



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

DECISION REGARDING THE COMPLAINT OF D. I. OF 24 NOVEMBER 2016

2017 March 20 No SP-7
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 approved by Subparagraph 13.1 of 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“, and after examination of the complaint of P.Ū. (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 24 November 2016 concerning possible violations of procedures at the Lithuanian University of Health Sciences (hereinafter - LUHS) and the submitted material,

determined:

The applicant indicated to the Ombudsman that “<...>LSMU violated my rights by its actions (inactions)²“. (The applicant's language quoted in the complaint continues to be uncorrected).

The applicant requests the Ombudsman:

“<...> to consider all the circumstances in this complaint, to evaluate the actions (inactivity) of the employees of the LSMU and, if there are any irregularities, take legal action measures within the competence.“, “<...> measure whether the LUHS is not legally issuing a document certifying professional qualifications<...>.“ and “<...> intermedate on receiving answers from LUHS <...> to the given questions <...>.“

It should be noted that the Ombudsman evaluates the circumstances of the complaint according to his competence and, at his own discretion, decides what information is necessary for the implementation of the tasks and functions assigned to him.

The Applicant, submitted annexes with the complaint AS-28 of 26 November 2016, confirming the circumstances specified in the complaint.

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.

The applicant stated that he/she received a Master's degree in Pharmacy at Huddersfield University in the United Kingdom, and after return to Lithuania, applied to the Centre for Quality Assessment in Higher Education (hereinafter - ENQA) for the recognition of the Master's Diploma in Lithuania. ENQA decided that “<...>in order to study and/ or work in the Republic of Lithuania, to recognize the qualifications as equivalent to the Master's degree delivered after the completion of integrated studies in the Republic of Lithuania“. (Underlined by us).

It should be noted that the applicant obtained a Master's degree in pharmacy in the United Kingdom, and the pharmacist's professional qualification was not granted without practice.

In order to pursue a pharmacist's practice, the applicant applied to the Ministry of Health of the Republic of Lithuania (hereinafter - MH) on the procedures to be followed in order to be able to work according to the available education. MH proposed to apply to the dean of the Faculty of Pharmacy of the Lithuanian Academy of Health Sciences, prof. Dr Vitalijus Briedis (hereinafter - the Dean). During the meeting with the applicant, the Dean explained orally that “<...>after the graduation from the LUHS subject “Pharmacy Practice“, a document, proving that [the applicant has completed]³ practices that will certify that [the applicant has acquired] a professional qualification in Lithuania, is issued. The Applicant indicated that, having completed 6 months of practice, the Faculty of Pharmacy of the Faculty of Medicine of the LUHS issued a certificate FF-11 No. 2 stating that the applicant studied the module “Pharmacy Practice“ at the LUHS and was assessed with 10 points (excellent) (hereinafter - LUHS certificate)

The applicant also noted that the LUHS certificate was submitted by MH. MH evaluation indicated that the submitted LUHS certificate does not confirm the acquisition of the pharmacist's professional qualifications.

The applicant additionally addressed the Ministry of Economy of the Republic of Lithuania (hereinafter ME) regarding the possibility of acquiring a pharmacy professional qualification. The ME submitted an answer that “<...> there are two possible solutions: 1) obtain a pharmacy license in the UK <...>; 2) apply to the LUHS for the possibility to obtain a pharmacy professional qualification in Lithuania <...>“. The ME also indicated that after acquiring the pharmacist's professional qualification in Lithuania, there is no need for a separate procedure for the recognition of the pharmacist's professional qualifications.

The applicant, having received a response from MH and ME, repeatedly contacted the Dean and informed that, according to MH, the certificate of the LUHS does not confirm the acquired professional qualifications of the pharmacist, and therefore asked the Dean to explain “<...>if is it possible to set off <...> available documents and receive an LUHS diploma with a pharmacy professional qualification. Applicant has received an answer that “<...>the university can offer you a solution that you join through the general admission to the Pharmacy program, most of your studied subjects are credited <...> and you [are promoted] to a higher course, prepare a master's thesis, pass a qualifying examination, and receive a master's degree and a professional pharmacy qualification.“

The applicant asked Dean for clarification by e-mail of 13 October 2015 “<...> whether the principles of justice, reasonableness, fairness, non-discrimination and equal treatment will not be violated in my case and in relation to other students.“ The applicant noted that, before submitting the complaint to the Office, he had not received a specific answer from the Dean to the questions related to the inclusion of the learnt subjects.

³ Here and hereinafter in the angle brackets are the comments of the Office.

