



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

DECISION REGARDING THE COMPLAINT OF KAZIMIERAS SIMONAVIČIUS UNIVERSITY OF 12 APRIL 2017

26 September 2017, No. SP-21

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 Science and Studies 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 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 the Kazimieras Simonavičius University (hereinafter - the KSU of the applicant) received in the Office of the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania (hereinafter - the Office) on 18 April 2017 regarding possible violations of the academic ethics and procedures of D. P.,

determined:

The applicant addressed to the Ombudsman stating in his complaint that “the actions of [the Institute’s] senior researcher [D. P.] on the indication of the unlawful institutional assignment in the publication [to the Institute]: [the Monograph] ([Publisher], 2016) and [the Institute’s] unjustified refusal to respond to the circumstances of the unlawful institutional assignment and to take all necessary steps to remove the unlawful situation.“¹

The applicant also indicated that “[D. P.] refuses to take any actions to remove this misunderstanding, [therefore] in order to resolve this misunderstanding peacefully, on 18 January 2017 we addressed to the [Institute’s] management for the solution of this situation <...>, requesting a written declaration from the [Institute] that the institutional assignment is linked only to [the KSU], despite the fact that the publication states otherwise. This declaration would only be used in institutional assessments and would not affect the good reputation of institutions in any way.” (underlined by us).

“On 20 January 2017, [the applicant received] [the Institute’s] response <...> that [the Institute] does not possess the agreements concluded [by D. P.] and cannot assess the validity of the request submitted by [the applicant] <...>. On 3 March 2017, [the applicant] indicated in his response [to the Institute] that [Monograph] <...> is the result of the project <...> carried out by [the applicant].

¹ Here and further in the text cited language is unedited.

[The applicant], as the project promoter, has submitted the final report on the project to the institutions that funded the project <...>.”

The applicant also pointed out in his complaint that “[the Institute] did not participate in this project either as a partner or as a project promoter, *and this information should be sufficient in considering the issue on the indication of the institutional assignment of [the Institute’s] in [the Monograph].*” and noted that the persons complained against by their actions “[violated] [the provisions] of Article 9 of the Law on Copyright and Related Rights of the Republic of Lithuania [providing] that an author’s economic rights in a work, other than a computer programme, created by an employee in the execution of his duties or fulfilment of work functions shall be transferred to the employer for the period of 5 years, unless otherwise provided for by an agreement.”

By the letter No. S-207 of 2 May 2017 “Regarding the submission of the information”, the Ombudsman addressed to the Institute requesting “to indicate from when and in what projects the researcher [D. P.] participates [in the Institute], and to submit the confirming documents.”

In the letter No. 580000-S-27-(5800,02) of 8 May 2017, the Institute specified the periods during which D. P. was working in the Institute and enclosed the confirming documents:

“04-06-2004–31-12-2004” in <...> Division (Head of Division - <...>;
 “01-09-2016–15-03-2017” in Sector <...> of Division <...> (Head of Division - <...>;
 From 16-03-2017 until now: in the research group <...> (Head of the Group: <...>).”

The Institute also provided the additional explanations in its letter:

“1) <...>.

2) We would like to inform that no clause of the Code of Ethics of the [Institute] on the part of the Institute was not and could not be violated:

First, if the complaint of the KSU <...> is related to the <...> assignment to the Institute of the published international monograph <...>, at the time of occurrence of this assignment, [D. P.] was not the [Institute’s] employee, therefore, he could not be influenced to do this and his academic freedom could be restrained from the side of the Institute’s heads or his colleagues;

Second, the Institute did not participate and could not participate in solving the affiliation issue of the author as it is the subject matter of the agreement with the publisher of his [Monograph] and exclusively the prerogative of the author of the Work, unless otherwise specified in his contract of employment or his workplace code of academic ethics;

Third, in providing for possible allegations of influence before the recruitment and requiring to indicate the future work place [the Institute] in the assignment, we unequivocally declare that [D. P.] in any case (with or without the assignment) would be recruited into the Institute, because from the very moment of leaving he knew that he was welcome and could return at any time. <...> [D. P.] is a promising, energetic and productive scientist <...>. [D. P.] cooperation with the [Institute’s] researchers has never been interrupted, and this is reflected not only in the information provided on the [Institute’s] website on publications and seminars <...>, it is also well visible on the KSU website, where publications of the KSU employees are published <...>.

