



DECISION
OF THE CENTRAL ACADEMIC ETHICS COMMISSION
OF VILNIUS UNIVERSITY

On the complaint of 9 May 2022 submitted by Prof. D. S. of the /Unit/ regarding the decision of the Academic Ethics Commission of the Unit of 21 April 2022.

On 9 May 2022, the Central Academic Ethics Commission (hereinafter the ‘Commission’) received a complaint submitted by Prof. D. S. (hereinafter the ‘Complainant’) of the /.../ Institute of the Unit, contesting the decision of the Academic Ethics Commission of the Unit (hereinafter the ‘Unit Commission’) No. (1.10) 850000 V-243 of 21 April of this year.

The Unit Commission made the contested decision after investigating the appeal of the Unit’s Prof. R. U. of 17 March 2022 requesting an investigation of the Complainant’s potentially unethical behaviour. In the contested decision of 21 April 2022, the Unit Commission upheld Prof. R. U.’s appeal and established that the Complainant had violated Items 5(1) (“disrespect expressed towards opinions of other members of the community shall be incompatible with the responsible use of academic freedom”) and 7(2) (“the principles of relationships between members of the community /.../ shall be violated by humiliation of members of the community”) of the Code of Academic Ethics of Vilnius University. The aforementioned decision of the Unit Commission was made after a thorough investigation of the situation in question, including, *inter alia*, interviewing colleagues of both parties to the dispute – the teaching staff of the /.../ study programme.

The Complainant disagrees with the contested decision of the Unit Commission and, in her complaint to the Commission, seeks to repeal the contested decision of the Unit Commission and to declare Prof. R. U.’s appeal to the Unit Commission on the basis of which the contested decision of the Unit Commission was made to be unsubstantiated. The Complainant bases her complaint on the deficiencies in the content of the appeal submitted by Prof. R. U. and the procedural steps taken by the Unit Commission in dealing with it: (1) the Complainant points out that in making decisions in accordance with the provisions of the Commission Regulations of the Unit applicable to dealing with appeals, the content of the right to be heard, and the principles of dispute settlement in relation to academic ethics, the Unit Commission was obliged to make a decision solely on the basis of the

statements made by the parties to the dispute and their evidence, thus, by collecting evidence on its own initiative, the Unit Commission potentially violated the principle of dispositiveness and exceeded the limits of the requirements for investigating the appeals; (2) the interviews of other employees of the Unit conducted by the Unit commission when collecting evidence for the decision potentially violated the principles of confidentiality, dispositiveness and adversariness; (3) the fact that the Unit Commission failed to acquaint the Complainant with other information relevant to the investigation (other than that contained in Prof. R. U.'s appeal) potentially violated the principles of the Unit Commission activity enshrined in the Statute and the Commission Regulations of the Unit; (4) the Unit Commission may have been biased in its decision because it was collecting evidence itself and, in the opinion of the Complainant, in support of the unsubstantiated appeal of Prof. R. U., and thus failed to assess the overall body of evidence that could have been collected; 5) the content of the contested decision is abstract and lacks clarity, adequacy and sufficiency.

After reviewing the Complainant's complaint, the contested decision of the Unit Commission and other accompanying documents to the complaint submitted by the Complainant, the explanations given by the Unit Commission, and after hearing the Complainant and Prof. R. U. at the meeting, the Commission hereby points out the following:

1. The Commission is guided by the Regulations of the Central Academic Ethics Commission of Vilnius University approved by the Senate of Vilnius University (current version approved by Resolution of the Senate of Vilnius University No. SPN-55 of 21 October 2020) (hereinafter the 'Commission Regulations'). The Commission Regulations describe the course of the Commission's procedures, competency, and possible decisions. Item 13(1) of the Commission Regulations says that the Commission investigates the legality and validity of the decisions of the academic ethics commissions of units, or the lack of actions of the academic ethics commissions thereof. This means that the Commission does not examine the substance of the complaint for the second time when investigating the complaint, but checks and assesses whether the Unit Commission complied with the requirements and procedures of the University's legal acts when adopting the contested decision, whether the decision was fully and clearly substantiated and reasoned, and whether the Unit Commission had carried out all the mandatory actions provided for in the Commission Regulations of the Unit. The Commission also notes that, in accordance with Item 1 of the Code of Academic Ethics, only the disputes regarding academic ethics fall within the competency limits of the Commission, therefore, the appeals received are only investigated by the Commission in terms of academic ethics and not in terms of labour laws or other aspects not falling within the competency of the Commission.

