

# International discussion: Governance models for research integrity offices in Europe: Where are we?

## The overview and nature of judicial challenges of decisions of Office of the Ombudsperson for Academic Ethics and Procedures of the Republic of Lithuania

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# Topics of discussion

1. Academic ethics and the autonomy of higher education institution;
2. Peculiarities of challenging decisions of Scientific and Higher Education Institutions concerning violations of academic ethics;
3. Peculiarities of challenging decisions of Office of the Ombudsperson for Academic Ethics concerning violations of academic ethics;
4. Form and contents of the norms of academic ethics;
5. Peculiarities of ongoing judicial proceedings of Ombudsperson for Academic Ethics



# Academic ethics and the autonomy of higher education institution

Law on Science and Studies of the Republic of Lithuania dated 30 April 2009 established new subject - Office of the Ombudsperson for Academic Ethics and Procedures (**Ombudsperson**).

Constitutional Court ruling of 22 December 2011 in case No. 13/2010-140/2010:

**Does the Ombudsperson of Academic Ethics and Procedures, as a public official appointed by the Seimas, violate the autonomy of higher education institutions by providing recommendations on the contents of code of academic ethics?**



# Academic ethics and the autonomy of higher education institution

Constitutional Court ruling of 22 December 2011 in case No. 13/2010-140/2010:

**Autonomy of school of higher education** - the right to independently determine and establish in the regulations or statute the organizational and governance structure, relations with other partners, the procedure of research and studies, study programmes and the procedure of student enrolment, to solve other related questions, to use the property given over by the state and other acquired property, to possess the territory, buildings and other property allotted for the needs of research and studies, and to have the guarantee of inviolability.

For this purpose, the school of higher education is guaranteed the institutional autonomy, i.e. a certain status, which means that there are certain spheres of activities independent from the control of the executive power.

**However** - granting autonomy to schools of higher education does not relieve the state from its constitutional obligation to secure the efficiency of the system of higher education. the quality of higher education is related inter alia to heeding the norms of academic ethics while pursuing activities of science and studies. Therefore, while seeking to ensure inter alia the quality of higher education, the state may establish recommended standards of academic ethics and procedures.



# Academic ethics and the autonomy of higher education institution

Constitutional Court ruling of 22 December 2011 in case No. 13/2010-140/2010:

**Ombudsperson adopts recommendations**, which is the basis for codes of academic ethics for the institutions of science and studies, which reveal the recommended standard acceptable to the academic community of all institutions of science and studies.

Thus, each institution of science and studies (a school of higher education or an institute of scientific research) prepares and approves its code of academic ethics while taking into account the recommendations of the Ombudsperson, as well as of the specificity of activity of a respective academic community and of the traditions of good academic practice,

**N.B.** until 2004, higher education institutions did not have codes of academic ethics.

## Questions:

1. Did academic ethics exist in an institution of science and studies before the adoption of the code of academic ethics?
2. Did academic ethics exist before the adoption of the Ombudperson's recommendations (31 March 2015)?
3. What is the content of such academic ethics?



# Peculiarities of challenging decisions of Scientific and Higher Education Institutions concerning violations of academic ethics

## 1. Violation of academic ethics is assessed by a higher education institution

Supreme Administrative Court of Lithuania (SACL) order of 10 February 2010 in administrative case No. AS442-37/2010, order of 19 June 2010 in administrative case No. AS556-347/2010:

*The activities of organizing and conducting studies do not meet the statutory definition of public administration, and the higher education institution is not a public administration entity.*

Special Chamber of Judges (which decides on the competence of the type of case before a common or administrative court) order of 15 February 2011 No. T-XX-13/2011, order of 24 February 2011 in case No:

*The university does not have the powers of public administration and is not a subject of public administration.*

### Consequence:

Supreme Court of Lithuania decision of 28 July 2011 in civil case No. 3K-3-342/2011: a higher education institution has the right to accept and remove students in accordance with the procedure established by its statute, to impose disciplinary penalties on students for violations of the student's duties. The discussed principles of autonomy of higher educational institutions ensure the implementation of academic ethics and fair competition as principles of science.



