



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

**REPORT ON THE ACTIVITY
OF THE OMBUDSMAN FOR ACADEMIC ETHICS AND
PROCEDURES
OF THE REPUBLIC OF LITHUANIA
AND OF THE OFFICE OF THE OMBUDSMAN FOR
ACADEMIC ETHICS AND PROCEDURES
OF THE REPUBLIC OF LITHUANIA FOR THE YEAR
2016**

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1. INTRODUCTION

The Office of the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania (hereinafter - the “Office of Ombudsman”) is the State budgetary institution, which aims to ensure the functions of the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania (hereinafter - the “Ombudsman”), including considering the complaints, initiating investigations for violation of academic ethics and procedures and supervising the compliance with academic ethics provisions and procedures. In its activity, the Office of the Ombudsman obeys the Constitution of the Republic of Lithuania, international treaties of the Republic of Lithuania, the Law on Higher Education and Research of the Republic of Lithuania, Statutes of the Office of Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania approved by the Resolution No. XI-1583 of the Seimas (Parliament) of the Republic of Lithuania of 15 September 2011, work regulation, legal acts of the European Union, and other legislation.

In implementation of its functions, the Office of the Ombudsman attempts to implement effectively the legal acts of the European Union, to improve the legal acts, to induce the higher education and research institutions (hereinafter - as “HERI”) to comply with academic ethics and procedures in fostering of academic responsibility principles and ethical scientific practices, applying the preventive measures against plagiarism, unauthorized copying and other unauthorised use of intellectual property results developed by other people as well as counterfeiting, fraud and manipulation of research data, etc.

At the end of the year 2016, 5 staff positions were taken, and 7 employees worked at the Office of Ombudsman: 3 civil servants – the chief advisor (1 post), chief specialist (2 posts) and 4 employees working under an employment contract – chief specialist (chief accountant) (0.5 of time), chief specialist (IT specialist) (0.5 of time) and 2 chief specialists (0.5 of time each).

2. REVIEW OF COMPLAINTS, INVESTIGATIONS INITIATED BY THE OMBUDSMAN AND DECISIONS TAKEN BY OMBUDSMAN

2.1. REVIEW OF APPLICANTS

In 2016, the Office of Ombudsman received 25 complaints and 4 investigations were initiated on the Ombudsman’s initiative. A total of 29 cases.

In 2016, student applied to the Office the most often by filling out the complaint form (14 cases / 48% of the total number of applications). This category of applicants includes those who were admitting to a higher education institution, are studying there or have recently completed studies (the

subject of the appeal is related to completed studies, for example, the work supervisor has plagiarized the final thesis, the fact of purchasing the final thesis has been determined, etc.). Another large part of the applicants is made up of third parties (8 cases / 28% of all applications): trade unions of higher education institutions, representatives of state institutions and natural persons, for whom it is important that the employees of the administration of higher education and management bodies would take decisions and actions, without violating academic ethics and procedures. Pedagogical and / or scientific staff applied for the organization of competitions, attestation procedures and mutual ethical relations (4 cases / 14% of all applications). Administrative staff (mostly heads of higher education institutions) applied for decisions made by management bodies (3 cases / 10% of all applications) (see Table 1 and Figure 1).

Category name (explanation) / subject of appeal	Number
1. Students (<i>entering high schools, studying or having recently completed studies</i>):	14
a) Bachelors;	6
b) Masters;	4
c) Doctoral Students.	4
Applied for:	
1.1. the organization and execution of studies;	8
1.2. violations of the admission procedures;	4
1.3. evaluation of the final work;	1
1.4. the use of the final work by plagiarizing the student.	1
2. The third persons:	8
(a) trade unions of higher education institutions;	5
(b) representatives of public authorities;	2
(c) persons reporting potential violations of academic ethics and procedures.	1
Applied for:	
2.1. decisions or actions taken by administrative staff and management bodies;	7
2.2. academic integrity when admitting to higher education institutions.	1
3. Pedagogical and / or research staff (<i>lecturers and researchers of higher education institutions</i>).	4
Applied for:	
3.1. organization of competitions;	2
3.2. mutual ethical relations.	2
4. Administrative staff (<i>heads of higher education institutions, administrative staff</i>).	3
Applied for:	
4.1. decisions or actions taken by administrative staff and management bodies.	3

Table 1. Statistical survey of the applicants who have applied to the Office in 2016 and of subjects of appeal specified in complaints or reports.

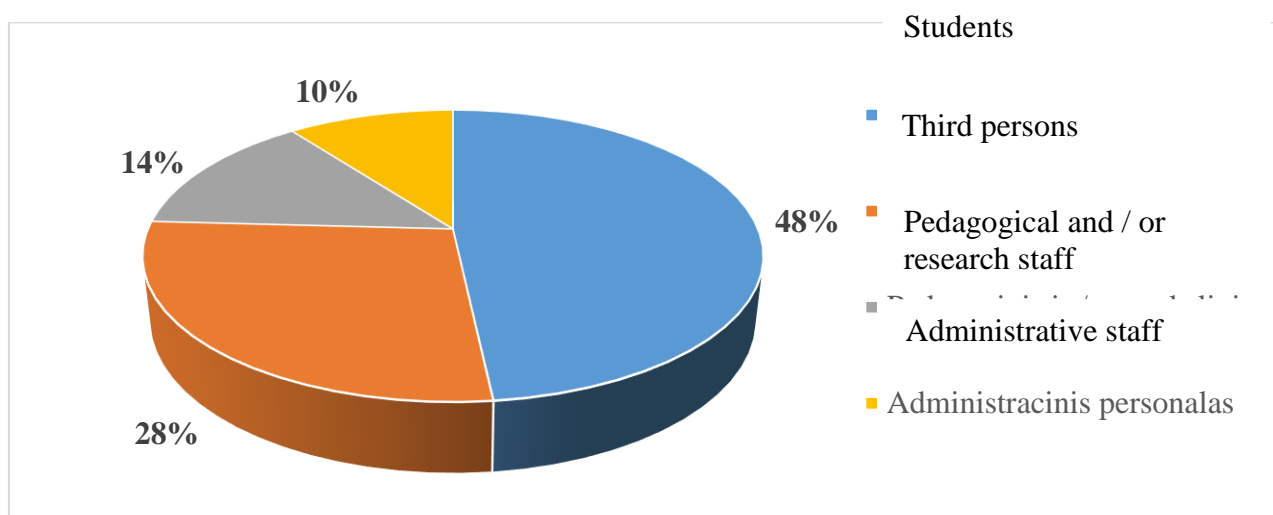


Figure 1. Number of applicants applied to the Office in 2016 (%).

2.2. REVIEW OF NAMED AND IDENTIFIED VIOLATIONS

According to the nature of the violations of academic ethics and procedures mentioned in the complaints received in 2016 and the nature of the investigations initiated, violations of academic ethics and procedures compared to 2015 can be categorized as follows:

Violation related to:	Nature of violation named in complaint		Number of initiated investigations	
	2015	2016	2015	2016
academic integrity	3	4	4	0
impartial assessment of scientific works	0	0	0	0
equal rights to participate in competitions	1	3	0	0
ethical mutual relations	2	8	0	1
other types of violations of academic ethics	0	1	0	2
procedures	14	19	0	4
Total violations named:	20	35	4	7

Table 2. Review of complaints and initiated investigations in 2015-2016 in accordance with the type of violations of academic ethics and procedures indicated (named) in complaints and initiated investigations.

According to the data of Table 2, in 2016, most complaints and initiated investigations were for violations of procedures. It accounts for 79 % of all complaints and initiated investigations in 2016 (23 out of 29 cases). Compared to 2015, the number of complaints and initiated investigations for possible violations of procedures increases (recorded increase of 64 percent), as well as the number of possible violations due to ethical mutual relations significantly increased (recorded 4.5 times higher).

The distribution of the number of complaints received and the number of initiated investigations¹ according to the nature of violations of academic ethics and procedures, specified in complaint of initiated investigation, is presented in Figure 2.

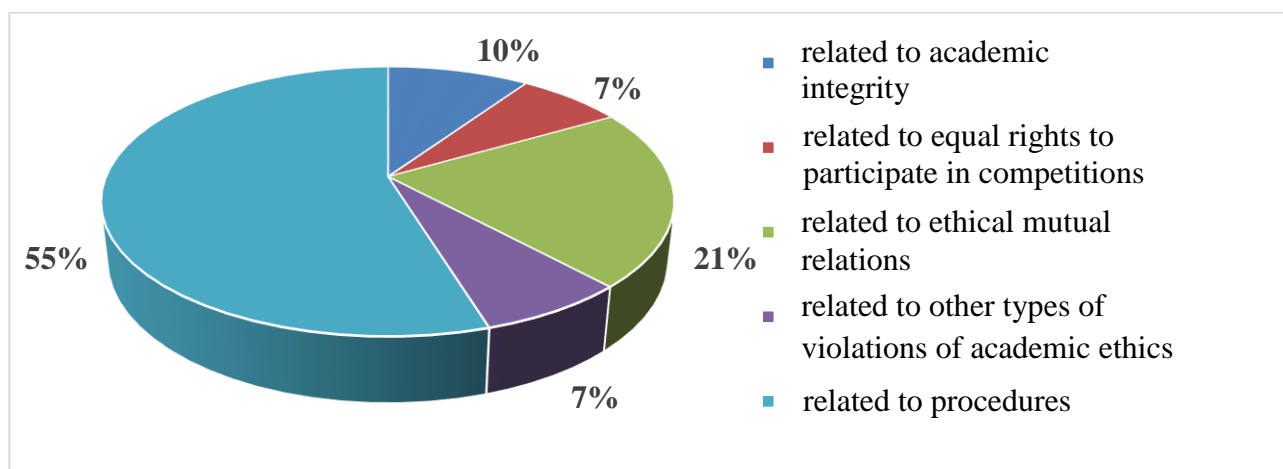


Figure 2. The number of complaints received and the number of initiated investigations in 2016, according to the nature of violations of academic ethics and procedures, specified in complaint of initiated investigation.

The violations identified in the decisions taken by the Ombudsman in 2016, compared to 2015, are listed in Table 3 below:

Violation related to:	2015	2016
academic integrity	5	3
impartial assessment of scientific works	0	0
equal rights to participate in competitions	0	1
ethical mutual relations	0	0
other types of violations of academic ethics	4	0
procedures	3	8
Total violations identified:	12	12

Table 3. Violations of academic ethics and procedures identified in decisions of the Ombudsman of 2016.

After analyzing the data presented, it can be seen that in 2016, there were almost 3 times more violations of procedures compared to 2015. **Note:** in assessing the number of violations of the procedures identified in 2015, it is necessary to take into account the ratio of possible and identified violations of procedures, since, in 2015, 14 complaints about possible violations of procedures were received, but most of them were either unfounded or not investigated by the end of 2015. For this reason, violations related to procedures were the most relevant not only in 2016, but also in 2015, although statistics show that in 2015 the highest number of violations related to academic integrity

¹ In the investigation initiated by the Ombudsman or in a complaint filed by the applicant, more than one possible violation of academic ethics or procedures may be indicated. For this reason, 29 complaints and initiated investigations (identified) in 2016 resulted in 42 possible violations.

was identified.² The identified violations related to academic integrity, equal rights to participate in competitions, and ethical mutual relations accounted for only 33.33 % of all violations identified in 2016.

Summarizing the data of 2016, it can be concluded that the Ombudsman mainly received complaints, initiated investigations and took decisions on violations of procedures, which were also no less relevant in 2015.

Attention is drawn to the fact that Part 1 of Article 17 of the Law on Higher Education and Science of the Republic of Lithuania, the new version of which entered into force on 1 January 2017, establishes that the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania “is a state official who 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 HERI.”

The Ombudsman, after examining a complaint or conducting an investigation and having determined a violation of procedures established in codes of non-academic ethics but in legal acts, would be forced to close an examination of complaint or to interrupt an investigation, as the codes of academic ethics of HERI do not regulate procedures - the procedures are established in the legal acts.

Taking this into account, on 8 February 2017, the Ombudsman submitted to the request to the Board of the Seimas of the Republic of Lithuania, as well as the Committee on Education and Science, **for urgent action to ensure the amendment to Part 1 of Article 17 of the Law on Higher Education and Science and the legitimate expectations of members of the academic community.**

2.3. DECISION-TAKING AND ENFORCEMENT

In 2016, the Ombudsman took 26 decisions³:

- ✓ 3 decisions on the complaints received in 2015 and completed to examine in 2016;
- ✓ 2 decisions on the investigations started in 2015 and completed in 2016;
- ✓ 19 decisions on the complaints received in 2016;
- ✓ 2 decisions on the investigations completed in 2016.

7 pending complaints have been moved to 2017 because a part of the complaints was received in October-December, the other part was not examined due to the large volume, complexity, or the

² Having examined all complaints received in 2015 for possible violations of procedures (a total of 14 complaints): In 2015, 2 violations of procedures were identified; in 2016, due to complaints received in 2015 that were unfinished to examine, 1 violation of procedures and 1 contradiction to the principle of academic ethics were identified; having examined 7 complaints in 2015 which were received in the same year, they were recognized to be unfounded; having examined the complaint in 2016 which was received in 2015, it was recognized to be unfounded, having examined the complaint in 2015 which was received in the same year, other non-procedural violations were identified, and the complaint received in 2015 has not been examined.

³ Decision is a document drawn up after examination of a complaint or investigation. Several violations of academic ethics or procedures may be established in one decision, as well as in this document, the Ombudsman may, in accordance with Part 12 of Article 18 of the Law on Higher Education and Research of the Republic of Lithuania, adopt one, several or more of the decisions provided for in the aforementioned legal act (9 decisions are currently established, see table 4).

higher education institution did not provide the information and documents requested by the Ombudsman. For example, Kazimieras Simonavičius University has not provided the information necessary for an examination of a complaint for more than 2 years. 2 unexecuted investigations were also moved to 2017. One of them was started in November, the other one was not carried out due to the large volume - three complaints were merged.

After examining a complaint or conducting an investigation at his own initiative, the Ombudsman, in accordance with Part 18 of Article 12 of the Law on Higher Education and Research of the Republic of Lithuania, in 2016, compared to 2015, took the following decisions:

Decisions of the Ombudsman:	Number of Decisions	
	2015	2016
[1] 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;	14	19⁴
[2] to oblige the institution that has awarded the scientific degree and / or conducting the competition for a position to withdraw the decision awarding the degree and / or the winner of the competition;	0	0
[3] to recommend to the science and study institutions to revoke the decision based on the documents governing academic ethics and procedures;	2	3
[4] to recommend the employee to refuse to participate in the ongoing research and experimental (social, cultural) development project;	0	0
[5] to inform the institution responsible for the relevant area about the persons (authors) who are became victims of violations of academic ethics;	0	0
[6] to inform law enforcement authorities if a sign of a criminal offense is identified;	0	0
[7] to apply to the court if the Ombudsman's obligation is not fulfilled;	0	0
[8] to publicize identified cases of violations of academic ethics and procedures;	6	3
[9] to recognize the complaint as unjustified.	14	7

Table 4. The Ombudsman's decisions in accordance with Part 12 of Article 18 of the Law on Higher Education and Research of the Republic of Lithuania.

