



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

### REGARDING VIOLATIONS OF THE ACADEMIC ETHICS BY THE RECTOR OF KAUNAS UNIVERSITY OF TECHNOLOGY PETRAS BARŠAUSKAS AND THE COMMISSION OF THE UNIVERSITY ATTESTATION OF ACADEMIC STAFF AND COMPETITION

11 July 2017, No. SP-19  
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“ (hereinafter - the Provisions), after examination of the complaints of G. M. (hereinafter - the applicant)<sup>1</sup> received in the Office of the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania (hereinafter - the Office) on 16 January 2017 and 18 April 2017 respectively regarding the announcement and execution of the extraordinary attestation, and having assessed the material submitted to the Office by the applicant and the Kaunas University of Technology (hereinafter - the KTU),

#### **determined:**

In the complaint of 16-01-2017, the applicant, among other things, indicated the following:

“<...>

<...> The sequence of prosecution actions in respect of me follows the order of the Rector of the KTU <...> on the announcement of extraordinary attestation [to the applicant]<sup>2</sup> <...>. <...>.

<...> My scheduled attestation, naturally after the expiration of the 5-year term, already had to be announced in March 2017, (the certification procedure itself was due to take place in June). <...>.

<...>

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<sup>1</sup>“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.

<sup>2</sup>Here and hereinafter in the square brackets - the comments of the Office.

<...> Most of the extraordinary attestations in higher education institutions take place “at your own request”.

<...>. <...> Only a very small part of extraordinary attestations take place on the initiative of the administration, and such a step usually means formal preparation for dismissal of an academic worker. <...>.

An extraordinary attestation initiated by the administration in respect of the experienced academic worker with the highest academic positions is an unprecedented event, publicly questioning the competence of such a scientist, achievements of all his life, violating his rights, undermining business reputation, and rudely intervening in an academic career.

<...>

However, the extraordinary attestation that the university administration initiates in respect of the experienced academic worker - professor, habilitated doctor - should be particularly justified, meaningful and objective arguments should be found. <...> This is also required by a specific legal act, article 43 of which states: “*an extraordinary attestation of a lecturer or researcher shall be announced by the Rector on the basis of a reasoned submission of the Dean of the Faculty (head of the academic unit)... (see Description).*”

<...> the mandatory provision of the law - the reasoned submission - was not fulfilled in this case. On the contrary, the preparation of the aforementioned Order of the Rector caused a lot of serious violations.

1. The question of initiating [the applicant's] extraordinary attestation was not, as a personal question, discussed in any academic unit. It was not discussed, voted. <...>.

2. [The applicant became aware of] the commented Order of the Rector of the KTU only on 8 December 2016, although so-called Submission for the Extraordinary Attestation Announcement of the Head of the initial unit <...> was already prepared on 28 October 2016 <...>. By this I was prevented from the opportunity to appeal, provide explanations, evidence of my academic activity, require for this issue to be considered at the academic units of lower level <...>.

3. Specific arguments for submission, that the doctoral students did not defend their thesis and that the individual workload of [the applicant] was not completed, are null and void, demagogic. <...> Another argument for submission is poor statistics on the defense of dissertations <...>.

4. <...> Particularly insulting, unacceptable phrase of the submission is the following: “*there are reasonable doubts as to the competences and the compliance with the requirements for the positions of these employees*“. It is completely unclear why in the submission on the extraordinary attestation of one professor there is involved a squad of associate professors, lecturers, etc. who are no longer employed in the university? <...>.

5. By announcing an extraordinary attestation without arguments, the natural scientist's creative cycle of 5 years, which is legalized by law, is decimated, and the opportunity to achieve high individual indicators of scientific publication is reduced. On the contrary, leaving the natural cycle of 5 years, during the remaining time before the end of the cadence it could still really be possible to achieve significantly higher indicators of scholarship. Moreover, some of the publications of [the applicant] were currently being intensively developed, others were already presented to prestigious magazines <...>. Destroyed specific creative plans to submit a

monograph to a foreign scientific publishing house on time <...>, to prepare an application for a scientific internship abroad. <...>.