3) <...> In the academic world community, there is an unwritten provision that publications or other intellectual works should mention those scientists who not only participated in the creative process, but also presented substantive comments, moved the scientific research in the right direction, proposed essential new ideas, etc. The main author of the work has the right (and even academic duty) to mention the contribution of other persons or institutions, and this is considered an appropriate academic behavior. The KSU submits the complaint on the assignment of [the Monograph] of the

former employee which was published after the expiry of his contract of employment with the previous workplace, in violation of the academic rights of not only [D.P.], but also the members of the [Institute's] community who contributed to the publication of [the Monograph].

4) We believe that the claim of the KSU to the exclusive assignment of [the Monograph] is unjustified because [the Monograph] was not only the result of the implementation of the project of [D. P.]: project funds are usually allocated to researchers who already have a great contribution in the field of research, declared in the application, i.e. for a long time before the project conducted research on a certain topic of research and achieved good results. <...> [D. P.] started working on the topic of [the Monograph] already in our Institute, and later he continued to collaborate with his former colleagues after leaving to another work. <...>.”

By the letter No. S-208 of 2 May 2017 “Regarding the submission of the information”, the Ombudsman addressed to D. P. requesting “to indicate since when have you been working [at the Institute] and in what projects do you participate. To submit confirming documents; to submit explanations, on which basis the institutional affiliation in [the Monograph] was assigned [to the Institute].”

In response to the request, by the letter of 9 May 2017 “Regarding the submission of the information”, D. P. indicated: “<...> was prepared in accordance with the project of the Global Science Grants Program of the Lithuanian Science Council (LMT), funded by EU funds. I was the responsible head of the project, and the Business and Management Academy (later joined to the KSU) was the institution hosting the head. The terms of this project agreement required the consent of a recognized international publisher for the Monograph publishing, but was not obliged to publish it. The Monograph was completely edited and published in the [Publishing House] already after the project was completed and I left the KSU.” (underlined by us).

D. P. also explained to the Ombudsman that “according to the current procedure, a publishing contract can only be signed by a natural person, i.e. the author of the monograph signs the author’s contract with his publisher. <...>. I note that [in the Publishing House] the terms of the book publishing agreement with the author are template, their modification was not desired by the publisher's advance notice, therefore, the claims expressed *post factum* by the KSU heads for not being involved in signing the publishing contract have no grounds.

<...>.

1. It should be noted that the personal moral rights of the author to the Monograph exclusively belong me and I also have the right to write in the additional assignment together with the KSU, if it reflects its significant contribution to the created scientific product <...>.

2. The creation and preparation of the Monograph under the project grant agreement <...> was financed not by the KSU but [LMT] from the EU funds.

3. The scientists [of the Institute] have significantly contributed to the successful completion of the project and the preparation of the book during the project. At the beginning of publishing the Monograph, it was also consulted with [the Publishing House] regarding involvement of [the Professor of the Institute] as a co-author with the assignment of [the Institute], but later I mentioned him as a co-author in the sections of the book and thanks prepared by him. I note that [the Professor of the Institute] has carried out several studies, which are reflected in the Monograph in two sections <...>; in addition, he has contributed significantly to the creation of several models and constructive counseling on a number of problematic issues. [The Professor of the Institute] was not employed at the KSU, but worked at [the Institute]. I note that I started the research on which the Monograph was

based much earlier, while still working at [the Institute]. I actively collaborated on research with my then colleague [the Professor of the Institute], as our areas of interests are very close.

