



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

**DECISION  
ON VIOLATIONS OF ACADEMIC ETHICS COMMITTED BY PROF. DR. JOLANTA  
ZABARSKAITĖ FROM THE INSTITUTE OF THE LITHUANIAN LANGUAGE**

28 November 2017 No. SP-24  
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 (hereinafter - the Law) and with Subparagraph 1 of Paragraph 13 of the Statute of the Office of the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania (hereinafter - the Statute), 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“ of the Seimas of the Republic of Lithuania, examined the complaint (hereinafter - the complaint) of the applicant Ž. 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 17 February 2017 regarding possible violations of academic ethics of the employee of the Institute of the Lithuanian Language (hereinafter - the LKI) (hereinafter - the employee of the LKI<sup>2</sup>) and the provided material. The Ombudsman, in accordance with Paragraph 1 of Part 11 of Article 17 of the Law , on 19 May 2017, adopted the decision No. SP-14 “Regarding the complaint of Ž. M. of 14 February 2017” (hereinafter - the Decision). On 19 June 2017, the applicant appealed against the decision to the Chief Administrative Disputes Commission (hereinafter - the Disputes Commission), composed of Vytautas Kurpuvesas (chairperson of the commission), Vaidas Milius and Zita Smirnovienė (speaker). By the decision No. 3R-204 (AG-161/04-2017) of 18 July 2017, the Disputes Commission annulled the decision of the Ombudsman and obliged him to re-examine the complaint. The Ombudsman, having regard to the decision of the Disputes Commission and the newly discovered circumstances, re-examined the complaint.

**The Ombudsman determined the following in the Decision of 19 May 2017:**

The applicant complains 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]<sup>3</sup> 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

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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> “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.

<sup>3</sup> Here and hereinafter in the square brackets - the comments of the Office.

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 [the Science Council of the LKI] approves non-periodical publications published on behalf of the Institute <...>. It should be noted that the LKI MT 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 [LEI-15184] 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] <...>, 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.”<sup>4</sup>

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. [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 [he] 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.”

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*), in which the employee of LMT was entered.

*It needs to be noted that the Ombudsman assesses the circumstances of the complaint and adopts the decision in accordance with the competence established in Article 17 of the Law on Higher*

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<sup>4</sup> The language quoted here and hereinafter in the decision is unedited.

*Education and Science, therefore, he did not assess the procedures established in the internal legal acts of the LKI, the possible violations of the provisions of the Law on Public Procurement of the Republic of Lithuania, and the actions of the Lithuanian Science Council (hereinafter - the LMT) and the employees of the LMT.*

By the letter No. S-82 of 22 February 2017 “Regarding the submission of the information”, the Ombudsman 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*).

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

- 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 Scientific 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.

By the letter No. S-230 of 11 May 2017 “Regarding the submission of the information”, 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 “Regarding the submission of the information”, 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-5 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.” It should be noted that the Partnership Agreement was signed by the Director of the LKI Jolanta Zabarskaitė on behalf of the LKI.

By the letter No. S-231 of 11 May 2017 “Regarding the submission of the information”, the Ombudsman addressed to the LMT, requesting:

“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 “Regarding the information on the application reg. No. LEI-15184“ (hereinafter – the letter No. 4S-529), 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.”

By the letter No. S-232 of 11 May 2017 “Regarding the submission of the information”, 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].”

In the Decision of 19 May 2017, the Ombudsman indicated that he “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.”

#### **Regarding the statements of the Disputes Commission:**

The Disputes Commission in its decision states that in the decision of the Office “there is no conclusion as to whether [the LKI employee] has [issued] the publication subject to the complaint and [by publishing], in respect of violation of publishing procedure (if any) <...> did not violate the norms of Code of Academic Ethics of [the LKI]”.

It should be noted that the Ombudsman, in accordance with the competence established in the Law on Higher Education and Research, cannot examine and evaluate possible violations of procedures established in non-institutional codes of academic ethics, and therefore he did not evaluate the compliance of the procedure for publishing the publication with the provisions of the Regulation of the Science Council of the LKI or other internal legal acts.

