

Case :Vejsel Rizvanolli vs. Academic Senate of the University of Sports of Tirana (2012)

Preparing by:

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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

Decision no. 1 dated 13.01.2012, the Senate of the University of Sports of Tirana has decided:

1. 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”.

Objections of the Claimant - Vejsel Rizvanolli

- The Claimant 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.

Objections of the Claimant - Vejsel Rizvanolli

- The Principle of Equality and Non-Discrimination constitutes a **fundamental universal human right**, which as such, is recognized and guaranteed by:
 1. *Constitution of Albania – Art. 18*
 2. *Labor Code - Art. 9*
 3. *Code of Administrative Procedures – Art. 11*
 4. *Law No. 10221 dated 04.02.2010 “On Protection from Discrimination” – Art.1 & 9*
 5. *European Convention on Human Rights – Art.14*

Objections of the Claimant - Vejsel Rizvanolli

- This discrimination **has infringed** on the claimants the **fundamental rights** legitimate in Articles 17 and 49 of the Constitution.

Objections of the pretender - UST

- 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.

Objections of the pretender - UST

- 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.

Objections of the pretender - UST

- **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 MES

- 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:
 1. *Article 17 of the Constitution of Albania,*
 2. *ECHR.*
 3. *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.

Finding by trial of the case (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”**.

Finding by trial of the case (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 [...]”.

Finding by trial of the case (4)

- The decision of the Academic Senate 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**.

Finding by trial of the case (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 09.04.2013 of the
Appeal Court of Tirana**

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

Thank you !