2. The Unit Commission is an institution established by law in the Statute of Vilnius University and operating on the basis of the autonomy and self-governance of the University. It

consists of members of the community, and investigates disputes arising between the academic community regarding academic ethics. The activity of the Unit Commission is regulated by the Regulations of the Academic Ethics Commission of the Core Academic Units of Vilnius University, approved by the Senate of Vilnius University (current version approved by Resolution of the Senate of Vilnius University No. SPN-55 of 21 October 2020) (hereinafter the ‘Commission Regulations of the Unit’). In accordance with Items 2 and 30 of the Commission Regulations of the Unit, the Unit Commission shall be guided in its activities by the Statute of Vilnius University, the laws of the Republic of Lithuania, the Code of Academic Ethics of Vilnius University, and the Commission Regulations of the Unit, whereas in investigating the appeals it shall be guided by the principles specified in Article 25(5) of the Statute of Vilnius University (the principle of the party autonomy, procedural equality, adversariness, dispositiveness, confidentiality, economy, cooperation and expeditiousness). A systematic evaluation of the aforementioned provisions leads to the conclusion that, being a self-governing rather than a judicial body for the settlement of disputes in the community, the Unit Commission is guided in its operations by its regulations and other legislation enshrined therein, but does not directly apply in its activities the provisions of the legislation applicable to the activities or the proceeding of judicial authorities nor the official interpretations of the said legislation provided in the case law formed by the said judicial authorities, but rather makes decisions based on the legislation listed in the Commission Regulations of the Unit and within the competency conferred upon it by the Statute and the provisions of the Commission Regulations of the Unit.

3. Article 25(2) of the Statute of Vilnius University and Item 13 of the Commission Regulations of the Unit state that the Unit Commission shall examine appeals regarding the actions of members of the academic community who are working or studying in that unit, which potentially violate academic ethics, and resolve disputes regarding academic ethics. Item 23 of the Code of Academic Ethics also points out that unit commissions, within the framework of their competency, perform the supervision and control over the implementation of the Code. Thus, the University's legislation grants academic ethics commissions far broader powers than just a formal evaluation of the arguments put forward by the parties to the dispute. In order for these functions to be implemented and with the aim to enable the actual resolution of often complicated and complex disputes regarding academic ethics, recommendations are made on the implementation of the Code. In addition, the commissions of the units, acting within the framework of their competency defined in their legislation and the trust granted by the community, must demonstrate their active nature and examine the merits of each case rather than deal with them in a formal manner only.

Item 20(2) of the Commission Regulations of the Unit provides that when filing an appeal to the Unit Commission, the applicant must include in their appeal ‘a description of the possible violation of academic ethics and specification and attachment of the available information or

circumstances confirming that the violation was actually committed". Thus, it is common for academic ethics commissions to first investigate disputes on the basis of the information provided by the parties to the dispute. However, as is clear from the quoted provision, applicants are only required to provide the commission with the information in their possession. This is a logical provision, since the evidence (especially when possible violations of academic ethics are committed orally) is often not documented at all or such documentation is not preserved or available to the applicant. For this reason, considering that the facts set out in the appeal filed by the applicant are not manifestly unsubstantiated, and with the aim to actually resolve the dispute, the commissions must, on their own initiative, interview the parties, other persons involved, review the relevant documents available and other evidence that the commissions consider relevant. In practice, this is a fairly common and characteristic part of an academic ethics commission's investigation, which must be performed in a confidential (without disclosing the content of the appeal in question to persons who do not have the right to access it), objective (by seeking to clarify and investigate the situation, but not to collect only specific evidence necessary to support any of the parties to the dispute or a particular decision of the commission) and economic (by avoiding to investigate excessive information that is not related to a dispute over academic ethics) manner.