4. The KSU is not capable of conducting world class research, [the KSU] has not doctoral students, there are almost no internal funding opportunities for scientific work and insufficient scientific excellence and qualifications. There was none internal researcher of the KSU with whom I could have been able to do research. I was the only one full-time scientist of the KSU conducting scientific research. Only thanks to the EU-funded project I was able to invite several colleagues from [the Institute], therefore, in the course of research and preparation of the Monograph on their basis, I collaborated a lot with [the Institute's] and foreign scientists. In the course of preparation of the [Monograph], Prof. [J. F. G.] (USA) and Prof. [D. M.] (USA) were involved as the co-authors of the Monograph. For example, Prof. [J. F. G.] prepared all annexes to the Monograph <...>, which were very well evaluated even by several monograph reviewers of the international level. That is why together with the Publishing House we considered to include him as a co-author, but then the KSU would have even smaller part of the assignment, therefore, in view of the possible interests of the KSU, I changed the structure of the monograph during the preparation of the publication, <...> and additionally included only the assignment of [the Institute] because the contribution of the [Institute's] scientists was the most important. <...> I think that I did more for the KSU than its leaders could have expected, taking into account who and what role played in the preparation of the Monograph.

5. As the main author of the Monograph, I feel obliged to name the [Institute], which formed my competence for doing this work: here I obtained two higher education diplomas, I defended my doctoral dissertation, I started working as a lecturer. In 2004 I worked at <...> [the Institute]. Academic cooperation with the Institute did not stop even when working in another institution: I was invited and I constantly participated in the seminars organized by the Institute, and I continued my cooperation with scientists working in my area of scientific interests. <...>.

6. The contract for the implementation of the project <...>, under which the Monograph was prepared, was signed while still working at the Management and Business Academy (VVA). <...> I note that my employment relationship with the KSU was governed by the employment contract with the KSU, in which the issues of authorship and assignments were not clearly defined. In addition, I inform that when I refused to sign the KSU employment contract, I was demoted and did not receive the extras that belonged to me under the project of a global grant. I was also warned several times verbally by the Chancellor of the KSU [D. V.] that my research does not have the value for this institution, although the Chancellor of the KSU (and the owner of the KSU) [D. S.] does not even have a doctorate degree required for competent assessment of scientific activity. I was tolerated only because I was conducting a prestigious global grant project that funded my research and under which the KSU gained the scientific products - the assignments full of several scientific publications of international level, organized seminars, released publications, created models and prototypes.

7. <...>.

8. The monograph was completed and published when I was no longer working at the KSU.

9. <...>.

10. I have been working at [the Institute] since 01-09-2016. I believe that a positive decision on my application to employ me at [the Institute] has also been adopted because I have never interrupted by academic relationships with the staff of this [Institute], I have collaborated on research, consulted and was consulted by the scientist of [the Institute].

11. I ask the [Ombudsman] to take into account the fact that in 2013, under the pressure of the Chancellor and the Rector of the KSU, I was offered to sign a new employment agreement with

the KSU in which copyrights, the opportunity to work on the chosen research topic in another academic institution were limited, it was forbidden even to express the opinion on the KSU and so on. <...> I think this shows the attitude of the KSU as not of the University, but as of the company with the narrow private interests, as well as its disregard for academic freedom and ethics. I would like to draw your attention to the fact that when the administration of the KSU did not agree to any amendments to the employment contract, I refused to sign it. Shortly thereafter, my demotion took place <...> and the non-payment of the extras that belonged to me under the global grant agreement (according to the LMT agreement, the administration of the hosting institution was free to approve their payment or not). The Chancellor of the KSU [D. V.] told me verbally that this is done in connection with my refusal to sign the employment agreement unfavorable for me. I would also like to draw your attention to the fact that there were also more former VVA researchers who refused to sign a new employment agreement with the KSU and the employment relationship with them were terminated.

12. <...> When I left the KSU, the server and the software V-lab system contained therein was turned down after a while and was not accessible to me or to readers of [the Monograph] and a dozen other high-level scientific publications that featured WEB links. <...> The virtual laboratory was installed on a server that was purchased for the EU funds under the project. <...> under the global grant agreement, the project works must be continued for a certain period of time and their results continue to be promoted after the completion of the contract, but the server purchased under the project funds has been disconnected for several months and the virtual laboratory is not a publicly accessible <...>. KSU does not care and disregard the embedded work and the efficient use of the EU funds <...>. I have been contacting the IT Administrator of the KSU several times to restart the server and the V-lab <...> [The KSU] did not do this, so I had to ask the colleagues from [the Institute] for help with the restoration of the V-lab system (all the requisites of the KSU remained) already on ([Institute's]) server. <...> I would like to draw your attention to the fact that it was [the Institute] that helped to restore the created scientific product, not the KSU, indicating incompetence, a purely formal, discarded attitude of the Heads of the KSU towards scientific academic activities.

