



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

**DECISION
REGARDING THE COMPLAINTS OF Ž. M. OF 11 AUGUST 2017 AND I. B. OF 22
AUGUST 2017**

28 November 2017, No. SP-25

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 “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 of 15 September 2011, and after examination of the complaint of Ž. M. (hereinafter - the Applicant 1)¹ of 11 August 2017 and the complaint of I. B. (hereinafter - the Applicant 2) of 22 August 2017 received in the Office of the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania (hereinafter - the Office) regarding possible violations of academic ethics committed by the member of the academic community E. J. Z., which were combined in view of the similarity of the subject-matter of the complaints,

determined:

The Applicant 1 by the complaint of 11 August 2017 and the Applicant 2 by the complaint of 22 August 2017 applied to the Ombudsman requesting to evaluate the actions of E. Z. J. as of the Director of the Institute and the co-author of collective monographs, related to the publication of the collective monograph *A* at the Institute and the publication of the collective monograph *B* and the assignment to the Institute.

In the complaint of 11 August 2017, the Applicant 1 pointed out that one of the two reviewers of the monograph *A*, appointed by the Institute Center, first, together with E. J. Z. belongs to the group of co-authors of the monograph *B* and, secondly, is the colleague of E. J. Z. at the University². Taking into account the relationship between E. J. Z. and one of the reviewers, the Applicant 1 in the complaint expressed doubts about the objectivity of the reviewer: “such a high

¹ “Applicant” 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 applicants.

² E. J. Z. has labor relations with at least two institutions of science and studies: the Institute and the University.

degree of linkage between [E. J. Z.]³ and [one of the reviewers] does not allow to make a presumption that reviewing of [the monograph A] of [E. J. Z.] was objective and impartial.“⁴

The Applicant *I* indicated that E. J. Z. did not report his relationship with the reviewer and did not withdraw from the vote on the issue of publication of monograph A at the Institute Center meeting on 13 February 2017 and in the meeting of the Institute Science Council on 14 February 2017.

The Applicant *I* also noted in the complaint that “before the meeting, the members of the Institute Science Council were not provided with neither reviews for getting acquainted, nor the minutes of the meeting [of the Institute Center], in which the monograph was considered, and the monograph itself was submitted to the members of [the Institute] Science Council only on 08-02-2017 about 2:08 p.m. (<...> only 3 working days before the meeting of the Science Council, during which the members of [the Institute] Science Council did not really have the opportunity to fully get acquainted with the text of the monograph, not to mention the comparison of the text with the content of the reviews).”

In the complaint of 22 august 2017, the Applicant 2 pointed out that the monograph *B* was published as a joint publication of the Institute and the University with a double assignment, but the publication of the monograph *B* was not approved at the Institute science Council as provided for in the internal legal acts of the Institute: “[The Institute] publishes scientific publications in accordance with particularly specific procedure established by [the Institute] Science Council, i.e. when [the Institute] Science Council recognizes the scientific publication as eligible for publishing. Meanwhile, as is evident from the public data, [the Institute] Science Council did not consider and disagreed that the assignment of [the Institute] would be given to the collective monograph [*B*].”

The Applicant 2 pointed out in the complaint that the publication of the monograph *B* was approved at the University, and expressed the doubt of “whether [the University] has sufficient number of scientists [,working in particular area] so that it could objectively, impartially and professionally evaluate the publication of this level. Briefly, whether [the University] did not limit itself to just a formal assessment of the monograph [*B*].”

In the complaint submitted to the Ombudsman, the Applicant *I and the Applicant 2* identically state that the actions of E. J. Z. related to the publication of the two monographs violate the provisions of the Code of Academic Ethics of the Institute, which state that:

- 1) the academic ethics is in conflict with “5.3. restraining academic freedom by using the official position”;
- 2) academic ethics is violated when “6.1. professional competition between colleagues becomes unfair, it is engaged in unfair bargaining, the information intended for individual or all employees is concealed”;
- 3) academic ethics is violated by “10.11.⁵ bias in reviewing scientific works, research projects or their results”.

³ The comments of the Office are given in the square brackets.

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

⁵ The numbering of the provisions of the Code of Academic Ethics indicated in the complaints of the Applicant *I* and the Applicant 2 is not in accordance with the numbering of the provisions of the Code of Academic Ethics of the Institute. Clause 11 of Part 10 of the Code of Academic Ethics of the Institute of 5 May 2011 states: “failure to indicate the people or organizations contributing to scientific activity if it was not agreed”. The provision of the Code of

Applicant 1 and Applicant 2 identically request the Ombudsman “to inform the applicant[s], the institutions of science and studies, and the Ministry of Education and Science about the persons who have committed violations of academic ethics and procedures”, to recommend the repeal of the decisions that violate academic ethics and “to resolve the question of the annulment of the monograph[s] until th[eir] impartial review and subsequent approval at [the Institute Center] and the Science Council is carried out.”

