



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

DECISION REGARDING THE COMPLAINT OF Ž. M. OF 14 FEBRUARY 2017

19 May 2017, No. SP-14

Vilnius

The Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania (hereinafter - the Ombudsman), in accordance with Part 1 of Paragraph 17 of the Law on Higher Education and Research of the Republic of Lithuania and with Subparagraph 1 of Paragraph 13 of the provisions of the Office of the Ombudsman for Academic Ethics and Procedures 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“, and after examination of the complaint of Ž. M. (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 17 February 2017 (hereinafter - the complaint) regarding possible violations of the academic ethics of L. V., the employee of the Institute of the Lithuanian Language (hereinafter - the LKI) (hereinafter - the employee of the LKI)², and the provided material,

determined:

The applicant complaints about the actions of the employee of the LKI who possibly violated academic ethics. The applicant stated that “at the end of 2015 the LMT [the Science Council of Lithuania]³ published an invitation <...> for the education and study institutions to submit applications for funding for publishing publications. <...> Pursuant to this invitation, the Institute of the Lithuanian Language submitted the following applications to the LMT: LEI-15011, LEI-15034, LEI-15037, LEI15073, LEI-15086, LEI-15147, LEI-15157, LEI-15170, LEI-15174, LEI-1584. The LMT decided to finance only LEI-15011, LEI-15034 and LEI-1584. It was the application LEI-1584 that was submitted [by the employee of the LKI] <...>. In accordance with Section 4.12. of the Regulation of the Science Council [of the LKI], the LKI MT approves non-periodical publications published on behalf of the Institute <...>. It should be noted that the LKI MNT did not consider and not confirm this publication prior to the submission of this complaint. At the LKI MT meeting held on 14-02-2017, [the employee of the LKI] pointed out that the publications provided for printing in LEI-1584 were not released until 31-12-2015, and one of the publications was published without having been considered on 12 or 13 February 2017, i.e. after the deadline set in the application and financing terms for more than one year. In view of this, there is a reasonable doubt that [the employee of the LKI] could have violated not only the provisions of the Regulation of the Science Council [of the LKI]

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

² “Employee” in the text of the Ombudsman’s decision is given as a noun of masculine gender without linking it to the sex of the person.

³ Here and hereinafter in the square brackets - the comments of the Office.

<...>, the provisions of the Academic Code of Ethics [of the LKI], but also the legal acts governing public procurement procedures. The legal acts governing public procurement procedures could have been violated because the publishing (cooperation) agreement was concluded with the legal person providing publications possibly without completing the public procurement procedures at all.”⁴

The applicant also indicated that [the employee of the LKI] is “<...> also an expert of the Lithuanian Science Council (hereinafter - LMT) (I cannot confirm the accuracy of the data on this position). However, if this factual circumstance is that [the employee of the LKI] is also an expert of the LMT, i.e. she is related to the LMT not only through family ties <...>) extends the scope of the investigation of this complaint. Thus, the actions [of the employee of the LKI] should be evaluated not only whether she violated the provisions of academic ethics and other legal acts in the Institute of the Lithuanian Language, but also in the Lithuanian Science Council.”

In addition, the applicant indicated that “Articles 6.1, 6.4, 7.3. of the Code of Academic Ethics of the Institute of the Lithuanian Language were potentially violated. At the same time, the provisions of the relevant Code of Academic Ethics of the LMT may have been violated.”

It needs to be noted that the Ombudsman assesses the circumstances of the complaint and adopts the decision in accordance with the competence, therefore, he did not assess the actions of the Lithuanian Science Council (hereinafter - the LMT) and the employees of the LMT.

