



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

**DECISION
ON THE TERMINATION OF THE INVESTIGATION INITIATED ON 29 JANUARY 2018**

28 September 2018 No SP-7

Vilnius

Following paragraph 1 of Article 17 of the Republic of Lithuania Law on Higher Education and Research and subparagraph 1 of paragraph 13 of the Statute of the Office of the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania approved by the Resolution No XI-1583 of the Seimas of the Republic of Lithuania of 15 September 2011 “On the Establishment of the Office of the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania and the Approval of the Statute of the Office of the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania” and having examined the complaint of Ž. M. (hereinafter referred to as the “Applicant”)¹ concerning possible violations of academic ethics at the Institute of the Lithuanian Language (hereinafter referred to as the “ILL”) received by the Office of the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania (hereinafter referred to as the “Office”) on 29 January 2018 (hereinafter referred to as the “Complaint”), the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania (hereinafter referred to as the “Ombudsman”)

has determined the following:

The Applicant addressed the Ombudsman specifying the following circumstances in the Complaint:

“both during <...> meeting of the Research Council of the [ILL]² held on 14 <...> February 2017 and later, <...> [after] the conversation with the [employee of the ILL]³, reasonable doubts that the [employee of the ILL] possibly abused his official position by [entering into] transactions of dubious legitimacy with third parties [Public Institution <...>, [the University]] arose. I personally expressed my position that the afore-mentioned transactions are possibly unlawful to [the employee of the ILL] [pointing out] that they should be reversed. [The employee of the ILL] was not pleased with my position and [he] has immediately pointed out to me with a raised voice that “<...> after the afore-mentioned our conversation it will be difficult to work together”. After some time, [the employee of the ILL] [came] to my office and pointed out that “<...> after the afore-mentioned our conversation it would be difficult to work together and [he] recommended to terminate my employment contract with ILL by mutual agreement between the parties”⁴.

¹ For the purposes of the text of the decision of the Ombudsman, the “Applicant” is given a noun of masculine gender without linking it to the sex of the applicant.

² Information of the Office is provided in the square brackets.

³ Data of the legal and natural persons related to the object of the Complaint is sensitive.

⁴ Here and hereinafter the Applicant’s speech is not corrected.

The Applicant in his Complaint has also pointed out that it is necessary “to evaluate all dubious transactions with the Public Institution <...>, [the University] in legal [terms] and notify the Ombudsman for Academic Ethics and Procedures and the Ministry of Education and Science. After our conversation with [the employee of the ILL], the employees of the ILL addressed by me refused to comply with by official requests on the ground that <...> [the employees of the ILL] instructed them not to provide any documents or information <...> without [his] written consent.”

The Applicant has pointed out in the Complaint that he considers such instruction of [the employee of the ILL] to [other] employees of the ILL as unlawful and ungrounded: “evidently[this] is the aim of <...> to evade liability. <...> believe that by [restricting] <...> my <...> rights to receive information and documents from the employees of the ILL without written consent of [the employee of the ILL] [the employee of the ILL] not only violated academic ethics but also infringed my <...> rights and legitimate interests and possibly abused his official position”.

The Applicant has also noted that “the ILL is a national scientific institute which, following the Regulations of [the LHER] and the Articles of Association of [the ILL], is not entitled to carry out undergraduate and graduate studies. Thus, the human and material resources of the ILL cannot be actually used in the process of preparation and evaluation of undergraduate and/or graduate study programmes <...>. <...> as is evident from the information disseminated by the news agency BNS, the news dissemination service was possibly paid from the funds of the ILL.

[The employee of the ILL] <...> reasonably had an interest that a higher number of students studying the [study] programme chose the study programme, since, logically, this had to guarantee greater income (or wages) of [the employee of the ILL]. Given such situation, [the name of the ILL] was used for publicity or, in other words, advertising of the study programme. Possibly, such situation contravenes paragraph 7.2 of the Code of Academic Ethics of the ILL providing for that “ethics is violated where the name of the Institute is used for political or public activities”.

