researchers for the proper execution and development of the scientific work and scientific topic, **is unjustified.**

In view of the foregoing, it can be stated that the decision of the Commission (the composition of the Commission: L. Valkūnas, V. Balevičius, D. Čeburnis, A. Čenys, V. Gulbinas, S. Juršėnas, A. Kareiva, E. Norkus, G. Račiukaitis, R. Ramanauskas, E. Tornau, N. Žurauskienė) adopted during the tender regarding the unsuitability of the applicant for the position of the chief researcher is unjustified and contradictory to the principles of objectivity, justice and transparency.

Taking into account the provision in the preamble of the Law on Higher Education and Research of the Republic of Lithuania that the Lithuanian higher education and research policy guarantees the quality of higher education and research <...> and the conditions for the best to conduct the scientific work, to seek for the scientific and creative improvement <...>, and admitting that setting of the adoption of the decisions of the Commission's members by Secret voting based not on the legislation provisions and principles of objectivity, justice, transparency, contradict to the principles of the rule of law, responsibility and accountability to the public, the Ombudsman recommends to the VMTI FTMC to establish in the legislation the clear criteria of the assessment of the candidates, requirements and procedures during the tender, and to vote during the tender in accordance with the assessment criteria, requirements, procedures and the principles of objectivity, justice, transparency.

After evaluation of the documents provided by the applicant and the VMTI FTMC as well as the legal regulation, taking into account the complaint of the applicant and in accordance with Part 1 of Article 18, Paragraphs 1 and 3 of Part 12 of Article 18 of the Law on Higher Education and Research of the Republic of Lithuania, the Ombudsman

decided:

1. To inform the State Scientific Research Center for Physical Sciences and Technology and the Ministry of Education and Science about the decision of the Ombudsman.

2. To recommend to cancel the unreasonable decision of the Commission regarding the applicant's unsuitability for the position of the chief researcher.

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