



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

DECISION REGARDING THE EXECUTION OF ASSESSMENT AND EXECUTION OF PUBLIC TENDER IN LITHUANIAN CULTURE RESEARCH INSTITUTE

27 February 2017 No SP-5
Vilnius

The Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania (hereinafter – Ombudsman), in accordance with Paragraph 1 of Article 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 13.1, and after examination of the complaint of D.T. (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 1 December 2016 and the material submitted by the Lithuanian Culture Research Institute (hereinafter – LCRI),

determined:

The applicant complains of “management of LCRI and voting results of the Commission of certification and tender of the institute based on which the LCRI management dismissed [the applicant] from work due to [being unsuccessful] in the tender”.

The applicant requests²:

“1) due to the infringement of academic freedom, to void the voting of the Commission for certification and tender of Lithuanian Culture Research Institute relating to further work of [the applicant] in the position of scientific officer of Modern Philosophy Department of Lithuanian

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

² The language of the applicant here and further in the text is unedited.

Culture Research Institute and my dismissal from work at the institute, which was carried out on the basis of the Commission voting results;

2) to initiate the amendment to the Law on Higher Education and Research in the Seimas of the Republic of Lithuania, the essence of which is: a) the tender for academic positions may be held only if the position is vacant; b) those, who have started holding positions by means of tender, should not be subject to repeated tenders for the same positions, c) they can be dismissed from office only after being assessed during the certification as not satisfying the qualification requirements; (d) the certification should be carried out periodically; the periodicity thereof may be the same as the periodicity of current tenders;

3) to initiate the amendment to the Law on Higher Education and Research in the Seimas of the Republic of Lithuania, which would supplement the definition of academic freedom by contemporary content as follows: the researchers employed by higher education and research institutions cannot be prevented from reciting such views or carry out such research if they began to manifest those beliefs or perform the research after already being employed". (The information in square brackets below is ours).

After having read the material of complaint filed by the applicant, the Ombudsman addressed to LCRI on 7 December 2016 requesting to indicate and submit the regulations governing the certification of research officers and the procedure for organizing tenders, and indicate and submit what requirements and criteria were applied to candidates during the certification and tender for the vacant positions of researchers in the Contemporary Philosophy Department on 26 January 2016.

On 12 December 2016, LCRI submitted Order No... of 28 October 2015 on the announcement of the tender for vacant positions at LCRI, Order No V-18 of 28 April 2015 on the approval of the Commission for certification and tender of the Institute, the procedure for organizing the certification and tenders for positions for academic staff of the LCRI; a description of the qualification requirements for job descriptions of LCRI researchers and the minutes of the meeting of the Commission for certification and tender of LCRI of 26 January 2016.

After having analysed the documents submitted by the LCRI, the Ombudsman applied to LCRI on 22 December 2016 requesting to submit: the text of public announcement of the tender for vacant positions in the Department of Contemporary Philosophy of LCRI of 26 January 2016, and taking into account the fact that in the letter of 12 December 2016, the LCRI did not indicate what requirements and criteria were applied to the candidates, the Ombudsman repeatedly asked to provide conclusions on the eligibility of the candidates who took part in the said tender, indicating which of the candidates having participated in the said tender satisfied these requirements and which did not

satisfy the specified requirements, and to attach the data of assessment of candidates as well as substantiating and confirming documents.

The LCRI submitted the text of the public announcement of the tender and the explanations according to the questions indicated by the Ombudsman on 28 December 2016, but did not submit the conclusions requested by the Ombudsman regarding the eligibility of the candidates who participated in the tender for the position of a researcher in the Contemporary Philosophy Department on 26 January 2016 to hold office, stating that “speeches of the members of the Commission on the eligibility of candidates for holding office are given in the minutes of the Commission for certification and tender, and the conclusions are reflected in the voting on the eligibility of the candidates.” (Underlined by us). The Ombudsman in the letter No S-460 of 22 December 2016 requested the LCRI to “indicate which candidates fulfilled <...> the requirements of the tender of 26 January 2016 for the position of research officer in the Department of Contemporary Philosophy and which of them did not meet the specified requirements, and to attach the assessment data of the candidates and the documents substantiating and certifying them (data)”.