The applicant applied to MH by e-mail on 20 November 2015 regarding additional questions and received an invitation to the meeting concerning the situation regarding the clarification of the acquisition and recognition of the pharmacist's professional qualification. During the meeting the Dean proposed “<...> to arrive to the LUHS with a detailed study program in order to be compared with the corresponding LSMU study program <...>.”

The applicant noted that he made a statement to the rector of LUHS prof. Hab. Dr Remigijus Žaliūnas by e-mail on 6 June 2016 (Letter No 1 on access to professional qualifications) (hereinafter – the Statement) indicating that: The LUHS as one of the two institutions in Lithuania that can provide a professional qualification of the pharmacist should have known and explain the circumstances in which the pharmacist's professional qualification in Lithuania is acquired; the decision to deny the pharmacist's professional qualification is unclear and may not be justified; the Dean temporizes to answer the questions asked by the applicant in writing. The applicant has received confirmation that the letter has been received, but has not received a reply before the complaint has been sent to the Office.

In addition to this, the applicant indicated that the Dean had sent the certificate of the LUHS to the British institution responsible for the applicant's professional qualification in the United Kingdom (hereinafter - the British institution) without the applicant's consent, in which the applicant's personal details (name, surname and personal identity number) were indicated.

It should be noted that the Dean sent the applicant's certificate of practice to the above-mentioned institution in order to find out whether the British institution could correspond the applicant's 6 months practice.

Considering the response from the British institution and the national legislation in Lithuania, the acquisition of a pharmacist's academic qualification is not separate from the acquisition of a professional qualification and in the United Kingdom, the academic qualifications and professional qualifications of the pharmacist are given separately and co-ordinated by different institutions.

The Ombudsman addressed to the applicant by letter S-456 of 19 December 2016 to provide the necessary information for the examination of the complaint:

“1) all the documents proving <...> the acquired education and qualification (diploma, appendix, evaluation of the accomplished practice in Lithuania and the United Kingdom, etc.);

2) the copies of the letters you sent to the Ministry of Health of the Republic of Lithuania and the State Medicines Control Agency from 2014 to 2016.”

The applicant submitted required documents via e-mail on 19 December 2016 and indicated that “<...> I sent a request to the Ministry of Health of the Republic of Lithuania and the State Medicines Control Agency <...> to send directly <...> the requested information.”

The applicant supplemented the requested information via e-mail on 20 December 2016 with the letters he addressed to MH.

On 20 December 2016, at the applicant's request, the State Medicines Control Agency (hereinafter - SMCA), submitted letters to the Office asking the applicant to contact the SMCA.

The Ombudsman applied to LUHS and LUHS Faculty of Pharmacy of the Academy of Medicine by letter No S-457 of 19 December 2016 requesting to submit:

“1) description of the subject “Pharmacy Practice”;

2) Legislation governing the procedure for compulsory practice of students and listeners;

3) LUHS the relevant edition of the study regulations;

4) Legislation on the disclosure of student data to the authorities of the Member States of the European Union;

5) Order No SC1- 950 of 25 September 2014 on the listener's admission“.

On 21 December 2016, by the letter No DVT2-2107, LUHS submitted the documents requested by the Ombudsman and informed that the legislation on the procedure for the disclosure of the requested personal data to the authorities of the Member States of the European Union has not been approved by the LUHS.

The Ombudsman applied to the European Law Department (hereinafter - ELD) by the letter No S-458 of 19 December 2016 for an opinion on the application of the provisions of Directive 2005/36/EB of the European Parliament and of the Council on the recognition of professional qualifications (hereinafter - Directive 2005/36 / EB) in the circumstances relevant to the applicant.

On 5 January 2017, ELD addressed to the Office by e-mail to requesting “<...> to provide additional information in accordance with working procedure:

1. Proof of formal qualifications available to the Office by the applicant (titles of documents in Lithuanian and English, if the document is acquired in the United Kingdom);

2. <...> Copies of the letters of the Ministry of Health and the Ministry of Economy quoted in paragraphs 6 and 7 of the letter.“

The Office, having ensured the applicant's anonymity, submitted the information requested ELD by the letter No S-7 of 6 January 2017.

