



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

DECISION REGARDING ACTIONS OF MANAGEMENT BODIES OF LITHUANIAN UNIVERSITY OF HEALTH SCIENCES

4 January 2016 No SP-1
Vilnius

The Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania (hereinafter - the Ombudsman), <...> examined the complaint (hereinafter - the complaint) of I. M.¹ (we have impersonalized the data) (hereinafter referred to as the applicant) received in the Office of Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania (hereinafter - the Office of Ombudsman) on 24 August 2015 and the material submitted by the Applicant, Lithuanian University of Health Sciences (hereinafter referred to as LUHS), and **determined that:**

The applicant appeals against the actions of LUHS Council and LUHS Senate and requests:

“To recommend the Council of Lithuanian University of Health Sciences to revoke its Decision No 3-3 of 24 April 2015; and

To recommend the Senate of Lithuanian University of Health Sciences to revoke its Decision No 23-01 of 5 October 2012; and

To recommend the community of Lithuanian University of Health Sciences to hold elections to the LUHS Council as soon as possible, and

To recommend the Lithuanian University of Health Sciences University to postpone the competition of election of the Rector for the period until the formation of a new tenure Council of the University, and

To make public the cases of violation of academic ethics and procedures in Lithuanian University of Health Sciences. “

I. Relating to the approval of the LUHS Council

The applicant in his complaint indicated that “in 2010 the Council consisted of 3 (three) professors delegated by LUHS “lecturers and research fellows” <...> 1 professor was delegated by LUHS “administration and other employees” <...> 1 professor was delegated by “the Minister of Education together with the LUHS Senate” <...> 1 person was delegated by LUHS representation of students <...> and 5 persons were delegated by the Minister <...>”.

¹ Applicant in the text of the Ombudsmen’s resolution is given as a noun of masculine gender without linking it to the sex of the student, applicant

The complaint also indicates that the composition of the Council was approved by the Resolution No 23-01 of 5 October 2012 of LUHS Senate “On the approval of the members of the Council of the University already delegated by the Senate (hereinafter - Senate Resolution), whose formation procedure contradicts the Clause 4 of Article 24 of the Law on amendment and supplement to Articles 7, 10, 12, 17, 19, 20, 21, 22, 23, 43, 44, 47, 48, 51, 55, 57, 66, 69, 70, 71, 73, 75 and 95 of the Law on Higher Education and Research of the Republic of Lithuania (Official Gazette, 2012, No 53-2639) (hereinafter - 2012 HERLAS).

<...>

In the letter No DVTZ-1425 of 18 September 2015, LUHS indicated that the following persons were delegated from **the lecturers and research fellows**: 1) Rūta Jolanta Nadišauskienė (professor of Lithuanian University of Health Sciences), 2) Saulius Petkevičius (professor of Lithuanian University of Health Sciences), 3) Juozas Pundzius (professor of Lithuanian Health Sciences University), 4) Henrikas Žilinskas (professor of Lithuanian University of health Sciences), 5) Vilius Jonas Grabauskas (professor of Lithuanian health Sciences University); “**from students** <...> Linas Leonas was delegated, and the representation of students approved Dr. Jonas Milius (copy of the request of 1 October 2012 of LUHS representation of students is attached) of the persons proposed **by the Minister of Education together with the Senate of school of higher education (academic council) and the persons not belonging to the staff and students of school of higher education**. <...> the following persons (approved members of the LUHS Council of 2012): Donatas Stakišaitis, Egidija Vaicekauskienė, Rūta Vainienė and Vytautas Šileikis were the persons proposed by the Minister of Education together with the Senate of school of higher education (academic council) and the persons not belonging to the staff and students of school of higher education.”

Paragraph 4 of Article 24 of 2012 HERLASL stipulates that “the senate (academic council) may approve the members as the members of the council of the state school of higher education already appointed from four employees of the teachers and research staff without observing the procedure related to the formation of the council of the school of higher education as defined in the law herein. Representation of students, if there is no such representation - a general meeting of students (conference), can confirm the member as a member of the council of state school of higher education already appointed from the students. The senate (academic council) may approve respectively three or four members of the council, representative of students, if there is no such representation - the general meeting of students (conference) - one member of the council to be the members of the council of state school of higher education from persons proposed by the Minister of Education together with the senate (academic council) of school of higher education and the persons not belonging to the staff and students of school of higher education. The authorization of unapproved members of the council of state school of higher education shall expire, respectively, from the approval of the decision on the new council made by the senate (academic council) and the representation of students or the general meeting of students (conference). Lacking members of the council of state school of higher education are elected and appointed in accordance with this law.” (Underline is ours).