The LCRI did not provide the requested information and substantiating documents, but in the letter No IS-203 of 28 December 2016 stated that “the material of the tender of 26 January 2016 along with the documents submitted by the candidates and the list of publications constitutes a very thick office folder”. In case of any further questions regarding the transparency of this tender, we invite you to visit the Institute and familiarize yourself with it in situ”.

The meeting of the Commission for certification and tender (hereinafter - Commission) on the applicant’s certification was held on 26 January 2016. At the meeting, one member of the Commission introduced the applicant describing [him] “as a “rich” person, [a public figure]; [his] research is interdisciplinary, is engaged in both critique of music and philosophy, writes publications in the cultural press; there are articles dedicated to the philosophy of music. [His] dissertation is a theme of philosophy, although not everyone admits it. Our institute’s mission is to unite and integrate different branches of science. This is just such a case”. Another member of the Commission asked whether scientific publications were sufficient. It is confirmed that “formally enough”. The rest of the members of the Commission expressed their opinions about the applicant: “he is [weak]: works - pure ideology, and there was no philosophy there”, “was flinging among different research fields; [the applicant] has the potential to work, but at the moment he gives a lot of energy to public work and does not concentrate on scientific work”; “[the applicant] was flinging and did not find his own medium”. It is proposed to vote “based on formal criteria”. The votes of the members of the

Commission when voting on the applicant's certification are distributed as follows: "for" - 10 votes, "against" - none, "abstained" - 1 vote.

The procedure for the certification of researchers of the LCRI is established in the Procedure for certification of research staff and the tenders for positions (hereinafter – the Procedure) approved by the Resolution of the meeting of the LCRI Scientific Council of 12 October 2010 (minutes of the meeting No 13-TP-6). Sub-clause 1.4 of the Procedure stipulates that "the Commission for certification and tender of the Institute shall organize the assessment of candidates for the position of research staff and shall submit the conclusions regarding the eligibility of a candidate to hold office to the Director". Sub-clause 3.1.1 of the Procedure stipulates that the certification of research staff is carried out "in order to determine whether the research staff is eligible to hold current position"; sub-clause 3.4 – "those who wish to take part in the certification <...> shall submit <...> a description of the scientific activity together with the list of publications based on the approved form <...>", sub-clause 4.4: "in assessing the eligibility of the research officer for the position, the Commission for certification and tender shall decide on the final evaluation of results, determine and draw conclusions on the eligibility of each candidate", and sub-clause 4.5 – "the Commission for certification and tender shall evaluate the significance of scientific works and other activities of an employee and the number thereof" (underlined by us).

In accordance with sub-clause 3.1.1 of the Procedure, which stipulates that that the certification of research staff is carried out "in order to determine whether the research officer is eligible to hold current position" and taking into account the fact that the Commission has certified the applicant "for the scientific activities at the LRCI during the period of 2011-2015", it should be concluded that the Applicant has been certified, and following the decision of the Commission, has been recognized as eligible for the position of research officer.

In respect that, according to the LRCI, "the speeches of the members of the Commission concerning the suitability of candidates to fill positions are given in the minutes of the Commission for certification and tender", and the conclusions are reflected in the voting on the eligibility of candidates, and there are no data supporting the assessment of criteria, other than the number of scientific publications, it must be concluded that, in the present case, the applicant was certified according to one criterion and that the conclusions on the eligibility of the candidate were not determined and made.

A tender to fill positions at LRCI was announced by Order No V-39 of the Director of the LCI of 28 October 2015. Two positions for researchers were allocated to the Department of Contemporary Philosophy - 1.5 position (0.75 and 0.75). The public announcement of 29 October

2015 sets the following requirements for the candidates – “experience in the field of contemporary philosophy research, compliance with the qualification requirements for research staff of the LRCI and the long-term program “Lithuanian Philosophy: History and the Present”.