By the letter No SD-13 of 12 January 2017, ELD provided the Ombudsman with an opinion on the application of the provisions of the Directive 2005/36/EC of the European Parliament and of the Council on the recognition of professional qualifications in the circumstances relevant to the applicant. The letter states in Article 1 of Directive 2005/36/EC [Directive 2005/36/EC of the European Parliament and of the Council] that this Directive lays down rules according to which a Member State which allows access to a regulated profession in its territory in the context of a specific occupational qualification, recognizes the professional qualifications acquired in the other Member State(s) and allows the holder of that qualification to pursue that profession. Accordingly, the directive applies only in cases where a person has acquired a professional qualification which allows a person to pursue his professional activities in the Member State in which he obtained that qualification.“ It is also explained that the professional qualification in Lithuania “<...> is acquired in accordance with national rules, but these rules must also accord with the requirements of European Union law. For example, Article 49 of the Treaty on the Functioning of the European Union states that “restrictions on the freedom of establishment of nationals of one Member State in the territory of another Member State are prohibited“(Right of establishment). In accordance with the aforementioned article and the case-law of the Court of Justice of the European Union relating to that article (Verdict Thieffry, Case C-71/76, EU: C: 1991: 193, Verdict Vlassopoulou, C-340/89, EU: C: 1991: 193; Verdict Morgenbesser , C-313/01, EU: C: 2003: 612.) [Reference by the Office to the information provided by the ELD] requires that the authorities of one Member State of the European Union take into account, before deciding on a person's right to engage in certain activities in its territory, the knowledge and qualifications acquired by that person in another Member State. It is recognized that the implementation of the right of establishment would be obstructed if, in accordance with the rules of national law, it is not possible to take into account the knowledge, skills and qualifications of a person acquired in another Member State. Thus, the responsible authorities have an obligation to assess whether, and to what extent, the knowledge acquired by a person attested by

a diploma awarded by another Member State as well as the qualifications or professional experience gained (both in the other Member State and in the Member State in which the acquisition of the right to pursue a given activity is sought) corresponds the requirements for certain activities“. (Quoted ELD language is not corrected).

The Ombudsman addressed to the ELD by letter No S-93 of 28 February 2017 for an opinion on possible gaps in legislation regarding the implementation of Directive 2005/36/EC of the European Parliament and of the Council on the recognition of professional qualifications.

ELD provided its opinion by the letter No SD-52 of 14 March 2017 on the potential gaps in legislation regarding the implementation of Directive 2005/36/EC of the European Parliament and of the Council on the recognition of professional qualifications. ELD informed that “<...> the national law does not contain any loopholes in the transposition of Directive 2005/36/EC due to the circumstances set out in the letter of the Office.“ It is also stated in the letter that national laws should respect the general principles of European Union law. For example, in the circumstances set out in the letter, the right of establishment cannot be limited, therefore “<...> it is necessary to consider whether the applicant who has already had a degree in pharmacy <...> should be required to re-enter the relevant study program“. In addition, it is stated that “<...> it is to be considered whether a procedure for the recognition of a diploma obtained in another Member State cannot be regarded as a procedure for the recognition of professional qualifications. For example, <...> eliminating the identified educational disadvantages, instead of a Lithuanian diploma, an applicant would be issued with a certificate attesting to the equivalence of the diploma obtained in another country and the acquired professional qualification“. (Underlined by us)

Summarizing the opinion of the ETD, it can be concluded that in this case the academic qualification is acquired in another Member State and recognized by the QAHE centre in Lithuania, but professional qualifications have not been acquired in another Member State, therefore the provisions of Directive 2005/36/EC do not apply to the recognition of professional qualifications. In accordance with the Treaty on the Functioning of the European Union and the case-law of the European Court of Justice, the Member States authorities must ensure the implementation of the right of establishment of a person and provide him with a professional qualification by assessing his personal knowledge and experience and on the basis of the minimum formal requirements evidence of qualifications⁴ established in paragraph 2 of Article 44 of Directive 2005/36/ EC. The right of establishment should be ensured by national legislation in such a way that individuals do not need to re-study the same study program if they have already had a diploma.

The applicant asked the Office by e-mail of 6 January 2017 “<...> whether all the necessary information was received, which had been requested by <...> Ombudsman of the Lithuanian Academic Ethics and Procedures<...> by letter No S-456 <...>?“ and “<...> whether <...> Ombudsman of the Lithuanian Academic Ethics and Procedures submitted to the Lithuanian University of Health Sciences all the questions set in my letter No 3?“

The Ombudsman, in response to the applicant’s e-mail of 6 January 2017 by the letter No S-10 of 9 January 2017, informed that “<...> requested information <...> on 19 December 2016 <...> was received“, and “<...> that Ombudsman decides at his discretion what information is necessary for the implementation of the tasks assigned to him and the performance of the established functions“.

⁴ Part b of Paragraph 1 of Article 3 of the Directive 2005/36/EC states that a professional qualification is a qualification certified by a formal qualification.