By the letter No. S-355 of 24 August 2017, the Ombudsman applied to the Institute notifying on the complaints about possible violations of academic ethics and requesting to submit the following:

- “1) legal acts governing publishing of publications at [the Institute];
- 2) copies of parts of the collective monograph [A] containing bibliographic data;
- 3) copies of parts of the collective monograph [B] containing bibliographic data;
- 4) the minutes of meetings and decisions to appoint the reviewers of the abovementioned publications;
- 5) the minutes of the meetings of the Institute’s divisions and scientific councils dealing with the issues of publishing of the abovementioned collective monographs;
- 6) the decisions to publish the aforementioned collective monographs, indicating who finances publishing of the publications.”

On 1 September 2017, by the letter No. (1.8) S-282, the Institute submitted the documents requested by the Ombudsman: the copies of the description of the procedure for the approval of publications of the Institute, approved by the Order No. 1 of the Institute Council of 3 February 2004, the procedure for determining the publishing and financing sources of the Institute’s publications, approved by the Order No. BR-16 of the Director of the Institute of 23 November 2016, and the procedure for the distribution of the Institute’s publications approved by the Order No. KT-0.5 of the Director of the Institute of 27 January 2015; the copies of the parts of the monographs containing bibliographic data; the copies of the minutes of meetings of the Institute Center of 25 January 2017 and 13 February 2017 and the minutes of the meeting of the Institute Science Council of 14 February 2017, and the correspondence related to these meetings by e-mail; the copy of the Partnership Agreement between the Institute and the University No. SU-2016-1 of 26 January 2016 related to the monograph B; the copies of the Order of the Director of the Institute No. BR-17 of 30 November 2016 “On the formation of the commission for establishment of publishing and financing resources” and the minutes of the meeting of the commission for establishment of publishing and financing resources of 19 January 2017.

As can be seen from the documents presented, the monograph A was finalized in January-February 2017. The e-mail of 20 January 2017 of the Institute Center sent to the Institute Science Council contained the notification that “[the Institute Center] will have one collective publication of [the group of researchers] headed by ([E. J. Z.] for the approval to print. First of all, we will consider at the [C]enter, therefore, I think that on 6 February (or no later than that week) we will submit the revised/supplemented version of the book and the feedback from reviewers to [the Institute] Science Council as well as the extract from the minutes of [the Institute Center].”

At the meeting of the Institute Center on 25 January 2017, it was noted that the monograph *A* was “already planned in individual scientists’ plans, but it is doubtful whether it would be finalized on time. At present, all the articles have already been written, they are edited, it is requested to consider the prospective reviewers of the publication.” Two reviewers were appointed at suggestions of A. T. and A. G., one of who was the employee of the University R. V.

The letter of the Institute Center of 7 February 2017 to the Institute science Council notified of the following: it would be considered to submit the collective monograph [A] for printing (submitted by [the Institute Center]). Copy of monograph *A* is attached to the letter. On 8 February 2017, the Secretary of the Institute Science Council sent an invitation to the meeting of 14 February 2017 to the members of the Institute Science Council and noted that “I will send the reviews of [the monograph *A*] which will be submitted by reviewers <...>, and the extract from the minutes of the meeting of [the Institute Center].”

On 9 February 2017, the Institute Center repeatedly sent the copy of monograph *A* to the Institute Science Council and added feedback from reviewers. On 9 February 2017, the secretary of the Institute Science Council sent the reviews of the monograph *A* to the members of the Institute Science Council.

On 13 February 2017, the monograph *A* and its reviews were presented at the meeting of the Institute Center and, given that both reviews were positive, it was decided to submit the monograph *A* for approval to print. On 14 February 2017, the monograph *A* was approved for printing by open vote at the meeting of the Institute Science Council. 9 members of the science Council approved the submission for printing, 4 members abstained from voting.

The monograph *B* was published in accordance with the Partnership Agreement No. SU-2016-1 of the Institute and the University of 22 January 2016. By the Agreement, the Institute and the University agreed to cooperate in the preparation of the monograph *B* “on the basis of [joint scientific] research, as well as jointly organized scientific practical conference <...>”.

The Partnership Agreement stipulated that “[1.] The University carries out research activities in the development of the collective monograph: special subject editing, appointment of reviewers, scientific reading of the publication, monograph creation, and also organizes the meetings necessary for discussion of scientific research. [2.] Having obtained the University’s conclusion regarding the scientific conformity of the monograph and its submission for printing, the Institute organizes the monograph printing and publishing works. [3.] During the period of validity of the Agreement, all newly created products, the copyright and other intellectual property rights arising are exclusively owned by those who created the products or have obtained the copyright and other intellectual property rights. The Institute acquires the right to trade publications, to receive income for publications, as well as, if necessary, to repeat the printing.”