6. <...>.

The factual circumstances and arguments presented indicate that the academic unit's Submission for the Extraordinary Attestation and the corresponding order of the Rector of the KTU are unjustified, violate the legal acts and are null and void. <...>.”<sup>3</sup>

The following is requested in the complaint:

“1. To recognize the actions of mobbing and harassment for criticizing to be illegal and violating ethics.

2. To recognize the submission for the extraordinary attestation of [the applicant] and the corresponding order of the Rector of the KTU as unethical and violating legal acts and academic procedures.”

In the complaint of 18-04-2017, the applicant, among other things, indicated the following:

“<...> By the Order of the Rector of the KTU of 8 December 2016 <...> the extraordinary attestation was announced for me. For some time I was sick and on 8 December I received a certificate of incapacity for work. My incapacity lasted more than three months and ended only on 22 March 2017 <...> <...> On 12 January 2017 my employer did, however, completed my extraordinary attestation procedure in my absence and did not attest me. <...> At the end of the incapacity, according to the legal acts (Part 4 of Article 72 of the Law on Science and Studies of the Republic of Lithuania and Part 1 of Article 129 of the Labour Code of the Republic of Lithuania), I had to sign the documents on termination of employment agreement <...>.

<...> even being sick I prepared the application to the Rector of the KTU <...>. In the request, I set out the legitimate interest and desire that none of my personal issues would be resolved in the event of my incapacity and inability to participate directly.

<...> the persons to be attested usually participate in the meeting of the commission, moreover, during the attestation meeting they actively use their right to provide explanations, additional documents, etc. In my case, because of my incapacity, I have not had any opportunity to use such right and I was placed in an inequitable condition, in other words, I was discriminated. <...>”.

<...> Because of sickness and lasted incapacity, I had no opportunity to properly prepare for the attestation procedure in general: to include the most up-to-date information on my acquired scholarship indicators in my attestation file and university's databases. <...> Scientific reports for the last calendar years in Lithuanian universities are usually prepared in January of the year beginning, and are approved and announced in February. The procedure for my extraordinary attestation was initiated on the initiative of the administration and was carried out from 8 December 2016 to 12 January 2017, therefore, I was deprived of the opportunity to actualize my scientific indicators, to include in the university's databases and the attestation file. These important circumstances - the lack of work and the cyclicity of the collection and publishing of indicators for scientific reports of academic staff and departments - were known to the administration of the KTU. <...>.

The following is requested in the complaint:

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<sup>3</sup>The applicant's language quoted here and hereinafter in the decision is unedited.

1. To integrate this complaint to the complaint (case) already being examined by the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania “Regarding possible violations of academic ethics and procedures by the extraordinary attestation procedures at the KTU” <...>.

2. To recognize that: a) [the applicant’s] extraordinary attestation was conducted in violation of legal acts, academic ethics and procedures, human and worker’s rights b) the extraordinary attestation conducted has the characteristics of persecution for criticism.” (underlined by us).

By the letter No. S-41 of 24-01-2017 “Regarding the submission of the information”, the Ombudsman addressed to the Kaunas University of Technology requesting the following:

“1) to submit the legal acts regulating the procedure of attestation and organization of competitions for positions of lecturers and researchers at the Kaunas University of Technology;

2) to submit the copy of the Order No. P-1208 of the Rector of the Kaunas University of Technology of 08-12-2016 “On the Announcement of Extraordinary Attestation”;

3) to submit the copy of the submission for the extraordinary attestation announcement of the Head of the unit for [the applicant];

4) to submit the documents confirming the consideration of the justification of the initiative to announce the extraordinary attestation for [the applicant] at the academic unit;

5) to specify the term of [the applicant’s] inability to perform the functions at the Kaunas University of Technology due to the disease and submit the supporting documents (application, time accounting, etc.);

6) to specify and submit all the documents (data) that were submitted by [the applicant] for the assessment of the entity conducting his extraordinary attestation;

7) to specify the date of conducting the extraordinary attestation of [the applicant], its result (if the attestation has been completed), and to submit the minutes and the sound record (if any) of the extraordinary attestation;

8) to specify which assessment criteria were applied and which data of [the applicant] were assessed during the extraordinary attestation of [the applicant], and to submit all documents related to the assessment of these data;

9) to indicate the [applicant’s] latest term of 5 years of cadence;

10) to indicate the time limit within which [the applicant] would have to submit an annual report on scientific activity and other documents (data), by conducting the attestation in accordance with the usual procedure for 5 years of cadence. <...>”.