The applicant repeatedly applied to the Office by letter No 4 of 17 January 2017, asking “<...> to explain whether the Office is planning to submit an inquiry and evaluate the responses received <...> from the Lithuanian University of Health Sciences“, and <...> to explain and justify specific arguments how the Office will be able to assess properly its direct functions without assessing all the set out circumstances <...> “. Also asking to submit “<...> the inquiry from the Office and the received response<...> from the Department of European Law to the Ministry of Justice of the Republic of Lithuania“.

In response to the applicant’s letter No 4 dated 17 January 2017, the Ombudsman informed the applicant by the letter No S-45 of 24 January 2017 that “the Ombudsman for Academic Ethics and Procedures <...> notes that complaints are examined <...> having regard, inter alia, to one of the principles of the conduct of investigations - the comprehensive, thorough and objective assessment of possible violations of academic ethics and/or procedures <...> examination <...>“. Also, Ombudsman pointed out that “<...> when conducting the investigation, the Office must ensure the confidentiality of information about the people who formally provided the necessary information for the investigation“. (Article 16 of the Office Statute)⁵ and that “<...> the complaint information is only available in the premises of the Office “.⁶

The Ombudsman applied to LUHS and the Faculty of Pharmacy at the Faculty of Medicine of LUHS by the letter No S-52 of 31 January 2017, requesting to submit:

“1) the legal act regulating the crediting of study results when a foreign diploma is recognized by the Study of Quality Assessment Centre;

2) The legal act regulating the procedure for the recognition of professional qualifications in pharmacy at LUHS;

3) The minutes No 13 and audio recording of Rector’s office meeting at LUHS of 22 September 2014;

4) The document authorizing the LUHS to pursue the recognition of academic foreign qualifications (paragraph 4 of the Order No V-600 of the Minister of Education and Science of the Republic of Lithuania of 4 April 2012 on the right of higher education institutions to pursue academic recognition of education and qualifications related to higher education and acquired under the education programs of foreign countries and international organizations)“.

By the letter No DVT2-163 of 7 February 2017, LUHS submitted a copy of the request of D.I. of 22 September 2014, a copy of the Order No SC-1-950 of the rector of LUHS of 25 September 2014 on acceptance of the listener, the minutes No 13 of the meeting of the LUHS Rector’s office of 22 September 2014 and informed that there was no sound record at that meeting and that the Office does not send legal acts publicly posted by this letter. LUHS noted that “The procedure for crediting study results is regulated at the state level “Procedure for crediting study results“, approved by the Minister of Education and Science of the Republic of Lithuania <...>. <...> results<...> are counted for those who are going to study or are studying, i.e. a higher education institution has no possibility

⁵ Statutes of the Office of Ombudsman for Academic Ethics and Procedure of the Republic of Lithuania approved by the Resolution No XI-1583 of the Seimas of the Republic of Lithuania of 15 September 2011 “Regarding the establishment of the Office of the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania and the approval of the provisions of the Office of the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania“.

⁶ Paragraph 33 of Rules on the processing of personal data in the Office of the Ombudsman for Academic Ethics and Procedures.

to count a non-resident person and, in any case, only the study results are taken into account<...> but not a qualification degree or professional qualification<...>“.

Also, pointed out that “<...> there is no legal act regulating the recognition of the professional pharmacy qualifications procedures at the LUHS and cannot be due to <...>the set out reasons. The pharmacist's profession is regulated at national and European Union level. <...> Sub-clause 9 of Paragraph of Article 4 of the Law on Pharmacy stipulates that “a person has a pharmacist’s professional qualifications gained after completing a university degree or equivalent studies in the field of pharmacy. The professional qualification of a pharmacist of a person, who has graduated from a university or equivalent degree in pharmacy studies outside the Republic of Lithuania, must be recognized in accordance with the provisions of Article 3 of this Law“; <...> In Lithuania, the professional qualification of a pharmacist is recognized by the Ministry of Health, not by the LUHS or another higher education institution, in accordance with the “Description of procedures for recognition of a pharmacist’s professional qualification in order to work as a pharmacist or to provide a temporary and occasional service of the pharmacist in the Republic of Lithuania“ approved by Order No V-389 of the Minister of Health of 4 May 2010 <...>“. (Quoted language is not corrected).

The Ombudsman addressed to the Dean by letter No 56 of 31 January 2017 inviting him to arrive at the Office to explain the circumstances of the complaint.