⁴ Violations of academic ethics or procedures were identified in 11 decisions of the Ombudsman out of 26, therefore, a decision was taken to inform HERI and the Ministry of Education and Science about persons who committed violations of academic ethics and procedures. Also 8 decisions were taken, in which violations were not identified, but a decision was taken to inform HERI and the Ministry of Education and Science about the Ombudsman's decision, because due to the lack of clarity and insufficiency of regulation, there was determined a contradiction to objectivity, fairness, transparency, equal rights to participate in competitions, fair competition and other principles of academic ethics, the implementation of which, in accordance with Clause 13(1) of the Provisions, is to be ensured by the Ombudsman.

The Ombudsman informed HERI and the Ministry of Education and Science about all decisions (other than those where the complaint of an applicant was declared unjustified) by notifying of the persons who have violated the academic ethics and procedures or informing them of determined contradictions to objectivity, fairness, transparency, equal rights to participate in competitions, fair competition and other principles of academic ethics. All decisions of the Ombudsman are publicly available on the website *www.etika.gov.lt*.

Enforcement of decisions

The decisions to be fulfilled from listed in Table 4 are as follows:

[2] – to oblige the institution that has awarded the scientific degree and / or conducting the competition for a position to withdraw the decision awarding the degree 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 (social, cultural) development project;

[7] – to apply to the court if the Ombudsman's obligation is not fulfilled.

In 2016, 3 decisions were taken to recommend HERI to revoke the decision based on the documents governing academic ethics and procedures. Out of these decisions 1 has been fulfilled and 2 outstanding:

1) 26-01-2016 No. SP-3 “Regarding the Cancellation of Members of the Council of Panevezys College and the Members of the Council, the decision taken by the Ombudsman to recommend to Panevezys College to cancel the decision “<...> to cancel the members of the Council (of Panevezys College) [R. D., Č. G., and P. Ž.] from the members of the College's Council.” At the meeting of the Academic Council of Panevezys College of 03-02-2016 it was decided to cancel the decisions taken on the 9th issue of the protocol No. V4-10 of the Academic Council of Panevezys College of 25 November 2015. In view of the foregoing, the Ombudsman's decision has been fulfilled.

2) 13-06-2016 No. SP-14 “Regarding Attestation and Execution of the Public Competition in the State Scientific Research Institute Center for Physical Sciences and Technology”, the decision taken by the Ombudsman for the Public Tender in the State Scientific Research Institute Center for Physical Sciences and Technology (hereinafter - the VMTI FTMC) to cancel the unjustified decision of the Commission for Competition and Attestation due to the applicant's inappropriateness to hold the position of the Senior Researcher. By the letter No. SR-4600-455 of 01-07-2016 “Regarding the information on the institution's action plan for the implementation of the Ombudsman's recommendations”, the VMTI FTMC informed that the members of the Scientific Council of the VMTI FTMC at the meeting of 30-06-2016 “<...> voted to leave valid their decision of 14-01-2016

by which the results of the of the competition of researchers, which started on 09-09-2015 were confirmed, according to which (the applicant) was attested to the position of the Senior Researcher, but did not win the competition for the position of the Senior Researcher in the Department of Electrochemical Materials”. In view of the foregoing, the Ombudsman’s decision has not been fulfilled.

3) 13-10-2016 No. SP-22 “Regarding the Evaluation of the Final Thesis and the Procedure of the Appeal Submission at Mykolas Romeris University”, the decision taken by the Ombudsman to recommend Mykolas Romeris University, under the competence, to cancel the decision on the rejection of the applicant's appeal for the review of the final Master’s thesis. By the letter No. 3A(00.21-301)-311 of 05-12-2016 “Regarding the implementation of the Ombudsman’s recommendations”, the Center for Academic Affairs of Mykolas Romeris University explained that “<...> in accordance with Clause 2 of the Appeal Regulations approved by the Resolution No. 1SN-7 of the Senate of Mykolas Romeris University of 15 October 2013, the applicant’s appeal “On the review of the Master's Thesis” was not considered, as Clause 2 of the Regulations sets out the final list of cases on which appeals are admitted. This list provides for the possibility of appeal only in respect of the procedure for defense of the final thesis and for taking the final examination. In accordance with the principles of the hierarchy of normative acts, the Appeal Regulations are more powerful than the methodological guidelines for the preparation and defense of final theses approved by the Council of the Faculty of Law. Clause 115 of the said guidelines refers to a blanket rule on the basis of which the relevant wording of the normative act is to be observed. Therefore, in taking the decision on the applicant's appeal, the Appeal Regulations approved by the Resolution No. 1SN-7 of the Senate of Mykolas Romeris University of 15 October 2013 were followed, but not the Regulations approved by the Resolution of the Senate of 3 June 2011”. In view of the foregoing, the Ombudsman’s decision has not been fulfilled.

2.4. THE ANALYSIS OF IMPLEMENTATION OF PROVIDED RECOMMENDATIONS

The Ombudsman, in accordance with the function of the Ombudsman established in Clause 13(5) of the Regulations to cooperate with HERI in dealing with problems related to violations of academic ethics and procedures, when a decision has been taken in cases where violations of academic ethics and / or procedures are established or the existing regulation is unclear, inadequate and does not ensure objectivity, transparency, equal rights to participate in competitions, fair competition or other principle of academic ethics, as appropriate, provides recommendations as a precautionary measure to HERI.

19 of 26 (73%) decisions taken by the Ombudsman regarding violations of academic ethics and / or procedures were submitted with recommendations, which, based on the subject of the complaint / subject of investigation, proposed measures for preventing violations of academic ethics and / or procedures to HERI. Recommendations were not provided in 7 (27%) decisions.

The most part of the recommendations provided by the Ombudsman - 16 (84%) cases - were the main suggestions to improve the specific internal legal acts of HERI, and in 3 (16%) cases - to take actions on established violation of academic ethics and procedures (see Figure 3).

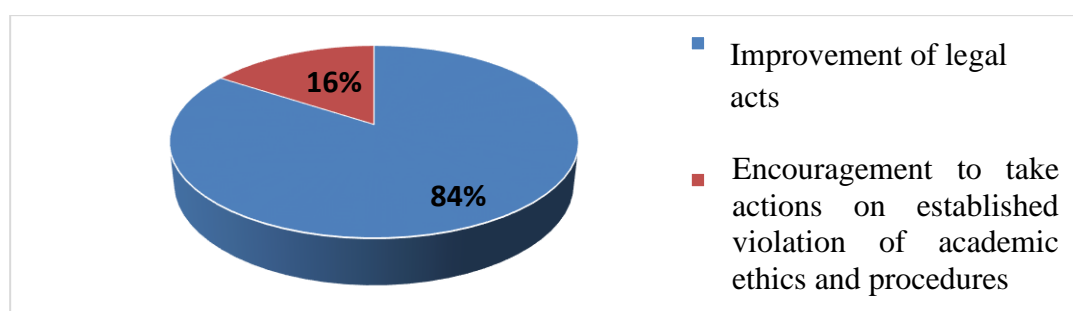


Figure 3. The nature of the recommendations provided by the Ombudsman in 2016.

In 2016, the Ombudsman, out of 16 recommendations for improving the internal legal acts of HERI, in 7 (44%) cases recommended to HERI editing and / or supplementing documents associated with the personnel rights, duties and functions of HERI; in 6 (37%) cases - with improvement of the procedure settlement, exams and final works of the first (bachelor) and second (master) study stages; in 3 (19%) cases, the recommendations were associated with the improvement of the procedure for admission to the third stage (doctoral) studies, the regulation of their organization and execution (see Figure 4).

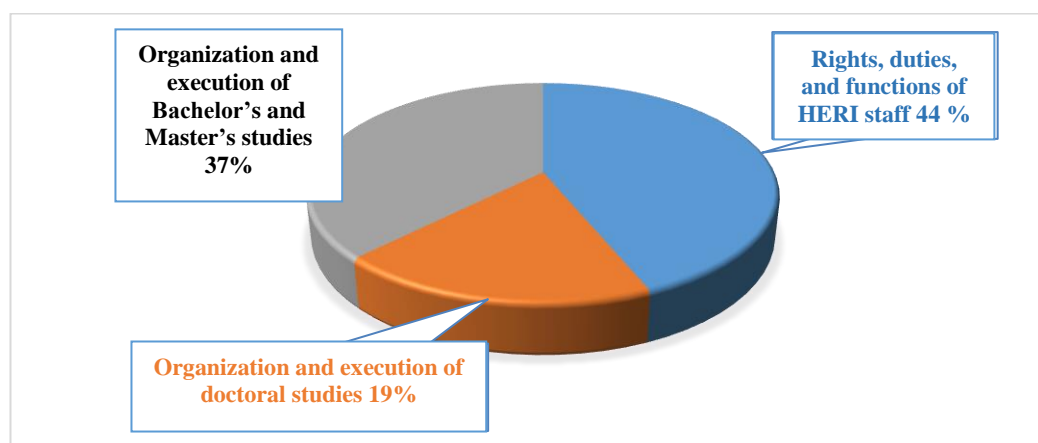


Figure 4. The topics of the internal legal acts of HERI recommended to improve by the Ombudsman.

Attention is drawn to the fact that the statistics reveal the problem of regulating the internal legal acts of HERI and the need to improve them. It should be noted that the relevance of this problem and the consequences (violations of academic ethics and procedures) were identified by the

Ombudsman in survey conducted in 2016 on violations of academic ethics and procedures identified in HERI in 2015. The analysis data revealed an increase (compared to 2014) in the number of violations of the academic ethics and / or procedures of pedagogical and scientific staff. Statistics are related to gaps in the internal legal acts of HERI - there is no detailed description of the procedures for examinations, defense of final works, insufficiently regulated the rights, duties, and functions of HERI staff.

The Ombudsman, providing recommendations, indicates the date to HERI by which it is requested to inform by e-mail about the course and deadlines of actions planned to be taken in the institution. HERI is also requested to inform the Ombudsman of the reasons for such a decision if it decides not to take any action. Out of 19 recommendations provided by the Ombudsman in 2016, 13 (69 %) cases were answered timely, 5 (26 %) cases were answered late and 1 case (5 %) was not answered (see Figure 5).

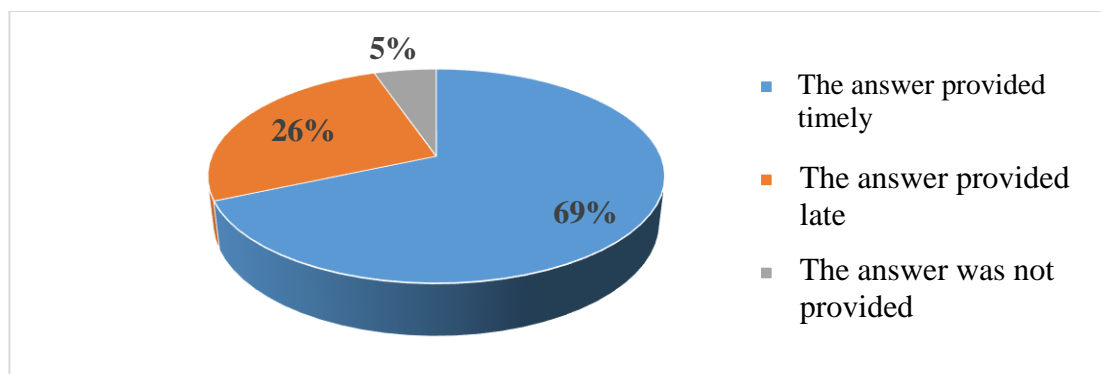


Figure 5. Submission of HERI's response to the Ombudsman's recommendations.

Analyzing the implementation of the recommendations, 4 groups of responses to the recommendations provided to HERI are distinguished:

1) **implemented recommendations** (5 cases / 26% of all recommendations) – HERI agreed (fully or partially) with the recommendations and submitted a plan for implementation of the recommendations or, in the light of the recommendations, a legal act or a specific decision was taken;

2) **decided to implement the recommendations** (6 cases / 32% of all recommendations) - HERI considered the recommendations, set up a special work group tasked to prepare draft amendments to the legal acts, or, in the light of the recommendations, HERI informed of the intentions to take decisions implementing recommendations;

3) **postponed consideration of recommendations** (4 cases / 21% of all recommendations) - HERI just intends to consider the recommendations, as it is awaiting completion of the judicial process, the end of the internal reforms, the meeting, start of the academic year or another important future action, due to which the implementation of the recommendations has been postponed;

4) **unfulfilled recommendations** (4 cases / 21% of all recommendations) - HERI

disapproved, did not consider and does not intend to do this, or no decision was taken after consideration of the recommendation or decision to disregard the recommendations as taken. The Office does not have any information on the decisions or results that have been taken since no answer was received from HERI regarding the implementation of the recommendations.

Summarizing these data, 2 main categories of implementation of the recommendations can be formulated, depending on whether the recommendations were approved or not (see Figure 6):

a) implemented (11 cases / 58% of all recommendations, when implemented in full, in part or decided or planned to implement in the short term);

b) not implemented (8 cases / 42% of all recommendations where the Office was not informed about the implementation of the recommendations, it was decided not to implement them or the consideration was postponed).

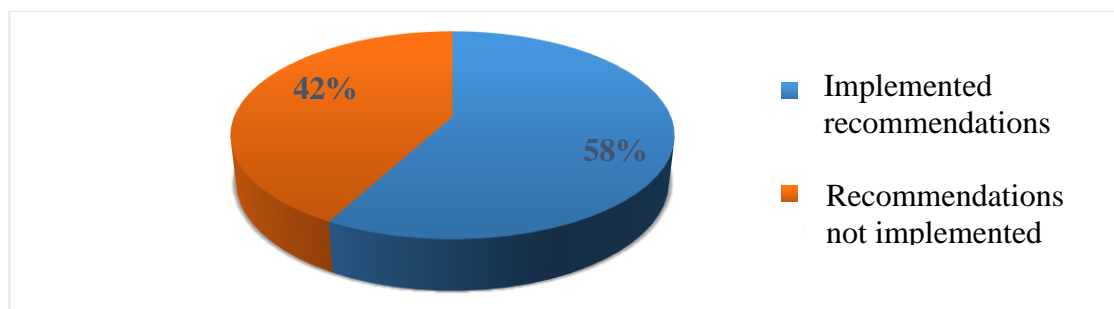


Figure 6. The indicator of implementation of the recommendations provided by the Ombudsman in 2016.