*Attention is drawn to the fact that according to Part 1 of Article 18 of the Law on Education and Studies of the Republic of Lithuania, in force until 1 January 2017, which establishes that “the Ombudsman for Academic Ethics and Procedures <...> is a public official who examines complaints and initiates investigations on violations of academic ethics and procedures”, the Ombudsman has been mandated to examine complaints and initiate investigations on violations of all procedures, i.e. not only the procedures that are established in the codes of academic ethics of science and study institutions. Pursuant to Part 1 of Article 17 of the Law on Higher Education and Science in force since 1 January 2017 “the Ombudsman for Academic Ethics and Procedures <...> s a state official who examines complaints, reports and conducts 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.”*

Part 11 of the Law on Higher Education and Research also establishes what decisions the Ombudsman may adopt after examining a complaint (report) or after conducting an investigation:

”1) to inform the applicant, the institutions of science and studies and the Ministry of Education and Science about persons who have committed violations of academic ethics and procedures;

2) to oblige the institution that has awarded the higher education qualification and / or conducting the competition for a position to withdraw the decision awarding the higher education qualification and / or the winner of the competition;

3) to recommend to the science and study institutions to revoke the decision based on the documents governing academic ethics and procedures;

4) to recommend the employee to refuse to participate in the ongoing research and experimental development project;

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

6) to inform law enforcement authorities if the signs of a criminal offense are identified;

7) to apply to the court if the obligation by the Ombudsman specified in clause 2 of this part is not fulfilled;

8) to recognize the complaint (report) as unjustified;

9) to terminate the examination of the complaint (report) or the investigation.”

It should be noted that Part 1 of Article 7 of the Law on Administrative Disputes of the Republic of Lithuania stipulates that the Disputes Commission “examines complaints (applications) concerning the legality of individual administrative acts and actions (inaction) adopted by central state administration bodies as well as the delay by such bodies to carry out actions assigned to their competence.”

Part 2 of Article 3 of the Law on the Proceedings of Administrative Cases of the Republic of Lithuania “Disputes on the Law” provides that “the court does not assess the disputed legal act and actions (inaction) in terms of political or economic expediency, but merely determines whether the law or other legal act was not violated in a specific case, whether the subject of public administration exceeded the competence, and whether the legal act or action (inaction) was not in conflict with the purposes and tasks for which the institution was established and received the powers“.

According to the decision No. A-602-1249-12 of the Supreme Administrative Court of Lithuania of 26 March 2012, “the subject of legal proceedings in the administrative case is the legality of the decision, i.e. whether the decision was taken without prejudice to the established procedure, whether all measures were taken during it in order to determine the facts necessary for the decision to be taken. The administrative court does not check the validity and expediency of the decision.”

Given the fact that the Disputes Commission “examines complaints (applications) concerning the legality of individual administrative acts and actions (inaction) adopted by central state administration bodies”, it is concluded that when the Disputes Commission is assessing the legality of individual administrative acts and actions (inaction), the relevant provisions of the Law on the Proceedings of Administrative Cases apply.

The Disputes Commission, stating that the Ombudsman’s Decision does not contain any conclusions as to whether the Code of Academic Ethics of the LKI was not violated due to possible violations of the procedure of publishing the publication of the LKI, assessed the content of the Decision, did not take into account the Law on Higher education and Research establishing the competence of the Ombudsman, the case law and other legal acts.

1. The Disputes Commission stated in its decision that “according to Part 4 of Article 23 of the Law on Public Administration, if the public administration body does not have the power to decide on the administrative procedure in relation to the matter raised in the complaint, it no later than within 5 working days forwards a complaint to the public administration body that has the necessary powers and informs the person thereof. Therefore [the Ombudsman, by indicating] that he does not assess some of the actions because it is not within the competence of the Office, he has violated this provision of the law.”

It should be noted that Part 12 of Article 2 of the Law on Public Administration of the Republic of Lithuania provides that “Administrative procedure decision is an administrative decision, the adoption of which ends an administrative procedure”, Part 1 of Article 19 provides that “administrative procedure, according to this law, is mandatory acts performed by the subject of public administration in investigating a complaint on the violation of rights or legal interests of the person indicated in the complaint possibly committed by the actions, omissions of the subject of public administration and by adopting an administrative procedure decision thereon.“ In this case, when making a decision, the Ombudsman assessed and examined the actions of the LKI, which is not a subject of public administration<sup>5</sup>, therefore the aforementioned provision of the law cannot be applied to the decision to be made by the Ombudsman.