The applicant requests the Ombudsman the following:

“<...> to inform the institutions of science and studies and the Ministry of Education and Science about persons who have committed violations of academic ethics and procedures;

<...> to recommend to the science and study institutions to revoke the decision based on the documents governing academic ethics and procedures;

<...> to recommend the employee to refuse to participate in the ongoing research and experimental development project;

<...> to inform the institution responsible for the relevant area about the persons (authors) are the victims of violations of academic ethics and / or procedures;

<...> to inform the Public Procurement Office, the State Control and the Financial Crime Investigation Service of possible violations of public procurement procedures, as well as the possible fraud in case of unlawful fraudulent acquisition of LMT funding. In addition, to inform the Chief Official Ethics Commission about potential conflicts of public and private interests between the LMT and the persons of other institutions concerned.”

On 17 February 2017, the applicant, together with the complaint, presented a list of the editorial staff of the magazine “Naujasis Židinys –Aidai” (*literally: Echoes and New Fireplace-Echoes*).

The Ombudsman by his letter No. S-82 of 22 February 2017 addressed to the LKI requesting to submit the following:

“1) the statutes of the LKI;

2) the legal acts regulating the activities of the Science Council of the LKI and the procedure for approving the publications of the LKI;

3) the Code of Academic Ethics of the LKI;

4) the minutes and the sound record of the meeting of the Science Council of the LKI of 14 February 2017;

5) the application No. LEI-1584 for funding for publishing publications for the Lithuanian Science Council;

6) the cooperation agreement of the LKI and the Public Institution “Naujasis Židinys –Aidai” (*literally: Echoes and New Fireplace-Echoes*).

The LKI by the letter of 8 March 2017, No. (1.8) S-72 informed “<...> that the meetings of the Science Council of the LKI are not recorded, therefore, we have no possibility to provide the requested sound record.”⁵ and submitted the requested information:

⁴ The applicant's language quoted here and hereinafter in the decision is unedited.

⁵ The language of the LKI quoted here and hereinafter in the decision is unedited.

- 1) the copy of the statutes of the LKI, certified by the signature of the responsible person;
- 2) the copy of the Regulation of the Science Council of the LKI approved by the Resolution No. 22 of the Science Council of the LKI of 9 February 2016, certified by the signature of the responsible person;
- 3) the copy of the description of the procedure for the approval of publications of the LKI approved by the Resolution No. 10 of the Science Council of the LKI of 20 December 2011, certified by the signature of the responsible person;
- 4) the Code of Academic Ethics of the LKI approved by the Ordinance No. 5 of the Director of the LKI of 5 May 2011 (hereinafter - the Code of Academic Ethics of the LKI), certified by the signature of the responsible person;
- 5) the minutes of the meeting of the Science Council of the LKI of 14 February 2017, certified by the signature of the responsible person;
- 6) the copy of the application No. LEI-15184 for funding for publishing publications, certified by the signature of the responsible person;
- 7) the copy of the cooperation agreement of the LKI and the Public Institution "Naujasis Židinys –Aidai" (*literally: Echoes and New Fireplace-Echoes*) signed on 27 November 2015, certified by the signature of the responsible person;

On 22 February 2017, the Office received the applicant's e-mail, in which the applicant indicated that "By this email, I send the data necessary for the investigation of the complaint." By the mentioned e-mail, the applicant submitted the following:

- 1) The annual report of the long-term institutional research and experimental (social, cultural) development program, not certified by the signatures of the responsible persons;
- 2) The lists of the funded applications of the target invitation for submission of the applications to receive funding for publishing publications, approved by the Order No. V-289 of the Chairperson of the Science Council of the LKI of 14 December 2015, not certified by the signatures of the responsible persons and without the signed copy of the mentioned Order;
- 3) the Code of Academic Ethics of the LKI, confirmed by the Ordinance No. 5 of the Director of the LKI of 5 May 2011;
- 4) The lists of the applications submitted for the contest of the target invitation for submission of the applications to receive funding for publishing publications, not certified by the signatures of the responsible persons;
- 5) the copy of the application No. LEI-15184, not certified by the signatures of the responsible persons.