The Strategic Plan of the Office for 2016-2018 sets out the criteria for assessing the impact of Strategic Objective 2 on the implementation of the recommendations:

✓ ratio of the implementation of the recommendations provided by the Ombudsman (percentage of the number of recommendations provided) - 30;

✓ ratio of proposals for improvement of legal regulation in the field of academic ethics and procedures (percentage of the number of the proposed provisions) - 30.

11 out of 19 recommendations provided to HERI were implemented, i.e. 58 % (Strategic plan indicator exceeded). 10 out of 16 recommendations related to the regulation of the internal documents and legislation were implemented, i.e. 62.50 % (Strategic plan indicator exceeded by 2 times).

Conclusions and recommendations: statistics show that a large part of HERI responds willingly and in a timely manner to the recommendations provided by the Ombudsman. However, it should be noted that a certain part of HERI's responses to the Ombudsman does not substantiate the decisions that it takes, having failed to comply with its scheduled deadlines due to the delayed date of the recommendation's consideration.

The Ombudsman, based on statistics and findings, recommends that HERI pay more attention to reviewing and improving HERI's internal legal acts, in particular on ensuring the rights, duties and functions of HERI staff.

Attention is drawn to the fact that Part 20 of Article 17 of the Law on Higher Education and Science of the Republic of Lithuania, the new version of which entered into force on 1 January 2017, establishes that HERI must provide information to the Ombudsman within 30 calendar days from the date of the decision of the Ombudsman, on which action will be taken in accordance with the Ombudsman's decision. Such an obligation will ensure a more effective and closer cooperation between the Ombudsman and HERI, accelerating the identification, application and enforcement of preventive measures for violations of academic ethics and procedures.

3. COURT PRACTICE ON THE OMBUDSMAN'S DECISIONS

In 2016, 3 decisions of the Ombudsman were appealed to Vilnius Regional Administrative Court (HERI appealed against 1 decision in which violations of procedures were identified, and 2 decisions were appealed by the applicants). It should be noted that in 2016 there were court hearings on 7 complaints filed to the courts in 2014 (with respect to 3 decisions taken by the Ombudsman in 2014) and in 2015 (with respect to 4 decisions taken by the Ombudsman in 2015). Thus, 10 court hearings took place in total in 2016.

Course of hearing of 10 complaints in courts:

- ✓ 4 complaints were examined in Vilnius Regional Administrative Court and Lithuanian Supreme Administrative Court, the final and not subject to appeal decisions were adopted;
- ✓ 2 complaints were not adopted for examination by Vilnius Regional Administrative Court;
- ✓ 1 complaint was dismissed as unjustified by Vilnius Regional Administrative Court;
- ✓ the decisions of Vilnius Regional Administrative Court on 3 complaints are adopted, but they are appealed (by the applicants or the Office of Ombudsman) to Lithuanian Supreme Administrative Court.

In 2016, Lithuanian Supreme Administrative Court adopted decisions by which 3 decisions of the Ombudsman were repealed:

- ✓ On 25 August 2016, Lithuanian Supreme Administrative Court decided to amend the decision of Vilnius Regional Administrative Court of 3 November 2015 "to repeal the Decision No. SP-5 of the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania of 19 March 2015 and oblige the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania to re-examine the complaint", by repealing the part of the decision, in which the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania was obliged to re-examine the complaint of the applicant. To leave unchanged the other part of the decision of Vilnius Regional Administrative Court of 3 November 2015.

✓ On 12 December 2016, Lithuanian Supreme Administrative Court decided to leave unchanged the part of the decision of Vilnius Regional Administrative Court of 6 January 2016 “to repeal the part of the Decision No. SP-17 of the Ombudsman for Academic Ethics and Procedures of 22 December 2014 “On the actions of lecturers and administration of Vilnius University Health and Fitness Center”, in which violations of academic ethics by L. Samsonienė were identified;

✓ On 20 December 2016, Lithuanian Supreme Administrative Court decided to leave unchanged the decision of Vilnius Regional Administrative Court of 9 November 2015 “to repeal the Decision No. SP-3 of the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania of 20 February 2015 “On violations of the principle of academic ethics in scientific activities of Darius Milčius and co-authors”.

Attention is drawn to the fact that Vilnius Regional Administrative Court and Lithuanian Supreme Administrative Court, when examining complaints and taking decisions on decisions of the Ombudsman, do not respect the differences in the content and form of academic ethics and legal norms, equate the Ombudsman’s decision, which establishes violations of academic ethics (norms of ethics), to a decision finding violations of procedures (legal norms). Such a position of the courts that violations of academic ethics must be based on legal norms presupposes the adoption of unjustified decisions by the courts regarding the invalidation and illegality of decisions of the Ombudsman.

The Ombudsman has uncertainties about the motives for the relationship between the content and form of academic ethics and legal norms stated in **Resolution of 25-08-2016** of Lithuanian Supreme Administrative Court (hereinafter - LVAT) (Chamber of Judges: Artūras Drigotas, Stasys Gagys and Dalia Višinskienė) (the decision of Vilnius Regional Administrative Court of 03-11-2015 in administrative case (Chamber of Judges: Rytis Krasauskas, Mefodija Povilaitienė and Jūra Marija Strumskienė)), in **Resolution of 12-12-2016** of LVAT (Chamber of Judges: Laimutis Alechnavičius, Ramūnas Gadliauskas and Dalia Višinskienė) (the decision of Vilnius Regional Administrative Court of 06-01-2016 (Chamber of Judges: Arūnas Kaminskas, Irena Paulauskienė and Milda Vainienė)), and in **Resolution of 20-12-2016** of LVAT (Chamber of Judges: Ričardas Piličiauskas, Veslava Ruskan and Arūnas Sutkevičius) (the decision of Vilnius Regional Administrative Court of 09-11-2015 (Chamber of Judges: Milda Vainienė, Violeta Petkevičienė, Donatas Vansevičius)).

The courts are of the position that the Ombudsman’s decision is unlawful because it is not justified by the norms of the legal acts regulating academic ethics and procedures

The Resolution of LVAT of 12-12-2016 states:

1) “<...> upon examination of a complaint or an investigation, the decision taken by the Ombudsman in accordance with Article 12 of the Law on Higher Education and Research <...> must

be based on objective data (facts) and norms of legal acts regulating academic ethics and procedures <...>;

2) <...> for an individual legal act to be lawful, it must include an examination of the facts, a search for the applicable legal norm, and a legal assessment (qualification) of the facts. <...> not individual facts must be determined but by the totality of the legal facts necessary and sufficient for the application of legal norm. (underlined by us).

The Resolution of LVAT of 25-08-2016 states:

the court of first instance “reasonably found that it [the Ombudsman’s decision, our comment] did not comply with the requirements for individual administrative acts of Part 1 of Article 8 of the Law on Public Administration <...>.

The Resolution of LVAT of 20-12-2016 states:

“<...> a legal act acceptable to the subject of public administration system, to which the Ombudsman is also subject, must be with clearly stated factual circumstances and a legal assessment carried out, leading to a satisfactory decision. <...>” (underlined by us).

The Decision of Vilnius Regional Administrative Court of 09-11-2015 states:

1) “<...> In accordance with the principle of good administration, public authorities must carry out their activities impartially and objectively. It should be noted that Part 1 of Article 8 of the Law on Public Administration, according to which an individual administrative act must be objective data (facts) and legal norms, the provisions also impose on the subjects of public administration the obligation to indicate the basic facts, arguments and evidence in the administrative decision adopted, to provide the legal basis on which the public administration entity relied upon its adoption of administrative act; <...>”;

2) “<...> In order for an individual legal act to be lawful, it must include an examination of the facts, a search for the applicable legal norm, and a legal assessment (qualification) of the facts. A fundamental condition for the validity of an individual administrative act - not individual facts must be determined but by the totality of the legal facts necessary and sufficient for the application of legal norm <...>” (underlined by us).

It is noteworthy that both in Lithuania and throughout the world there is followed the position that the ethical norms established in the codes of academic ethics of HERI are not “imposed” by other state institutions to the academic community, but they are the rules of ethical conduct recognized, agreed and expressed by members of the academic community, which neither content nor form cannot

be attributed to the legal norms, and the code of academic ethics cannot be attributed to a legal act from the point of view of its purpose or content and form.

In this case, the analogy of football rules could apply. For violations of the rules in force in the football game agreed by members of the football community, for example, a penalty of eleven meters, it finds the person responsible for supervising and controlling compliance in that area, but not a court judge, and the classification of such an infringement is based on rules agreed by the football community, not legal norms.

The courts are confused in the decision under appeal and equate the violation of academic ethics to a violation of the legal norm. In finding that the decision is unlawful, they justify their position on the lack of motives in the Ombudsman's decision for the violation of the legal norm by the applicant, although the applicant has been subject to the academic ethics standards laid down in the Code of Academic Ethics.

It should be noted that the Ombudsman, when determining the violation of academic ethics, justifies it on not legal norms but ethical norms contained in the codes of ethics of HERI and qualifies the violation of academic ethics in accordance with the content of the norm(s) of the code of ethics of HERI.

The violations of academic ethics identified by the Ombudsman cannot be regarded as the basis upon which the legal norm would relate to the emergence, change or termination of legal relations. The decision establishing violations of academic ethics is based on the ethical norms established in the Code of Academic Ethics.

The rules for qualifying a violation of academic ethics are not regulated. The Ombudsman must examine complaints and conduct investigations in accordance with the principles of legality, impartiality, fairness and publicity established in the Law on Higher Education and Research, and therefore the analogy of the qualification of a violation of a legal norm should not be applied with regard to the violation of ethical norm.

Lithuanian Supreme Administrative Court establishes the application of administrative procedures in accordance with the provisions of Section III of the Law on Public Administration of the Republic of Lithuania in the activities of the Ombudsman, although administrative procedures in the activities of the Ombudsman are not applicable

The Resolution of LVAT of 12-12-2016 states:

“<...> the requirement for the proper performance of public administration procedures, including administrative procedures in accordance with the provisions of Section III of the Law on Public Administration of the Republic of Lithuania, is connected with the factual reasonableness of an individual administrative act <...>” (underlined by us).

Attention is drawn to the decision of Vilnius Regional Administrative Court of 09-11-2015 which states:

“<...> it can be agreed with the defendant that the provisions of Part 4 of Article 23 of VAI [the Law on Public Administration, our comment] regulating the suspension of an administrative procedure are not applicable to the Ombudsman, since the investigation and decision taken by the Ombudsman are not an administrative procedure as defined in VAI, since the applicant is not the subject of public administration.” (underlined by us).

It is not disputed that the Ombudsman is an entity of public administration, but it cannot be accepted that the activities of the Ombudsman subject to the procedure for the handling of complaints set forth in the Law on Public Administration are an administrative procedure, defined as “<...> mandatory acts performed by an entity of public administration in the investigation of a person's complaint or notice a violation of the rights and legitimate interests of the person indicated in the complaint or notice, and taking a decision on that administrative procedure, may be committed by the actions, omissions or administrative decisions of the entity of public administration.”

In accordance with Part 1 of Article 17 of the Law on Higher Education and Research of the Republic of Lithuania, which establishes the competence of the Ombudsman, it is obvious that the Ombudsman does not investigate the violation of rights and legitimate interests of a person, indicated in a complaint or a notice, by actions, omissions or administrative decisions of a body of public administration, as provided for in the Law on Public Administration.

The courts deny the Ombudsman's right to rely on the findings, comments of experts, specialists

The Decision of Vilnius Regional Administrative Court of 09-11-2015 states:

“<...> In the present case, it is apparent from the contested decision that the Ombudsman stated, in essence, only the circumstances established, i.e. the conclusions of the experts of the Lithuanian Science Council, the opinions of the publishers of some scientific journals on the controversial articles and the explanations of the co-authors of certain controversial articles, but did not make any analysis of the established circumstances, did not provide either the definition of the established fraud or the concept of self-plagiarism, and their relation to the violation of academic ethics. Moreover, the Ombudsman in the decision only rewrote some of the applicant's explanations concerning alleged violations but did not analyze them.

The Court also notes that the explanation given by the Office in its response that the Ombudsman found in the contested decision that violations of academic ethics in publications, but

not offenders, should be critically assessed. It should be noted that the introduction to the contested decision indicates that an investigation is being carried out on the alleged violation of the academic ethics of the applicant [...] and of the co-authors. <...> Therefore, according to the court, the proper assessment of violations of academic ethics, isolated from the identification of the person who violated academic ethics, is impossible <...>” (underlined by us).

The Resolution of LVAT of 20-12-2016 states:

“<...> a legal act acceptable to the subject of public administration system, to which the Ombudsman is also subject, must be with clearly stated factual circumstances and a legal assessment carried out, leading to a satisfactory decision. <...>”.

Whether in the opinion of the Chamber of Judges, the Ombudsman, in qualifying the violations of academic ethics, has to question the technical errors, specified motives or comments made in the documents by experts, entities that have found in the file and do not have the right to rely on them or to approve them? The Chamber of Judges did not specify the legal act regulating the procedures of qualification and identification of the violation of academic ethics. The Chamber of Judges also did not mention the definition of a legal act that consolidates the concepts of “fraud” and “self-plagiarism”. It is noteworthy that these terms are not defined in any legal acts.

Clause 13(1) of the Statutes of the Office of Ombudsman approved by the Resolution No. XI-1583 of the Lithuanian Seimas of 15 September 2011 “Regarding Establishment of the Office of Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania and Approval of Statutes of the Office of Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania” 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 <...>. Definitions of the principles of “academic integrity”, “academic freedom”, “impartiality in assessing research”, “equal rights to participate in competitions” are also not established.

In view of the fact that the applicant's working relationship with a specific HERI was not determined at the time of the decision, the provisions of the Code of Ethics of HERI were not applied to the applicant, and the Ombudsman took a decision in carrying out the task of supervising and monitoring the implementation of the international treaties of the Republic of Lithuania, European Union legislation, the provisions of laws and other legal acts regulating academic ethics and procedures and contributing to the quality of science and studies, while fostering of academic responsibility principles <...>, applying the preventive measures against plagiarism, unauthorized

copying and other unauthorised use of intellectual property results developed by other people as well as counterfeiting, fraud and manipulation of research data.

It should be noted that, by the Ombudsman's decision, the violation of the principle of academic ethics was established in publications, i.e. the Ombudsman, having regard to the conclusions of experts and other persons, has established the inconsistency of the cases established by the applicant and other authors in the publication of the text of the misrepresentation of the text with the principle of academic ethics established in Clause 2 of article 3 of the Law on Higher Education and Science, but not the offenders.