# Peculiarities of challenging decisions of Scientific and Higher Education Institutions concerning violations of academic ethics

1. Violation of academic ethics is assessed by a higher education institution:

**Does academic ethics exist without legal norm prescribing it?**

Supreme Court of Lithuania ruling of 6 November 2015 m. in civil case No. 3K-3-551-611/2015:

*„the requirement for the originality of the thesis and the prohibition of plagiarism (as one of the aspects of scientific dishonesty) were established at the time of the defense of the plaintiff's doctoral thesis and were (should have been) known to him, therefore, the plaintiff's assertions that he is subject to legal liability for acts that were not considered a violation of the law are unfounded.*

*The mere fact that the subsequently enacted legislation identified plagiarism expressis verbis as one of the forms of scientific dishonesty does not in itself mean that plagiarism was not considered illegal until then and that the [lower] courts imposed on the plaintiff requirements that arose in the legislation only in 2010“*





# Peculiarities of challenging decisions of Scientific and Higher Education Institutions concerning violations of academic ethics

## 1. Can the decisions of the Ombudsperson of Academic Ethics be challenged at court?

### 1. Initial problematic aspects:

The Ombudsperson's decision on the violation of academic ethics is the basis for an institution of science or studies or other person (e.g. editor or publisher of scientific publication) to decide on the sanctions to a person who has violated academic ethics: eg. dismissal, non-certification for a term of office, not awarding a professor's or associate professor's degree, appointment of extraordinary certification, revocation of a scientific degree, cancellation of a scientific publication, etc.

However, a specific decision on what kind of exact measure (sanction) should be imposed (e.g. correcting a thesis or revocation of a doctoral degree) is made by a institution of science or studies or another person (e.g. editor of a scientific journal).

**Question:** which decision produces legal effects and can be challenged in court: the decision of the Ombudsperson or the decision of the person applying and deciding on the specific sanction?

**Consequence:** if the Ombudsperson's decision produces legal effects, it can be challenged in administrative legal proceedings before the court and the decision must comply with the requirements of the individual administrative act.





# Peculiarities of challenging decisions of Scientific and Higher Education Institutions concerning violations of academic ethics

## 1. Can the decisions of the Ombudsperson of Academic Ethics be challenged at court?

### 2. Ambiguous initial practice:

Supreme Administrative Court of Lithuania (SACL) order of 25 February 2015 in administrative case No. AS-499-624/2015:

„Acts which establish certain circumstances [*i.e. violation of academic ethics*], but do not produce specific legal effects for the applicants are not subject to appeal to the court“

„in accordance with the provisions of Article 18(12) of the Law on Higher Education and Research, decisions taken by the Ombudsperson may establish certain circumstances, of a recommendatory nature or create specific duties for certain entities“.

„Decisions of the Ombudsperson which establish certain circumstances [*liet. konstatuojamojo pobūdžio*] and recommendatory nature, which do not entail specific legal consequences for the applicants, can not be challenged before the court “.

SACL order of 18 March 2015 in administrative case No. AS-459-556/2015:

„the challenged Decision did not only stated petitioner's violations of academic ethics and procedures but the second paragraph of the operative part contains a decision - to publicise the violations of academic ethics and procedures identified by the Ombudsperson, i.e. the decision of the Ombudsperson provided for in Article 18(12)(8) of the Law on Higher Education and Research was adopted

Since "the challenged decision of the Ombudsperson found not only the violations committed by the petitioner, but also contained a decision of the Ombudsperson to apply a certain sanction in this regard - such decision of the Ombudsperson may be appealed to the administrative court.



# Peculiarities of challenging decisions of Scientific and Higher Education Institutions concerning violations of academic ethics

1. Can the decisions of the Ombudsperson of Academic Ethics be challenged at court?


**3. 2018 practice - the ombudsperson's decisions lead to legal consequences:**

SACL order of 19 June 2018 in administrative case No. eAS-426-442/2018:

Since the Ombudsperson's decision was published and forwarded to relevant universities, the Ministry of Education and Science and according to the decision of the Research Council of Lithuania (in force at that time) the applications of individuals who had violated academic ethics could not have been considered by the Scientific Council for 5 years - the Decision deemed to cause legal consequences for applicants, therefore, it was decided that it is subject to judicial review (can be challenge before court).

SACL order 20 November 2018 in administrative case No. eAS-787-552/2018:

„The Panel of Judges observes that in the most recent case-law of the Supreme Administrative Court of Lithuania, when examining separate appeals, it is consistently recognized that at the stage of the acceptance of the complaint it cannot be said that decisions of the Ombudsperson of this kind, i.e. when violations of academic ethics are found and the persons concerned are informed thereof, clearly do not entail legal consequences for the applicants“.