It needs to be noted that the Ombudsman examined the complaint without analyzing and assessing the date presented in informal, i.e. not confirmed by the signature, documents or in their draft variants.

By the letter No. S-230 of 11 May 2017, the Ombudsman addressed to the LKI requesting "<...> to submit all the documents confirming the order and procurement of works of publishing the publications specified in the application No. LEI-15184 of the LKI for funding for publishing publications addressed to the Science Council of Lithuania."

By the letter No. (1.8) S-152 of 15 May 2017, the LKI indicated that "<...> in accordance with the application No. LEI-15184, one publication was published - a collective monograph <...>. The project was carried out in accordance with the partnership agreement with the partner Public Institution "Naujasis židinys - Aidai" (*literally: Echoes and New Fireplace-Echoes*). As a partner, this entity has been selected as a non-profit publisher with the necessary experience <...>. In accordance with the partnership agreement No. 15LKI-51 of 27 November 2015 <...> the LKI undertook to prepare a publication, to submit an application for funding for the publication and to administer financing costs <...>. The Public Institution "Naujasis židinys - Aidai" (*literally: Echoes and New Fireplace-Echoes*) committed to publish the Publication, to pay the expenses incurred for

publication <...>. <...> The LKI had to transmit the part of the funds to the partner according to the financial statements presented by the partner <...>. On 18 December 2015, the Public Institution “Naujasis Židinys - Aidai” (*literally: Echoes and New Fireplace-Echoes*), executing the agreement, submitted the report on the use of the funds and the invoice for the reimbursement of expenses. The LKI transferred the amounts specified in the submitted documents to the Public Institution “Naujasis židinys - Aidai” (*literally: Echoes and New Fireplace-Echoes*). Both parties fulfilled their obligations under the agreement, and the report on the use of funds was submitted to the institution which financed the publication - the Lithuanian Science Council.”

By the letter No. S-231 of 11 May 2017, the Ombudsman addressed to the LKI requesting the following:

“1) to submit the target invitation for submission of the applications to receive funding for publishing publications of the Lithuanian Science Council (hereinafter - the LMT) of 2015;

2) to specify and submit the legal acts governing the submission of the applications / requests for funding for publishing publications to the LMT, the administrative and expert assessment, the procedure;

3) to submit the application No. LEI-15184 of the LKI for funding for publishing publications addressed to the LMT (hereinafter - the application of the LKI);

4) to submit the documents confirming the establishment of the administrative and expert assessment commission for the assessment of the application of the LKI, the list of its members;

5) to submit the documents confirming the administrative and expert assessment of the application / request of the LKI, and the decision to grant funding for publishing publications;

6) to submit all the financial documents submitted by the LKI (invoices, payment orders, etc.) related to the publications specified in the application of the LKI, their publishing and funding;

7) to indicate the dates when the publications specified in the application of the LKI had to be published and were published, and to submit the confirming documents;

8) to specify how [the employee of the LMT] was associated with the administrative and expert assessment of the application of the LKI and with the adoption of the decision to grant funding for publishing publications.”

By the letter No. 4S-529 of 16 May 2017, the LMT submitted the requested information and indicated that “<...> [we provide] explanations and the requested documents according to the list indicated in your request:

1) <...> the text of the target invitation for submission of the applications to receive funding for publishing publications <...>.

2) The documents related to the funding are indicated on the website of the Council <...>. Please find enclosed the description of the procedure of granting funding for publishing a publication or acquiring the textbook publishing rights and / or its publishing <...>.

3) <...> the application [of the LKI] reg. No. LEI-15184 <...>.

4) <...> we note that the administrative examination of the application <...> is carried out by the Science Foundation of the Council, and the assessment of the applications for funding for publishing is carried out by the Commission approved by order of the Chairperson of the Council <...>. Please find enclosed the Order No. V-278 of the Chairperson of the Council of 2 December 2015 “Regarding the establishment of the Commission for granting funding for publishing a publication” <...>.