Attention is drawn to the ruling of the Supreme Court of Lithuania (hereinafter - LAT), which stated that some of the drawings in the dissertation of the applicant were taken from other dissertations (and / or databases) without giving references to them, which is undoubtedly to be regarded as scientific immorality in the objective sense" (ruling in the civil case No. 3K-3-551-611/2015 (S) of 6 November 2015).

Whether, in the opinion of the Chamber of Judges, such a position of the LAT does not mean that by finding the plagiarism in the methodical measures by the Ombudsman's decision, after establishing the objective signs of plagiarism, i.e. the use of the thoughts of another person without mentioning the source, the scope of the object of the investigation without identifying the subjective signs of plagiarism, i.e. the intention of a person to plagiarize⁵, as the offender of the academic ethics himself, the violation of academic ethics could be established?

4. CARRIED-OUT SURVEYS AND REVIEWS

The sub-clauses 12.1, 12.2 and 13.4 of the Statute of the Office of Ombudsman, which set the tasks for the Ombudsman – to promote the compliance of HERI with academic ethics and procedures, to supervise and control the compliance of higher education and research institutions with the codes of academic ethic, also provide the following function of the Office of Ombudsman – to collect, analyse and summarize the data on violations of academic ethics and procedures, violations of the Law on Higher Education and Research or statutes and codes of academic ethics of higher education and research institutions, applied cases of administrative liability as well as other information related to the compliance with academic ethics and procedures in Lithuania known to the Ombudsman.

The main surveys carried out by the Office of Ombudsman in 2016 are generalized in the clauses 4.1-4.3 herein.

⁵A. W. Latourette, Plagiarism: Legal and Ethical Implications for the University. Journal of College and University, 2010, p. 22)" (ruling of the Supreme Court of Lithuania the civil case No. 3K-3-551-611/2015 (S) of 6 November 2015).

4.1. SURVEY ON VIOLATIONS OF ACADEMIC ETHICS AND PROCEDURES IDENTIFIED IN HIGHER EDUCATION AND RESEARCH INSTITUTIONS

In January-February 2016, the Ombudsman carried out the survey on violations of academic ethics and procedures in HERI. A survey description, results and recommendations are presented.

4.1.1. **The objective of survey:** to assess the effectiveness and publicity of self-regulation in dealing with cases of violations of academic ethics and procedures. For this purpose, the Ombudsman has requested HERI to:

- to provide information on how many possible and how many identified violations of academic ethics and / or procedures were recorded by the institution in 2015, indicating separately the groups of members of the academic community and the nature of the violation;
- to indicate the ways in which the decisions of HERI and the Ombudsman on violations of academic ethics and / or procedures are published in the institution.

4.1.2. **Survey data collection:** 20 January 2016 - 5 February 2016.

4.1.3. **Survey sample:** The Ombudsman applied to 62 HERI: 14 state and 6 non-state universities, 13 state and 6 non-state institutes, 13 state and 10 non-state colleges. Out of HERI, to which the letter was sent, 94 % of the respondents provided the data (see Table 5), i.e. 20.51 % more than in 2014 (only 78% of the respondents sent the data).

HERI number, which sent the data	HERI number, which sent the data belatedly	HERI number, which did not send the data
58 (94 %)	20 (34 %)	4 (6 %)

Table 5. Submission of information by HERI.

4.1.4. **Survey analysis:** statistics are compared with the data for 2014, the results are summarized, recommendations are proposed.

4.1.5. **Context:** The Ombudsman conducted a survey on violations of academic ethics and procedures in HERI in accordance with the obligation of Part 16 of Article 18 of the Law on Higher Education and Research of the Republic of Lithuania to report to the Seimas once a year (by 1 March) for its own activities and the activities of the Office. The data were also collected on the basis of Part 15 of Article 18 of the Law on Higher Education and Research and the right granted by Clause 14.1 of the Statutes of the Office approved by the Resolution No. XI-1583 Seimas of the Republic of Lithuania of 15 September 2011 “Regarding Establishment of the Office of Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania and Approval of Statutes of the Office of Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania”, to receive from the institutions, enterprises and organizations, members of the academic community free of charge all the information necessary for the performance of the functions of the Office.

4.1.6. **Survey results:** In 2015, HERI received 219 appeals, of which 176 (80 %) were for academic ethics, and 43 (20 %) for procedural violations. A total of 237 violations were identified in HERI, of which 218 (92 %) were of academic ethics and 19 (8 %) - of procedures (see Figures 7 and 8).

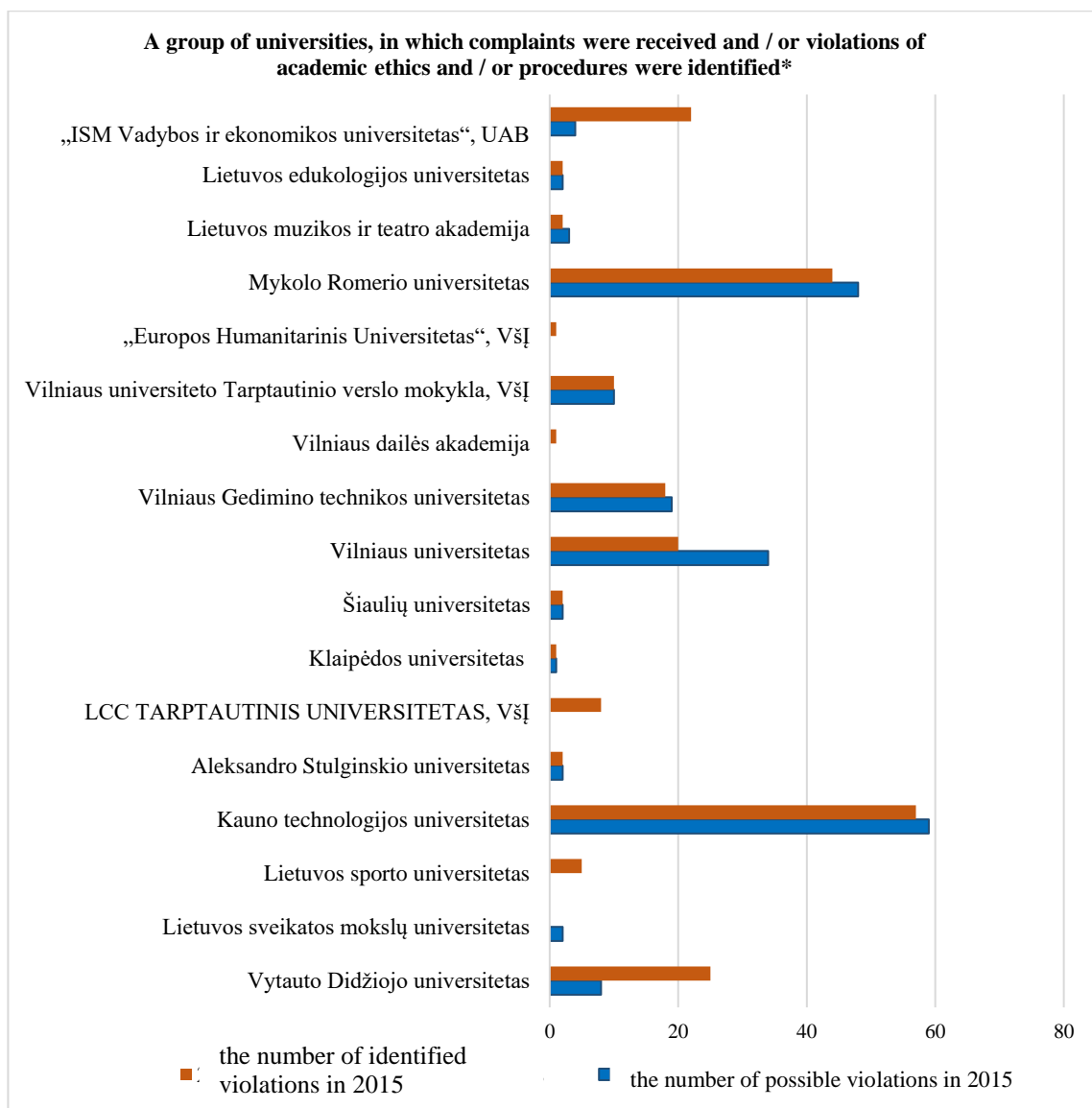


Figure 7. A group of universities, in which complaints were received and / or violations of academic ethics and / or procedures were identified.

* A group does not include universities, in which complaints were not received and / or violations of academic ethics and / or procedures were not identified.

Some institutions have a higher number of identified violations than received complaints of potential violations, because when violation was observed, the complaint on it was served, and the case was immediately recorded as a violation.

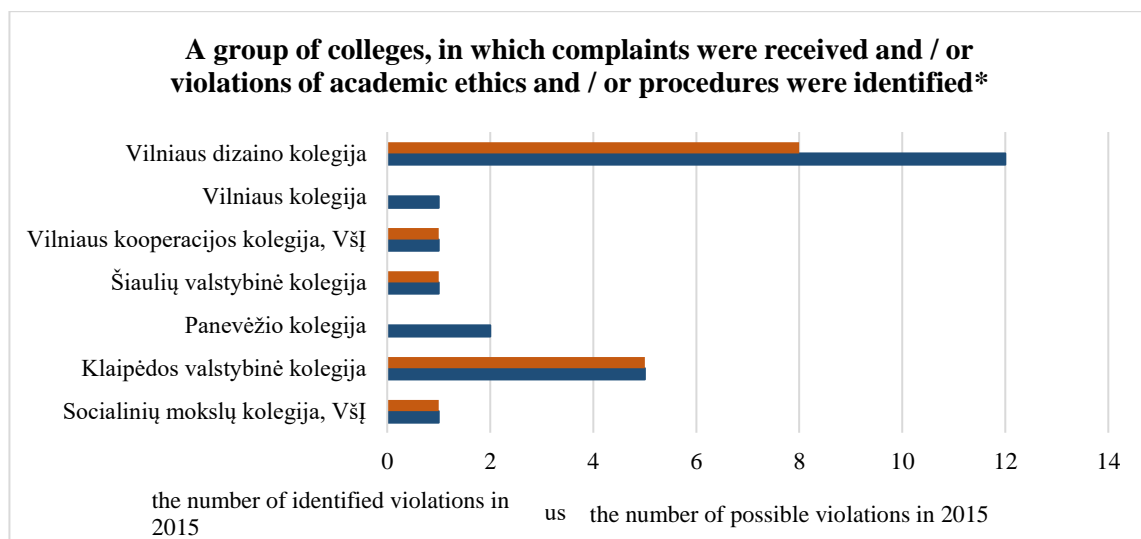


Figure 8. A group of colleges, in which complaints were received and / or violations of academic ethics and / or procedures were identified.

* A group does not include colleges, in which complaints were not received and / or violations of academic ethics and / or procedures were not identified. Also, those institutions which did not provide statistical data are also not included.

In 2015, as in 2014, a group of research institutes received and identified only one violation of academic ethics.

In order to objectively assess the number of violations of academic ethics and / or procedures identified in HERI in 2015, the size of each institution was taken into account. In collaboration with the Information Technology Center for Education, the ratio of the number of identified violations and academic community members of HERI (students of the first, second, third cycle studies and integral studies and pedagogical and / or scientific and administrative staff) was calculated (see Figures 9 and 10).

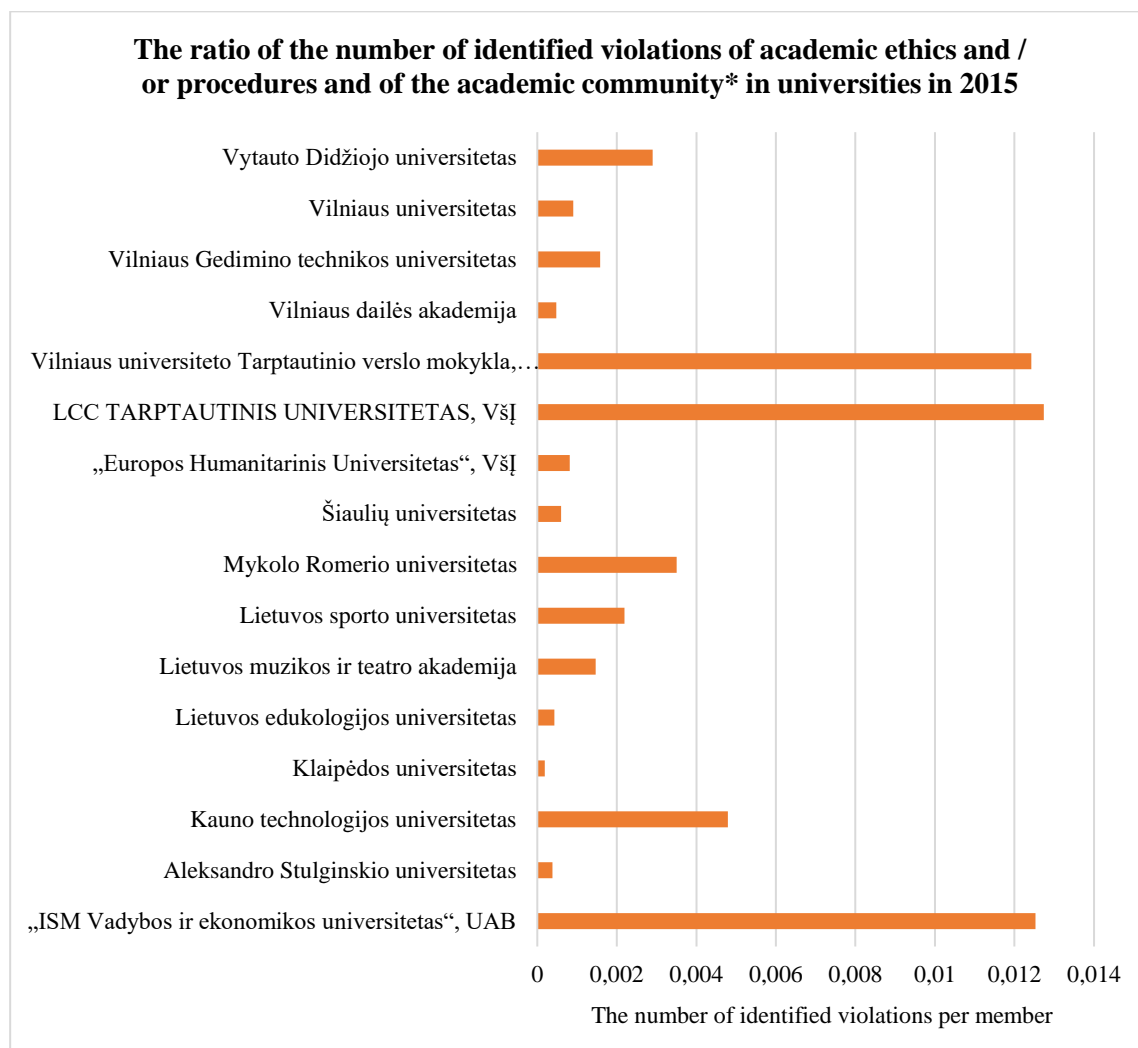


Figure 9. The ratio of the number of identified violations of academic ethics and / or procedures and of the academic community in universities in 2015.