Commission meeting on tender was held on 26 January 2016. At the meeting, five candidates were considered. Opinion on the first candidate for the position of a research officer in the Department of Contemporary Philosophy: “an organized and energetic, a personality with great strides, but the competence in philosophy is a little more than [the applicant’s] <...>, the work profile is similar, [candidate] is more [comparativist] than [philosopher]”. Another member of the Commission notes that the candidate “does not have competence in the field of philosophy: [his] monograph on the emptiness is not imposing. The opinion about [the candidate] is openly negative”. Another member of the Commission “shared this opinion”.

When discussing the second candidacy, the members of the Commission indicate that [the candidate] “is a promising researcher <...>, when assessing the prospect, <...> is a stronger candidate than [the applicant]”; the [candidate’s] dissertation was good, he is a serious and hard-working man; however, like <...> - “a reader of one book” - retells the ideas of philosophy classic K. Schmid. Has hermeticism”; “students have good opinion about him”; “it is likely that he is a potential scientist”.

The Commission describes the third candidate as “a pretentious personality and this was seen in the previous tender <...>”, describes “the unpleasant circumstances of the defence of the [candidate’s] dissertation: the charges were unfounded, the dissertation was defended; the candidate has a philosophical potential”. One member of the Commission contradicts claiming that the [candidate’s] publications were not very good, they lacked the structure and arrangement of language”. Another member of the Commission suggests comparing the second and third candidates and summarizes that one of them is “somewhat limited” and the other is “uncontrolled”.³

The minutes of the Meeting show that when the candidates were discussed by the members of the Commission, the applicant’s candidacy was not separately discussed, and he was assessed on a comparative basis:

- 1) “the competence of [the candidate] in philosophy is a little more than [the applicant’s]”;

³ The running number of the candidate is indicated considering the order how the candidacies were discussed at the meeting of the Commission of 26 January 2016; the remaining two candidates are not discussed because they are not directly related to the subject of the complaint; moreover, it should be noted that the candidacies are indicated in order to reveal the methodology and procedures of the Commission’s work. Three candidates from five have been generalized, i.e. more than a half; therefore, it should be presumed that such chosen number of candidates is sufficient to substantiate the generalizations.

- 2) “when assessing the prospect, <...> is a stronger candidate than [the applicant];
- 3) “[candidates] are superior to [the applicant]”.

The votes of the members of the Commission during the vote on the applicant’s candidature for the position of research officer in the Department of Contemporary Philosophy were distributed as follows: “for” - 2 votes, “against” - 6 votes, “abstentions” - 3 votes.

As already mentioned earlier, the applicant was certified, and the qualification was recognized as eligible for the position of research officer by the decision of the Commission. However, although the applicant was certified as eligible the position of research officer, he was dismissed from office because he did not win the tender.

The procedure for organizing tenders at LCRI is set out in the above-mentioned Procedure for certification of research staff and the tenders for positions approved by the Resolution of the meeting of the LCRI Scientific Council of 12 October 2010 (minutes of the meeting No 13-TP-6). Sub-clause 1.1 of the Procedure stipulates that LRCI “research staff <...> who won the public tender for holding office shall be assigned to the main or higher position”; Sub-clause 1.3 stipulates that “the text of public announcement must specify the nature of the work and the necessary competences”; sub-clause 1.4 states that “the Commission for certification and tender of the Institute shall organize the assessment of candidates for the position of research staff and shall submit the conclusions regarding the eligibility of a candidate to hold office to the Director”; sub-clause 2.1 – “the procedure of the tender for filling the position shall be carried out by the Commission for certification and tender of the Institute, and the Scientific Council shall approve the results thereof”; sub-clauses 2.2 and 2.2.2 – “the employees wishing to take part in the tender <...> shall submit <...> a description of scientific activity together with a list of publications in accordance with the approved form <...>”, sub-clause 4.4 – “in assessing the eligibility of the research officer for the position, the Commission for certification and tender shall decide on the final evaluation of results, determine and draw conclusions on the eligibility of each candidate”; sub-clause 4.5 - “the Commission for certification and tender shall evaluate the significance of scientific works and other activities of an employee and the number thereof”. (underlined by us).

