

## **Case Title**

Judicial case for power abuse and forging documents by the Minister of Education and Science (MOES) in issuing the order nr. 381, dated 05.08.2011 : “For opening the programs of first cycle Bachelor and second cycle master of Science in the Private Higher Education Institution Vitrina” (2016)

## **The field and level of education from which the case is taken**

Legislating the quality in education/ high education

## **Background Information**

On 17.04.2015, the General Prosecutor’s Office has registered the lawsuit nr. 04 of 2015 for the penal offences “abuse of power” and “Forging of the documents”, foreseen in the article 248 and 186 of the Penal Code, against the Minister of Education and Science. The defendant was a deputy in the Parliament of Albania, who during the period 2006-2013 served as Minister of Education and Science, the same period in which the defendant had allegedly committed the penal offences mentioned above.

## **Case Description**

On 03.05.2010, the private Higher Education Institution (HEI) “Vitrina” deposited in the MOES a request (project application) for the getting permission for opening new study programs for the year 2011 in the fields of Electrical Engineering, Mechatronics; Construction Engineering; Public Administration; Arabic Language and Literature; Dentistry; Medicine and Pharmacy. The project was sent for assessment to Accreditation Council of Higher Education (AC). The latter issued the decision no. 192 dated 24.06.2011, which was against the opening of the bachelor study programs in Electrical Engineering, Mechatronics, Public Administration and the MSc program in dentistry. The same decision left the approval pending for the Master in Science Programs in Construction Engineering, Medicine and Pharmacy, because it requested from the applicant to met some conditions concerning the standards and regulations. Despite this decision, the Minister of Education and Science issued the Order no. 381, dated 05.08.2011 “For opening the first cycle programs Bachelor and second cycle Master in Science, in the private HEI, Vitrina”. In the Annex of this order were listed the conditions set by AC which the HEI Vitrina had to fulfill in order to obtain a final assessment of the study programs. The order had foreseen a timeframe of 6 months for HEI Vitrina, to deliver to MOES a report on the fulfillment of these conditions. In the academic year 2011-2012 all the above mentioned programs in University High School were opened.

## **Case Object**

The General Prosecutor’s Office claimed unlawful the order of the MOES no. 381 dated 05.08.2011. It argues that the order violated the following legislation:

- the articles no. 43/3, 44/4, 44/7, 59, 60, 62 and 63/4 of the Law no. 9741, dated 21.05.2007 “For the higher education system in Albania”, articles no. 5/2 and 8 of the Decision of the

Council of Ministers no. 303 dated 01.07.1999, “For the creation of the accreditation system in higher education”, amended; chapter I and III of the Instruction of the MOES no. 11, dated 28.02.2012, “The procedures and documentation for opening a private higher education institution in higher education”.

The above-mentioned legal framework foresees the procedure for opening new study programs. Although the AC has given a negative evaluation, the defendant has approved the request for opening new study programs in a private HEI Vitrina. The illegality of the order pretended by the General Prosecution is based on the fact the defendant has overcome his competence by avoiding the decision of the AC, as it is foreseen by the law. The General Prosecutor’s Office pretended that the order of MOES no. 381 had opened study programs that are not in compliance with the legal criteria, had given opportunity to a private operator to expand its activity in the education sector with no quality.

### **Legal framework**

Article 44/1 of the Law no. 9741 dated 2007, foresees the rejection in a case of a negative evaluation for the entire programs (project) in the request, meanwhile the application received 3 evaluations with condition and one positive evaluation. The respective points of the Article 44/1 state as follows:

1. The opening of new study programs in entire cycles of the higher private education, the closure and their reorganization is conduct by the order of the Minister of Education and Science, based on the higher education institution request.
2. The Minister of MOES defines the documentation for project application for getting a permit and opening the new study programs.
3. MOES requires AC to deposit its evaluation for the study programs in the project application.
4. The Minister rejects a project application when AC gives a negative evaluation for *all* the study programs.

Article 42 of the Law no. 9741 dated 2007, states as follows:

1. The opening, closure, reorganization and adaption of new study programs in entire cycles in public HE is conduct by order of the Minister of Education and Science, based on the request of HEI.
3. The Minister takes a decision, according point one of this article, based on the AC assessment.

Article 62 foresees the procedure of accreditation and the opening of new study programs.

The chapter I and III of the Instruction of the MOES no. 11 dated 28.02.2012 “For the procedures and documentation for to open a private higher education institution in higher

education”, foresees the procedure and the documentation that a private HEI must complete for opening, closing and reorganization of new study programs.

### **Decision of the Supreme Court**

The Court decided that the Order of the Minister of Education and Science no. 381 dated 05.08.2011 “For the opening of the first cycle ... in private HEI “Vitrina” does not violate the law and does not overcome the competence of the Minister of Education and Science, as is foreseen in the article 248 of the Penal Code. The Supreme Court acknowledged in its decision, as follows:

From the literal and logical interpretation of the law’s disposition, specifically article 44/4 of the law no. 9741 dated 21.07.2007, results that the opening of new study program is under the discretion of the Minister, with exclusive decision-making competences. The term used in the article “a project application is rejected”, is different from “a program is not opening”. A project application submitted in MOES from a private HEI, may contain many programs, therefore the article uses the terms “when a negative evaluation is given for all the study programs”. This disposition foresees, when the entire study programs included in a project application have a negative evaluation from the AC, then the entire project is rejected. In this case, the AC has given 4 negative evaluation for 4 study programs, 1 positive and 3 other conditioned positive evaluations. Under these conditions, when the AC has not issued a negative evaluation for the entire study programs, but only for a part of them, there was no reason to reject the entire project. So, there are no violations of this article from the defendant. The right to open a new study program is exclusively the Minister’s competence. According to this law, the decisions of AC are not mandatory. AC has no decision-making competences in this procedure, but only evaluation competence (positive assessment, negative or conditioned positive). The law does not foresees acceptance or rejection for AC’s decisions. The unlimited discretionary power exercised by the Minister, foreseen in the respective law, is not judged against the article 248 of the Penal Code, but also not as an action against the law.

Based on the article 42 of the Law nr. 7941/2007 the competence to take this decision is under the Minister’s competence and the evaluation of the AC serves for this decision-making process.

Article 62 foresees the procedure of accreditation and the opening of new study programs. So this disposition is not applicable to this case. Accreditation and opening a new study programs are different processes in the mean of quality assurance.

The Penal College of the Supreme Court, based on Articles 384 and 388, point 1, letter b, of the Penal Procedure Code, decided:

*To declare innocent the defendant M.T., charged with committing the penal offense of "Abuse of Power" provided for in Article 248 of the Penal Code.*

**Source: Decision of the Supreme Court of Tirana, No. 6/36, date 14/06/2016**

**Prepared by Rovena Sulstarova, UT**