* The academic community of the institution in this case consists of: students of the first, second and third cycle studies and integral studies, pedagogical and / or scientific staff, administrative staff.

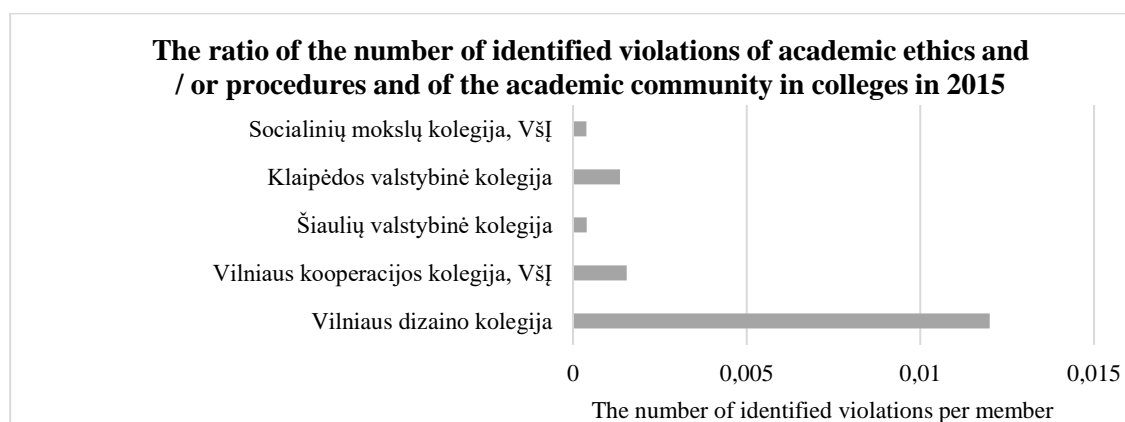


Figure 10. The ratio of the number of identified violations of academic ethics and / or procedures and of the academic community in colleges in 2015.

* The academic community of the institution in this case consists of: students of the first, second and third cycle studies and integral studies, pedagogical and / or scientific staff, administrative staff.

In 2015, the highest number of violations (both academic ethics and procedures) was identified in bachelor study cycle - 179 (76 %), not identified at all - in doctoral study cycle (Figure 12). All groups of members of academic community mostly have violations of academic ethics (see Figures 11 and 12).

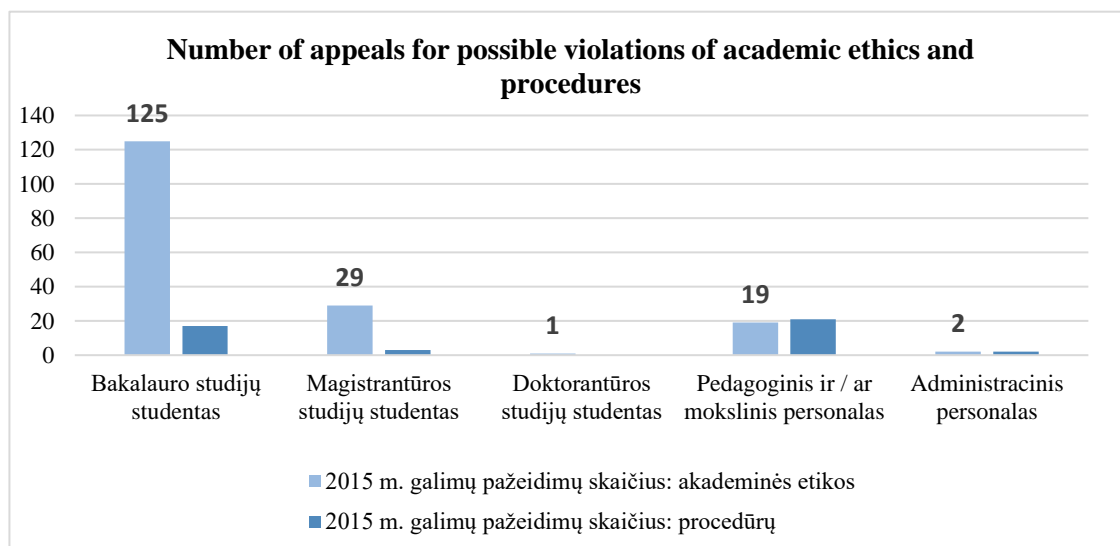


Figure 11. Number of appeals for possible violations of academic ethics and procedures recorded in 2015.

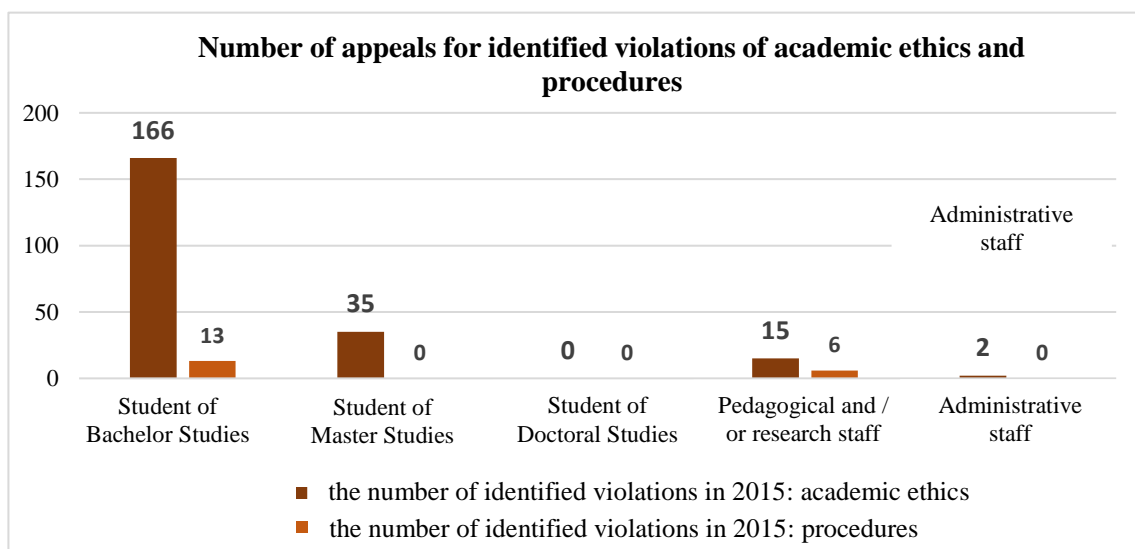


Figure 12. Number of appeals for identified violations of academic ethics and procedures in 2015

Compared to the data for 2014, the number of received appeals for possible violations of academic ethics and / or procedures at HERI in 2015 increased by 67 %, while the number of identified violations of academic ethics and / or procedures increased by 132 % (see Figure 13). The number of both the received appeals and identified violations in 2015 increased in all groups of members of the academic community, with the exception of students of doctoral studies (in 2014, possible and identified violations were 2 per each, while, in 2015, 1 possible violation was recorded,

but it was not confirmed) and of administrative staff (in 2014, 12 possible violations were recorded and 4 identified, while, in 2015, 4 messages were received, 2 of which were confirmed) (see Table 6).

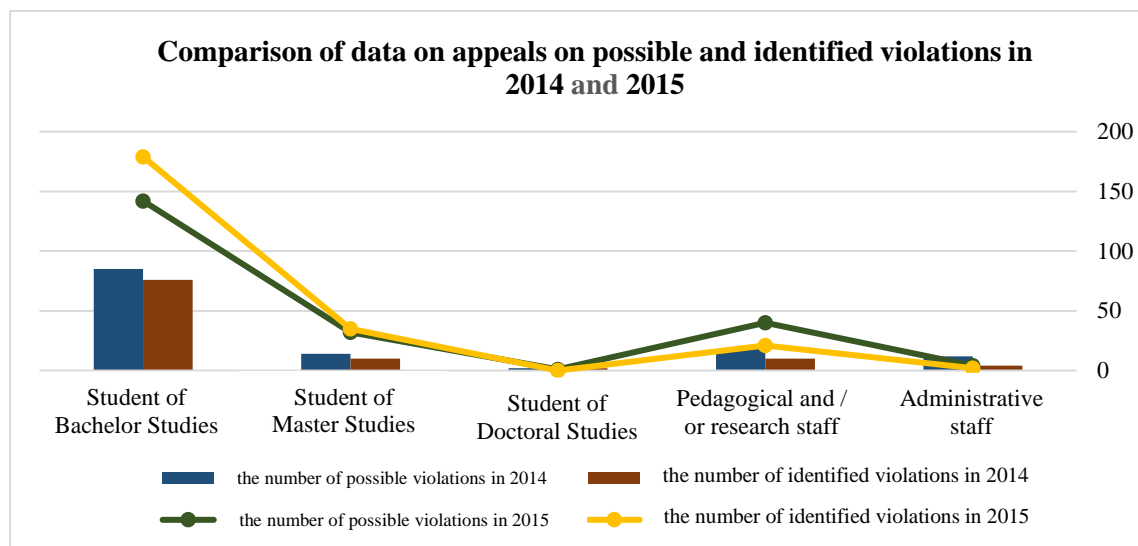


Figure 13. Comparison of data on appeals on possible and identified violations in 2014 and 2015.

The group of members* of the academic community	2014		2015	
	Number of possible violations	Number of identified violations	Number of possible violations	Number of identified violations
Student of Bachelor Studies	85	76	142	179
Student of Master Studies	14	10	32	35
Student of Doctoral Studies	2	2	1	0
Pedagogical and / or scientific staff	18	10	40	21
Administrative staff	12	4	4	2
TOTAL:	131	102	219	237

Table 6. Comparison of data on appeals on possible violations and identified violations in 2014 and 2015.

* It was appealed for their actions or a violation of academic ethics and / or procedures was identified.

The increased number of identified violations of academic ethics and procedures in 2015 shows that the members of HERI community are more rigorous about actions that violate the principles of transparent higher education. The recording of violations of the Code of Academic Ethics of HERI and Study Regulations as well as a responsible attitude towards possible violation of academic ethics and / or procedures indicate that the higher education institution has a self-regulatory aspect and the academic community is not indifferent to the ethical values of the higher education institution. Such conclusions are confirmed by desire of HERI to strengthen the prevention of academic ethics through the establishment of Academic Ethics Commissions of Stem Academic Departments (Vilnius University), actively pursuing the activities of the Center for Academic Ethics

(Mykolas Romeris University). Also, more and more students representations of higher education institutions are organizing settlement monitoring, all Lithuanian universities and colleges have approved codes of academic ethics.

However, the analytical data also revealed the weakest link in the academic community - the students of bachelor studies prevail in the group of violations of academic ethics and / or procedures. This indicates that students in the first cycle are most likely to violate the values of academic ethics.

Compared to 2014, the number of violations of the academic ethics and / or procedures of pedagogical and scientific staff also increased. Attention is drawn to the problem of HERI of regulating internal legal acts. It is often misconduct due to the lack of proper description of the exams, the final thesis procedure, and the lack of proper regulation of the lecturers' rights and duties. Violations are also caused by the non-observance of the deadlines set by the pedagogical and scientific staff, the lack of familiarity with the provisions of the internal legal acts.

The data provided by higher education institutions reveals that violations of both academic ethics and procedures are identified inside HERI. It should be noted that Clause 28(11) of the fourth section of the recommendations approved by the Ombudsman on 31 March 2015 indicate that “the Ethics Committee also does not examine reports or information about possible violations of procedures in the institution of science and studies.” On the decision not to examine the notification or information and to transmit the notification or information to the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania, the Ethics Committee notifies the person in writing within 10 working days of receipt of the notification or information” (underlined by us). The Ombudsman strives to ensure an effective and confidential investigation of violations, has the necessary legal knowledge and experience in solving such issues.

After analyzing the survey data related to information on methods of publicizing violations of academic ethics and / or procedures, it became clear that HERI firstly announces and presents the decisions to the circle of the academic community in which the offender works / studies. Also, among the indicated answers, it is noted that the information is submitted to the Senate, Ethics Committees. The offender is given a warning and / or reprimand in writing and orally.

HERI publishes violations of academic ethics and / or procedures on both the institution's intranet and on the website (such forms of information disclosure were provided by the same number of institutions). But even 15 % of HERI do not publish violations, and 23 % did not indicate this information (see Figure 14).

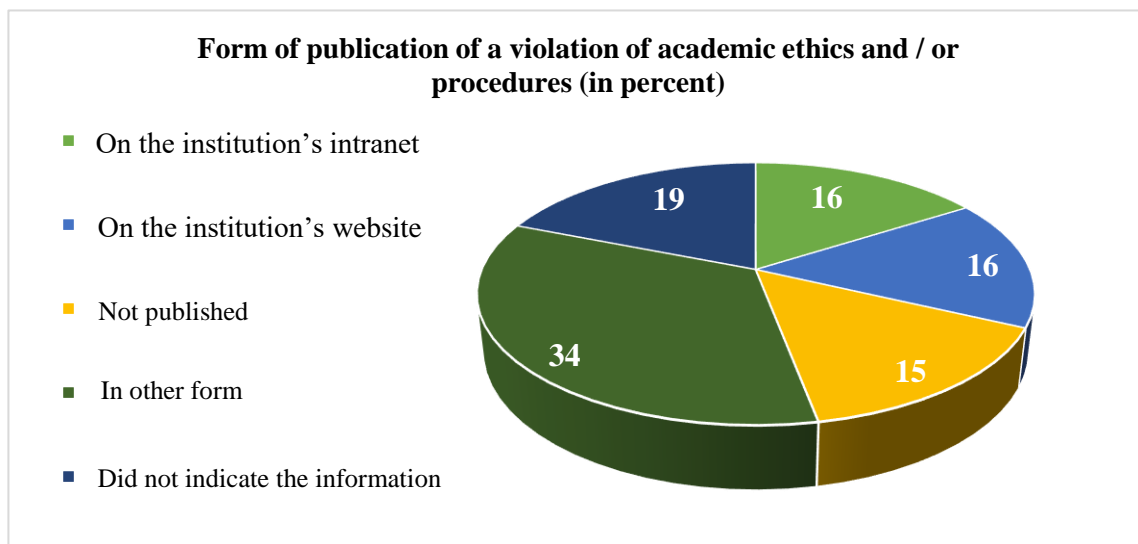


Figure 14. Forms of publication of decisions.

