

APPROVED

by Order No. V-39 of the Ombudsperson for Academic Ethics and Procedures of the Republic of Lithuania of 13 July 2021 (Amendment by Order No V-62 of the Ombudsperson for Academic Ethics and Procedures of the Republic of Lithuania of 10 December 2021)

PROCEDURE OF COMPLAINTS HANDLING AND INVESTIGATIONS AT THE INITIATIVE OF THE OMBUDSPERSON FOR ACADEMIC ETHICS AND PROCEDURES

I. GENERAL PROVISIONS

1. The Procedure of Complaints Handling and Investigations at the Initiative of the Ombudsperson for Academic Ethics and Procedures (the Procedure) lays down the rules for handling complaints and reports at the initiative of the ombudsperson for academic ethics and procedures (both together referred to as a complaint) at the Office of the Ombudsperson for Academic Ethics and Procedures of the Republic of Lithuania (the Office).
2. The Procedure has been drafted in accordance with the Law on Higher Education and Research of the Republic of Lithuania, the Law on Public Administration of the Republic of Lithuania, the Rules for Examining Applications and Complaints of Persons and Serving them in Public Administration Institutions, Bodies and Other Public Administration Entities approved by Resolution No. 875 of the Government of the Republic of Lithuania of 22 August 2007 “On the Approval of the Rules for Examining Applications and Complaints of Persons and Serving them in Public Administration Institutions, Bodies and Other Public Administration Entities”, the Statutes of the Office of the Ombudsperson for Academic Ethics and Procedures, Office’s Rules of Procedure and other regulatory legal acts. The ENRIO Handbook: Recommendations for the Investigation of Research Misconduct was also used in drafting the Procedure.
3. The Procedure shall not apply in investigating administrative offenses under the Code of Administrative Offenses of the Republic of Lithuania.

II. GROUNDS AND PRINCIPLES FOR CONDUCTING AN INVESTIGATION

4. The aim of an investigation is to assess facts, circumstances, and the possibility of a violation of academic ethics and/or procedures.
5. Grounds for initiating an investigation:
 - 5.1. A written complaint filed with the Office by natural or legal persons shall form the grounds for initiating an investigation.
 - 5.2. The Ombudsperson may start an investigation at his/her own initiative, having observed any indications of violation of academic ethics and/or procedures in the media or other sources and/or new circumstances emerge.
6. Anonymous complaints shall not be examined unless the Office knows the claimant’s contact data and/or the appealed actions are related to the public interest.

7. A complaint may be submitted in a free form or in accordance with a complaint form approved by the Ombudsperson (Annex 1). A complaint shall contain the following information:

7.1. The addressee – the Ombudsperson;

7.2. Name, surname (title) of the whistleblower, his place of residence address (headquarters address), e-mail, telephone number or addresses of other electronic means of communication, also (if any) name, surname and address of the representative, the representative's e-mail, telephone number or addresses of other electronic means of communication;

7.3. Name, surname, job position of a person whose actions are complained about (a potential violator) or title, headquarters address and other known data of the person being complained about (e-mail, telephone number or addresses of other electronic means of communication);

7.4. Circumstances, which the whistleblower uses to base his complaint, and the supporting evidence, names, surnames and known contact details of witnesses, and location of other evidence;

7.5. An application to the Ombudsperson;

7.6. Date of signing of the complaint and signature of the whistleblower.

8. If the complaint is filed in free form, in order to assure implementation of the principles of personal data protection and persons' information about their personal data processing, the investigator shall ask the claimant to sign the confirmations and (dis)agreements not later than within 3 workdays after receipt of the assignment to get familiar with the primary material of the complaint (date of the ombudsperson's resolution).

9. If a whistleblower's representative files a complaint, a power of attorney or another document substantiating legitimate representation of interests of the whistleblower shall be enclosed therewith.

10. The following are the principles of investigating:

10.1. A comprehensive, detailed, objective, impartial, transparent and effective handling of allegations of academic ethics and/or procedures and their circumstances;

10.2. In the course of an investigation, the Office shall seek to ensure the anonymity of persons having reported violations of academic ethics and/or procedures to the Ombudsperson and provide information on them in accordance with legal acts.

11. In order to ensure proper arrangement of protection of personal data by the Office, also the protection of persons having filed a written complaint with the Office, data relating to persons who have filed a written complaint with the Office shall not be disclosed, published to any stakeholders and may be disclosed solely in presence of a written consent of the whistleblower and solely to the extent necessary to conduct an investigation and to take a comprehensive, detailed and objective decision, also in other cases established by law.