The Ombudsman applied to the Public Procurement Office (hereinafter - the VPT) for possible violations of the procurement procedure on the same day as the decision was made, i.e. as soon as circumstances of a possible violation became apparent, the evaluation of which does not fall within the competence of the Ombudsman.

2. The Disputes Committee in its decision states that the non-evaluation of unofficial data “is contrary to Point 1) of Clause 13 of the Statute of the Office of the Ombudsman for Academic Ethics and Procedures, according to which the Office has the right to examine the facts on its own initiative”. Clause 13(1) of the Statutes establishes that the Ombudsman “considers the complaints of the applicants and at own initiative carry out the investigations of the actions of natural and legal entities (acts and omissions), which violate or are suspected to violate the academic ethics and procedures, first of all, the principles of academic integrity, academic freedom, impartiality in assessing research, equal rights to participate in competitions, and ethical relations as well as the complaints regarding the abuse of heads of higher education and research institutions and heads of administration of departments in the field of academic ethics and procedures”. Taking into account the comment of the Disputes Commission, the Ombudsman notes that he is not obliged to examine, assess and rely on unofficial and / or anonymous data, and therefore, when examining complaints, he follows the principle of objectivity and decides on his own discretion what data and information are necessary to conduct a thorough and impartial investigation for making a decision.

### **The actions of the Ombudsman after adoption of the Decision of 19 May 2017:**

By the letter No. S-250 of 19 May 2017 “Regarding forwarding the complaint”, the Ombudsman applied to the VPT indicating the circumstances of possible violations of the

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<sup>5</sup> The activities of the organization and execution of studies do not correspond to the definition of the public administration provided by law, and the higher education institution is not the subject of public administration (see the ruling of 5 February 2010 in administrative case No. AS442-37/2010; 2015).

procurement procedure, forwarding the Decision and requesting the decisions taken to be notified to the Office.

In the letter No. 4S-1912 of 15 June 2017 “Decision not to select purchase for evaluation”, the VPT indicated that, in accordance with the Partnership Agreement No. 15LKI-51 of 27 November 2015 (hereinafter - the Partnership Agreement), the Public Institution “Naujasis židinys-Aidai” (*literally: Echoes and New Fireplace-Echoes*) (hereinafter - the Partner) “was engaged in scientific activity in the development of collective monograph, not publishing services, therefore the provisions [of the Law on Public Procurement of the Republic of Lithuania] do not apply to these services”, and informed that “Purchase has not been selected for evaluation”.

By the letter No. S-302 of 4 July 2017 “Regarding the decision not to select purchase for evaluation”, the Ombudsman repeatedly applied to the VPT indicating additionally that “the Public Institution “Naujasis židinys-Aidai” (*literally: Echoes and New Fireplace-Echoes*) committed to publish the Publication, to pay the costs incurred for publishing <...>” (underlined by us) and requesting to “evaluate the specified circumstances and to indicate the reasons for which the provisions of the Law on Public Procurement of the Republic of Lithuania do not apply to the mentioned services.”

By the letter No. 4S-2439 of 2 August 2017 “Request for additional information”, the VPT applied to the Office requesting to “provide explanations and supporting documents to justify the costs incurred by the Contracting Authority [the LKI] according to which the Office of the Ombudsman decides that the contracting authority was required to conduct public procurement of publishing services.”

By the letter No. S-341 of 14 August 2017 “Regarding the request for additional information”, the Ombudsman provided the VPT with the explanation, indicating that:

1) By the letter No. (1.8) S-152 of 15 May 2017 “Regarding the submission of the information”, the LKI indicated to the **Ombudsman** that “the Public Institution “Naujasis židinys - Aidai” (*literally: Echoes and New Fireplace-Echoes*) committed to publish the Publication, to pay the expenses incurred for publication<sup>6</sup>;

2) By the letter No. (1.8) S-188 of 9 June 2017 “Regarding the submission of the information”, the LKI indicated to the **VPT** that “the Public Institution “Naujasis židinys - Aidai” (*literally: Echoes and New Fireplace-Echoes*) was not the entity carrying out the works or providing the services of publishing”;

3) By the letter No. 4S-529, the LMT submitted to the Ombudsman the Targeted Invitation announced on 14 October 2015, in accordance with which the application No. LEI-15184 was submitted. It stated that “legal persons who will carry out (are carrying out) publishing works or services are not considered as partners, their services are purchased in accordance with the provisions of the Law on Public Procurement of the Republic of Lithuania”.