4.1.7. Recommendations. Taking into account the statistics and the findings, the Ombudsman submits the following recommendations:

1. Give more attention to ensuring academic ethics and transparency procedures at the main (bachelor's) degree stage. To actively take care of providing information on academic ethics and procedures in the institution (to organize conferences, to organize open discussions with members of the community and the Ombudsman, taking care of the dissemination of publications on academic ethics and integrity).

2. To increase the involvement of the student community in the provision of information about academic ethics and its assurance.

3. To review and adjust the institution's internal legal acts ensuring the procedures of exams and final works, the rights and duties of lecturers and students.

4. To publicize information about violations of academic ethics and / or procedures identified at the institution.

4.1.8. Conclusion. In order to facilitate the implementation of the Ombudsman's task in the future "contributing to the quality of higher education and research by nurturing the principles of academic responsibility and ethical research practices by applying the preventive measures against plagiarism, unauthorized copying and other unauthorised use of intellectual property results developed by other people as well as counterfeiting, fraud and manipulation of research data" (Statute of the Office, p. 12.6), it is necessary to give the Ombudsman access to the data of the Lithuanian Academic Electronic Library (eLABa) in order to get acquainted with the scientific products accumulated by eLABa (publications, doctoral dissertations, theses and other published material) and assessment of scientific texts coincidence.

According to data provided by higher education institutions, in 2015, 202 violations of academic ethics were identified in universities and 15 in colleges. According to the Information

Technology Center of Education (hereinafter - ITC) data on the number of students, in Lithuania, in 2015, 96 985 students studied at universities and 41 548 students studied in colleges. Thus, according to the ratio of the number of students and the number of violations of academic ethics identified in universities, one violation of academic ethics was for 480 students, and for 2770 students in colleges.

In 2015, during the research conducted by the Lithuanian Students Union “Academic Integrity Index 2015”⁶, 1243 students of universities and colleges were interviewed for the purpose of representativeness. 32 percent of respondents who are studying in universities, and 34 percent of respondents who are studying in colleges, believe that academic dishonesty in higher education institutions is widespread. Thus, every 3 students studying at a higher education school believe that the principle of academic integrity is violated during studies.

It can be concluded that the public image of HERI in terms of academic violations is significantly different from the students' view of the current situation as a result of academic violations.

4.2. SURVEY ON ACADEMIC DEBTS OF STUDENTS OF BIOMEDICAL SCIENCES

4.2.1. *Objective of the survey:* to find out what are the subjects of study programs of which students receive academic debts and for what reasons students submit the appeals for the academic debts. To achieve this purpose, the Office applied to higher education institutions, by requesting to submit the data of three semesters of 2014-2015 on subjects in the field of biomedical sciences: a) the number of students, b) the number of academic debts, c) the number of appeals for academic debts and d) the causes of appeals concerning academic debts.

4.2.2. *Survey data collection:* 22 March 2016 – 19 April 2016

4.2.3. *Survey sample:* The Office applied to 20 higher education institutions where biomedical studies are being conducted. 16 (80%) of the higher education institutions provided the requested information. 2 higher education institutions (University of Applied Social Sciences and Lithuanian Academy of Music and Theater) reported that they had not completed the study programs in the field of biomedical sciences during the specified period, therefore the survey data is summarized only according to the information provided by the higher education institutions (i.e., 14 higher education institutions). The field of biomedical sciences is chosen randomly, without reference to a particular violation of academic ethics and / or procedures.

⁶ Research conducted by the Lithuanian Students Union, “Academic Integrity Index 2015”, <<http://www.lss.lt/wp-content/uploads/2015/06/ASI-tyrimas.pdf>>

The number of higher education institutions that have completed the survey in a timely manner	The number of higher education institutions that have completed the survey belatedly	The number of higher education institutions that have not completed the survey
12	4	4

Table 7. Submission of information by HERI.

4.2.4. **Survey data analysis:** On 2-6 May 2016, the survey data was analyzed by calculating the ratio of academic debts of individual study program subjects and appeals for academic debts.

4.2.5. **Survey results:** the situation of higher education institutions due to the number of academic debts is not frustrating. The average of academic debts of state college students in the given period amounted to 10%, while of non-state colleges - 10-12%. Only one higher education institution, i.e. Kaunas University of Technology, pointed out that students of biomedical sciences in the period of 2014-2015 did not receive academic debts. Students from both state and non-state colleges did not appeal for their academic debts against their higher education institutions. However, the statistics of state universities vary widely, for example, there were such subjects of programs in biomedical sciences, on which 50-100 % of students have collected academic debts, i.e. one student was attending the subject or one of the two received an academic debt. The average of academic debts of state university students in the given period was about 15 %. Out of those submitted the data, three universities (Vilnius University, Lithuanian University of Sport and Lithuanian University of Health Sciences) have indicated that students have filed appeals for academic debts. 12 complaints were filed in the Lithuanian University of Health Sciences due to inadequate assessments of the subjects of the different programs and 6 appeals regarding violation of procedures of in assessing one subject. The appeals related to the latter case were satisfied. 3 appeals were filed in Vilnius University for violation of procedures of one subject and disagreement with the final assessment, and 1 appeal for a contradiction to re-take the colloquium only once (although such a provision is specified in the description of the subject). Lithuanian University of Sport informed that only one appeal was filed for the academic debt throughout the entire period, but the reason was not specified.

4.2.6. **Recommendations for the development of further research:** the research can be extended by analyzing data from other fields of studies, including the analysis of appeals submitted to higher education institutions and the internal legal acts of higher education institutions, which establishes the procedure for the examination of appeals, i.e. assessing whether the appeals were reasonably submitted, whether the deadlines for submission were followed, what are the conclusions of the examination of appeals, as well as the decisions that determine the quality of the studies.

4.3. SURVEY ON THE USE OF AUDIO RECORDERS

4.3.1. **The objective of survey:** to find out whether the higher education institutions regulate audio recording in lectures and / or seminars for target groups. To achieve this purpose, the Office applied to higher education institutions, by requesting a) to submit the documents that provide conditions for the use of audio recorders in lectures and seminars for students, lecturers and administration; b) to indicate cases in which the use of audio recordings in lectures and seminars was addressed to the Academic Ethics Committee / Commission of the higher education institution.

4.3.2. **Survey data collection:** 18 October 2016 – 12 December 2016

4.3.3. **Survey sample:** The Office applied to 42 state and non-state higher education institutions. 37 out of 41 higher education institutions (90 %) provided the requested information. Vilnius University Business School (formerly the International Business School of Vilnius University) indicated that it has become a unit of Vilnius University, therefore its procedure for using the audio recorders is no different from that of the Vilnius University.

The number of higher education institutions that have completed the survey in a timely manner	The number of higher education institutions that have completed the survey belatedly	The number of higher education institutions that have not completed the survey
23	15	4

Table 8. Submission of information by HERI.

4.3.4. **Survey data analysis:** On 13-16 December 2016 the survey data was analyzed.

4.3.5. **Survey results:** two aspects were important in the survey: 1) the legal regulation of the use of audio recorders in lectures and seminars and 2) the number of persons appealed to the Academic Ethics Committee / Commission of the higher education institution regarding the use of audio recorders. The survey results indicate that most Lithuanian higher education institutions have not regulated the use of audio recorders in lectures and seminars. About 89 percent of all data providers responded negatively to this question. About 16 percent of higher education institutions assessed the request in an inaccurate way because they indicated that audio recorders were used during the defense of the final works, but did not provide information about the audio recording equipment used during lectures and seminars. Out of all the respondents, 6 high education institutions (16 %) distinguished themselves, which in one way or another indicated the procedure for audio recording during lectures and seminars. The aspect of the use of audio recorders is included in the various documents: in study contract of higher education institution and student, Codes of Academic Ethics, Descriptions of Remote Learning Procedure, Academic Regulation. The documents include the provision that, in most lectures and seminars, students may only use audio recorders with the consent of other students and lecturers and / or the administration, the same rule applies to lecturers, administrators, i.e. with the consent of students. Audio records should only be used to achieve better

learning outcomes without publishing or disseminating records. The Descriptions of Remote Learning Procedure indicate that lectures can be recorded and presented to students as teaching materials. Some higher education institutions, which have not confirmed the procedure for audio recorders, have indicated that the consent of the lecturer and other students is required in order to record a lecture or a seminar. On the second question, higher education institutions have provided unanimous information: none of the Academic Ethics Committee of institutions has considered the use of audio recorders in lectures or seminars. Two higher education institutions have indicated that this issue will be included in the documents of the institution's activities in the near future.

4.3.6. **Recommendations:** The Ombudsman draws attention to the decision No. SP-3 of 18 January 2017 “Regarding the complaint of T. G. of 14 October 2016” and recommends that the procedure for the use of audio recorders be clearly defined.

5. INFORMATIVE – CONSULTATIVE ACTIVITIES

In 2016, the Ombudsman gave his opinion, provided advice on various issues of academic ethics and procedures, and informed the academic community or other institutions in evaluating any phenomenon.

On 4 March 2016, the Ombudsman appealed to public authorities with an invitation to cooperate. In 2015-2016, various state institutions were not indifferent to the problems of academic ethics and forwarded relevant information to the Office. The Ombudsman therefore thanked the Ministry of Education and Science of the Republic of Lithuania, the Seimas Ombudsman's Office of the Republic of Lithuania, the Office of the Government of the Republic of Lithuania and other institutions that contributed to improving the academic ethics situation. The Ombudsman also urged other institutions not to tolerate violations of academic ethics and procedures in the future and called for cooperation in forwarding relevant information related to cases of possible violations of academic ethics and procedures. The Ombudsman emphasized that indifference is one of the most important tools for promoting fairness in the broadest sense.

On 30 March 2016, the Ombudsman applied to HERI for the regulation / detailing of the procedure for handling individual applications. This step was caused by the situation of the decision No. SP-8 of 25 March 2016 “On the Complaint of P. K. of 4 January 2016”. Seeking for clarity of examination of applications for termination of study contracts by university students / colleges via email, the Ombudsman recommended that universities and colleges regulate / specify the procedures for examining applications at universities and colleges, including examining applications submitted by individuals (students) by e-mail. In this procedure it is proposed to take into account the rules of the examination of applications by individuals and their servicing in public administration

institutions, institutions and other entities of public administration approved by the Resolution No. 875 of the Government of the Republic of Lithuania of 22 August 2007, Clauses 24 and 25, and to establish that a person's request submitted electronically and signed by electronic signature is equivalent to a written request. It should be noted that “a request submitted electronically is made in such a way that the requested authority could:

- 25.1. recognize the format of the electronic document;
- 25.2. open and process it using electronic document management systems or other information technology tools used by the institution;
- 25.3. recognize the contents of the request;
- 25.4. identify the electronic signature and the person who submitted the request.”

The Ombudsman pointed out that some universities already have established rules for examining applications at universities.

On 1 June 2016, the Ombudsman reacted to information about academic dishonesty in public space at Vytautas Magnus University and appealed to the academic community and the media to urge the academic community not to remain indifferent and, in the face of similar situations, to contact the Academic Ethics Commission / Committee of HERI or the Office. According to the Ombudsman, only a public debate about the arising problems may produce tangible results, and publicity of offenses is equivalent to a preventive measure.

The Ombudsman pointed out that HERI itself shapes its image, i.e. management and / or other members of the academic community decide how to deal with a person who has violated academic ethics and what sanctions apply in a particular case.

In 2016, the employees of the Office advised interested persons not only on the telephone but also at the Office: they provided consultations on the classification of violations of academic ethics and procedures, the concept of decisions taken by the Ombudsman and recommendations in specific cases. Applicants often were interested in completing the complaint form.

One of the most important functions of the Ombudsman is to publicize his activities. In 2016, significant visits to HERI took place, and it was participated in various meetings, discussions and conferences. In the second-third quarter of 2016, meetings were held with college academic community members. During these meetings, discussions and conferences, the Office's activities, the main issues of academic ethics and procedures at HERI were presented, as well as relevant aspects of investigation of complaints, studies being carried out / had been carried out, and answers to the questions of the academic community were provided. Details of publicity activities are described in sections 5.1–5.4.

5.1. CONFERENCES IN LITHUANIA

- On 3 May 2016, the Ombudsman participated in the presentation-discussion of the report of the Seimas Ombudsman's Annual Report for 2015 “The Importance of Ombudsmen in Ensuring Human Rights”. The ombudsman spoke in the discussion “The role of the Seimas Ombudsmen and other ombudsmen in shaping the human rights policy in the state: expectations and opportunities“. In an extension of the discussion on the role of ombudsmen, the Ombudsman intended to hold a conference-discussion with lawyers and representatives of science and study institutions in June this year.

- On 17 May 2016, the Ombudsman participated in the round table discussion at the Faculty of Law of Kazimieras Simonavičius University “Academic (dis)honesty - reflection of our attitude towards life”. The aim of the event was to discuss the issues of plagiarism and purchase of student writing works. The Ombudsman became involved in the discussion and called for a more rigorous assessment of the writing work, publicizing all cases of plagiarism, thus striving to establish academic values not only among students but also among the academic community as a whole.

- On 22 June 2016, the Office organized a conference-discussion in the Seimas of the Republic of Lithuania “The Concept of Academic Ethics in Legal Aspect”. The reports were read by the Ombudsman (“Challenges of Academic Ethics”), the Chief Lawyer of the Lithuanian University of Educational Sciences Ramutė Ruškytė (“Where Law and Ethics Meet”) and Jolanta Bieliauskaitė, Lecturer at the Public Law Institute of the Law Faculty of Mykolas Romeris University (“Academic Ethics and Law Intersection: Theoretical and Practical Aspects”). On the subject of reports, a discussion was arranged, in which representatives of higher education institutions joined.

- On 14 October 2016, the Ombudsman participated in the conference “Academic Ethics in a Changing Society 2016”, organized by Mykolas Romeris University. The Ombudsman was invited to present his position in the discussion on “How the decisions based on (non) ethics and the (non)ethical academic community contributes to the quality of the study process and the quality of scientific work, representation of the reputation of the institution?”

- On 7 December 2016, the Ombudsman participated and read the report at the Human Rights Conference organized by the Seimas of the Republic of Lithuania “Respect for Everyone: Human Rights Achievements and Challenges in Lithuania”, dedicated to commemorate the International Day of Human Rights.

- On 14 December 2016, the Ombudsman participated in the round table discussion organized by the Lithuanian Education Council on “Opportunities and Challenges for Optimization of Study and Science System - Higher Education Institutions and Research Institutions” held at the Seimas European Information Office.