In the specific case under investigation, the Unit Commission, in order to clarify the actual situation and the grounds for confirming or refuting the arguments made in Prof. R. U.'s appeal, made a decision to interview the teaching staff of the /.../ study programme. According to the information available to the Commission, this was done without disclosing to the interviewees the circumstances of the appeal under investigation, without asking the interviewees excessive questions, and by excluding persons not related to the content of the appeal in question from the interview. Both the content of the interviews and the way in which they were conducted lead to the conclusion that such an action was logical and could really have helped to more objectively resolve the dispute over academic ethics. Therefore, having considered the aforementioned circumstances, the Commission finds that the Unit Commission acted lawfully and within the limits of the powers conferred on it when interviewing the employees and using the results thereof in support of its decision.

4. The Commission points out that the Complainant's complaint is, to a large extent, based on the notion that the interviewing of employees conducted by the Unit Commission violated the principles for the settlement of disputes concerning academic ethics enshrined in the Statute, and therefore explains the following:

4.1. In the practice of academic ethics commissions, the principle of dispositiveness means that commissions must have their say on what is required by the parties and cannot interpret the subject matter of the complaint in an expanded manner or investigate what is not being asked to be investigated. Moreover, this principle implies the right of the parties to withdraw or supplement the

submitted appeals or complaints in accordance with the procedure established by the commission regulations. However, as mentioned earlier, this principle does not limit the ability of the commissions to collect evidence on their own initiative and to otherwise thoroughly interpret the situation under investigation, in so far as it does not infringe the principles of confidentiality, objectivity and economy.

4.2. The right to be heard is one of the most important parties' rights in the process of investigating disputes over academic ethics, and the improper exercise of this right is the basis for changing or repealing the contested decision of an academic ethics commission. As stated in Item 30 of the Commission Regulations of the Unit, this right may be exercised in writing or orally. The content of this right consists of acquainting the parties with the material submitted to the academic ethics commission by the other party (Item 24 of the Commission Regulations of the Unit) and hearing the position of the parties (in writing or orally) in the commission (Item 30 of the Commission Regulations of the Unit). However, the right to be heard cannot be interpreted as the duty of the commission investigating the appeal to make the parties aware of all the material in its possession (in particular, that which it has collected on its own initiative). The possibility of doing so is often limited by confidentiality, the aim to ensure the anonymity of the source, and partly by the application of the principle of economy – the commission may, but is not obliged to, ask the parties for their opinion and explanation regarding the relevant material submitted by the other parties for investigation, which is why the commission decides at its discretion in accordance with the competency assigned to it.

It should be noted that in cases where the material collected by the commission on its own initiative is not disclosed to both parties to the dispute, as is the case in the present situation, such actions of the commission cannot be regarded as a violation of the principles of adversariness, party autonomy, or other principles of dispute settlement, since it does not confer additional opportunities or advantages on either of the parties.

In summarising the foregoing, the Commission finds that the Unit Commission acted lawfully and did not violate the principles of dispute settlement in reaching out to the employees of the Unit during the course of the proceedings and, therefore, could have relied on the data obtained in reaching the decision that is being contested by the Complainant.

5. By taking into consideration the Complainant's comments on the possible lack of objectivity and the bias on the part of the Unit Commission in the decision-making process, the Commission points out that the academic ethics commissions of units are formed by decision of the unit's council and consist of members of the unit's community who must meet strict ethical requirements of impeccable reputation (Item 8 of the Commission Regulations of the Unit), sign the confidentiality and impartiality pledges, and are subject to sanctions arising from their non-compliance (Items 9 and 10 of the Commission Regulations of the Unit), including the obligation to withdraw themselves from deliberations in cases when the member of the commission or their relatives may be

biased or have certain interests related to the outcome of the investigation (Item 16 of the Commission Regulations of the Unit). For these reasons, a unit's commission is considered to be acting on the basis of trust and it is presumed that the decisions it makes are objective and impartial. The bias of the decision or the commission that made it is usually manifested in the clearly biased content of the decision, in the investigation of only part of the available evidence and/or in not mentioning the arguments that are unacceptable to the decision-making commission or its individual members. However, the Commission notes that the contested decision did not contain any such indications of a biased decision. The Commission explains that the staff interviews conducted by the Unit Commission allowed the Unit Commission to obtain a clearer picture of the situation in question, but it cannot be said that the interviews were biased or that only evidence adverse to the Complainant was collected as a result. This assumption is also refuted by the fact that the Unit Commission identified violations of academic ethics only on the basis of one of the episodes investigated, and for the rest it established the absence of violations of academic ethics. No specific arguments have been put forward by the Complainant herself to show that the decision is biased against her. It is also to be noted that, as is clear from the contested decision of the Unit Commission, the interview data was only one of, but not the only, source on the basis of which the contested decision was passed: the explanations of the Complainant, the feedback of the students, the information provided by the Director of the /.../ Institute and the Unit's Studies Division were also examined. Thus, the results of the interview were only an additional, but not the only reason for adopting the contested decision.

