



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

## DECISION REGARDING THE PROCEDURES FOR THE RECALL OF THE COUNCIL MEMBERS OF PANEVĖŽYS COLLEGE FROM THE COUNCIL MEMBERS

26 January 2016 No SP-3  
Vilnius

The Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania (hereinafter - Ombudsman), <...> examined the complaint of E. Ž.<sup>1</sup> (we have impersonalized the data) (hereinafter - applicant) received in the Office of Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania (hereinafter - Office of Ombudsman) on 29 December 2015 and the material submitted, and **determined that:**

The applicant in his complaint indicated that Academic Council of Panevėžys College (hereinafter - Academic Council) in the Academic Council meeting on 25 November 2015 (extract from the Protocol No V4-10) decided as follows:

“1. To recall the members of College Council [R. D., C. G. and P. K.] from the College Council members (the information in angle brackets is ours);

„2. To organize a general meeting of meeting of the academic community for the recall of College Council members [B. D., R. J., R. K., D. U.] from the College Council members.” (The information in angle brackets is ours).

The applicant requests the Ombudsman:

1. “To evaluate the compliance of such decisions of Academic Council of Panevėžys College with the legal norms of the Law on Higher Education and Research and the Statute of Panevėžys College.”

2. “To evaluate whether the Academic Council violated the procedural requirements established in the legislation and (if yes) whether the following procedural violations may result in the fact that the decisions adopted, recalling the external members of the College Council, are basically illegal.”

<...>

In the letter No V11-9 of 12 January 2016, the Chairwoman of Academic Council of Panevėžys College L. Unterhauser stated that: “Part of Academic Council members of Panevėžys College appealed to me with a request signed on 18 November 2015 <...> from Council of Trade Union of Employees of Panevėžys College to include the questions to the Agenda of the meeting of the Academic Council of 25 November 2015 related to the recall of external and internal members of

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<sup>1</sup> 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 College from the College Council members <...>. The applicants were informed that, according to paragraph 14 of the Rules of Procedure of Academic Council, <...> the Council of Trade Union of Employees of Panevėžys College are not provided with the opportunity to submit the negotiable questions to the Academic Council meeting. It was followed by the application of identical content <...>, which was signed by six members of the Academic Council. The Academic Council meeting held on 25 November 2015 voted on the possibility of considering the questions submitted in the request. By secret voting, it was decided to include the proposed questions in the agenda of Academic Council meeting. During the consideration, the address to the Academic Council members was read <...>, where the distrust in the College Council was expressed and the request to recall external and internal members of the Council was stated, and, in view of six members of academic council, the reasons for distrust in the College Council were indicated. <...> by secret voting, the Academic Council decided: “1. To recall the College Council members [R. D., C. G. and P. K.] from the College Council members; 2. To organize a general meeting of meeting of the academic community for the recall of College Council members [B. D., R. J., R. K., D. U.] from the College Council members; 3. To authorize the Chairwoman of Academic Council Laima Unterhauser to convene a general meeting of the academic community in accordance with the Statute of Panevėžys College. <...> “(The information in angle brackets is ours).

In addition, the Chairwoman of the Academic Council noted that “an extraordinary meeting of the Academic Council was held on 8 December 2015 initiated by the Director of Panevėžys College regarding the resolution of the question 9 of the Academic Council meeting held on 25 November 2015 [“1. To recall the College Council members [R. D., C. G. and P. K.] from the College Council members”. 2. To organize a general meeting of meeting of the academic community for the recall of College Council members [B. D., R. J., R. K., D. U.] from the College Council members. 3. To authorize the Chairwoman of Academic Council Laima Unterhauser to convene a general meeting of the academic community in accordance with the Statute of Panevėžys College.”] as potentially illegal. <...> The Academic Council members did not take into account the arguments submitted and decided not to consider this issue. <...> On 6 January 2016, an extraordinary meeting of the Academic Council initiated by the Director of Panevėžys College regarding the resolution of the question 9 of the Academic Council meeting. The members of Academic Council were provided a comment of the lawyer on the competencies of management bodies of Panevėžys College <...>. However, the members of Academic Council rejected the resolution adopted in the Academic Council meeting on 25 November 2015 on the recall of question 9. After the introduction of the Academic Council members to the address to the Chairwoman of Academic Council, at said meeting the Chairwoman was obliged to fulfil the resolutions of 25 November 2015 of the ninth question of the Academic Council <...>. The Chairwoman of the Academic Council presented conclusions of an independent lawyer. Despite these arguments, by secret voting, the Academic Council members decided not to recall the resolution of 25 November 2015 of the ninth question of the Academic Council.” (The information in angle brackets is ours).

Upon detection of inaccuracies in the reply of the Chairwoman of Academic Council (letter No V11-9), the Ombudsman, by the letter No S-29 of 15 January 2016, asked to specify the information. Specified information was received by e-mail (reg. No G-55) on 19 January 2016. Therein, the Chairwoman of Academic Council Ms. Unterhauser responded: “<...> There was no address of the Chairman of Panevėžys College Council Benjaminas Pladis to the person who

appointed these members [R. D., C. G. and P. K.] with a request to recall them.” (The information in angle brackets is ours).