By the letter No. DV10-119 of 20-02-2017, the KTU submitted the information related to the applicant’s extraordinary attestation. The KTU, among other things, indicated the following:

“<...> [the applicant] has been seek since 8 December 2016. The incapacity currently is extended until 21 February 2017. <...>.

The main documents (data) are submitted by the University’s departments in accordance with the University’s valid procedure for attestation. The staff must ensure that all results of their activities are timely and properly recorded (e.g., publications in the library). The documents (data) for the extraordinary attestation of [the applicant] were submitted by the University’s departments responsible for recording of studies and research results. <...> [The applicant] did not submit any additional documents (data) to the Commission of the University Attestation of

Academic Staff and Competition (UADAKK), although he was duly informed about the extraordinary attestation and submission of documents.

The extraordinary attestation of [the applicant] took place on 12-01-2017. The University Commission of the Attestation of Academic Staff and Competition adopted the decision - not to attest [the applicant]. <...>.

During the extraordinary attestation, the performance of [the applicant] over 4.5 years was assessed on the basis of the requirements set out in Clause 4 of the Description of the Procedure of Attestation and Competitions for Positions of Lecturers and Researchers at the Kaunas University of Technology <...> for the professor during his cadence. What criteria have been applied and what data are assessed are set out in the minutes of the meeting of the UADAKK of 12-01-2017 <...>.

<...> The ordinary attestation [for the applicant] was scheduled for 30-06-2017. <...>” (underlined by us).

When more questions were raised regarding the circumstances of the applicant’s extraordinary certification, by the letter No. S-252 of 22-05-2017 “Regarding the submission of the additional information”, the Ombudsman addressed to the Kaunas University of Technology requesting the following:

“1) to specify the purpose, reasons, grounds, terms and conditions for conducting the extraordinary certification of the members of the academic community of the Kaunas University of Technology, and submit legal acts regulating it;

2) to specify the purpose, reasons and grounds for conducting the extraordinary certification of 12-01-2017 of the former employee [the applicant] of the Kaunas University of Technology;

3) to substantiate the necessity for conducting the extraordinary attestation of [the applicant] at the Kaunas University of technology in the period of incapacity of [the applicant];

4) to specify the date until which [the applicant] had to provide the documents (data) necessary for the extraordinary attestation and the legal act regulating it. <...>”

By the letter No. DV10-374-1 of 14-06-2017 “Regarding the submission of the additional information”, the Kaunas University of Technology, among other things, indicated the following:

“<...> the determination of the procedure of attestation in the University - one of the guarantees of the autonomy of the University <...> every higher education institution, as well as the University, has the right to establish higher requirements for persons seeking to attain or maintain the position of professor.

Since 01-07-2012 [the applicant] had an employment contract of indefinite duration for the position of the professor, thus, this person was attested every 5 years. Such attestation - i.e. the attestation, where every 5 years it is verified that the person has fulfilled at least the minimum requirements for his position in the last 5 years, is called an ordinary attestation. Extraordinary attestation is a situation where there is a reasonable doubt as to whether a person meets at least the minimum requirements for his position or when a person overwhelmingly exceeds the requirements for his position. <...>.

<...>.