The minimal qualification requirements for the persons who claim for the position of the researcher at the LRCI by means of public tender are specified in the Description of official qualification requirements for researchers of LRCI (hereinafter - the Description). sub-clause 4 of the Description states that in the description, “the works are listed according to the significant and most valuable internationally recognized scientific works”; the minimum qualification requirements set out in sub-clause 5.3 are for the scientists who claim for the position of researcher, i.e. they “must have obtained a doctor’s degree and have published at least two scientific articles in peer-reviewed

<...> scientific publications before or after the defence of the dissertation”; sub-clause 6 – “the Commission for certification and tender of the Institute shall assess the contribution of the candidate’s scientific work to the field of science. It shall decide whether the scientific works of the candidate correspond to those specified in the Description and shall assess their results” (underlined by us).

The letter No S-460 submitted by the Ombudsman on 22 December 2016 requested the LRCI to “indicate which of the candidates of the tender for the position of research staff at the Department of Contemporary Philosophy held on 26 December 2016 satisfied the requirements of <...> and which of did not satisfy the specified requirements, and to attach the evaluation data of the candidates and the documents substantiating and confirming them (data)”.

In the letter No IS-203 of 28 December 2016, the LRCI stated that “the candidates who satisfied the work profile of the department most were being selected during the tender to the two positions of researchers at the Department of Contemporary Philosophy, taking into account the tasks of the long-term program and intended works therein, the philosophy research works and/scientific activity in the field of philosophy have been evaluated, as well as that the candidates must “have experience in the field of contemporary philosophy research, comply with the minimum qualification requirements of the LRCI research staff and the tasks of the long-term program “Lithuanian Philosophy: History and the Present”. In the same letter, the LRCI stated that “the statements of the members of the Commission regarding the suitability of the candidates for the position are given in the minutes of the Commission for certification and tender, and the conclusions are reflected in the vote on the eligibility of the candidates”; “The conclusions of the members of the Commission are also reflected in voting “against”. In the said letter, the LRCI also emphasized that “the Scientific Council of the Institute has also approved the candidacies. Appeals and complaints were not received. I would like to remind the Honourable Ombudsman that the members of the Commission for certification and tender are competent specialists in their fields and their decision was beyond any doubts in the Scientific Council of the Institute”.

In its letter No IS-19 of 12 December 2016, the LRCI stated that “we are convinced that the tender was conducted in a transparent manner and that there were no violations of academic ethics and procedures”.

The Commission for certification and tenders comprising 11 members was formed by the Order No V-18 of LRCI of 28 April 2015 on the Approval of the Commission for certification and tenders of the Institute: assoc. prof. Dr (hp) Rita Šerpytė (LRC), Dr Sigitas Narbutas (LASWB), assoc. prof. Dr Valdas Jaskūnas (VU OC), Dr (hp) Arūnas Sverdiolas, Dr Naglis Kardelis, habil Dr Antanas Andrijauskas, Dr Romualdas Juzefovičius, Dr Rita Repšienė, Dr Mindaugas Paknys, Dr Dalia Vasiliūnienė, Dr Rasa Vasinauskaitė.

Sub-clause 2.1 of the procedure stipulates that “the procedure of the tender for filling the position shall be carried out by the Commission for certification and tender of the Institute, and the Scientific Council shall approve the results thereof”, sub-clause 3.3- “the certification procedure is carried out by the Commission for certification and tender and its results are approved by the Scientific Council of the Institute”. Attention should be drawn to the fact that 7 members of the 11 members of the Commission belong to the Scientific Council. Considering this fact, the proportion of the Commission members who belong to the Scientific Council, the execution of the tender procedure and the approval of the results of the Scientific Council in terms of objectivity and impartiality should be considered.

In its letter of 28 December 2016, the LRCI indicated what requirements apply to the candidates selected in the tender for the position of researcher at the Department of the Contemporary Philosophy, but did not provide the data to the Ombudsman confirming compliance with such procedure for certification and tender.