The Ombudsman also indicated that he had applied to the VPT “in order to find out whether the public procurement had been carried out, where it was mandatory to do so pursuant to the circumstances known to the Ombudsman <...> The Ombudsman does not question the risk of the decision [of the VPT] on a such public procurement that may have not even been carried out.”

On 29 September 2017, on its web site at the fourth quarter of the year, the VPT submitted the conclusion of the evaluation of the procurement of the VPT Control Department No. 4S-3039. The documents and explanations evaluated in the above conclusion are related “to the circumstances of publishing the collective monograph <...> [publication according to the application No. LEI-15184

<sup>6</sup> Here and hereinafter – underlined by the Office.

of the LKI]” and the conclusion provided for the LKI’s “decision to purchase the aforementioned monograph publishing services not in accordance with the legal acts governing public procurement procedures”.

The VPT stated that “without carrying out the public procurement procedures for procurement of publishing and printing services for the Publication [publication according to the application No. LEI-15184 of the LKI], the LKI violated the principles of transparency and equal rights enshrined in Part 1 of Article 3 [of the Law on Public Procurement of the Republic of Lithuania, version 02-07-2015–31-12-2015] did not ensure the achievement of the objective of public procurement laid down in Part 2 of Article 3”.

After the evaluation of the information submitted by the applicant, LKI, the employee of the LKI, LMT and VPT, newly discovered circumstances, 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 determined:

***Regarding the personal relations between the employees of the LKI and the LMT***

The Applicant stated in the complaint that the employee of the LKI possibly violated the academic due to the personal relations between him and the employee of the LMT, who also is the member of the editorial office of the Public Institution “Naujasis židinys-Aidai” (literally: Echoes and New Fireplace-Echoes), i.e. Points 6.1, 6.4, 7.3 of the Code of Academic Ethics of the LKI.

The employee of the LKI, who submitted the application No. LEI-15184 to the LMT, confirmed that the employee of the LMT is his spouse<sup>7</sup>. According to the information specified in No. 4S-529 of the LMT, the said employee of the LMT was not assigned the function of participating in administrative and expert evaluation procedures of the applications for funding of publishing. In the same letter, the LMT submitted a list of members of the commission evaluating the applications for funding publications, which, among other applications, also evaluated the application of the LKI, to which the said employee of the LMT was not listed. It is evident from the data presented that the personal relationship of the employee of the LKI with the employee of the LMT did not influence the evaluation of the application of the LKI.

By the letter No. (1.8) S-152 of 15 May 2017 “Regarding the submission of the information”, explaining the circumstances of the conclusion of the Partnership Agreement, the LKI indicated that “as a partner, this entity [the Public institution “Naujasis židinys - Aidai” (*literally: Echoes and New Fireplace-Echoes*)] has been selected as a non-profit publisher with the necessary experience whose main themes are philosophy, theology, religion, history, literary and linguistic issues, art, social sciences, cultural theory, politics.” There is no data on the fact that the employee of the LKI on personal communications applied to his spouse, the employee of the LMT, a member of the editorial office of the Partner, regarding the conclusion of the Partnership Agreement.

Given the fact that the personal relationship of the employee of the LKI with the employee of the LMT did not affect the evaluation of the application of the LKI and the conclusion of the

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<sup>7</sup> “Spouse” in the text of the Ombudsman’s decision is given generally as a noun of masculine gender without linking it to the sex of the applicant.

Partnership Agreement, there are no grounds for finding the violations of academic ethics of the employee of the LKI.

***Regarding publishing the publication under the application No. LEI-15184***

On 14 October 2015, the LMT announced the Target Invitation, which, among other information on the submission of applications, stated that “legal persons who will carry out (are carrying out) publishing works or services are not considered as partners, their services are purchased in accordance with the Law on Public Procurement of the Republic of Lithuania”.

According to the above-mentioned invitation, on 30 November 2015, the employee of the LKI submitted the application No. LEI-15184 to the LKI to receive funding for publishing publications.