The necessity of the extraordinary attestation of [the applicant] was determined by the submission of the Dean of the Faculty stating that there is reason to believe that [the applicant]

does not meet the minimum requirements for the position of the professor, i.e. the fact that he did not perform his direct duties as an academic worker for the full academic year 2015- 2016, and failed to fulfill his annual plan of work, which, incidentally, was also subject to the minimum requirements for his activities; the fact that these minimum requirements were not met was also confirmed by the meeting of the Public Policy and Administration Institute (hereinafter - the VPAI) of 30 September 2016, during which the reports of the lecturers' activity plans for 2015-2016 were discussed and approved. At the meeting it was found that the hours of work of [the applicant] did not meet the requirements of Clause 2 of the Lecturers' Work Accounting Regulations <...>, at the meeting of the unit it was decided to consider the deviation of more than 15 per cent from the number of hours required as "significantly not reached". Failure to comply with his direct duties as an academic worker raised reasonable doubts as to the fact that he may not meet the minimum requirements for the position of the professor.

<...>.

<...> [The applicant] was notified about the extraordinary attestation announced for him on 8 December 2016, and on 9 December he was sent the information about the ordered certificates and other documents that would be required during the extraordinary attestation and the expected date and time of the meeting of the Commission of the University Attestation of Academic Staff and Competition. <...> for the performance of both ordinary and extraordinary attestation, the person to be attested may submit only additional documents, because **the University has all the information necessary to objectively assess the compliance of the person with the minimum requirements for his duties.**

On 13 December 2016, [the applicant] was sent by e-mail the scanned certificates prepared by the University departments – a list of scientific publications, a certificate on scientific guidance for doctoral students, a certificate on pedagogical work, a certificate on significant experimental development work. In the same letter [the applicant] was informed that he could still provide information on qualifications, participation in seminars, courses, participation in educational activities, reports read at conferences. It should be noted that [the applicant] contacted the Human Resources Administration by phone, but he did not inform that he had or intended to submit additional documents for the attestation.

<...> the participation of a person to be attested, regardless of whether there is an ordinary or extraordinary attestation, is not necessary <...>.

<...>.

<...> In accordance with this procedure [the Description of the Procedure of Attestation and Competitions for Positions of Lecturers and Researchers] and taking into account the circumstances set out above – i.e. the fact that the University has all the information on the activities performed by the person and all the data necessary to objectively assess the compliance of the person with the requirements for his duties at the meeting of the Attestation and Competition Commission, and in view of the fact that [the applicant] has been given the opportunity to submit additional the documents, the Attestation and Competition Commission adopted the decision to conduct the extraordinary attestation as set out in Clause 47 of the Description of the Procedure of Attestation and Competitions for Positions of Lecturers and Researchers– i.e. in the absence of the person to be attested.

The Commission of the University Attestation of Academic Staff and Competition (hereinafter – UADAKK) in assessing [the applicant's] compliance with the minimum

requirements for the position of the professor, found that [the applicant] did not satisfy even several minimum requirements for the position of the professor: he did not prepare and did not publish any methodological teaching tool, did not participate in the expert and (or) project activities of the studies, did not meet or only partially met the requirement for participation in scientific activities, also did not meet the requirement to improve qualifications and participate in educational activities.“ (underlined by us).

By the letter No. S-255 of 23-05-2017 “Regarding the provision of the consultation” on the actions of the member of the academic community during the period of his incapacity, the Ombudsman addressed to the State Labour Inspectorate under the Ministry of Social Security and Labor of the Republic of Lithuania requesting to answer:

“1) whether the legal acts provide for the functions that the employee is required to perform, even during the period of his incapacity (for example, to submit the documents (data) requested by the research and study institution required for the performance of extraordinary certification). Please indicate such legal acts;

2) what decisions can be adopted in respect of the employee in the period of his incapacity. Can the extraordinary attestation of a member of the academic community be conducted during the period of his incapacity, if the institution that carried out the attestation was notified on the said person’s incapacity and willingness to participate in the attestation?”

By the letter No. SD-25-7118 of 08-06-2017 “Consultation on Inquiry”, the State Labor Inspectorate under the Ministry of Social Security and Labour of the Republic of Lithuania, among other things, stated:

“<...> Clause 4 of Part 2 of Article 143 of the Labour Code provides that the period of incapacity for work is not included in working time. This means that the employee who is issued a certificate of incapacity for work (no matter why the temporary incapacity arose, i.e. due to a worker or his family member’s illness), has a legitimate reason not to go to work during the period of incapacity. It follows that during this period, the employee is not required to perform his job functions or employer’s instructions.

