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Case on Disciplinary procedures against staff

Albania

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Case title

Decision of the Administrative Court on dismissing the
Administrative Act of School Niket Dardani on teacher V. P.
professional performance, year2015

Field and level of education of the case

- Disciplinary Procedures against staff/ pre-university education

Case description

- On dt. 16.09.2015 the teacher V.P. opened a judiciary case in order to declare illegal the administrative case that the School Niket Dardani in which she works has compiled regarding her professional performance.
- The school directorate has taken some disciplinary acts based on the findings of the Ethics Committee and Disciplinary committee of the school due to irregularities in implementing the Code of Ethics, violations of the Normative Dispositions of the Pre-university Education for the school year 2013-2014.

The plaintiff

- The plaintiff claims that this administrative act is illegal.
- Based on the plaintiff, the facts are not correct, they are not based on the personal portfolio of the teacher, due to the fact that the documents of her personal portfolio are archived in the Regional Education Authority of Tirana, which is the competent superior.
- As such, the information are not correct and not based in facts.
- The plaintiff has submitted a non-pecuniary, but a professional damage, as well as an encroachment of her personality.

The defendant

- The defendant arguments that the work reference compiled for the professional performance of the plaintiff does not bring consequences or demand execution of decision, but it is an opinion of the superior for the employee.
- An administrative act are those compiled by the administrative organ, bringing about judiciary consequences for the plaintiff.
- Based on the Law 69/2012 the school directory does not have a legal authority, but is a menagerial structure of the educational institute

Administrative Court decision on the case

The Court rejects the request of the plaintiff, as it does not find legal space to support the demand for reward based on these arguments:

1. The difference between the real and the administrative act lies in the lack of will to create, change or abolish the consequences
2. The Real Act (Article 5 Code of Administrative Procedures) does not have Sanction and penalty power towards the subject, but it is directed towards an undefined number of individuals
3. The written statement to the teacher is not a real act in this sense, but a professional reference
4. The written statement is not considered an administrative act, as it has no legal penalties

Legal Basis

- Articles no. 40, 41, 42 of the Law No. 49/2012 "On the organization and functioning of administrative courts and the adjudication of administrative disputes"
- Articles 306-310 of Code of administrative procedures
- Article 609 of Civil Code