<...> I would like to emphasize that the desire of the KSU to claim the only Monograph affiliation is understandable: they are concerned about higher indicators of the KSU scientific activity evaluation at the LMT. However, the presentation of assignments only to the KSU in the Monograph would only undermine academic ethics, as it would not indicate the institution that contributed the greatest scientific input to my work - [the Institute]." (underlined by us).

The Ombudsman, having regard to the Institute's publishing regulations, stating that "the assessment of the manuscript if required for the publications the authors of which seek the assignment "[the Institute]" and the publishing of which is not sponsored by [the Institute]", by the letter No. S-317 of 7 July 2017 "Regarding the submission of the additional information", addressed to D. P. requesting "to indicate whether the assessment of the manuscript of [the Monograph] <...> was carried out, and to submit the confirming documents".

In response to the said letter of the Ombudsman, by the letter No. 580000-S-52-(5800.02) of 2 August 2017 "Regarding the submission of the additional information", D. P. together with [the Institute] indicated the as follows: "<...> The extent to which [the Institute] implements the publishing regulations of [the Institute] mentioned in the Letter and that are not currently relevant due to their age is the prerogative of the Heads of [the Institute]. <...> The current regulations are applied in accordance with the principle of reasonableness: in the context of the issue under consideration, an appropriate solution is chosen by abandoning excessive procedures. <...>" and noted that "The

decision on the assignment of the [Monograph's] manuscript to [the Institute] was considered and adopted by the Heads of [the Institute] since: <...> The cost of publishing the monograph was covered by <...> [the publishing house]. The manuscript assessment was performed by <...> [the Publishing House] having prestige in the world of science: <...>. The requirements of publishing regulations for the assessment of manuscripts and the approval of the assignment at the Board are necessary not for the implementation of the principles of academic ethics but for the preservation of the [Institute's] prestige of science. The fact that <...> the publishing house agreed to publish the Monograph is more than a sufficient proof of the quality of scientific production, <...>.” (underlined by us).

By the letter No. S-356 of 24 August 2017 “Regarding the submission of additional information”, the Ombudsman addressed to the KSU requesting to submit the agreement with the Lithuanian Science Council (hereinafter - the LMT) under which the development of the project carried out by the KSU was financed. In response to the request, the KSU submitted the requested agreement.

By the letter No. S-381 of 14 September 2017 “Regarding the submission of additional information”, the Ombudsman addressed to the KSU requesting to submit the internal documents regulating the protection of intellectual property, the procedure for granting assignments and documents confirming that D. P. was acquainted with these documents. On 18 September 2017, the Ombudsman received the cover letter No. 10 of the KSU of 15 September 2017 “Regarding the submission of additional information” and the accompanying document - the internal rules on commercial, knowledge and technology transfer, intellectual property management of results of the KSU MTEP. Given the fact that the KSU provided only internal rules for the management of intellectual property, by the letter No. 389 of 20 September 2017 “Regarding the clarification of the information” repeatedly addressed to the KSU requesting to submit the internal legal documents regulating the procedure of assignments and the documents confirming that D. P. was acquainted with the legal acts of the KSU regulating intellectual protection and assignments.

By the letter No. 20 of 25 September 2017 “Regarding the clarification of the information”, the KSU indicated that “the project management contract was concluded with [D. P.] on the creation of the disputed object in which issues of intellectual property rights have been discussed and which was confirmed by the signature of [D. P.]. Also as a project manager, [D. P.] was obliged and objectively to have known all the provisions governing the project activity, enshrined in the project documents and in the internal legal acts [of the KSU]. Repeatedly, we note that [the Institute] was not included in the list of participants in the project, so that, without the consent of the [KSU], it could not have been given the assignment of the disputed object.”