The Applicant requests the Ombudsman to notify the Applicant, higher education and research institutions, the Ministry of Education and Science of the persons who have committed violations of academic ethics and procedures and recommend to the higher education and research institutions to revoke the decision adopted on the basis of the documents violating academic ethics and procedures.

By 2 February 2018 letter No S-34 the Ombudsman addressed the Applicant with the request to provide documents governing his job description and notified that a decision on initiation of examination of the Complaint will be taken only upon receipt of additional information.

By 7 February 2018 letter the Applicant has notified the Office that “currently, he could not provide the requested documents, since <...> from 23 June 2017 until now I on sick leave.” Furthermore, he has also pointed out that “he lodged [the Complaint] concerning two aspects to the Office. You requested only for clarification of the first one <...>, thus, it is logical <...> that the Office has a sufficient amount of evidence concerning the second aspect <...>.”

It is to be noted that the Applicant has failed to take the information related to provision of missing information and documents necessary for taking a decision on initiation of examination of the Complaint laid down in the Ombudsman’s letter into account.

Following paragraph 16 of Article 17 of the LHER and in pursuance of promotion of self-regulation of the higher education and research institution, resolution of mutual disagreements between the ILL and the Applicant within the institution and, thus, contributing to proper implementation of the principle of loyalty to the higher education and research institution, by 13

February 2018 letter No S-42 the Ombudsman forwarded the Complaint to the Commission of Academic Ethics of the ILL (hereinafter referred to as the "Commission") for examination.

By 26 February 2018 letter No (1.8) S-81 the ILL furnished the Office with the Commission's response stating that "having familiarised itself with the Complaint, the Commission has decided not to examine the Complaint", since, according to the provisions of paragraph 3 of Section I of the Code of Academic Ethics of the ILL, the Applicant does not belong to the academic community and, pursuant to paragraph 8 of the Rules of Procedure of the Commission, only members of the academic community of the ILL are entitled to submit requests to the Commission. It has also pointed out that "having evaluated the subject of the Complaint, [two] of five members of the Commission should disqualify themselves from consideration of the Complaint due to possible conflict of interest".

It is to be noted that at the moment of receipt of the Commission's response the issue of initiation of consideration of the Complaint was postponed due to the unforeseen circumstances existing in the Office, i.e. till the position of the Seimas of the Republic of Lithuania on removal of Vigilijus Sadauskas from the office of the Ombudsman becomes evident. By 15 March 2018 resolution of the Speaker of the Seimas of the Republic of Lithuania Vigilijus Sadauskas was dismissed without appointing another person to hold the position of the Ombudsman on a temporary basis. Taking into account the fact that there is no person who can take a decision on examination of received complaints, on 28 March 2018 the employees of the Office notified each applicant of the existing situation by mail and pointed out that "the issue of acceptance of complaints (notifications) on the initiation of examination of which no decision was taken is postponed and will be considered after appointing the person who shall hold the position of the Ombudsman".

By 15 May 2018 Resolution No XIII-1150 "On the Assignment to Edita Žiobienė to Hold the Position of the Ombudsperson for Academic Ethics and Procedures on a Temporary Basis" the Speaker of the Seimas appointed the Ombudsperson for Children's Rights Edita Žiobienė (hereinafter referred to as the "Ombudsperson") to hold the position of the Ombudsperson on a temporary basis.

Having familiarised herself with the complaints received by the Office, by 24 May 2018 letter No S-112 the Ombudsperson notified the Applicant of initiation of examination of the Complaint.

By 25 May 2018 letter No S-117 the Ombudsperson repeatedly addressed the Applicant with the following request: "in the light of the cooperation and partnership agreement concluded between [the ILL] and [the University], to provide additional clarifications concerning the statement in [the Complaint] that [the employee of the ILL] possibly violated academic ethics, since he used the name of [the ILL] for public activities, i.e. publicity (advertising) of the study programme carried out at [the University] and arguments" on the basis of which the Applicant stated that the name of [the ILL] was used namely for public activities.