The Minister of Education and Science announced “<...> the following composition of the Council of Lithuanian University of Health Sciences by the Order No V-1656 of 30 September 2010 of the Minister of Education and Science of the Republic of Lithuania “On the Council of Lithuanian University of Health Sciences” (hereinafter referred to as the Order of 30 September 2010):

2.1. Delegated by the representation of students of Lithuanian University of Health Sciences – Linas Leonas, a representative of the representation of students of Lithuanian University of Health Sciences;

2.2. Delegated by the lecturers and research fellows of Lithuanian University of Health Sciences:

Rūta Jolanta Nadišauskienė, professor of Lithuanian University of Health Sciences;

Saulius Petkevičius, professor of Lithuanian University of Health Sciences;

Juozas Pundzius, professor of Lithuanian University of Health Sciences.

2.3. Delegated by the administration and other staff of Lithuanian University of Health Sciences - Vilius Jonas Grabauskas, Medical Academy Chancellor, professor of Lithuanian University of Health Sciences;

2.4. Delegated by the Minister of Education together with the Senate of Lithuanian University of Health Sciences - Henrikas Žilinskas, professor of Lithuanian University of Health Sciences;

2.5. Delegated by the Minister of Education and Science:

Jonas Milius – Director of the National Food and Veterinary Risk Assessment Institute;

Donatas Stakišaitis – Head of Preclinical and Clinical Research Division of State Medicines Control Agency under the Lithuanian Ministry of Health;

Egidija Vaicekauskienė – Director of Agricultural company “Nematekas”;

Rūta Vainienė –President of Lithuanian Free Market Institute;

Vytautas Šileikis – General Director of Kaunas Chamber of Commerce, Industry and Crafts. <...>“

The Senate, in accordance with paragraph 4 of Article 24 of HERLASL, decided to approve “<...> already delegated the members of the Council of University – the lecturers and research fellows:

1.1. Rūta Jolanta Nadišauskienė, professor of Lithuanian University of Health Sciences;

1.2. Saulius Petkevičius, professor of Lithuanian University of Health Sciences;

1.3. Juozas Pundzius, professor of Lithuanian University of Health Sciences;

1.4. Vilius Jonas Grabauskas, professor of Lithuanian University of Health Sciences;

1.5. Henrikas Žilinskas, professor of Lithuanian University of Health Sciences; <...>“

By the same resolution of the Senate, it was decided to approve “<...> already delegated members of the council of university not belonging to the staff and students of university:

2.1. Donatas Stakišaitis – Head of Preclinical and Clinical Research Division of State Medicines Control Agency under the Lithuanian Ministry of Health;

2.2. Egidija Vaicekauskienė – Director of Agricultural company “Nematekas”;

2.3. Rūta Vainienė – Strategic Project Manager of Lithuanian Free Market Institute, special expert;

2.4. Vytautas Šileikis – General Director of Kaunas Chamber of Commerce, Industry and Crafts.

3. To assign the Chairman of the Senate of Lithuanian University of Health Sciences Vilius Jonas Grabauskas to publish the composition of the Council of university, which also includes the members approved by the students - Jonas Milius and Linas Leonas”

The content of the Order of 30 September 2010 shows that the lecturers and research fellows delegated Rūta Jolanta Nadišauskienė (professor of Lithuanian University of Health

Sciences), Saulius Petkevičius (professor of Lithuanian Health Sciences University) and Juozas Pundzius (professor of Lithuanian Health Sciences University), the administration and other staff of Lithuanian University of Health Sciences - Vilius Jonas Grabauskas (Medical Academy Chancellor, professor of Lithuanian University of Health Sciences), and the Minister of Education and Science together with the LUHS Senate delegated Henrikas Žilinskas (professor of Lithuanian University of Health Sciences) to the members of the Council 2010.