In accordance with the competence established for the Ombudsman in Part 1 of Article 17 of the Law on Higher education and Research, the Ombudsman cannot assess the circumstances related to the copyright and therefore does not have the authority to make a decision. However, taking into account the fact that the Lithuanian science and study policy guarantees the quality of science and studies, cares about the conformity of the science and studies system with the needs of society and economy, supports its openness and integration into the international research and higher education area, the Ombudsman, as one of the entities implementing the science and studies policy, in the performance of the tasks entrusted to him, must contribute to the quality assurance and improvement of the quality of science and studies, and therefore he will examine and assess the validity of the assignment as a matter of academic ethics, also taking into account the copyright

to the work established in the Republic of Lithuania Law on Copyright and Related Rights (hereafter - the ATGTI).

Considering the fact that the KSU did not provide the internal rules governing the procedure, conditions, etc. of granting assignment, it can be concluded that the documents mentioned by the KSU are not approved.

The ATGTI establishes copyrights for scientific works, copyright objects, which include written scientific works (monographs, scientific projects, design documentation, etc.). Article 9 of the said law governs copyright in works created in the execution of his duties or fulfilment of work functions, namely: 1. The author of a work created in the execution of his duties or fulfilment of work functions shall be a natural person or a group of natural persons who have created that work. 2. An author's economic rights in a work, other than a computer programme, created by an employee in the execution of his duties or fulfilment of work functions shall be transferred to the employer for the period of 5 years, unless otherwise provided for by an agreement. Thus, the law establishes the presumption of the transfer of property rights. The said part of Article of the Law provides for the necessary conditions for the transfer of property rights, that is: an employment relationship must be formed between the employee and the employer, and the work must be created in the execution of duties or fulfilment of work functions.

The Preamble to the Law on Science and Studies states that Lithuanian science and studies policy supports the openness and integration of the science and study system in the international research and higher education area.

The European Commission's recommendations on the European Charter for Researchers of 11 March 2005 and on the Code of Conduct for the Recruitment of Researchers states that "all forms of mobility should be promoted as a comprehensive human resources policy in the field of [research and development] at national, regional and institutional levels". The Charter, approved by the said recommendations, recognizes "the value of all forms of mobility as a tool for the professional development of researchers", i.e.: "employers and (or) funders must recognize the value <...> of intersectoral, interdisciplinary and virtual mobility, <...> as an important mean of promoting scientific knowledge and professional development at all stages of the career of a scientist. Therefore, they should include such options in a specific career development strategy for researchers and fully evaluate and recognize all mobility experience in their career assessment and (or) evaluation system." The Charter also states that "employers and (or) funders should ensure that all researchers at all stages of their career benefit from the use of the results of their [research and development] (if used) on the basis of legal protection, in particular adequate protection of intellectual property rights, including copyright." (underlined by us).

Clause 5.1.7 of the methodology of scientific (art) work evaluation by the institutions of science and studies approved by the Order No. V-1128 of the Minister of Education and Science of the Republic of Lithuania of 10 July 2010 "On the methodology of scientific (art) work evaluation by the institutions of science and studies" states that the assignment is the *assignment* of the author (s) to the institution indicated in the scientific work, presentation of the work of art or its performance or in the declaration of the scientific (art) works.

It should be noted that the assignment is related to certain purposes, for example: the assignments may aim to promote the name of the institution in a global society; the assignments provide researchers with access to institutional services, and so on. It should be noted that the meaning of the concept of assignment is to be interpreted in the context of the evaluation of scientific activities,

i.e. the following may depend on the assignment: 1) the rating of the institution of science and studies at the international level; 2) the rating of the science and studies institution at the national level in the LMT; 3) attestation of researchers in the institutions with which the researcher is bound by the employment contract relations, etc. Consequently, it is necessary to give proper consideration to the freedom to subscribe and the right to demand assignment.

Therefore, when assessing the validity of a specific assignment, it is necessary to take into account other aspects of the relationship between the researcher and the institution of science and studies: 1) the material basis for scientific activity; 2) cooperation and advisory activities; 3) the biographical relationship between the researcher and the institutions that help to form the ideas of the author, etc.