<...>

<...> The specialists of the Personnel Service and Law Enforcement Division of the State Labor Inspectorate provide consultation on the questions you have submitted:

1. The Labour Code and other labour laws do not provide for exceptional cases in which an employee should perform the employer’s instructions or his job functions during temporary incapacity. This means that the employee can perform certain actions requested (for example, to submit the documents (data) required by the institution of higher education and studies for the performance of the attestation), but is not required (if this is not contrary to the rules of conduct during the period of incapacity).

2. <...> the extraordinary attestation for lecturers and researchers of science and study institutions **can be arranged in accordance with the procedure established by these institutions** (Part 6 of Article 72 of the Law on Science and Studies of the Republic of Lithuania). This means that a specific procedure for the execution of extraordinary attestation may be established in the local (internal) legal acts of the institution. In the event that such legal acts provide for, that, for example, the employee’s participation/arrival/submission of documents at the time of the attestation and (or) making a decision is mandatory, in such a case, decisions that were taken in breach of the relevant procedure could be considered unlawful.

However, if the procedure for conducting the attestation established by the institution is not violated (for example, participation of the employee is not mandatory, etc.) decisions can also be made in the absence of the employee. Attention is drawn to the fact that upon the adoption of a decision regarding, for example, not attesting and termination of an employment contract with such employee (Part 4 of Article 72 of the Law on Science and Studies of the Republic of Lithuania), there is applied Clause 1 of Part 1 of Article 131 of the Labour Code which provides for that it is prohibited to give notice of the termination of an employment contract and to dismiss from work an employee during the period of temporary disability, except for the cases specified in Part 1 of Article 136 of the Labour Code. This means that the employee can be informed in writing with the relevant decision and given notice of the termination of an employment contract only after the end of the incapacity period.

<...>.” (underlined by us).

After examination of the circumstances of the complaint, the following was determined:

Audronė Telešienė, Acting Director of the Public Policy and Administration Institute of the Faculty of Social Sciences, Humanities and Arts of Kaunas University of Technology, in her submission of 28-10-2016 “On the Announcement of Extraordinary Attestation” to the Dean of the Faculty of Social Sciences, Humanities and Arts of Kaunas University of Technology stated that “during [her] leadership there emerged the reason to consider the announcement of the extraordinary attestation for [the applicant]. The extraordinary attestation is required in order for the Commission of the University Attestation of Academic Staff and Competition to assess [the applicant’s] compliance with the qualification requirements of the professor’s duties and dispel the doubts the basis for which emerged due to the following objective reasons:

1. <...> the working hours completed by [the applicant] <...> do not comply with the requirements of Clause 2 of the Lecturer’s Work Accounting Regulations <...>, the number of hours required <...> is significantly not reached. At the meeting, there were not provided the reasons for such non-compliance and failure to fulfill the activities or to reach the results <...>.

2. In the description of the position of a professor, among other things, Clause 30.2 states that one of the main tasks of the professor’s activities is the training of researchers (doctoral counseling; the performance of the functions of the doctoral student scientific supervisor, etc.). [The applicant] participates in the preparation of doctoral students in the field of sociology, but since 2009, (including this term of cadence from 2012), none of the doctoral students led by him at the Kaunas University of Technology did not reach the public defense procedure for the dissertation because of unclear reasons for the unit. <...> “.

Acting Dean Eglė Butkevičienė, in the submission of 05-12-2016 to consider the extraordinary attestation announcement No. V22-12-149, addressed to the Rector of the KTU Petras Baršauskas, states that “In accordance with the submission No. V22-1250-17 of temporary acting at the Public Policy and Administration Institute Audronė Telešienė of 28 October 2016 “On the Announcement of Extraordinary Attestation”, in which it is proposed to announce the extraordinary attestation for [the applicant], I would like to ask to consider such possibility <...>”.