It should be noted that the requirements for the candidates for the position of researchers are set out in the Procedure for organizing the certification and tenders for the position of research staff of LRCI, the Description of official qualification requirements for researchers of LRCI, the Order for planning of the scientific activities at LRCI and reporting thereof. The LRCI did not provide the data confirming the significance (value), magnitude and number of the scientific works of candidates as set out in sub-clauses 4.4 and 4.5 of the Procedure and paragraphs 4 and 6 of the Description, and spoke on the evaluation of the candidates only in the letter of 28 December 2016, stating that “the statements of the members of the Commission regarding the suitability of the candidates for the position are given in the minutes of the Commission for certification and tender, and the conclusions are reflected in the vote on the eligibility of the candidates”. The minutes No AKC-1 of 26 January 2016 show that the members of the Commission have submitted individual opinions that are not based on any criteria (at least none was found from the minutes of the meeting), and therefore should be assessed as subjective judgments based on individual perceptions.

In this regard, it is established: 1) the evaluation of the results of the candidates by Commission is not reflected in any documents; (2) The Commission did not identify nor conclude on the suitability of candidates for the position; 3) The members of the Commission made and presented opinions on the personal characteristics of the candidates and fragments of scientific activities, but the opinions of the members of the Commission cannot be equated to objective and reasonable conclusions simply because the LRCI has indicated so in the explanations provided by it.

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.⁴

The Ombudsman in his activities follows the laws only and bases his activities on the principles of legality, justice, impartiality and other principles, and thus assesses the voting results of the members of the Commission not according to the extent to which the Commissioners are “competent in their field”, but in terms of objectivity and reasonableness.

The competence and qualification of the members of the Commission of itself does not determine the objective and substantiated voting results. The status of the members of the Commission and the procedure for organizing and executing a tender presupposes an obligation for the members of the Commission to vote by expressing their will to follow the principles of academic ethics enshrined in the code of academic ethics as well as the criteria and requirements established in the legislation. 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.

In the complaint, among other things, the Applicant that “the incentive to submit the complaint was given by the violation of the academic freedom when the Commission for certification and tender of the Institution voted for [the applicant’s candidacy] (I did not receive the minutes of the meeting of the Commission itself <...>), which resulted in my [dismissal] from work at the institute. The Institute’s management presented my scientific works to the Commission for certification and tender as not meeting the strategic plan of the Institute nor the topics being investigated by the Department of Contemporary Philosophy of the Institute where I worked. <...>”. In this case, having analysed and assessed the information provided by the LRCI and the applicant, the Ombudsman has no grounds for finding an infringement of academic freedom. It should also be noted that the Ombudsman within his scope of competence did not assess the initiation of amendments to the part referred to in the complaint regarding the Law on Higher Education and Research.

In view of the foregoing, it can be stated that that the procedure for certification and tender conducted at the Lithuanian Culture Research Institute on 26 January is contradictory to the principles of objectivity, justice and transparency.

⁴ Decision No SP-14 of the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania of 13 June 2016 “Regarding certification and execution of the public tender in the State Scientific Research Institute Centre for Physical Sciences and Technology”.

Without assessing the suitability of a scientist to hold office, without judging the final evaluation results, without establishing and making the conclusions on the suitability of each candidate for a position, without assessing the importance, significance and number of scientific works and other activities, the Commission violated the provisions of the certification and tender stipulated in sub-clauses 4.4 and 4.5 of the Procedure and paragraphs 4 and 6 of the Description.

Taking into account the fact that paragraph 1 of Article 17 of the wording of the Law on Higher Education and Research of the Republic of Lithuania, which entered into force from 1 January 2017, stipulates that the Ombudsman examines complaints and initiates investigation regarding the violation of academic ethics and procedures enshrined in the codes of academic ethics of higher and research institutions and, in this case, the violations of procedures not enshrined in the Code of Academic Ethics of the LRCI, but in internal legal acts of the LRCI have been determined, and the applicant, having a legitimate expectation, appealed to the Ombudsman before the entry into force of the said wording of the law, after evaluation of the documents provided by the applicant and LRCI as well as the legal regulation, and in accordance with Paragraph 1 of Article 17, sub-clause 1, paragraph 11 of Article 17 of the Law on Higher Education and Research of the Republic of Lithuania, the Ombudsman

decided:

To inform the applicant, the Lithuanian Culture Research Institute and the Ministry of Education and Science about the violations of the procedures committed by the Commission for certification and tender of Lithuanian Cultural Research Institute.

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

Ombudsman for Academic Ethics and Procedures

Vigilijus Sadauskas