In the present case, it was found that, on 24 March 2011, the Business and Management Academy (hereinafter - the VVA) concluded the contract with the LMT, which provided funding for the project from the EU funds (hereinafter - the Project Financing Agreement). By the Order No. V-182 of the LMT of 9 May 2013 “On the modification of the project financing and administration contract” the project promoter was changed “from the Business and Management Academy, UAB to Kazimieras Simonavičius University, UAB”. In accordance with the terms of the said contract, for the implementation of the Project activities, the VVA concluded the employment agreement with D. P.

From the information provided, it is established that D. P. worked in the VVA (later respectively - the KSU) from 1 September 2003 to 31 March 2011 (1.0 of full time) and from 1 April 2011 to 31 May 2016 (0.5 of full time). From 1 April 2011 to 30 November 2015 D. P. worked as a head of the research in the project funded by the European Union funds, a senior researcher (1.0 of full time) in accordance with the employment agreement No. 123 of 1 April 2011, which was concluded on a timely basis, in accordance with the terms of financing and administration of a project funded by the European Union funds and linked to the implementation of the activities of the Project. Clause 1.2 of the aforementioned contract provides that D. P. “is employed for full time as a head of the research project manager, a senior research worker whose job functions are the following: project management in accordance with the guidelines provided in the Project application, including fundamental research, in order to achieve the expected results (preparation of articles, conference materials, simulation platforms and monographs, etc.). Paragraph 1 of Article 6.193 of the Civil Code of the Republic of Lithuania stipulates that contracts must be interpreted in a fair manner, thus, in interpreting the contract, the actual intentions of the contracting parties must be examined first, and not merely based on a literal interpretation of the text of the contract. In the said employment contract, the parties agreed, first of all, on management for the project by D. P. Under the LMT Global Grant Program, it was committed to obtaining permission for publication from a prestigious foreign publisher.

The Report on the Implementation of the Research (No. G-272 of 10 May 2017, Annex 2) shows not only that “the project agreement provides for consent for the publication of the monograph from a prestigious foreign science publishing house”, but also that “the monograph in the reporting period has been substantially supplemented: some sections have been expanded, new sections have appeared. <...> obtained sufficiently good review assessments of the world-class experts <...>. The monograph, according to the comments of the reviewers, is being prepared for publication in the prestigious scientific [Publishing House] <...>. “ (underlined by us).

D. P. in his explanations (No. S-208 of 2 May 2017, Annex 3) indicated that ‘as the main author of the Monograph, I feel obliged to name the [Institute], which formed my competence for doing this work: here I obtained two higher education diplomas, I defended my doctoral dissertation, I started working as a lecturer’. In the present case, it was determined that, in 2003, D. P. was awarded a degree in sciences and started a researcher career in a particular field of research. From 2003 to 2016 D.P. worked at the KSU, constantly prepared scientific publications. However, attention is drawn to the fact that the KSU presents a list of scientific publications on its website, which shows that the KSU should have known that D. P. was preparing publications together with other contributors, including the Institute’s staff.

It needs to be noted that Article 2.2.23 of the Project Financing Agreement stipulates that the promoter undertakes “upon receipt of income, <...> not taken into account in determining the maximum <...> amount of costs eligible to declare and (or) the maximum amount of eligible project financing, to inform the General Grant Manager about such income by submitting <...> the report on completion of the project and return it to the state budget”, therefore, the financing of the project from the LMT is not related to financial gain, and Article 9 of the ATGTI presumes the transfer of property rights associated with financial gain. (underlined by us).

Attention is also drawn to the Institute’s observations (No. G-269, 9 May 2017) which state that the monograph “was not only the result of the implementation of the project of [D. P.]: project funds are usually allocated to researchers who already have a great contribution in the field of research, declared in the application, i.e. for a long time before the project conducted research on a certain topic of research and achieved good results.” The foregoing, in essence, is not in conflict with the legal acts: according to Clause 6.1 of the General Rules for the Competitive Financing of Science and Dissemination Projects of the Lithuanian Science Council approved by the resolution No. VIII-26 of the Lithuanian Science Council of 27 October 2014 “On Approval of the General Rules for the Competitive Financing of Science and Dissemination Projects of the Lithuanian Science Council”, the executing authority must ensure that the promoters are recruited only to those posts the minimum qualification requirements of which <...> they meet”. D. P. was employed as the Chief Researcher of the KSU, therefore, in accordance with the minimum qualification requirements for researcher posts of the scientific and research institutions, the highest requirements were imposed on him. The LMT’s invitation for proposals for research funding states that LMT invites “high-level researchers to apply for research funding <...>”. The invitation also indicates that “the global grants measure supports the following activities: Scientific research carried out at the higher education institutions of Lithuania by scientists and other researchers of high (international) level.” The description of the measure states that the aim of the measure is “to promote research and mobility of the international level of experienced and young scientists, thus attracting high-level researchers to the Lithuanian research area, strengthening its competitiveness in the world” (underlined by us).