5) Please find enclosed the following documents: The extract of the minutes No. PP-LEI-KO-01/15 of the meeting of the Commission for granting funding for publishing a publication of 7 December 201[5] and the extract of the Order No. V-289 of the Chairperson of the Council of 14 December 2015 “Regarding the approval of the lists of the funded and reserve application for the contest of 2015 for funding for publishing publications” <...>.

6) Please find enclosed the following documents: The invoice for the reimbursement of expenses <...> and the report on the use of the funds <...>.

7) <...> in the application of the LKI reg. No. The planned date of publishing LEI-15184 is 30 December 2016. This date was corrected by the letter reg. No. (1.8) S-371 of 18 October 2016 submitted by the LKI “Regarding the date of publishing the funded publication” <...>, by which the Council was informed that the first volume of the publication would be published on 30 January 2017, and the second volume - on 30 October 2017. According to the Description, the settlement for the Council was foreseen only after publishing the publication.

8) <...> we note that, in accordance with the Description, no functions for the Council’s committees, the member of one of which is [the employee of the LMT], are established in the procedures of the administrative and expert assessment of the applications for funding for publications.”⁶

By the letter No. S-232 of 11 May 2017, the Ombudsman addressed to the employee of the LKI requesting “<...> to indicate the relationship between you and [the employee of the LMT].”

The employee of the LKI, by the letter of 11 May 2017 “Response to the letter S-232 of the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania regarding the submission of the information”, indicated that “[the employee of the LMT] is my [spouse] <...>.”

It needs to be noted that the Ombudsman assesses the circumstances of the complaint and adopts the decision in accordance with the competence, therefore, he did not examine and assess the possible violations of the procedures established in the internal legal acts of the LKI.

After the evaluation of the information submitted by the applicant, LKI, the employee of the LKI, LMT and the legal regulation, and in accordance with Part 1 of Article 17 of the Law on Education and Studies, which establishes that “the Ombudsman for Academic Ethics and Procedures <...> is a public official who examines complaints, reports and conducting investigations at his own initiative on possible violations of academic ethics and procedures that are established in the codes of academic ethics of science and study institutions <...>, ***the Ombudsman did not determine any violations of the procedures established in the code of academic ethics of the LKI*** (underlined by us).

Taking into account the fact that the Ombudsman cannot examine the circumstances of the complaint and adopt the decision on possible violations of the public procurement procedure according to his competence, therefore, the Ombudsman, in accordance with Clause 10 of the Rules on the Examination of Applications of Persons and Their Service in Institutions, Agencies and Other Public Administration Entities approved by the Resolution No. 875 of the Government of the Republic of Lithuania of 22 August 2007 “On the Rules on the Examination of Applications of Persons and Their Service in Institutions, Agencies and Other Public Administration Entities and the Approval of the Form of Application, Complaint of Other Document Confirming the Fact of Acceptance of Referral”, which states that “A person's request addressed to one institution, when the questions specified in the request are attributed to the competence of several institutions, are organized and answered by the institution receiving the request. Other institutions competent for examining an application shall, within 10 working days of the registration of the application, answer the request to the transmitting agency in accordance with their competence.”, will forward the relevant information to the Public Procurement Office.

It needs to be noted that the Controller did not have the capacity to assess the circumstances of the complaint in terms of the sustainable use of resources according to his competence.

⁶ The language of the LMT quoted here and hereinafter in the decision is unedited.

Taking into account the circumstances of the complaint, the legal regulation, and in accordance with Paragraph 1 of Part 11 of Article 17 of the Law on Education and Studies of the Republic of Lithuania, the principles of intelligence and publicity, the Ombudsman:

decided:

To inform the applicant, the LKI and the Ministry of Education and Science about the decision of the Ombudsman.

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

The Ombudsman for Academic Ethics and Procedures

Vigilijus Sadauskas