Having arrived at the Office on 20 February 2017, the Dean, at the time of meeting at the Office with the Chief Adviser Kristina Pažusytė and the chief specialist Kamilė Kapočiūtė, explained that “LUHS implementing a pharmacy program, issues a diploma stating that students receive a degree in pharmacy and a pharmacist’s professional qualification. In this way, for those who have completed our degree program<...> there are two, let's say, guarantees one is a scientific degree and the other is a professional qualification“. He also pointed out that in England, a Pharmacist’s degree can be acquired by a person in any university, but the Royal Pharmacist Society is responsible for the practice and professional qualifications. Being asked how the professional qualification of a pharmacist is recognized, when a person has graduated from an abroad university, has a ENQA academic recognition, has practiced at LUHS and passed the final exam, the Dean stated that there is no such mechanism at LUHS as the provision of a professional qualification <...> is foreseen with the issuance of a diploma<...>. We are not executing some sort of recognition procedure“. He also indicated that the final exam is not a part of the practice, but “<...> we actually form the exam in such a way as to test his ability to work in the pharmacy. An exam is designed to assess precisely his practical abilities, how he is able to deal with one or the other practical situation and what knowledge he has accumulated and how well he can apply it.“ When asked whether the master’s degree and professional qualification are certified by a single diploma, the Dean answered positively. After specifying whether the LUHS has a procedure that governs a situation when a person has acquired academic qualifications and is lacking only professional qualifications, the Dean stated that they really do not have, because “<...>it is inseparable, as the practice is carried out<...> based on knowledge, which<...> is formed at the university<...>“. (Language of prof. Dr Vitalijus Briedis is not corrected).

The Ombudsman applied to ENQA by letter No 67 on 13 February 2017 for consultation on “<...>the distribution of competences of ENQA and higher education institutions in terms of academic recognition and qualifications. <...> whether an Authorized Higher Education Institution should evaluate the academic recognition of a person, who intends to study, <...> if such recognition has been recognized by the ENQA?“

ENQA, by the letter No S-474 of 23 February 2017, stated that “Requirements for enrolment of study results in Lithuanian higher education establishments are estimated<...> The Order for crediting study results (hereinafter- the Order) <...>. In accordance with the Order, a person`s higher education qualification acquired in Lithuania or abroad may not be counted in one hundred percent. The achieved study results can only be considered as part of the study program, which is intended to be studied. <...> ENQA decision on the recognition of foreign qualifications is not intended to be taken into account of the study results. It defines the value and level of qualification in Lithuania, on the basis of which a person can apply for certain studies or work position“.

After analysing and evaluating the information presented by the applicant, the LUHS, prof. Dr Vitalijus Briedis, the ENQA and the ELD and legal regulation, it was determined:

Prof. Dr Vitalijus Briedis, by applying to the British institution by e-mail of 20 June 2016 presented them a personal certificate of education of the LUHS, which contained the applicant`s personal data (name, surname, personal identity number), although the required information from the British institution could be obtained by indicating only the circumstances without providing the applicant's personal data.

LUHS does not have any legislation regulating the disclosure of personal data of students to the institutions of the European Union.

Sub-clause 6.4 of the contract between the LUHS and the listener concluded on 25 November 2014 stipulates that the LUHS undertakes “<...> to ensure that the personal data submitted by the listener will not be disclosed and / or transmitted to the third parties without a written permission from the listener, except in cases provided by the laws of the Republic of Lithuania“.

Taking into account that prof. Dr Vitalijus Briedis, being a Dean of the Faculty of Pharmacy at the LUHS Medical Academy and addressing to the British institution, disclosed the applicant`s personal data, although this could have been avoided, it should be stated that prof. Dr Vitalijus Briedis violated the sub-clause 6.4 of the contract concluded between the LUHS and listener on 25 November 2014.

The Ombudsman following the position that the right of establishment of people who have acquired an academic degree in another Member State of the European Union and who have practiced in the host Member State is not guaranteed in Lithuania, performing the task set out in sub-clause 5 of Paragraph 12 “to supervise and control the fulfilment of the provisions of international treaties of the Republic of Lithuania, legislation of the European Union, laws of the Republic of Lithuania and other legislation regulating academic ethics and procedures“, and in order to ensure compliance with the provisions of European Union law, the Ombudsman will initiate the consideration of the case, in which a person who has acquired an academic degree in another Member State of the European Union, and has practiced in the host Member State, and adoption of decisions at the level of state institutions.

Having assessed the information submitted by the applicant, LUHS, prof. Dr Vitalijus Briedis, ENQA and ELD and legal regulation and in accordance with Paragraph 1 of Part 11 of Article 17 of the Law on Higher Education and Research of the Republic of Lithuania, the Ombudsman:

decided:

To inform the applicant, Lithuanian University of Health Sciences and Ministry of Education and Science about the violation of procedures committed by Vitalijus Briedis, the Dean of Pharmacy Faculty of LUHS Medical Academy.

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