In the context of the present case, it should also be noted that the information provided by D. P. shows that “the project funds were used for acquiring a server with the created V-lab simulation system <...>”. In one of the e-mails sent to the Administration of the KSU on 17 May 2016 (No. G-272, 10 May 2017, Annex 12), D. P. notes that “Due to the lack of competence, nobody will properly maintain this system and administrate the web sites created at the KSU <...>, so please leave me administrative access to the resources of this server. Otherwise, the work of the project of a global grant supported by the Council of Sciences will eventually fail”. From the explanations provided by D. P. to the Ombudsman and the enclosed correspondence with the KSU Information Systems Administrator, it appears that the virtual laboratory did not operate. D. P. addressed the KSU

Information Systems Administrator in order to restore the operation of the system, who, in response to the request, wrote in the e-mail of 23 February 2017: “<...> Unfortunately, [N] is no longer working. Currently I administer all the economy [of the information technologies], nobody could explain why this strange server was needed, the KSU moved to other premises, changed all the equipment and IP addresses. The server is turned off for quite a long time.” D. P., by the e-mails of 1 March 2017, 9 March 2017, repeatedly addressed to the KSU. By the e-mail of 9 March 2017, the KSU Information Systems Administrator informed D. P. indicating the following: “<...> I do not have time for the server now, there are other more important works now.” By the e-mail of 18 April 2017, D. P. addressed to the KSU Information Systems Administrator requesting to make “the redirection to [the Institute], where we launched the system on another server. <...>.” (underlined by us)

It needs to be noted that the presumption of the employer’s property rights enshrined in Part 2 of Article 9 of the ATGTĮ is related to property rights, thus the financial benefit to the employer, while the Project Financing Agreement relates to the promotion of research and mobility of experienced and young scientists at international level, strengthening of competitiveness in the world, but not financial gain for the project promoter.

In the case under consideration, the historical link between D. P. and the Institute, the constant cooperation with this scientific institution, as well as the contribution of the Institute’s staff to the Monograph, is to be emphasized. According to the project, it was only intended to obtain consent for publication from a prestigious foreign publisher, while the Monograph was released in 2016, that is, when D. P. no longer worked at the KSU. It should also be noted that the Monograph is the result of a long-term work of D. P., as of a researcher, and the Charter seeks to ensure that “all researchers at all stages of their career benefit from the use of the results of their [research and development] (if used) on the basis of legal protection, in particular adequate protection of intellectual property rights, including copyright.”

In view of the foregoing, it must be understood that the assignment cannot be associated only with the financial support and relations arising from a contract of employment.

In this context, one can also notice the different approaches of the KSU and D. P. to scientific activity. The objective of the science and studies institution to be the sole holder of the assignment of the Monograph and to obtain the highest possible assessment of D. P. scientific production for the LMT is incompatible with the principles of justice, integrity, academic freedom, cooperation of members of the academic community, and with the Lithuanian Science and Studies Policy published in the preamble to the Law on Science and Studies that ensures the quality of science and studies, integration into the international research and higher education area.

The Ombudsman negatively assesses any attempts by science and study institutions to restrict scientific contacts with both international and national institutions. In the times of global society, mobility and academic freedom of scientists must be ensured. Scientific mobility is essential in order to ensure the quality of science and competitiveness in the world.

After the analysis and evaluation of the submitted documents, legal regulation and in accordance with Paragraph 8 of Part 11 of Article 17 of the Law on Higher Education and Research of the Republic of Lithuania, the Ombudsman

decided:

to recognize the complaint as unjustified.

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