In the light of the foregoing, the Commission finds that there are no grounds for arguing that the contested decision of the Unit Commission is biased or not objective. The Unit Commission, in passing the contested decision, was acting in accordance with the procedures and time limits laid down in the regulations. The decision was taken after considering the available evidence. Moreover, it enabled the Complainant to be heard and, therefore, after considering all the above-mentioned circumstances, it must be concluded that the contested decision of the Unit Commission has no substantial shortcomings in terms of legality.

6. By taking into account the Complainant's statements that the contested decision of the Unit Commission is not clear and complete, the Commission points out that the validity of the contested decision is normally assessed both in objective (reasoning of the decision) and subjective (clarity and completeness of the decision) terms. Having analysed the contested decision of the Unit Commission in the light of the above, the Commission points out that the decision has a clear structure; its content, for the sake of clarity, is divided into segments, each of which ends with a conclusion as to whether, in a particular case, the question is to be considered at all by an academic ethics commission, and whether academic ethics have been violated; it includes the specific reasons for the decision, and a reference to the documents examined and to the legislation applicable to the decision;

and it provides specific recommendations to the Unit's administration related to the management and resolution of the situation (conflict). None of this allows the Commission to accept the Complainant's statements about the incompleteness and unsubstantiated nature of the contested decision.

The Commission agrees that the clarity and completeness of the decision depends, to a certain extent, on the subjective views of the assessor. In this particular case, in the Commission's view, the impression of incompleteness and inconsistency of the decision under appeal, as perceived by the Complainant, may have resulted from the fact that the paragraph stating the violations of academic ethics does not include detailed statements regarding each of the potentially unethical acts (words or behaviour) described in the application of Prof. R. U., on the basis of which the contested decision was made. However, having performed a systematic evaluation of the content of the contested decision, the circumstances in which it was adopted and other aspects already mentioned in this decision, the Commission points out that this way of laying down a decision does not, in this particular case, constitute a substantial shortcoming in the content of the decision, because: (1) the Unit Commission clearly notes in its decision that the Complainant's pattern of conduct (i.e., the totality of the deeds and utterances investigated) is recognised to be contrary to academic ethics. For these reasons, the content of Prof. R. U.'s appeal, which describes in detail the manifestations of the potentially unethical conduct on the part of the Complainant, which is to be investigated, is not repeatedly quoted; 2) the decision clearly states that it was partly determined by the results of the employee interviews, therefore, it is only natural that the decision does not elaborate on the individual circumstances investigated, thus maintaining the confidentiality of the persons interviewed and the opinions expressed by them.

In practice, commissions admit that the only substantial shortcoming which would lead to the repeal of a decision on the grounds of being unsubstantiated is complete failure to state reasons for a particular decision. In the case in question, having performed a systematic evaluation of the content of the contested decision, the circumstances under which it was adopted and other aspects already mentioned therein, the Commission finds that the contested decision complies with the requirements of legality and validity applicable to the decisions of the academic ethics commissions of the University, therefore there are no grounds for amending or repealing it.

7. The Commission notes that, in accordance with Item 39 of the Commission Regulations, the Commission's decisions (or summaries thereof) are published on the University's website. The Commission explains that it is done with the aim to more clearly define the ethical standards applied at the University, to make the University community aware of the examples of inappropriate and intolerable behaviour, the examples of good practice in the activities of commissions, and to promote following the principles of academic ethics introduced and fostered by the University in their activities at the University and beyond.

In the light of the foregoing, in accordance with Items 13(1), 35(3) and 39 of the Regulations of the Central Academic Ethics Commission, the Central Academic Ethics Commission hereby decides

1. To dismiss the complaint of /Unit/ Prof. D. S. of 9 May 2022.
2. To make the depersonalised decision of the Commission publicly available.

Chairperson Assoc. Prof. Vígita Vèbraité