By the Order No. P-1208/2 of 08-12-2016 “On the Announcement of Extraordinary Attestation”, the Rector of the Kaunas University of Technology, in accordance with Clause 43

of the Description of the Procedure of Attestation and Competitions for Positions of Lecturers and Researchers, announced the extraordinary attestation for the applicant.

The minutes No. PV3-9280-1 of the meeting of UADAKK of 12-01-2017 (hereinafter - the Minutes) indicates that “on 8 December 2016, [the applicant] came to the Human Resources Administration Department and was acquainted with the Order No. P-1208/2 released by the Rector on 8 December 2016, but he refused to sign that he got acquainted.”

The e-mail of the specialist of the Human Resources Administration of the Kaunas University of Technology of 9 December 2016, addressed to the applicant, among other things, indicates the following:

“<...> Regarding qualification upgrading, if you have not submitted qualification upgrading documents, notes, certificates, you can still do this.

Attached to this letter is a description of the academic activities, that you have to complete for the attestation.

You have to submit the completed description of the academic activities, certificates and other additional documents for the attestation to the Human Resources Administration Department (320, 322 cabinets) until 3 January 2017.

The meeting of the Commission of the University Attestation of Academic Staff and Competition will take place on 12 January 2017 <...>” (underlined by us).

The letter No. V-22-92-07 of the Human Resources Administration Department of the Kaunas University of Technology of 06-01-2017 “Regarding the submission of documents for the extraordinary attestation”, addressed to the applicant, indicates that “<...> on 9 December 2016 by e-mail you were sent the information about the documents required to submit for the extraordinary attestation, the information about the deadlines for submission and the date of the meeting of the Commission of the University Attestation of Academic Staff and Competition, also the scanned report on the students’ opinion was attached. By another e-mail, on 13 December 2016, you were sent the scanned certificates prepared by the University departments – a list of scientific publications, a certificate on scientific guidance for doctoral students, a certificate on pedagogical work, a certificate on significant experimental development work. In the same letter we informed that we do not have information on qualifications, participation in seminars, courses, participation in educational activities, reports read at conferences. You can still provide this information by sending scanned certificates by e-mail, by post mail or by registered mail, or by submitting the copies of the certificates to the Human Resources Administration Department <...> until 11 January 2017.

According to the certificates prepared by the University departments, we send you a completed data summary for the attestation.

If you do not provide additional information, the Commission at the meeting will be guided by the certificates prepared by the University departments on your academic activities.” (underlined by us).

The applicant, by the request of 10-01-2017 “Regarding postponement of consideration of personal questions at the time of incapacity for work“, addressed to the Rector of the KTU, informed that from 8 December 2016 to 13 January 2017 inclusive he has an incapacity for work, and expressed his will and legitimate interest that none of the personal questions, for example, regarding the extraordinary attestation, etc., would not be substantially considered while he is sick and does not have the possibility to participate.

The minutes state that UADAKK “<...> assessed the [applicant's] compliance with the attestation requirements for 4.5 years and during the extraordinary attestation adopted the decision not to attest <...>“. The part of the minutes on the applicant’s compliance with the minimum requirements for the position states that the applicant does not meet the following Clauses of the Description of the Procedure of Attestation and Competitions for Positions of Lecturers and Researchers, approved by the Resolution No. 64 of the Senate of 16 December 2009, “established for a five-year cadence“ (underlined by us): 1) 4.1.2. prepared and published study literature and other methodological tools; 2) 4.1.3. participated in the expert and (or) project activities; 3) 4.2.1. carried out the research and experimental development projects and led them; 4) 4.3. improved qualification and participated in educational activities. “<...> the decision on extraordinary attestation is taken by open vote“. “Voting results: “For” - 11 [members of the Commission], “Abstained” - 1 [member of the Commission]”.

Attention is drawn to the fact that the part of the minutes on the applicant’s compliance with the requirement to improve qualifications and participate in educational activities states that “According to Clause 23 of the “Provisions for Qualification Upgrade of the Employees of the Kaunas University of Technology”, approved by the Order No.A-8 of the Rector of the Kaunas University of Technology of 10 January 2005, the employee must submit documents evidencing qualification improvement. No information has been received about the [applicant's] qualification improvement or the educational activities. <...>.“ (underlined by us). The minutes indicate that the applicant does not meet this requirement.

