

CASE TITLE

VEJSEL RIZVANOLLI VS. ACADEMIC SENATE OF THE UNIVERSITY OF SPORTS OF TIRANA (2012)

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The scope and level of education from which the case is taken: Decision-making in the collegial bodies in higher education, and the right to appeal

Description of the Case Problem:

Objections of the Claimant - Vejsel Rizvanolli

1. With the Decision no. 1 dated 13.01.2012, the Senate of the University of Sports of Tirana (hereinafter UST) has decided: Approval Article by Article of the Regulation "On the elections for the Authority and the Governing Bodies in the UST".
2. With regards to the two articles, the Academic Senate has decided to vote in the report of 4 pro/5 against:
 - Item 7.3: "The winning candidate in the main unit is considered elected as a member of the Academic Senate without being subjected to the election process".
 - Item 7.10 "They have the right to run for members in the Authorities of Steering Bodies, persons who fill the retirement age within 2/3 of the term of the mandate. If they are declared winners, their term is terminated with the age of retirement".
3. The Claimant - Vejsel Rizvanolli with the Claim before to the Court states, that: Section 7.10 of the Rule establishes a discriminatory restriction, due to age, to a category of subjects, including the claimant as a result of his age.
4. The Principle of Equality and Non-Discrimination constitutes a fundamental universal human right, which as such, is recognized and guaranteed by the Constitution of the Republic of Albania - Article 18, as well as the legislation in force - Article 9 of the Labor Code, Article 11 of the Code Administrative Procedures, Articles 1 and 9 of the Law No. 10221 dated 04.02.2010 "On Protection from Discrimination" and the European Convention on Human Rights - Article 14 thereof.
5. This discrimination has infringed on the claimants the fundamental rights legitimate in Articles 17 and 49 of the Constitution.

Objections of the pretender - the University of Sports of Tirana

1. In assessing the violation of the principle of protection from discrimination, it is clear that there is no moment to violate this principle, by the UST Senate.
2. If the right that pretends is violated, it is gained by voting for four years, and it comes as a limited right in time. So, if a right comes with a deadline, meeting the deadline is an obligation and not a violation of discrimination.
3. The age in the concrete case is the fixed time determined by law no. 9741 dated 21 May 2007 "On High Education", Art. 3 thereof.

Interpretation of the Ministry of Education and Science

1. Claimant Vejsel Rizvanolli has requested from the Ministry of Education and Science (Legal Department) the legal interpretation of these two points of the Regulation if they are in conflict with the legislation in force.
2. MES, regarding point 7.10 (Memo no.301 / 1 Prot dated 20.01.2012) has given the following answer: We suggest that this wording should not be included in the regulation because the imposition of an exclusionary criterion that constitutes discrimination because of age, is in contravention of the provisions of Article 17 of

the Constitution of the Republic of Albania, the European Convention on Human Rights and the Law no. 10221/2010 “On the Protection from Discrimination”.

Finding by trial of the case

1. Approval of Item 7.10 of the Regulation with Decision No. 1 dated 13.01.2012, and subsequently with Decision No. 2, dated 23.01.2012 (Item 5) by the Academic Senate of the UST is in contradiction with the provisions of articles 17 and 18 of the Constitution of the Republic of Albania.
2. This decision-making is also contrary to Article 14 of the ECHR as well as Articles 1 and 9 of the Law no.10221/2010 “On the Protection from Discrimination”.
3. Decision No. 20 dated 11.07.2006 of the Constitutional Court affirmed: “According to Article 17 of the Constitution, the rights and freedoms of the individual may be limited only by law [...]. The expression ‘only by law’ has the meaning [...]. This assessment is only at the discretion of the legislator and not to other organs [...]”.
4. The Court concludes that the decision of the Academic Senate of the UST for Item 7.10 (also Item.5) is a partly absolutely invalid administrative act, because it was also issued in violation of Article 116 / b of the Code of Administrative Procedures, which provides that: Administrative acts shall be considered absolutely invalid in the meaning of this Code when the act is issued by an administrative body in exceeding its legal powers.
5. As an administrative act absolutely invalid in the interpretation of the requirements of Article 117 of the Code of Administrative Procedures, this act does not produce any legal consequences [...].

The decision, no.10995 dated 14.11.2012 of the Tirana District Court

- Acceptance of the claim - lawsuit.
- Found out partly absolutely invalid the decision no.1 of 13.01.2012 of the Academic Senate of the UST only in for Item 7.10 and the Decision No. 2 of 23.01.2012 only for Item 5.

The decision no. 853, dated 09.04.2013of the Appeal Court of Tirana

The civil decision no.10995 dated 14.11.2012, of the Tirana District Court, remains in force.

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