The date of publishing the publication specified in the application of the LKI (hereinafter - the publication) is 30 December 2016. This date was corrected by the LKI by the letter No. (1.8) S-371 of 18 October 2016 “Regarding the date of publishing the funded publication” by which the LMT was informed. The said letter of the LKI states that the first volume of the publication will be published on 30 January 2017, the second - on 30 October 2017.

When the Ombudsman, by the letter No. S-230 of 11 May 2017 “Regarding the submission of the information”, requested to submit the documents confirming the order and procurement of works of publishing the publication, the LKI, by the letter No. (1.8) S-152 of 15 May 2017 “Regarding the submission of the information”, explained that “the project [the publication under the application of the LKI] 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“ and that by the Partnership agreement the Public Institution “Naujasis židinys - Aidai” (literally: Echoes and New Fireplace-Echoes) “committed to publish the Publication, to pay the expenses incurred for publication (under copyright and service contracts) (in more detail in Clause 3.2 of the Agreement)“. It should be noted that the Partnership Agreement on behalf of the LKI was signed by Prof. Dr. Jolanta Zabarskaitė, the Director of the LKI. The functions of the Director of the LKI, among other things, are to ensure that the LKI’s “activities comply with the laws of the Republic of Lithuania, the Statute of the Institute and other legal acts” and conclude “agreements with natural and legal persons” on behalf of the LKI<sup>8</sup>.

By the letter No. S-250 of 19 May 2017 “Regarding forwarding the complaint”, the Ombudsman applied to the VPT regarding possible violations of the public procurement procedure of the LKI by publishing the publication under the application No. LEI-15184. In the conclusion of the evaluation of the procurement of the Control Department No. 4S-3039 of 29 September 2017, the VPT stated that the LKI “violated the principles of transparency and equal rights enshrined in Part 1 of Article 3 [of the Law on Public Procurement of the Republic of Lithuania, version 02-07-2015–31-12-2015] did not ensure the achievement of the objective of public procurement laid down in Part 2 of Article 3”. Based on the conclusion of the VPT, the LKI failed to comply with the above public procurement procedures and, at its discretion, choosing the Partner, did not adequately ensure the lowest possible prices for publishing works / services.

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<sup>8</sup> Functions of the director of the LKI [viewed at: <http://lki.lt/prof-dr-jolanta-zabarskaite/#1496343034626-71e9ab2c-8124>].

It should be noted that the LKI concluded the Partnership Agreement on 27 November 2015, and the application No. LEI-15184 was submitted to the LMT on 30 November 2015, but there is no data on the fact that the employee of the LKI, when submitting the application No. LEI-15184, knew about the Partnership Agreement.

Clause 2 of Part 1 of Article 3 of the Law on Higher Education and Research stipulates that “the science is based on <...> [the principle] <...> of the academic ethics, and Part 2 of Article 4, that “Academic ethics is a set of universally recognized values that ensure the transparency, honesty, justice of the science and study process <...> sustainable use of resources”.

***Taking into account the fact that Prof. Dr. Jolanta Zabarskaitė, the Director of the LKI, is responsible for ensuring that the LKI’s activities comply with the laws of the Republic of Lithuania, the Statute of the Institute and other legal acts, signed the Partnership Agreement on behalf of the LKI without organizing of public procurement procedures for procurement of publishing and printing services for the publication and thus not ensuring adequately the lowest possible prices for publishing works / services, irresponsibly and unscrupulously used material resources provided by the LMT, it can be stated that she did not follow the universally recognized values referred to in Part 2 of Article 4 of the Law on Higher Education and Research, which ensure transparency, honesty, justice and sustainable use of resources, and thus violated the principle of academic ethics set out in Clause 2 of Part 1 of Article 3 of the Law on Higher Education and Research.***

Taking into account the circumstances of the complaint, the legal regulation, and in accordance with Clauses 1 and 5 of Part 11 of Article 17 of the Law on Higher Education and Research of the Republic of Lithuania, the Ombudsman

**d e c i d e d:**

To inform the Applicant, the Institute of the Lithuanian Language, the Ministry of Education and Science, and the Science Council of Lithuania about the violations of academic ethics committed by Prof. Dr. Jolanta Zabarskaitė, the Director of the Institute of the Lithuanian Language.

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