The attention should be drawn to paragraph 24 of LUHS Statute (Resolution No XI-973 of 30 June 2010 of the Seimas of the Republic of Lithuania), which regulated the procedure for the formation of the Council 2010. Based on subparagraph 3 of the paragraph thereof, which establishes the procedure for the election of the member of the administration and other staff, it can be said that Vilius Jonas Grabauskas was delegated not only by the administration and other staff, but also from the administration and other staff. This position is also confirmed by the position of the administration employee indicated at the member of the Council Jonas Vilius Grabauskas - Medical Academy Chancellor of Lithuanian University of Health Sciences. The indication of the position confirms the delegation of Vilius Jonas Grabauskas to be a representative at the Council as Medical Academy Chancellor (administration employee) of Lithuanian University of Health Sciences. However, the resolution of the Senate shows that the member of the Council Jonas Vilius Grabauskas was approved as a member delegated “from the lecturers and research fellows”, and the position of the LUHS professor is indicated at his name.

In addition, it should be noted that Henrikas Žilinskas (professor of Lithuanian Health Sciences University) delegated to the Council 2010 by the Minister of Education and Science together with the LUHS Senate was approved by the Resolution of the Senate as a member delegated “from the lecturers and research fellows”, and the position of the LUHS professor is indicated at his name.

Attention should be drawn to the fact that in case of the members of the Council Vilius Jonas Grabauskas and Henrikas Žilinskas, LUHS did not provide the data justifying the fact of the will expressed by the LUHS academic community members and their choice to delegate the said members of the Council to the Council 2012, however, they were approved Council members as delegated “from the lecturers and research fellows”.

Paragraph 1 of Article 53 of the Law on Higher Education and Research provides for that “the academic community shall consist of students, the teaching staff, the research staff, other researchers, and professors emeritus of higher education and research institutions.” “Administration and other staff” are not members of the academic community. In this regard, it must be concluded that the persons delegated to the members of the Council by “the administration and other staff” “cannot be regarded as delegated by the academic community and the representatives of the academic community in the Council.

In its ruling of 22 December 2011, the Constitutional Court held that “self-governance of academic community of schools of higher education should be related *inter alia* to democratic principles of governance; in the context of the autonomy of schools of higher education guaranteed in Paragraph 3 of Article 40 of the Constitution, the said principles include *inter alia* the direct participation of the academic community in, and its decisive influence on, the formation of the governance institution (institutions) of the school of higher education <...> “.Also, the Constitutional Court stated that “the strategic and other key management decisions of state higher education institution should be made by the governing body (council), the majority of which would consist of directly appointed academic community members, and during the formation of which, the members

directly appointed by academic community would also have a decisive influence adopting the decisions of this body <...>. <...> under the Paragraph 3 of Article 20 of the Law on Science and Studies, the three out of nine or four out of eleven members of the council can be directly appointed by the academic community of a state school of higher education (one member of the council is representative of students, two or three – representatives of teachers and research staff). ... Another six out of nine or seven of eleven members of the council of state school of higher education are not directly appointed by the academic community:

- One member of council is assigned by the administrative and other staff <...>;
- One member of the council is appointed by the Minister of Education, together with the senate (academic council) of school of higher education <...>;
- Other four out of nine or five of the eleven members of the council are also appointed by the Minister of Education and Science out of any candidates proposed by legal or natural persons do not belong to the staff of the state school of higher education and students (*inter alia* the academic community) <...> “(underline is ours).

Evaluating systematically the provisions of the said Ruling of the Constitutional Court related to the representation of academic community in the Council, and the provisions consolidated in paragraph 4 of article 24 of 2012 HERLASL on the basis thereof, it should be noted that the composition of the Council is clearly associated with the representation of academic community. The said position of the Constitutional Court in respect of the members directly appointed by the members of academic community to the Council accentuates the importance of selection of the academic community with respect to the member of Council. In this case, during the formation of the Council, it is important that the appointment of members of the academic community to the members of the Council would come from the will and choice of the academic community. In 2012, the paragraph 3 of Article 20 of HERLASL was amended, on the constitutionality of which the Constitutional Court spoke in 2014, confirms and explains the importance of representation of the academic community in the Council. Paragraph 3 of article 20 of the said law provides for that “<...> other members of the academic community <...> shall appoint respectively not more than four or five members <...>” (underline is ours). Therefore, it should reasonably be assumed that the possibility to approve the members of the Council already appointed from the teachers and researcher staff must be based on the principles of Council formation and directed to the legitimate composition of the Council as established in amended paragraph 3 of article 20 of HERLASL.“