5.2. COUNSELS / MEETINGS

- On 13 April 2016, at the meeting of the Education, Science and Culture Committee, the issue of the principles for the formation of state higher education councils was discussed in accordance with Law on Amending and Supplementing Articles 7, 10, 12, 17, 19, 20, 21, 22, 23, 43, 44, 47, 48, 51, 55, 57, 66, 69, 70, 71, 73, 75, 95 of the Law on Higher education and Research (Official Gazette No. 53-2639, 2012). At the meeting, the current situation was discussed and the way of its solution was considered.

- 5 May 2016 The Ombudsman together with Chief Adviser Kristina Pažusytė attended the meeting of the Higher Education Council of the Ministry of Education and Science. At the meeting, the Ombudsman introduced the principles for the formation of councils of state higher education institutions and appointment of its members.

5.3. MEETINGS WITH HIGHER EDUCATION INSTITUTIONS

In II-III quarters of 2016, the meetings of the Ombudsman with the communities of state and non-state colleges were organized. 18 out of 23 higher education institutions responded to the invitation to meet. It was important for all communities to hear about the activities of the Office of the Ombudsman, relevant issues of the code of ethics, investigations carried out, opportunities for cooperation, problem of plagiarism and coincidences, efficiency of teachers / researchers, proposed methods for the prevention of fundamental ethical problems in the academic and scientific activities, the concept of autonomy of higher education institutions, the principle of academic freedom and equality in the academic activities, obligations of students and lecturers, problem of intellectual property, the situation of private and state higher education institutions in Lithuanian system, etc. One of the colleges, i.e. Vilnius Business College, invited to listen to the primary defense of the final works and to discuss with the gathered community about academic dishonesty by presenting the final works.

Date	Institution	Place	The meeting format
1 February 2016	Panevezys College	Panevezys	Lecture
9 February 2016	Utena College	Utena	Lecture
29 February 2016	Šiauliai State College	Šiauliai	Lecture
9 March 2016	Kaunas College of Forestry and Environmental Engineering	Kaunas	Lecture
24 March 2016	Kaunas College	Kaunas	Lecture
29 March 2016	International Law and Business School	Vilnius	Lecture
29 March 2016	Vilnius Cooperative College	Vilnius	Lecture
31 March 2016	Vilnius College of Technologies and Design	Vilnius	Lecture

4 April 2016	Kaunas University of Applied Engineering Sciences	Kaunas	Lecture
7 April 2016	Northern Lithuania College	Šiauliai	Lecture
20 April 2016	Vilniaus kolegija /University of Applied Sciences	Vilnius	Lecture
25 April 2016	Klaipėda State College and Lithuanian Maritime Academy	Klaipėda	Lecture
6 May 2016	Vilnius College of Design	Vilnius	Lecture
9 May 2016	St. Ignatius Loyola College	Kaunas	Lecture
13 May 2016	University of Applied Social Sciences	Vilnius	Lecture
18 May 2016	Vilnius Business College	Vilnius	Lecture / Primary defense of the final works
19 May 2016	Alytaus kolegija /University of Applied Sciences	Alytus	Lecture
19 May 2016	Marijampole College	Marijampole	Lecture

Table 9. Schedule of meetings of the Ombudsman with communities of state and non-state universities.

5.4. FOREIGN MISSIONS

On 25-26 May 2016, the Ombudsman participated in the Steering Group (ETINED) meeting “Pan-European Platform on Ethics, Transparency and Integrity in Education” in Strasbourg. The meeting was intended to discuss this project’s guidelines and future plans to strengthen the educational situation in the whole of Europe.

On 22-24 September 2016, the Ombudsman went to the mission to Strasbourg, where the second meeting of the Steering Group (ETINED) “Pan-European Platform on Ethics, Transparency and Integrity in Education” was organized. The meeting discussed the results of the first meeting that took place in May, participants shared their country's best practices and planned the agenda and work of the plenary. The Ombudsman presented to the ETINED Steering Group his own and the Office's activities, introduced the recommendations of adoption, implementation and supervision of the codes of academic ethics of science and study institutions, adopted on 31 March 2015, discussed the topical issues that the academic community faced and the challenges facing the recently established Office.

On 2-3 November 2016, the Ombudsman participated in the United Nations Economic Commission for Europe in Geneva. The main theme of the conference was the harmonious development of society, from which honest and ethical science and studies are inseparable. The reports highlighted the obligatory transparency and ethics of the academic community in conducting research that has an impact on a favorable environment for social development. During the sessions, the participants discussed the impact of social factors, the directions of public-private partnerships,

and shared their state's best practices with a view to sustainable social development, the important part of which is knowledge competitiveness and ethics and integrity at the academic level.

On 23-25 November 2016, the Ombudsman went to the mission to Strasbourg, where he attended the first plenary session of the ETINED “Pan-European Platform on Ethics, Transparency and Integrity in Education” was organized. The meeting program presented a presentation of work and priorities of the ETINED, workshops on issues of academic ethics were held, as well as case studies and discussions on ETINED thematic priorities. The event was attended by specialists from the European Union member countries, working in the field of academic ethics and representing the academic community.

In three different working groups, important and debatable issues of academic ethics, proposals for improvement and change were discussed. In the working group A “**Ethical behavior of all participants in the education system**” the situation of the Ethics Code in Armenia was presented: reception, adaptation, and performance in practice. Participated in a pre-selected working group B “**Academic Integrity / Plagiarism**”, which included case studies on the use of references for information sources in works and the ordering of written / settlement works. Representative of the German University of Konstanz, A. Schafer spoke on importance of references to sources of information and the fundamentally changing plagiarism prevention strategy in the German education system and presented internal insights. There was presented the problem of ordering and purchasing of writing works / settlements in the UK. The challenges facing in solving this problem and the indifference of state institutions to the seriousness of the problem were discussed by the professor at the Swansea Medical School in the United Kingdom, Ph. Newton. In the working group C “**Qualification Recognition**”, based on case studies, there were discussed the models of behaviour of all persons and recommended actions when it turns out that the scientific degree has been acquired illegally.

6. COOPERATION WITH LITHUANIAN INSTITUTIONS

On 18 January 2016, the Ombudsman met with Birutė Noreikaitė, Vice-President of the Lithuanian Student Union. The meeting was intended to discuss the possibilities of cooperation, i.e. how the Lithuanian Student Union could contribute to the policy of formation of academic ethics in their higher education institutions. The Vice-President introduced what specific projects are initiated by students at higher education institutions to curb academic dishonesty.

On 14 March 2016, the Ombudsman met with Dr. Feliksas Petrauskas, the Director of the State Consumer Rights Protection Service. the issue of institutional cooperation was discussed at the

meeting. The Ombudsman and the Director of the State Consumer Rights Protection Service have agreed on the transfer to the Office of data on cases of academic ethics dishonesty.

7. PROPOSALS FOR REGULATIONS OF OMBUDSMAN'S ACTIVITIES

The Ombudsman, in view of the problems encountered in his activities and in order to better organize the work of the Office, the decision-making process and its implementation, and taking into account the provisions of the Law on Higher Education and Research entered into force on 1 January 2017, which have narrowed the competence of the Ombudsman, and the problems of implementation of Article 123 of the Code of Administrative Offenses of the Republic of Lithuania (hereinafter - the Code), in January, submitted proposals for the Law on Higher Education and Research and the supplement and amendment of the Code (see annex to the report).

7.1. PROPOSALS FOR AMENDMENT AND SUPPLEMENT OF THE LAW ON HIGHER EDUCATION AND RESEARCH

The new version of the Law on Higher Education and Science entered into force in January 2017, according to which the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania “is a state official who 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 HERI.

*It should be noted that the codes of academic ethics of HERI do not regulate procedures, procedures are established in legal acts. The legal regulation that came into force in January this year has unreasonably narrowed the powers of the Ombudsman, and the amendments aim to correct a logical error. Without changing the wording of Part 1 of Article 17 of the Law, the Ombudsman, after examining a complaint or conducting an investigation and having determined a violation of procedures established in codes of non-academic ethics but in legal acts, **would be forced to close an examination of complaint or to interrupt an investigation.***

Part 13 of Article 17 of the Law on Higher education and Research establishes that the Ombudsman is entitled to receive the information necessary for the performance of the specified functions from the state and municipal institutions, authorities and organizations, state registers, and other persons.

In order to ensure the proper protection of the right to personal data, by publishing information on complaints under investigation, investigations and decisions of the Ombudsman, and ensuring the Ombudsman's right to receive information, it is proposed to supplement Part 13 of Article 17 of the

Law by establishing that the Ombudsman collects and manages personal data necessary for examination of complaints, reports and conduct of investigation at own initiative.

Given that the development of information technology has made it particularly easy to access information, there are more and more cases of plagiarism and other cases of academic dishonesty. In order to qualify and establish the violations of academic ethics of this kind, the access to information systems that ensure the identification and presentation of the coincidences of texts of publications is necessary. Access to the databases for determining international coincidences has been granted, but at the national level, the Ombudsman does not have such access so far. At present, the access to checking and determining coincidences could be granted by the consortium for the maintenance and development of the Lithuanian Academic Libraries Information Infrastructure for Science and Studies (hereinafter - the Consortium), administering the eLABa information system, which has a subsystem for identifying coincidences of the document texts and implementing the plagiarism control function (Electronic Plagiarism Detection System or Electronic Coincidence Detection System (hereinafter - EPAS / ESAS).

On 23 September 2015, the representatives of the eLABa visited the Office and presented the principles of eLABa operation and the possibilities of using this information system. According to the data of the representatives, in 60 % of the writing works, which are uploaded to the EPAS / ESAS system, the coincidences with other writing works uploaded to the system are recorded. Also the writing works which are not checked in the system are uploaded. It should be noted that the displayed coincidences cannot be equated with plagiarism, it should be assessed whether the coincidences can be classified as a violation of academic ethics (plagiarism). The above coincidence percent reveals the relevance of the problem, the importance of coincidence assessment and plagiarism detection.

In accordance with Clause 13.5 of the Statute, the Ombudsman should, when investigating cases of violations of academic ethics and procedures, use academic networks to exchange information on violations of academic ethics, in particular on plagiarism and other violations of intellectual property rights. However, at this time, the Ombudsman, in analyzing plagiarism and other cases of unfair behavior, cannot use the information systems that ensure and facilitate the identification and presentation of coincidences of publications at national level. EPAS / ESAS is a tool for comparing the texts of any written work with texts uploaded to the EPAS / ESAS system.

Attention is drawn to the fact that in Poland, in 2016, an amendment to the Law on Higher Education and Research was adopted, according to which universities were required to check the final examinations using anti-plagiarist system. By subsequent amendment to the law, there was established the regulation for a central anti-plagiarist system in co-operation with the National Writing Workshop. Higher education institutions were obliged to check the written work through this system in a centralized manner.

Access to the eLABa information system has been provided to higher education institutions, academic and other public authorities (e.g. National School Assessment Agency, etc.), but the Ombudsman has not yet used the national database eLABa, for creation of which state and EU structural assistance funds have been allocated, he has no possibility to use it so far, therefore, he cannot perform even the comparison of final thesis in order to determine the cases of coincidences and record them.

It should be noted that, in addition to the work of the accumulation bases in the world practice, there are also other tools used to determine the coincidence when comparing two texts. In 2015, the Ombudsman received a temporary access to “VroniPlag” software. Analyzing the color markings in the texts of comparative works, one can identify the coincidences of texts and identify the plagiarism.

In view of the foregoing, is obvious that the Ombudsman, in the absence of either software or access to information systems, which would considerably facilitate the handling of complaints and the conduct of investigations, and in the case of analyzes - the technical comparison of texts, determination of coincidences and presentation of the conclusions of the analysis carried out, cannot properly contribute to the quality assurance of science and studies by applying plagiarism prevention measures.

*In order to ensure the implementation of tasks entrusted to the Ombudsman, legal regulation is necessary, **which gives the Ombudsman the right to use information resources at the national level free of charge.** With this regard, it is proposed to supplement Part 13 of Article 17 of the Law by indicating that the Ombudsman, in the exercise of the powers entrusted to him, has the right to use the state electronic information systems, databases and registers of electronic documents free of charge and to obtain all information necessary for the performance of the functions of the Ombudsman from the institutions, enterprises and organizations, members of the academic community free of charge.*

Part 11 of Article 17 of the Law on Higher Education and Research establishes that, having examine the complaint, reports and investigations, the Ombudsman can take the decisions established in the Law on Higher Education and Research: 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 / or procedures; 2) to obligate 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 area about the persons (authors) who are became victims of violations of academic ethics; 6) to inform law enforcement authorities if the signs of a criminal offense are identified; 7) to apply to

the court if the Ombudsman's obligation specified in Clause 2 of this Part is not fulfilled;

8) to recognize the complaint (report) as unjustified; 9) to terminate an examination of complaint or investigation.

*The emerging practice of the complaints (reports) examined, investigations conducted and decisions taken by the Ombudsman has shown that the current legal regulation is insufficient in cases of plagiarism and illegal copying, as the issue of the correction of the work in which the infringement is identified remains unclear, **therefore, it is proposed to supplement the list of possible decisions to be taken set out in Part 11 of Article 17, including the following decisions of the Ombudsman:** 1) to propose, in accordance with the procedure established by laws, to abolish or amend the decisions contradicting to the legal acts regulating academic ethics and procedures, or suspend the validity of conflicting decisions or propose decisions that are not taken due to misuse of academic ethics and procedures by heads of science and study institutions and heads of administration of departments; 2) to propose to take measures to eliminate violations of academic ethics and procedures, their causes and conditions; 3) to obligate the authors of scientific (art) works to submit to the Ombudsman a confirmation from the publisher regarding the elimination of scientific (art) works from trading places and / or databases referring to scientific (art) works, or technical error correction.*

7.2. PROPOSALS FOR AMENDMENT AND SUPPLEMENT OF THE CODE OF ADMINISTRATIVE OFFENSES

At present, Article 123 of the Code regulates the illegal purchase, sale and submission of scientific works to institutions of science and studies, and pursuant to Part 78 of Article 589, the Ombudsman commits administrative offenses, conducts an investigation into administrative misconduct and draws up records of administrative offenses provided for in Articles 123 and 507 of the Code.

The mechanism for implementing Article 123 of the Code is unclear on the following grounds:

1) Final theses of the first-cycle and post-graduate studies and postgraduate studies, dissertations, art projects - do not include the purchase and sale of abstracts, course papers and other intermediate study papers, although the "purchase and sale" abstracts, course papers and other intermediate study papers is no less important administrative offense, and therefore the elimination of the said study papers is not justified.

2) Furthermore, it is not clear what kind of purchase, sale of writing works would be considered "illegal". It should be noted that the finding of illegality of a purchase-sale transaction would exceed the competence established to the Ombudsman.