12. The investigator shall get familiar with the material enclosed with a complaint within 3 working days from the day of receipt of the instruction to get familiar with initial complaint material (the date of resolution), assesses it and presents the Ombudsperson with a plan on the course of the investigation (Annex 2), indicating therein one of the following proposals:

12.1. To refuse to start the investigation by stating one of the grounds for refusal to investigate the complaint listed in Clause 39 of the Procedure in the plan on the course of investigation. If the ombudsperson approves the plan on the course of investigation suggesting not to start the investigation, the investigator shall submit to the ombudsperson the draft reasoned refusal to investigate the complaint addressed to the claimant immediately, and in any case, not later than within 5 workdays.

12.2. To start the investigation by stating in the plan on the course of investigation, what alleged violation is to be assessed, to whom and why the referral will be made. The initial investigation actions shall be indicated in the plan on the course of investigation. If the actions are changed, the plan on the course of investigation shall not be changed. If the ombudsperson approves the plan on the course of investigation suggesting starting the investigation, the investigator shall submit to the ombudsperson the draft deeds addressed to the claimant and alleged offender(s) immediately, and in any case, not later than within 5 workdays (according to Clause 16 of the Procedure).

13. If the Ombudsperson receives a complaint the examination of which could result in a direct and obvious conflict of her public and private interests, or where direct and obvious circumstances for a conflict of public and private interests appear in the course of an investigation, the Board of the Seimas of the Republic of Lithuania shall be presented with a withdrawal from making a decision on a particular investigation and a request for the appointment of a substitute person for a particular investigation, unless this is established by laws otherwise.

14. Where an investigator in charge for an investigation receives a complaint the investigation of which may lead to a conflict of his public and private interests, he shall immediately notify the Ombudsperson thereof in writing (by e-mail, through document management system, etc.). Having assessed the circumstances of a potential conflict of public and private interests, the Ombudsperson may make one of the following decisions:

14.1. To withdraw the investigator and appoint another investigator;

14.2. Not to withdraw the assigned investigator from the investigation when it is determined that one or several criteria for refusal to non-accept the removal are satisfied, for example, there is no other person who could carry out the investigation, the investigator's actions would not result in exclusive conditions for him/her, the investigation's object is not evidently directly related to the investigator's personal circumstances and/or there are other circumstances that do not serve as a sufficient ground to cause conflict of interests.

15. The Office shall register, collect, and store all the information necessary for an investigation. Inquiries and responses may be sent and received via the general e-mail of the Office and/or e-mail of the investigator, cc'ing to the general e-mail of the Office.

III. CONDUCTING INVESTIGATIONS

16. After the Ombudsperson approves the plan on the course of investigation, the Office shall:

16.1. Notify the persons concerned (the whistleblower and the potential violator(s)) of the initiation of an investigation and their rights during an investigation, if the contact details are known, within 5 working days from the day of receipt of a complaint or the investigation's initiative of the Ombudsperson, by mail or electronic means of communication and, if necessary, ask to submit other investigation-related information;

16.2. Notify other stakeholders concerned of the initiation of an investigation and their rights during an investigation, within 5 working days from the day of receipt of a complaint or the investigation's initiative of the Ombudsperson, by electronic means of communication and ask to submit investigation-related information.

17. The investigator shall, on the day a plan on the course of the investigation is approved, provides information for publication to the employee administering the Office's website, who shall publicize it on the Office's website the same day.

18. Explanations may be made in writing or orally. Oral explanations shall be audio recorded, drafting detailed minutes on the basis thereof. The copy of the minutes shall be e-mailed to the person, who has given clarifications. The person requested to give clarifications shall be informed that in failure to provide the clarifications, it will be considered that the person has rejected the right to be heard. The investigator shall remind about clarifications by electronic communication means at least 2 workdays before the deadline for submission of clarifications (or 5 workdays in case of persons in foreign country).

19. Persons, who have or are likely to have participated in committing a violation of academic ethics and / or procedures under investigation, having conducted actions or being responsible for them, also persons, whose rights or legitimate interests have possibly been violated, shall have the following rights:

19.1. Provide data, information, make explanations and submit inquiries related to the investigation being carried out;

19.2. File a reasoned request for withdrawal of an investigator conducting an investigation;

19.3. Get familiar with an investigation material and receive their copies.

20. Getting familiar with an investigation material shall be possible having submitted a reasoned application therefor (Annex 3). The Ombudsperson shall make a decision on such a request in light of the content of an application and the proposal of the investigator. The investigator shall decide on the extent of the investigation material to be accessed. The investigator shall prepare depersonalized material, that does not disclose personal data of the whistleblower, for access.