<...>

The Chairman of the Council of Panevėžys College Mr. Pladis informed the Office of Ombudsman by the letter No G-47 reg. on 18 January 2016 that “in accordance with paragraph 11 of Article 20 of the Law on Higher Education of Research of the Republic of Lithuania, I did not address the person who appointed [R. D., C. G. and P. K.] with a request to recall them. There is also no address regarding the recall of [B. D., R. J., R. K., D. U.]” (The information in angle brackets is ours).

The recall of Council members of Panevėžys College is regulated by the Law on Higher Education and Research of the Republic of Lithuania (hereinafter - HERL), the Statute of Panevėžys College approved by Resolution No 857 of 11 July 2012 of the Government of the Republic of Lithuania “On the amendment of the Resolution No 1429 of 6 October 2010 of the Government of the Republic of Lithuania “On the reorganization of Panevėžys College” (hereinafter - the Statute), the description of procedures for nomination, election, appointment and recall of candidates to the Council of Panevėžys College approved by Resolution No V4-10 of 18 October 2012 of Academic Council of Panevėžys College (hereinafter - the Description) and the rules of procedure of Panevėžys College Council approved by Resolution No KT-2 of 20 February 2013 of the meeting of Panevėžys College Council (hereinafter - the Council’s Rules of Procedure).

Paragraph 11 of Article 20 of HERL states: “If a member of the council fails to properly perform the duties set out by the statute of the higher education institution, the rules of procedure of the council or the commitment referred to in paragraph 7 of this Article or fails to sign the commitment referred to in paragraph 7 of this Article, the chairman of the council shall have the right to address the person who has appointed the said member with a request to recall the appointed member of the council.” (Hereinafter the underline is ours).

A similar provision is also reiterated in the Statute, the Description and the Council’s Rules of Procedure: “If a member of the council fails to properly perform the duties set out by the Law on Higher Education and Research, the Statute, the Rules of Procedure of the Council or the commitment referred to in paragraph 7 of Article 20 of the Law on Higher Education and research or fails to sign the commitment referred to in paragraph 7 of this Article, the chairman of the council shall have the right to address the person who has appointed the said member with a request to recall the appointed member of the council.”

Paragraph 7 of Article 20 of HERL states that: “When commencing the duties of his office, a member of the council shall, at a meeting of the council in the manner prescribed by the statute of the higher education institution, sign a commitment to abide by the interests of the higher education institution and the public and to in good faith fulfil the functions set out by this Law.”

Paragraph 29 of the Statute provides that: “The Council shall be composed of 9 members as follows: 29.1. One Council member shall be appointed by the representation of students according to their own procedures set, and in the absence of such – by a general meeting (conference) of students; 29.2. Other members of the academic community (excluding students) shall appoint four members in accordance with procedures established by the Academic Council; 29.3. three members respectively, who do not belong to the staff of the College and the students, shall be selected, appointed and recalled in accordance with the procedures established by the Academic Council, and one – in accordance with the procedures established by the representation of students, and in the absence of such – by a

general meeting (conference) of students. These four members shall be selected through open competition and appointed upon the evaluation of the assessment of the candidates, carried out by the Council of Higher Education.”

Despite adequately detailed description of the appointment and selection procedure of council members, the HERL does not accentuate the different conditions for recall of members, it must be concluded that in order to recall the members of the council, all members are subject to the procedures established in paragraph 11 of Article 20 of HERL.

The procedures for the recall of the Council members are not also detailed in a special legislation of Panevėžys College: in Chapter IV of the Description “Approval of the composition of the Council and the recall of members”.

Thus, the legislation provides for two conditions under which the Council members of Panevėžys College can be recalled, i.e.: If a member of the council fails to properly perform the duties set out by the Statute, the Rules of Procedure of the Council or the commitment referred to in paragraph 7 of Article 20 of the HERL or fails to sign the commitment referred to in paragraph 7 of Article 20 of HERL. Under these conditions, the Chairman of the Council of Panevėžys College has the right to address the person who has appointed the said member with a request to recall the appointed member of the Council.

Following the analysis of the documents and explanations, it should be stated that the reason for recalling the Council members of Panevėžys College is not indicated, and there was not a request of the Chairman of Panevėžys College Council Mr. Pladis to recall the Council members.

It should be noted that the HERL and other legislation, regulating the recall of the members of Panevėžys College Council do not provide other entities (Council of Trade Union of Employees of Panevėžys College or the members of academic council) with the right to address a person who has appointed the member with a request to recall him. This right is granted only to the Chairman of the Council.

It should be noted that the Statute, the Description and the Rules of Procedure of the Council do not detail the procedures for recall of the Council members nor the inadequacy criteria on the implementation of obligations are established.

*In view of the foregoing, it should be stated that the decision of the Academic Council of Panevėžys College “<...> to recall the College Council members [R. D., C. G. and P. K.] from the College Council members”. (Protocol No V 4-10 of 25 November 2015 of Academic Council meeting, consideration of question 9) is unjustified and is contrary to the procedures established in paragraph 11 of Article 20 of the Law on Higher Education and Research of the Republic of Lithuania (The information in angle brackets is ours).*

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

1. To inform Panevėžys College and the Ministry of Education and Science of the violations of procedures determined by the Ombudsman;
2. To recommend to revoke the decision “<...> to recall the College Council members [R. D., C. G. and P. K.] from the College Council Members.” (Protocol No V 4-10 of 25 November 2015 of Academic Council meeting, consideration of question 9). (The information in angle brackets is ours).