# Peculiarities of challenging decisions of Scientific and Higher Education Institutions concerning violations of academic ethics

## 1. Can the decisions of the Ombudsperson of Academic Ethics be challenged at court?

*„The Supreme Administrative Court of Lithuania has clarified in its case-law that when it is clear from the content of the Ombudsperson's decision that it not only found a violation of academic ethics, but also decided to inform certain entities about it, this may affect the status of the applicant, assessment of his reputation“.*

**Consequence:** From 1 December 2021 a new provision of Law on Science and studies (Art 12(21) does not provide the option for the Ombudsman to make a separate decision on providing information to ministry of education or relevant institution or science or studies. The Ombudsperson has to inform them by default. Will this be a ground for a return to discussion on whether decision of Ombudsperson can be challenged before court at all, since such act of informing ministry and relevant institutions will not be subject to decision (will) of Ombudsperson?

## 4. Can the Ombudsperson's decision be challenged by the higher education institution where the violation has occurred?

SACL order of 19 February 2020 in administrative case No. AS-128-525/2020:

*The scientific institution in which the actions that constituted a violation of academic ethics took place have no legal interest to challenge the decision of the Ombudsperson of academic ethics, since such a decision does not create specific legal consequences for it.*



# Peculiarities of challenging decisions of Scientific and Higher Education Institutions concerning violations of academic ethics

2. What are the requirements for the decision of the Ombudsperson of Academic Ethics as an individual administrative act?

## 1. Establishment of the law of academic ethics in the "norms of law":

SACL order of 12 December 2016 in administrative case No. A-2957-520/2016:

The Ombudsperson's „decision is an individual administrative act that produces legal consequences for the applicant in terms of honor and dignity„.

*„ The adoption of individual administrative acts is the application of the law, which produces specific legal effects for the legal status of individuals, and must therefore be based on facts and legal norms. . That rule of law is linked to the principle of legality, which requires that the activities of public administrations do not infringe the requirements of the law, that their decisions are reasoned and that the content of the decisions complies with the rules of law [...]. In the present case, it must be held that, after examining the complaint or after an investigation, the decision taken by the Ombudsperson under Article 12 of the Law on Science and Studies must be reasoned and **based on objective data (facts) and the norms of the legislation governing academic ethics and procedures**, i.e. the decision must contain the main facts, arguments and evidence, and provide the legal basis on which the Ombudsperson's is guided in adopting the administrative act; the statement of reasons must be adequate, clear and sufficient “.*

*„Thus, in order for an individual act to be lawful, it must include an examination of the facts, the search for a rule of law applicable, a legal assessment (classification) of the facts established)“.*



# Peculiarities of challenging decisions of Scientific and Higher Education Institutions concerning violations of academic ethics

## 2. What are the requirements for the decision of the Ombudsperson of Academic Ethics as an individual administrative act?

### 1. Establishment of the rules of academic ethics in "legal norms":

SACL order of 10 April 2017 in administrative case No. eA-131-822/2017:

*„Supreme Administrative Court of Lithuania in the order of 25 September 2012 in the administrative case No. A<sup>756</sup>-2359/2012 emphasized , that the failure to comply with the requirements of Article 8(1) of the Law on public administration and the failure to link **specific rules of law** to objective data (facts) must be regarded as a substantial deficiency“*

### Consequence:

1. The Court imposes a requirement for the Ombudsperson to base the decision on legal acts which determine the content of academic ethics.

### Problems:

1. Normative legal acts must be published in accordance with the procedure established by law;
2. Does academic ethic exist in an educational and science institution before the adoption of the code of academic ethics (legal norm)?





# Norms of academic ethics and their contents

1. Whether to publish the code of academic ethics as a normative legal act in the manner prescribed by law?

**Problem:** Unpublished legislative acts do not have legal force.

SACL order of 23 June 2020 in administrative case No. A-502-415/2020:

„The appellants also submit that the [...] codes of academic ethics could not be applied to the appellants because they are not published in the Register of Legal Acts“

„In the present case, the applicable codes of academic ethics do not apply to a group of persons defined by species characteristics, but only to members of the community of those particular universities, i.e. persons with academic links to specific universities and do not have the general binding nature inherent in regulatory acts [...] and thus they do not have to be promulgated in Register of Legal Acts“.