21. If necessary, the Ombudsperson may harness independent experts, to be hired or acting on voluntary basis, for providing an expertise regarding an investigation. The investigator shall determine in each individual case the qualification of the expert necessary for expert-level appraisal, as well as the type of appraisal that the expert has to perform. For this purpose, the investigator shall submit the prepared material and request for expertise to the expert. The expert-level appraisal delivered by a foreign expert has to be translated into Lithuanian by the qualified translator or investigator on the Office's initiative.

22. An investigation shall be conducted, and a decision shall be made within the deadlines set by the Law on Higher Education and Research. In presence of difficult circumstances of an investigation (e.g., related to alleged violation of academic ethics and relating procedures in research conduct and/or research (artistic) dissemination, due to the need of an expert opinion, request from the investigating party for an extension of the submission of information, explanations and supporting documents, the continuing nature of the behaviour complained, the need for an additional investigation at the initiative of the Ombudsperson (to collect documents, explanations, to conduct interviews with the parties concerned, etc.), or where a person refuses to provide significant additional information or documents relevant for the investigation after two reminders, the investigation may be extended but not exceeding deadlines set for extension by the Law on Higher Education and Research.

Amendment by Order No V-62 of the Ombudsperson for Academic Ethics and Procedures of the Republic of Lithuania of 10 December 2021

23. Upon emergence of new circumstances, an investigation may be resumed at the initiative of the Ombudsperson.

24. Having made a decision on extending the deadline for conducting an investigation, the stakeholders shall be informed thereof in writing within 2 working days. The decision about extension

of the deadline for decision making shall be made by the ombudsperson's resolution written on the document containing new information received in the course of the investigation.

25. When the investigation is finished, i.e., all the possible information is collected and the investigator prepares a draft decision within 5 workdays after receipt of the respective information, the Ombudsperson shall make one of the decisions listed in the Law on Higher Education and Research. Research and higher education institution shall provide the Ombudsperson and the Ministry of Education, Science and Sport with information on the actions taken in response to the Ombudsperson decision within the time limit set by the Ombudsperson and specified in the decision (e.g., depending on the nature of the decision and the procedure for implementing the action in the research and higher education institution).

Amendment by Order No V-62 of the Ombudsperson for Academic Ethics and Procedures of the Republic of Lithuania of 10 December 2021

26. Having identified potential signs of an offense when investigating, information shall in all cases be forwarded to law enforcement authorities.

27. Having identified signs of other violations during an investigation, which do not fall within the competence of the Ombudsperson, the collected information (e.g., regarding equal opportunities, conflict of public and private interests) shall be forwarded to the competent authority in accordance with legal acts.

28. The Ombudsperson shall make a decision on termination of handling a complaint or an investigation in cases where:

28.1. The investigation's object on the same issue that has already been investigated, shall be investigated (if the information thereof is known to the Office) or it has to be examined in the preliminary dispute resolution procedure in the extrajudicial institution or in court in accordance with the laws. If the investigation is cancelled on this ground, the complainant shall be notified thereof in writing, stating the reasons, in accordance with the Law on Public Administration.

28.2. The whistleblower has submitted a waiver from the complaint. If the investigation is cancelled on this ground, the ombudsperson may start the investigation at own initiative, especially if the actions related to public interest are appealed;

28.3. Persons have failed to provide the requested information, while the available data are insufficient for recognizing a complaint unreasonable;

28.4. The circumstances, which led to the initiation of an investigation, have ceased to exist.

29. Persons listed in the Law on Higher Education and Research and the Law on Public Administration shall be notified of the decision made.

30. The depersonalised information about the decision (decision's title, number, date of adoption, and keywords) shall be announced immediately in section "Decisions" on the Office's website. When the appeal term of 30 days matures, the decision shall be depersonalised and downloaded not later than within 10 workdays. The depersonalised decision shall be available in section "Decisions" on the Office's website for one year after it has been downloaded. If the decision is appealed, the depersonalised decision shall not be publicly available in the course of the proceedings, and the term of one year shall be calculated from the day when the final procedural judgment enters into effect. The decision shall be depersonalised by the investigator, who has prepared its draft, or by another employee of the Office assigned by the ombudsperson, in accordance with the Rules for the Implementation of the Rights of Data Subjects in the Office of the Ombudsperson for Academic

Ethics and Procedures of the Republic of Lithuania. The published depersonalised decision shall be removed if the information about its appeal is learnt after its publishing.