The monograph *B* was being finalized in January 2017. At the meeting of the Commission for Establishment of Publishing and Financing resources of the Institution of 19 January 2017, the possibilities of the Institute to finance the printing of the monograph *B* were considered, taking into account the fact that “the Institute is a co-author” and that “the monograph also contains the articles of the Institute’s scientists, they are also included in the individual plans of scientists”. Three of the five members of the Commission approved the financing of the monograph *B* printing, one member disagreed and one member abstained.

On 21 August 2017, the Ombudsman, having regard to the fact that the material provided does not allow to determine the actions of E. J. Z., in considering the issue of publishing the

monograph *A* at the meetings of the Institute, by the letter No. S-390, applied to E. J. Z. requesting the following:

“1) to specify the position (withdrew, abstained or approved) you take when the issue of approval of publishing the monograph [A] was considered by voting in the departments of [the Institute] and at the Science Council (hereinafter - voting);

2) to submit the documents (sound records of the meetings and detailed minutes of the meetings) supporting your actions during voting.”

On 2 October 2017, by the letter No. (1.8) S-326, the Institute pointed out that E. J. Z. abstained in voting on publishing the monograph *A* at the meetings that took place at the Institute, and also noted that “there was no factual or legal reason to withdraw from voting – the publication of the monograph [A] does not have any financial benefit for the authors of the monograph [A]: they prepared it in the performance of their work functions and the salary for working time for the preparation of the monograph [A] was paid out. Revenues from the sale of publications are not received by the authors but by the Institute, therefore, the authors do not have any material or other interest in issues of publishing the publication.”

On 11 November 2017, the Ombudsman, having regard to the fact that, as it can be seen from the information provided in the letter No. (1.8) S-282 of the Institute of 1 September 2017, the second publications of the monographs are published, by the letter No. S-460 applied to E. J. Z. requesting the following:

“1) to indicate when the first publications of the monographs [A] and [B] <...> were published;

2) to explain the differences between the first and second revised publications of the monographs;

3) to indicate whether two publications of the monographs were submitted for assessment (to the Lithuanian Science Council) and to submit the related documents.”

On 13 November 2017, by the letter No. (1.8) S-377, the Institute informed “that the first printings of the monographs were published in February 2017. The differences between the first and second publications of the monographs are that the correction mistakes observed in the text were corrected, also the second publications had hard covers <...>. We also inform that the name of the monograph was refined in the second publication of one of the monographs <...>. At the end of the printing of the first monographs, the printings of the second monographs were published in April - May 2017. <...> [B]oth publications of the monographs were not submitted for assessment to the Lithuanian Science Council.”

The Applicant 1 and the Applicant 2 indicated in the complaints that E. Z. J. hampered the academic freedom of the members of the Institute community by using his official position, concealed information related to the publication of the monographs from the members of the academic community. The complaints are based on comments on possible violations of the procedures for approving the publications of the Institute and on the doubt of the quality of the monographs related to possible violations of the procedures for approving the publications. In the complaints, the Ombudsman is requested “to resolve the question of the annulment of the monograph[s] until th[eir] impartial review and subsequent approval at [the Institute Center] and the Science Council is carried out”, thus dispelling doubts about the quality of the monographs.

It should be noted that, in the public service, individual private and public interests are coordinated, and the impartiality of the decisions made is ensured by the Law of the Republic of Lithuania on the coordination of public and private interests in the state service. Part 1 of Article 11 of the Law provides that “a person who is employed in the public service shall be prohibited from participating in the preparation, consideration or decision-making or otherwise influencing decisions that cause a conflict of interests”. Part 2 of Article 4 of the Law defines a conflict of interest as “a situation in which a person working in the public service, in the performance of his duties or in execution of an order, must make a decision or participate in it, or execute an order that is also related to his private interests.” Part 2 of Article 2 of the Law states that “private interests are personal property or a non-interest of a person (or a person close to him or her) in the public service who may influence decisions in the performance of his / her duties.”

Given that E. J. Z. did not withdraw in voting on publication of his, as the co-author, monograph in the meetings of the Institute Center of 13 February 2017 and of the Institute Science Council of 14 February 2017, the Ombudsman shall forward the information collected in accordance with its competence to the Chief Administrative Ethics Commission.