The Certificate of the Study Organization Department of the Kaunas University of Technology of 12-01-2017 “About courses in the virtual learning environment” No. V22-SP20-1 indicates that on the applicant’s “<...> behalf, there was not a single electronic course created in the virtual learning environment “Moodle” of the Kaunas University of Technology.”

The letter No. DV17-2123-218 of E-learning Technologies Center of the Information Technology Department of the Kaunas University of Technology of 06-01-2017 indicates that the applicant “<...> has not uploaded any learning material and has not carried out any activities since 17 September 2015.”

The letter No. V22-1250-27 of the Public Policy and Administration Institute of the Faculty of Social Sciences, Humanities and Arts of Kaunas University of Technology of 11-01-2017 informs that the applicant “<...> after the attestation of June 2012 within the cadence to 11 January 2017 has not published methodological tools or has conducted study projects as a professor at Kaunas University of Technology.”

The Certificate of the Department of Science of the Kaunas University of Technology of 10-01-2017 on the prepared applications for scientific projects (No, 2017/01) states that “<...> the Department of Science has no data on [the applicant’s] <...> prepared applications for scientific projects in which he would carry out the functions of the project manager in the period 2012-2016.”

The applicant, by the e-mail to the Office, as the applicant himself points out, submitted “<...> the certificates evidencing the following: 1) the scientific competence of [the applicant], its recognition in authoritative scientific institutions; 2) the productive [applicant’s] supervision of doctoral students and involvement in doctoral studies. <...>.“: 1) the letter No. 01-04-148 of the Lithuanian Academy of Sciences of 04-01-2017 “On the activities of [the applicant] in the work of the Lithuanian Science Prize Commission“, which states that the said Commission’s

“experts are subject to the highest scientific excellence requirements“; 2) the letter No. 1-21 of Vytautas Magnus University of 11-01-2017 “On the activities of [the applicant] in the work of the doctoral studies committee in the field of sociology science“, which states that the applicant actively participates in the activities of the said committee: “he teaches the subjects of doctoral studies, reviews works, attends doctoral attestations and doctoral dissertation defense boards.“; 3) the Certificate of Participation in Dissertation Defense at Vilnius University of Vilnius University of 19-12-2016 No. 12300-298 and the Orders of the Rector of Vilnius University on the approval of the council for dissertation defense; 4) the Certificate of Participation in Doctoral Dissertation Defense No. 014-11 of Šiauliai University of 22-12-2016, which indicates that the applicant “in 2012-2016 participated in the doctoral activities of Šiauliai University: supervised the doctoral dissertation <...> defended <...> on 16 November 2012; was the advisor for 2 successfully defended <...> doctoral dissertations <...>.” and indicated that “<...> Due to the confidentiality of the procedures, due to the fact that there was no public debate, also due to the fact that the procedures were carried out when I even had an incapacity for work, I could not in any way to enter the relevant indicators of my scholarship to the databases of the KTU. <...>.” (underlined by us).

*Attention is drawn to the position of Kaunas University of Technology when, on the one hand, it is indicated, that “The University has all the information on the activities performed by the person and all the data necessary to objectively assess the compliance of the person with the requirements for his duties at the meeting of the UADAKK”, on the other hand, obliges the applicant to submit additional documents required for the extraordinary attestation (underlined by us).*

*It needs to be noted that in the examination of the circumstances in the complaint on the procedures established in the legal acts of the Kaunas University of Technology, and possible violations of such procedures, in accordance with the competence established Ombudsman in Part 1 of Article 17 of the Law on Science and Studies of the Republic of Lithuania, the Ombudsman has no powers to evaluate them and to take a decision thereon.*