By 18 June 2018 e-mail the Applicant notified the Office that he would provide the requested information till the set date, i.e. 23 June 2018.

The Applicant has failed to provide the requested information till the date of adoption of the decision, has not addressed the Office with the request to extend the time limit for provision of information.

By 25 May 2018 letter No S-118 the Ombudsperson addressed the employee of the ILL with the request to provide "all information related to <...> decision till 15 June 2018, that the employees of the ILL cannot provide information and/or documents concerning the activities of the ILL to [the Applicant] and/or the very decision/an extract therefrom without [his] written consent".

The requested information was not provided till 15 June.

On 31 July 2018, the Ombudsperson, taking into account the fact that paragraph 1 of Article 17 of the version of the LHER which came into force on 11 July 2018 provides for that the Ombudsman shall be “a state officer who examines complaints, notifications and, on his own initiative, conducts investigations regarding the *violations of academic ethics and procedures*” and the fact that the Complaint sets out the elements of the violations of procedures, on her own initiative, initiated an investigation into possible violations of procedures at the ILL.

By 7 August 2018 letter No S-181 the Ombudsperson notified the employee of the ILL of the investigation into possible violations of academic ethics and procedures at the ILL carried out at the Office. She also requested “to clarify, confirm or rebut the actions <...> appealed against, specify other circumstances of the actions appealed against and/or provide additional information related to [the Complaint]” and specified the afore-mentioned actions appealed against.

During the meeting at the Office held on 14 September 2018 the employee of the ILL indicated that the actions appealed against by the Applicant related to his (the employee of the ILL) instruction not to provide documents or information without consent were ungrounded, since we have taken a decision not to provide information <...> to [the Applicant] and it has never been taken, it was simply decided that information should be provided so that I would know what information [the Applicant] wants to receive and what information is requested by [the Applicant]. <...> we have furnished [the Applicant] with all information which was ten requested by [the Applicant]. Furthermore, as regards the same situation, there was opened another case, [the Applicant] sued [the ILL] for defamation but later [the Applicant] terminated the proceedings. No one has restricted [the Applicant’s] access to any information.”. The employee of the ILL has also noted that “the story is old and long, the prohibition has, on several occasions, been appealed against to the courts and the Equal Opportunities Ombudsman <...>. [The Applicant] was simply requested to apply in writing.”

During the meeting at the Office the employee of the ILL also explained that a partnership agreement was concluded with the University and “cooperation took place and it took very different forms. We also carried out common researches and organised joint conferences, one joint event according to a separate contract and one of the common activities was preparation of the study programme. The study programme [is] <...> approved by the Centre for Quality Assessment in Higher Education, the ILL is mentioned as the partner and originator of the programme. It is not only me. Other employees of the ILL are also involved. <...> At that time we expected to implement the programme together, since the programme includes descriptions of a lot of subjects and the majority of them were provided by the employee of the ILL. Since the idea was precisely to ensure that the people of the ILL who are the best professionals in their fields and work in other universities be the lecturers under the study programme”. After the enquiry if the ILL may prepare students, the employee of the ILL has assured that “the ILL cannot carry out studies but it is not deprived of the right to prepare students and he may participate as a partner”.

The employee of the ILL has also noted that it is hard to understand why the Applicant described cooperation between the ILL and the University, i.e. research activities, as public activities.

Having analysed and evaluated the information provided by the Applicant, the Commission of the ILL and the employee of the ILL, legal regulation and following paragraph 1 of Article 17 of the LHER providing for that the Ombudsman shall be “a state officer who examines complaints, notifications and, on his own initiative, conducts investigations regarding the violations of academic ethics and procedures”, the Ombudsperson has determined the following:

Having examined the Applicant's complaint lodged to the Office of the Equal Opportunities Ombudsperson whereby the actions of the employee of the ILL related to the prohibition of receipt of information and/or documents specified by the Applicant, have been appealed against, the Equal Opportunities Ombudsperson took a decision.