The description of the procedure for the approval of publications of the Institute, approved by the Order No. 1 of the Director of the Institute of 3 February 2004, is intended to “ensure the scientific quality of the publications of the Institute”. The description of the procedure for the approval of publications of the Institute establishes that:

“3.2. The publication [the monograph] prepared for the press release shall be discussed at the unit of [the Institute] <...>. If the unit decides <...> that the publication is suitable for printing, reviewers are foreseen, reviews are ordered. 3.2.1. All scientific publications must be reviewed by two reviewers. Both must not be the employees of the Institute. The third reviewer is selected if the opinions or reviewers differ. <...> 3.2.4. If the review of the publication is taken care of by other institutions <...>, the findings of the experts of those institutions may be assimilated to the reviews ordered by the Institute. <...> 3.4. According to the comments of the reviewers and the corrected and finalized publication for the press release <...> with the extract from the minutes of the meeting of the unit <...> or the submission of the chief editor <...>, with both reviews and, if necessary, a brief annotation of the publication, the author <... > submits to the Deputy Director for Scientific Matters. <...> 3.5. The Deputy Director for Scientific Matters, having received the prepared publication and the necessary documents, coordinates the date of the approval of the publication at the meeting at the Science Council meeting with the chairperson of the Science Council and the secretary, adds the issue of its approval to the agenda and issues a publication for consideration by the Science Council. <...> 3.6. The members of the Science Council shall be informed at least 7 working days of the convening of the meeting of the Science Council and the approval prescribed therein for publication, and shall get acquainted with this publication and documents (findings of the meeting of the unit or the editorial board, reviews). The Science Council approves the publication for printing. The author of the publication must attend the meeting <...>. If the conclusions of the reviewers are positive, the Science Council, having regard to the opinion of the unit or the editorial board, shall approve the publication for publishing by an open vote by a simple majority of votes of the members of the Science Council participating in the meeting. If there are substantial comments on the content or preparation of the publication, the Science Council may oppose its publication and by its decision to determine a further procedure for approval of this publication.”

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, 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.”

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 the codes of academic ethics of non-academic and educational institutions, and therefore he did not evaluate the compliance of the procedure for publishing the monographs with the description of the procedure for the approval of publications of the Institute or other internal legal acts.

It should also be noted that the Ombudsman, in accordance with the competence established in the Law on Higher Education and Research, has no authority to assess the content of the publications and their quality.

After analyzing and evaluating the information gathered and legal regulation, the Ombudsman determined the following:

E. J. Z. led the work of the group of scientists who wrote the monograph A and was the main promoter of the monograph A. In January-February 2017, the monograph A was prepared and submitted to the Institute Center. The Institute Center informed the Institute Science Council about the final drawing up of the monograph by e-mail sent on 20 January 2017. At the meeting of the Institute Center of 25 January 2017, the reviewers of the monograph A were appointed. The evaluations of the monograph of the reviewers were positive and did not differ. On 7 February 2017, the Institute center submitted the finalized monograph A to the Science Council, and on 9 February 2017, repeatedly sent the monograph A adding the reviews of the monograph. At the meeting of the Institute Center of 13 February 2017, the submission of the monograph A for printing was approved, in addition, it was taken into account that the publication of the monograph A was already foreseen in individual plans of the scientists. At the meeting of the Institute Science Council of 14 February 2014, when considering the issue of publishing the monograph A, the decision was adopted to publish the monograph A. The Institute confirmed that E. J. Z. abstained in voting and “does not have any material or other interest in issues of publishing the publication.” The monograph A was published repeatedly. After more than a half a year after publishing the monograph A, there are no data on deficiencies in the monograph.

The monograph B was developed according to the Partnership Agreement between the Institute and the University, continuing the co-operation between the two institutions of science. Following the University’s research on the development of the monograph, given that the publication of the monograph B was provided for in the individual plans of the Institute’s scientists, at the meeting of the Commission for Establishment of Publishing and Financing resources of the

Institution of 19 January 2017, it was decided to finance the printing and publication of the monograph *B* and the permission with the right to the Institute for the marketing of publications and for income from publications. The monograph *B* was published in February 2017, the second printing was published in April-May 2017 at the end of the first printing, attributing the publication to the two institutions that prepared it.

It should be noted that 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.”

After the analysis and evaluation of the circumstances of the notification and received information and in accordance with Part 1 of Article 17 of the Law on Education and Studies, which establishes that “the Ombudsman for Academic Ethics and Procedures <...> is a public official who examines complaints, reports and conducting investigations at his own initiative on possible violations of academic ethics and procedures that are established in the codes of academic ethics of science and study institutions, the Ombudsman did not determine any violations of the academic ethics and procedures established in the Code of Academic Ethics of the Institute.

After the analysis and evaluation of the provided information and its supporting documents as well as the legal regulation, and in accordance with Clause 8 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 recognize the complaints 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