In order to obtain clarification of the legislature, the Office of Ombudsman addressed the Committee on Education, Science and Culture of the Seimas of the Republic of Lithuania on 7 October 2015 by the letter No S-385, asking “to provide the clarification on how the approval procedure of the members of the Council established in paragraph 4 of Article of the Law on the amendment and supplement (of 24 April 2012) of Articles 7, 10, 12, 17, 19, 20, 21, 22, 23 , 43, 44, 47, 48, 51, 55, 57, 66, 69, 70, 71, 73, 75 and 95 of the Law on Higher Education and Research of the Republic of Lithuania should be understood to the extent which states that “the Senate (academic council) may approve the members as the members of the council of the state school of higher education already appointed from four employees of the teachers and research staff observing (without observing) the procedure related to the formation of the council of the school of higher education as defined in the law herein”. Linking the paragraph 4 of Article 24 of the said Law with paragraph 3 of Article 20 of the Law on Higher Education and Research (of 12 May 2009), the

question is how the phrase “ the members already appointed from the teachers and research staff” (underline is ours) should be interpreted. In this case, are the members of the Council formed until 2012 considered to be: 1) appointed from the persons who, among other duties at school of higher education, served as teachers or research fellows; or 2) appointed by the teachers and research fellows as stipulated in paragraph 3 of Article 20 of the Law on Higher Education and Research of the 12 May 2009 version”.

The Committee on Education, Science and Culture of the Seimas of the Republic of Lithuania, in response to the abovementioned request, submitted the opinion of the Legal Department of the Seimas of the Republic of Lithuania on 10 November 2015 in writing that “evaluating the phrase “members appointed from teachers and research fellows”, all provisions of the Law on Higher Education and Research, regulating the formation of Councils of schools of higher education should be analysed systematically. It should be noted that paragraph 3 of Article 20 of the Law on Higher Education and Research in 12 May 2009 version lays down only entities authorized to elect (appoint) the members to the Council of University, but the persons who may be elected (appointed) to the governing body of the said school of higher education are not indicated. However, the attention should be drawn to the fact that although the law does not define precisely the persons who may be appointed by the research fellows and teachers, according to a common principles of representation in the governing bodies, those persons specifically appoint the representatives from among themselves to the Council of Higher Education [council of school of higher education, our note], i.e. the research fellows and teachers, who also represent the interests of the academic community <...>” (the information in angle brackets is ours).

In view of the foregoing, it should be noted that the right established by the legislature to the Senate (academic council) to approve the Council without observing the procedure for the formation of the Council embedded in paragraph 3 of Article 20 of the Law does not negate the obligation to approve the legal Council, i.e. approving the Council, the principles of the formation of the Council consolidated in amended paragraph 3 of Article 20 of HERLAS shall be taken into account and the position of the Constitutional Court stated in Resolution of 22 December 2011 insofar as to ensure the Council, the majority of which would consist of the members directly appointed by the academic community and during the formation of which the members directly appointed by the academic community would also have a decisive influence adopting the decisions of the Council (Resolution of the Constitutional Court of 22 December 2011).

Attention should be drawn to the fact that from the approval of LUHS Council (2012) until the submission of applicant’s complaint (2015), the Ombudsman was not informed about the possible illegality of the composition of the LUHS Council.

In view of the foregoing, it should be stated that the approval of Vilius Jonas Grabauskas and Henrikas Žilinskas as the members of the Council in 2012 LUHS Council is inconsistent with the self-governance principle of academic community amplified in the Ruling of 22 December 2011 of Constitutional Court of the Republic of Lithuania and the procedure for the formation of the Council established in paragraph 4 of Article 24 of HERLAS.

<...>

II. Relating the elections of LUHS Rector

The applicant in his complaint indicated that “LUHS Council 2010 should complete its tenure on 30 September 2015, because then the 5-year period calculating from the date of formation of the Council will be reached (see Resolution of the Minister). The current rector of university - prof.

R. Žaliūnas - was elected by the 2010 Council as a rector on 26 November 2010. On the eve of the end of Council tenure, without waiting for the end of Rector's tenure, the LUHS Council of the same personal composition (as the Council of 2010) adopted Decision No 3-312 on 24 April 2015 <...> by which decided to hold the elections of university rector and elect a new rector of university for a term of 5 years <...>“.