# Norms of academic ethics and their contents

## 2. Problems of establishing the content of academic ethics

### 1. The content of academic ethics can be determined only by legislative legal act:

SACL order of 14 June 2016 in administrative case No. eA-935-146/2016 :

*„In the context of the circumstances of the present case, the panel of judges draws attention to the concepts of the law. Pagal 2009 m. 30 April In Article 3 of the Law on Science and Studies No XI-242 (the version of Law No XI-1987 of 24 April 2012 is relevant to the case), one of the principles of science and studies is the principle of academic ethics. [...] The legislature did not provide the content of the concept of academic ethics in the Law on Science and Studies. The constitutional court's ruling of 13 November 2006 emphasised that the legislature may define the content of the concepts used in laws, but the requirement arising from the Constitution, inter alia, the constitutional principle of the rule of law, to respect the hierarchy of **legal acts presupposes that the content of the concepts used in laws can only be defined (inter alia interpreted) by legislative act (law)**”.*

**„the establishment by a by-law of other ethical principles and concepts [...] related to the application of that law, in accordance with the existing Law on Science and Studies, was not possible”.**

### Consequence:

1. From 01/01/2017, Art. 4(2) of the Law on Science and Studies was introduced, which provided a definition of "academic ethics" as a concept ("a whole set of generally accepted values...")





# Norms of academic ethics and their contents

## 2. Problems of establishing the content of academic ethics

### 2. The content of academic ethics under Constitution:

Constitutional Court ruling of 3 December 2020 in case No. KT199-N16/2020:

*„under the Constitution, inter alia, Paragraph 1 of Article 42 thereof, constitutional freedom of science and research is not exempt from the duty to observe academic ethics. [...] it should also be noted that **academic ethics implies, inter alia, academic integrity**, which stems from the general principle of law bona fides, which is inseparable from the constitutional principle of a state under the rule of law and which means that subjects of legal relations are obliged to behave in good faith without violating the law and to seek to know what law requires from them; **the academic integrity is a principle of academic ethics based on openness, honesty and responsibility, inter alia, this principle implies the prohibition of any deception in academic activity, inter alia, the prohibition of fraudulent conduct such as falsification or manipulation of research data, plagiarism of scientific and other works, and the prohibition of incorrect, biased, or derogatory criticism**. Academic ethics and procedures also imply, inter alia, the requirement to ensure transparency of the process of awarding higher education qualification degrees, mutual trust and respect between members of the academic community, objectivity of evaluation of scientific works, authenticity of research results and reliability of the data used for research, originality of scientific works, compliance with academic values and principles ensuring the protection of intellectual property“.*



# Norms of academic ethics and their contents

## 2. Problems of establishing the content of academic ethics

### 3. The application of academic ethics as a universally recognized principle of "academic integrity":

Nr. eA-756-624/2021:

*„[...] The Ombudsperson is empowered to investigate whether the provisions of the codes of academic ethics of higher education institutions and the principles of academic ethics in general, as well as the principle of academic integrity, have been violated. In view of this, the panel of judges finds **unfounded the argument of the petitioner's complaint that at the time of the violation the code of academic ethics of the VGTU had not yet been approved** and the Ombudsperson did not have the authority to recognize the petitioner as having violated academic ethics. It can be seen from the material set out in the Ombudsperson's decision and from the legal regulation discussed that plagiarism in scientific works was universally regarded as illegal during the habilitation procedure of the petitioner and there was no reason to consider it compatible with academic ethics. The **principle of academic integrity** prohibiting plagiarism is one of the fundamental principles of academic ethics and Article 17(11) of the Law on Science and Studies (which refers to the source of academic ethics – codes of academic ethics) **cannot be interpreted narrowly** as preventing the Ombudsperson from finding that the discovery of signs of plagiarism in a scientific publication has violated academic ethics“.*

**Consequence:** the judicial practice has changed - the rigid requirement that academic ethics can be described only by legislative act is not supported by later case-law; courts indicate that Ombudsperson is entitled to derive content of academic ethics through/from „principle of academic integrity“, which can be interpreted broadly.



# Peculiarities of ongoing judicial proceedings of Ombudsperson for Academic Ethics

- Lack of human and financial resources of the Ombudsperson's Office limits the ability to effectively defend rights and contribute to the formation of consistent judicial practice (the Office appealed only against 1 judicial decision since 2020);
- There is an instance of 20 administrative cases (13 administrative proceedings) with 1 individual, who was subject to decision on violation of academic ethics;
- Ongoing judicial cases deal with issues on plagiarism, self-plagiarism, unethical authorship;
- A new practice emerges from the court of I instance, wherein the source of academic ethics is not only derived from the code of academic ethics of educational and scientific institution, but also from the international good practice of scientific activities too;
- Ombudsperson's office was invited as a competent authority to provide opinion on academic ethics in civil courts



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**Thank you for attention!**

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