31. To ensure the protection of personal data, the published decisions of the Ombudsperson shall contain solely the information necessary to achieve the aim pursued. In order to avoid the person's recognition, the fictitious initials of the person shall be used in the decision's text. The precise names of institutions, units and job titles shall not be used together.

32. If it is necessary to correct spelling mistakes or evident arithmetic mistakes present in the decision made by the ombudsperson in accordance with the Law on Higher Education and Research or in another document of the Office, the Office shall notify the persons indicated in the Law on Higher Education and Research, who have been informed about making of the respective decision, and other stakeholders about the mistakes detected in the ombudsperson's decision, and the stakeholders shall be notified about other documents of the Office. The information about the mistakes corrected in the ombudsperson's decision shall be announced immediately in section "Decisions" on the Office's website.

IV. COMBINING AND SEPARATING COMPLAINTS

33. If two or more complaints of the same or different claimants on the same or associated subject are detected, and if it is possible to assure personal data protection of the persons participating in the investigation, the complaints shall be examined together. Besides, the examination of the complaint may be joined to the investigation started at the ombudsperson's initiative if the investigated object is the same or related. In this case, the ombudsperson shall make one decision regarding all the investigated complaints. The claimants shall be notified thereof, without revealing identity of the parties participating in the investigation.

34. Where a complaint contains more than one request/inquiry, they may be separated into separate investigations of objective circumstances (e.g., unrelated persons for allegations). In this case, the ombudsperson shall make decision about each separated investigation individually. The claimants shall be notified thereof.

V. FORWARDING A COMPLAINT ON THE GROUNDS OF SELF-REGULATION

35. The decision to transmit the complaint to the research and higher education institution on the basis of self-regulation may be made if no referral has been made to the appropriate research and higher education institution regarding the same alleged violation of academic ethics and procedures.

36. Self-regulation shall not apply, when the Office is contacted for the third time for the same allegation at a research and higher education institution or its division or to ensure the protection of the whistleblower.

37. The whistleblower shall be informed of the decision to refuse to investigate the complaint and forward it for investigation to a research and higher education institution on the grounds, forwarding the complaint to the research and higher education institution, within 5 working days from the decision-making day.

38. Having examined the complaint, the research and higher education institution has to notify the ombudsperson about the made decision as soon as possible, and, in any case, not later than within the term set by the research and higher education institution for notification of complaint-related parties.

Having assessed whether the research and higher education institution has examined the forwarded complaint comprehensively and impartially, the ombudsperson may start the investigation on own initiative.

VI. REFUSAL TO EXAMINE A COMPLAINT

39. It is refused to accept the complaint if:

39.1. It is impossible to start the investigation because of insufficient data or illegible text of the complaint, and the claimant does not specify or submit them within the term set by the Office, or if there is no possibility to specify and/or check the submitted data;

39.2. The investigation of the circumstances described in the complaint does not fall within the ombudsperson's competence. If the complaint is not within the ombudsperson's competence, it has to be forwarded to the public administration subject authorised to examine the complaint not later than within 5 workdays via the e-delivery information system. The claimant shall be notified thereof by e-mail if the Office has the claimant's contact data. If there is no institution that would have competence to examine the complaint, the Office shall notify the claimant thereof, provided Office has the claimant's contact data. The claimant shall be notified about the complaint's forwarding or refusal to accept the complaint in accordance with the Law on Public Administration;

39.3. A complaint on the same matter was, is being examined (is such an information is known to the Office) or is to be examined in courts in accordance with laws;

39.4. A repeatedly submitted complaint on the same matter has already been examined by the Office, except for cases when new circumstances have come to light or new facts have been presented;

39.5. The complaint shall be transmitted to the research and higher education institution for examination on the basis of self-regulation.

VII. FINAL PROVISIONS

40. If the whistleblower abuses his/her right to refer to the Ombudsperson, correspondence with this whistleblower may be ended at the decision of the Ombudsperson.

41. This Procedure shall also be used in investigating allegations related to commercial secrecy. Persons providing data shall define which data (e.g., contract, final papers (thesis) data) contain a commercial secrecy and shall provide the Office with data without disclosing the commercial secrecy. In the event of an allegation relating to data containing a commercial secrecy, the Office shall commit to the persons having submitted data in writing to follow confidentiality requirements.