*Taking into account the circumstances specified by the Kaunas University of technology that “The has all the information necessary to objectively assess the compliance of the person with the minimum requirements for his duties”, that, as specified in other letter of the KTU, on the applicant’s compliance with the requirement to improve qualifications and participate in educational activities “According to Clause 23 of the “Provisions for Qualification Upgrade of the Employees of the Kaunas University of Technology”, approved by the Order No.A-8 of the Rector of the Kaunas University of Technology of 10 January 2005, the employee must submit documents evidencing qualification improvement, that the applicant did not submit the data necessary for the objective assessment of the compliance of the person with the minimum requirements for his duties because of his incapability for work, and in accordance with Clause 3.7.2. of the Code of Academic Ethics of the Kaunas University of Technology, there can be stated the objection to the principle of mutual relations between the ethical community enshrined in Clause 3.7 of the Code of Academic Ethics of the KTU due to the inaction of the Rector of the Kaunas University of Technology Petras Baršauskas, by which there was tolerated the behavior of the Commission of the University Attestation of*

*Academic Staff and Competition related to the organization and execution of the extraordinary attestation during the period of the applicant's temporary incapacity for work and violating the applicant's rights to provide the data necessary for the extraordinary attestation and to be objectively assessed.*

By the letter No. DV-10-119 of 20-02-2017 "Regarding the submission of the information", the Director of Human Resources of the KTU submitted the copy of the extract of the minutes No. PV3-9280-1 of the meeting of UADAKK of 12-01-2017. The extract of the minutes did not indicate the composition of the Commission, the list of the members of the Commission was not submitted to the Ombudsman. The number of the members of the Commission is 12, 11 of which at voting supported the proposal not to attest, 1 of which abstained.

*Taking into account the fact that the extraordinary attestation conducted for the applicant at the Kaunas University of technology was not justified, that proportionate reduction of job requirements has been applied, the minutes of the meeting of the Commission of the University Attestation of Academic Staff and Competition states that "[extra]ordinary attestation is conducted for 4.5 years", however, the non-compliance with the minimum requirements in the attestation include the activities, the compliance of which is related to the 5 year cadence, it can be stated that the Commission of the University Attestation of Academic Staff and Competition violated the principle of academic freedom and responsibility established in Clause 3.3.3 of the Code of Academic Ethics of the KTU in that part which states that the principle of academic freedom and responsibility is in conflict with "<...> deliberate dissemination of inaccurate information (untruth), non-objectivity", and the principle of the relationship of the ethical community established in Clause 3.5. in that part which states that "the members of the University community shall not discriminate <...>, by actions or by academic assessment <...>".*

*In view of the previously established violations of the academic ethics of UADAK and in accordance with Article 29 of the Law on Science and Studies, which provides that "<...> the Rector <...> is a sole authority of a higher education school acting on its behalf and representing it", and Part 4 of Article 60 which states that "the academic community exercises academic freedom and follows the Code of Academic Ethics <...>", it can be stated that the Rector of the Kaunas University of Technology Petras Baršaukas had violated the principle of academic freedom established in Clause 2 of Article 4 of the Law on Science and Studies due to his inaction, by which there was tolerated the attestation at the meeting of UADAKK in violation of the provisions of the Code of Academic Ethics of the KTU.*

*The Ombudsman, according to his competence, did not evaluate the legality of the actions, decisions of the Kaunas University of Technology on the organization and execution of the extraordinary attestation, the termination of the employment contract with the applicant at the time of his (applicant's) incapacity of work, and forwarded the collected information in accordance with his competence to the State Labour Inspectorate of the Republic of Lithuania under the Ministry of Social Security and Labour. Upon receipt of the conclusions of the*

***Labour Inspectorate and having assessed them, the Ombudsman will decide on conducting an investigation in the above-mentioned circumstances.***

After the analysis and evaluation of the provided information and its supporting documents as well as the legal regulation, and in accordance with Paragraph 1 of Part 12 of Article 17 of the Law on Higher Education and Research of the Republic of Lithuania, the principles of reasonableness and publicity, the Ombudsman,

**decided:**

To inform the applicant, the Kaunas University of Technology and the Ministry of Education and Science of the Republic of Lithuania about Violations of academic ethics by the Rector of the Kaunas University of Technology P. Baršauskas and the Commission of the University Attestation of Academic Staff and Competition.

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