3) It is also noteworthy that in some cases the order to prepare the writing work and its acceptance would be formalized as a purchase-sale transaction, therefore, in no case could the

remuneration for the preparation of the writing paper be determined. In addition, the current regulation lays down liability for the “purchase, sale and presentation of works”, but this wording constitutes a presumption for suspects to avoid liability in the event of an administrative offense indicating that the work was donated or otherwise transferred free of charge.

Against this background, it is proposed to abandon the wording “illegal purchase and sale of scientific works”, indicating only the gainful employment, and to amend the provisions of Article 123 of the Code by establishing liability: 1) for submission of prepared science or study writings (works) (or part thereof) to another person when it is known to the person who prepared science or study writings (works) (or part thereof) knows that it is intended to submit prepared science or study writings (works) (or part thereof) to the institutions of science and studies on behalf of another person; 2) for submission of science or study writings (works) (or part thereof) prepared by another person to the institutions of science and studies as own.

At present, Article 123 of the Code lays down liability for the illegal purchase, sale and submission of scientific works to scientific and educational institutions. Consequently, the Ombudsman can apply Article 123 only to HERI, which establishes a case of possible offense, on the basis of the notification of the purchase, sale and submission of works of scientific or study writing. Such regulation is flawed and inadequate, because in most cases acquisition of science or study writing can be found in other ways, for example, from other students. Against this background, it is proposed to separate the preparation of the academic or study writing work (or part thereof) from the submission to the institution of science and studies and to determine the responsibility separately for the preparation, and separately for submission to the institution of science and studies.

Modern technology has made it especially easy to access, purchase and distribute information, therefore, it is necessary to provide administrative responsibility for the preparation, submission and publication of information that promotes violations of academic ethics and / or procedures; therefore, it is proposed to supplement the Code with Article 123¹, which establishes administrative responsibility for disseminating information in the media, on the Internet, for promoting the provision of scientific or educational writing works (works) or other means of encouraging violations of academic ethics and / or procedures.

In accordance with Clause 78 of Article 589, the Ombudsman commits administrative offenses, conducts an investigation into administrative misconduct and draws up records of administrative offenses provided for in Articles 123 and 507 of the Code. Currently the Ombudsman and three civil servants are working at the Office. Unauthorized purchase, sale and submission of research papers or study papers are available throughout the country, at any institution of science and studies. The frequency of the presentation of information offering research or study writing services in the public space only confirms the necessity of the proposed legal regulation. In the absence of a clear mechanism for the implementation of the norms of Article 123 of the Code, in the case of limited

human resources, the possibility of imposing liability on offenders is very limited. For reasons of expeditious and cost-effective implementation, in accordance with the principle of reasonableness, it is proposed to supplement Clause 49 of Article 589, by assigning the application of provisions of Article 123 to police officers. It should be noted that the publicity of the Ombudsman's cooperation with police officers would give weight to the provisions of Article 123 of the Code from a preventive point of view.

The Enforced Code of Administrative Offenses introduced additional functions for the Ombudsman, requiring additional human resources for initiating legal proceedings on administrative offenses, investigating administrative offenses, and drawing up protocols for administrative offenses. At least one additional post at the Office is required for performance of additional functions. To date, no additional posts have been set up, funding has not been provided, and in 2017, the funding is further reduced.

In order to effectively implement the tasks entrusted to the Ombudsman, it is proposed to supplement Clause 78 of Article 589 with a reference to Article 505, according to which the Ombudsman could apply liability for the obstruction of the implementation of the rights granted or the performance of duties assigned, its legal requirements or instructions and the decisions of the collegiate bodies.

8. CONCLUSIONS AND SUGGESTIONS

1. In 2016, student applied to the Office the most often by filling out the complaint form on possible violations of organization and execution of studies and admission procedures. According to the object of appeals, the most complaints were started to examine or investigations initiated on decisions and actions taken by administration staff and management bodies at higher education institutions.

2. According to the nature of the violation named, the Ombudsman the most often received the complaints or initiated investigations (79 % of all complaints received and investigations initiated in 2016) on possible violations of procedures. According to the nature of the violations identified, the Ombudsman the most often took decisions (31% of all decisions taken) on violations of procedures.

3. In 2016, 3 decisions were taken to recommend to the science and study institutions to revoke the decision based on the documents governing academic ethics and procedures. Out of these decisions 1 has been fulfilled and 2 outstanding.

4. The most part of the recommendations provided by the Ombudsman - 16 (84%) cases - were the main suggestions to improve the specific internal legal acts of HERI, and in 3 (16%) cases - to take actions on established violation of academic ethics and procedures. More than half of the Ombudsman's recommendations have been implemented (58% of all recommendations, when implemented in full, in part or decided or planned to implement in the short term). The

implementation of the other part of recommendations has been postponed, it has been decided not to implement them or information on the implementation of the recommendations has not been received.

Attention is drawn to the fact that the statistics reveal the problem of regulating the internal legal acts of HERI and the need to improve them. The Ombudsman recommends that HERI pay more attention to reviewing and improving HERI's internal legal acts, in particular on ensuring the rights, duties and functions of HERI staff.

5. In 2016, 10 court proceedings on decisions taken by the Ombudsman in 2014-2016 took place. In 2016, Lithuanian Supreme Administrative Court adopted decisions by which 3 decisions of the Ombudsman were repealed. Attention is drawn to the fact that Vilnius Regional Administrative Court and Lithuanian Supreme Administrative Court, when examining complaints and taking decisions on decisions of the Ombudsman, do not respect the differences in the content and form of academic ethics and legal norms, equate the Ombudsman's decision, which establishes violations of academic ethics (norms of ethics), to a decision finding violations of procedures (legal norms). Such a position of the courts that violations of academic ethics must be based on legal norms presupposes the adoption of unjustified decisions by the courts regarding the invalidation and illegality of decisions of the Ombudsman.

6. The Ombudsman, in accordance with the statistics on identified violations of academic ethics and procedures, recommends:

6.1. Give more attention to ensuring academic ethics and transparency procedures at the main (bachelor's) degree stage. To actively take care of providing information on academic ethics and procedures in the institution (to organize conferences, to organize open discussions with members of the community and the Ombudsman, taking care of the dissemination of publications on academic ethics and integrity).

6.2. To increase the involvement of the student community in the provision of information about academic ethics and its assurance.

6.3. To review and adjust the institution's internal legal acts ensuring the procedures of exams and final works, the rights and duties of lecturers and students.

6.4. To publicize information about violations of academic ethics and / or procedures identified at the institution.

7. It is proposed to amend Part 1 of Article 17 of the Law on Higher Education and Research by establishing that the Ombudsman is a public official who examines complaints, reports and conducts investigations at his own initiative on possible violations of academic ethics and procedures, also to supplement the list of possible decisions to be taken set out in Part 11 of Article 17 by additionally indicating the following decisions of the Ombudsman: 1) to propose, in accordance with the procedure established by laws, to abolish or amend the decisions contradicting to the legal acts

regulating academic ethics and procedures, or suspend the validity of conflicting decisions or propose decisions that are not taken due to misuse of academic ethics and procedures by heads of science and study institutions and heads of administration of departments; 2) to propose to take measures to eliminate violations of academic ethics and procedures, their causes and conditions; 3) to obligate the authors of scientific (art) works to submit to the Ombudsman a confirmation from the publisher regarding the elimination of scientific (art) works from trading places and / or databases referring to scientific (art) works, or technical error correction; as well as to supplement Part 13 of Article 17 that the Ombudsman, in the exercise of the powers entrusted to him, has the right to use the state electronic information systems, databases and registers of electronic documents free of charge and to obtain all information necessary for the performance of the functions of the Office from the institutions, enterprises and organizations, members of the academic community free of charge.

8. In order to facilitate the implementation of the Ombudsman's task "contributing to the quality of higher education and research <...> by applying the preventive measures against plagiarism, unauthorized copying and other unauthorised use of intellectual property" (Statute of the Office, p. 12.6). , and in view of the limited ability of the Ombudsman to perform checks on the coincidences of written works and to identify cases of plagiarism, it is recommended to provide the Ombudsman with access to the Electronic Coincidence Detection System EPAS / ESAS at the Lithuanian Academic Electronic Library Information System (eLABa).

9. The Enforced Code of Administrative Offenses introduced additional functions for the Ombudsman, requiring additional human resources for initiating legal proceedings on administrative offenses, investigating administrative offenses, and drawing up protocols for administrative offenses. At least one additional post at the Office is required for performance of additional functions. To date, no additional posts have been set up, funding has not been provided, and in 2017, the funding is further reduced. In the event of a shortage of human resources, there arises the threat to the quality of implementation of the state's science and studies policy in the field of academic ethics and procedures and ensuring the tasks of the Ombudsman.

10. It is proposed to amend Article 123 of the code by determining the administrative responsibility for submission of prepared science or study writings (works) (or part thereof) to another person when it is known to the person who prepared science or study writings (works) (or part thereof) knows that it is intended to submit prepared science or study writings (works) (or part thereof) to the institutions of science and studies on behalf of another person, also to supplement the Code with Article 123¹ establishing the administrative responsibility for disseminating information in the media, on the Internet, for promoting the provision of scientific or educational writing works (works) or other means of encouraging violations of academic ethics and / or procedures, and to supplement Clause 49 of Article 589 by assigning the application of provisions of Article 123 to police officers. In order

to effectively implement the tasks entrusted to the Ombudsman, it is proposed to supplement Clause 78 of Article 589 with a reference to Article 505, according to which the Ombudsman could apply liability for the obstruction of the implementation of the rights granted or the performance of duties assigned, its legal requirements or instructions and the decisions of the collegiate bodies.

Annex

to the Report on the Activity of the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania and of the Office of the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania for the year 2016

**PROPOSAL FOR
AMENDMENT AND SUPPLEMENT OF THE LAW ON HIGHER EDUCATION AND
RESEARCH**

17 Article. The Ombudsman for Academic Ethics and Procedures

1. The Ombudsman for Academic Ethics and Procedures (hereinafter - the Ombudsman) is a public official who examines complaints, reports and conducts investigations at his own initiative on possible violations of academic ethics and procedures.

11. After examining a complaint (notification) or after conducting an investigation, the Ombudsman takes a decision:

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 / or procedures;

5) to propose, in accordance with the procedure established by laws, to abolish or amend the decisions contradicting to the legal acts regulating academic ethics and procedures, or suspend the validity of conflicting decisions or propose decisions that are not taken due to misuse of academic ethics and procedures by heads of science and study institutions and heads of administration of departments;

6) to propose to take measures to eliminate violations of academic ethics and procedures, their causes and conditions;

7) to obligate the authors of scientific (art) works to submit to the Ombudsman a confirmation from the publisher regarding the elimination of scientific (art) works from trading places and / or databases referring to scientific (art) works, or technical error correction;

13. The Ombudsman collects and manages personal data necessary for examination of complaints, reports and conduct of investigation at own initiative. The Ombudsman is entitled to receive the information necessary for the performance of the specified functions from the state and municipal institutions, authorities and organizations, state registers, and other persons. The Ombudsman, in the exercise of the powers entrusted to him, has the right to use the state electronic information systems, databases and registers of electronic documents free of charge and to obtain

all information necessary for the performance of the functions of the Office from the institutions, enterprises and organizations, members of the academic community free of charge.

**PROPOSAL FOR AMENDMENT AND SUPPLEMENT
OF THE CODE OF ADMINISTRATIVE OFFENSES**

Article 123. Submission of prepared science or study writings (works) (or part thereof) to another person and submission of science or study writing (works) (or part thereof) prepared by another person as own

1. Submission of prepared science or study writings (works) (or part thereof) to another person when it is known to the person who prepared science or study writings (works) (or part thereof) knows that it is intended to submit prepared science or study writings (works) (or part thereof) to the institutions of science and studies on behalf of another person,

imposes a fine on individuals from one hundred and fifty to three hundred euros and on the heads of legal persons or other responsible persons - from eight hundred to one thousand eight hundred euros.

2. The administrative misconduct provided for in Part 1 of this Article, committed repeatedly,

imposes a fine on individuals from three hundred to eight hundred and fifty euros and on the heads of legal persons or other responsible persons - from one thousand seven hundred to three thousand euros.

3. Submission of science or study writings (works) (or part thereof) prepared by another person to the institutions of science and studies as own

imposes a fine on individuals from one hundred and fifty to three hundred euros and on the heads of legal persons or other responsible persons - from eight hundred to one thousand eight hundred euros.

Article 123¹. Publication of information promoting violations of academic ethics and / or procedures

1. Preparation or presentation for dissemination in mass media, on the Internet of the information offering services of preparation of science or study writings (works) or in other ways promoting violations of academic ethics and / or procedures,

imposes a warning or a fine on individuals from one hundred to two hundred euros and on the heads of legal persons or other responsible persons - from three hundred to six hundred euros.

2. The administrative misconduct provided for in Part 1 of this Article, committed repeatedly,

imposes a fine on individuals from three to six hundred euros and fifty euros and on the heads of legal persons or other responsible persons - from one thousand two hundred to three thousand euros.

Article 589. Officers investigating administrative offenses and drafting protocols:

49) police – on the administrative offenses provided in Articles 48, 62, 63, 65, 69, 71, 72, 73, 74, Part 1 of Article 75, Articles 76, 77, 78, 80, 88, 89, 95, Part 1 of Article 98, Articles 108, 109, 115, 122, **123**, 125, 127, 130, 131, 133, 134, 137, 142, 143, 150, 151, 152, 153, 154, 155, 159, 160, 161, 162, 163, 164, 166, 167, 168, 169, 170, 171, Parts 1, 2 of Article 172, Articles 173, 174, 176, 182, 183, 192, 206, 207, 208, 209, 214, 219, 220, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 234¹, 234², Parts 1, 2 of Article 281, Articles 282, 290, 306, 307, 321, 336, 339, 340, 342, 346, 366, 367, 368, Parts 5, 6 of Article 369, Articles 414, 415, 416, 417, 420, 421, 422, 423, 424, Parts 1, 2, 3, 5 of Article 426, Articles 427, 428, 429, 430, 431, 432, 433, Parts 1, 3 of Article 434, Articles 436, 438, Part 2 of Article 439, Articles 450, 451, 452, 453, 454, 455, 456, 458, 459, 460, 461, 462, 463, 473, 474, Parts 5, 6 of Article 479, Articles 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, Parts 1, 2 of Article 496, Parts 1, 2, 4, 5, 6 of Article 506, Articles 507, 508, 511, 512, 513, 518, 519, 520, 521, 523, 524, 527, 528, 530, 532, 534, 535, 538, 539, 540, 541, 542, 543, 546, 553 of this Code;

78) The Office of the Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania – on the administrative offenses provided in Articles 123, **505**, 507 of this Code.