Attention should be drawn to the fact that when lodging the Complaint to the Ombudsman, the Applicant has not specified that he has already applied to another institution for the same actions of the employee of the ILL.

It is to be noted that such abuse of the activities and services of public administration institutions by persons contradicts the principle of effectiveness of public administration, i.e. prevents from use of resources allocated for the entity of public administration in a cost-efficient manner and seeking for the results at as low cost as possible.

Subparagraph 4 of paragraph 5 of Article 14 of the valid version of the Republic of Lithuania Law on Public Administration provides for that "by a decision of the head of the entity of public administration or an officer or civil servant authorised thereby, a request or complaint may be not examined <...> if it becomes evident that the entity of public administration which was addressed or another competent entity of public administration has provided the response or adopted a decision and the person has failed to provide new factual data allowing doubting about the reasonableness of the previous response or objecting the decision adopted by the entity of public administration".

In the light of the above and the fact that the Applicant has failed to provide new factual data with the Complaint and in the course of examination of the Complaint, the part of the Complaint concerning instructions of the employee of the ILL not to provide data and/or information to the Application should be left unexamined.

Paragraph 7.4 of the Code of Academic Ethics of the ILL provides for that academic ethics is violated if "the name of [the ILL] is used for political or public activities".

Paragraph 1 of the Articles of Association of the ILL approved by 23 December 2009 Resolution No 1797 of the Government of the Republic of Lithuania provides for that the ILL shall be "a national research institution with the status of special national significance" and paragraph 2 provides for that the mission of the ILL shall be "creation of new fundamental and applied knowledge about the Lithuanian language and record-keeping, accumulation, structuring and dissemination of intangible linguistic heritage, dealing with the language development and functioning objectives relevant to the State and society, promotion of Lithuanistics in the world".

Subparagraphs 2 and 6 of paragraph 1 of Article 11 of the LHER provide for that [the ILL] shall have the right "when fulfilling its mission, to cooperate with natural and legal persons of the Republic of Lithuania and foreign countries" and "under contracts with natural and legal persons of the Republic of Lithuania and foreign countries, to carry out expert examinations, to provide scientific consultations and other services in the spheres of its research".

Paragraph 3 of Article 46 of the LHER provides for that "doctoral studies may be carried out by universities or universities together with research institutes".

Furthermore, paragraph 7.6 of the Articles of Association of the ILL provides for that one of the aims of activities of the ILL is "to cooperate with higher education and research institutions and provide full support to them in development of Lithuanistics, prepare scientists together with universities under the procedure prescribed in the law".

Paragraph 11.3 of the Articles of Association of the ILL provides for that the ILL is entitled “to publish scientific and other literature, chose the methods of publication of the results of its lithuanistic researches and cultural development”.

In the light of the fact that the ILL is entitled to cooperate with legal and natural persons and enter into contracts with them and choose the methods of publication of the results of social and cultural development, the Applicant has failed to provide data and/or additional explanations supporting use of the material and human resources and name of the ILL for public activities when a partnership agreement is concluded; there are no grounds for finding violations of academic ethics and procedures.

Having analysed and evaluated the provided information and supporting documents and legal regulation and following subparagraph 11 of paragraph 11 of Article 17 of the Republic of Lithuania Law on Higher Education and Research, the Ombudsman

has decided the following:

To terminate examination of the Complaint.

The decision of the Ombudsman may be appealed against in accordance with the procedure prescribed in the Republic of Lithuania Law on Administrative Proceedings.

Ombudsperson for Children’s Rights

Acting Ombudsman for Academic Ethics and Procedures

Edita Žiobienė