Paragraph 3 of Article 22 of the Law on Higher Education and Research provides for that the rector (director) shall be elected by the council of the higher education institution in accordance with the procedure laid down by the higher education institution.” Paragraph 8 of the same article stipulates that “the term of office of the rector (director) shall be five years. The same person may be elected rector (director) of the same higher education institution for not more than two terms of office in succession and not earlier than after an interval of five years since the end of the last term of office, if the last term of office was the second consecutive term.”

Paragraph 3 of Article 32 of the Law on Higher Education and Research provides for that “within three months from the end of the reorganization, new management bodies of the higher education institution shall be set up in accordance with the procedure laid down by this Law in the higher education institution to which the rights and duties of the reorganized higher education institution have been transferred”. In accordance with such requirement of a 3-month period, the Council decided announce a public competition for LUHS Rector's position on 18 October 2010 (protocol No 1 of LUHS Council on 5 October 2010).

The text of that protocol shows that the issue on the termination of powers of LUHS Rector and his team was discussed at the Council meeting. “Prof. V. Grabauskas introduced the description of the procedures for the termination of powers of the Rector of Lithuanian Health Sciences University and his team, but “prof. J. Pundzius proposed not to consider this issue, because it is regulated by the Statute at length”. The decision “to consult with the lawyers on the description of the procedures for the termination of powers of the Rector of Lithuanian Health Sciences University and his team” was taken.

The description of the procedures for the organization of public competition for election of Lithuanian University of Health Sciences Rector (hereinafter - the Description) approved by Decision No 4-1 of the Council on 4 June 2014 establishes “the deadline of not less than 30 days for the submission of the Candidates' documents (Description, p. 6), but does not establish the deadline for execution of the public competition for the rector's position, i.e. the Description does not specify whether the rector must be chosen for another term of office and assigned before the end of the term of office of previous rector, or at the end of the term of office of the latter. The Description does not also specify other deadlines for the stages of the organization of public competitions.

In view of the foregoing, it should reasonably be stated that even though the organization of public competition mentioned is not inconsistent with the provisions of the Description, but such practice of the organization of public competition for the post of Rector, when the Council formed on 30 September 2010 (Order No V-1656 of 30 September 2010 of the Minister of Education and Science of the Republic of Lithuania “On the formation of the Council of the Lithuanian University of Health Sciences) elected the rector for a second term of office on 18 September 2015 before the end of a 5-year term of office, as the rector for the first 5-year term of office was elected by the Council of same term of office on 26 November 2010, presupposed the possibility for the Council of one and the same term of office to elect the rectors for the first and

second term of office thereby preventing the Council of next term of office to exercise the right to collect the rector.

Attention should be drawn to the fact that the rector at the reorganized LUHS was elected on 26 November 2010 for a five-year term of office (end of term of office - 26 November 2015), and for a second term of office, the rector was elected on 18 September 2015, i.e. before the end of the five-year tenure. In addition, it should be noted that the public competition for the post of rector was announced on 24 April 2015, and elections were held on 18 September 2015, i.e. after almost 5 months; and in case of Rector's elections in 2010, the public competition was announced on 18 October 2010 and elections were held on 26 November 2010, i.e. after one month and eight days.

In view of the foregoing, and considering such differences in deadlines for the organization of public competitions for the post of rector and lack of legitimacy of their (deadlines) although the public competition for the post of rector was announced on 24 April 2015, when more than 7 months were left till the end of Rector's term of office, and the rector was elected for a second term on 18 September 2015, when more than 2 months were left till the end of Rector's term of office, as well as the fact that the data justifying the need to elect the rector for a second term of office before the end of the first term of office of the Rector, were not submitted to the Office of Ombudsman, it must be assumed that the Decision No 3-3 of 24 April 2015 of the Council "On the announcement of the public competition for the post of Rector" is unjustified.

In accordance with the provisions of LUHS Code of Ethics and other internal documents of LUHS, the Ombudsman did not find any signs of dishonesty in the actions of Rector Prof. R. Žaliūnas, nominating himself for second tenure of LUHS Rector.

The Ombudsman <...> **decided:**

To inform the Lithuanian University of Health Sciences and the Ministry of Education and Science about the violations of procedures determined by the Ombudsman.
