

INVALIDITY OF ADMINISTRATIVE ACTS

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ABSTRACT

Administrative act is an expression of state attribution to create, change or erase specified juridical consequences. Administrative act is legal because is made based in law and in its execution. When the procedure of creating administrative act or its content is in discordance with demands defines in law this act can not create the needed juridical consequences so it is invalid. So compared to juridical invalidity when all elements of validity are verified, administrative acts have to be created based on law to be considered valid. The purpose of this paper is to study the elements that bring invalidity of administrative acts created from institutions attributed from law to do so and classification of invalid administrative acts. While analysing law literature and their changes we raise the question: Whether an invalid administrative act can be considered valid, in what circumstances and case and based on which procedure? Also how can juridical power of an invalid act be ceased. For this purpose base literature, law and their changes and court practices are taken into consideration.

Keywords: Illegality, relative invalidity, absolute invalidity, administrative control, administrative appeal.

INTRODUCTION

Invalid administrative act is expression of the will of administrative institution, that doesn't have juridical power because of the break of the law, lacks in form and content or threaten of the state will. Even when this act creates juridical power it is canceled from the authorised institutions. Administrative acts are usually created from public state institutions authorised from law to do so. Verification of their validity and of the fact that are made based on authorised competences is made from the supreme administrative institution or from the court based on the accuse raised from involved parts. So invalidity of administrative act is related with illegality, violence of elements that define validity and regularity of act derived from law and competences authorised in law. Nevertheless in everyday work of public administration there are more and more cases of violating law demands while creating an act making them object of administrative and court review and cancel. Illegality that makes administrative act invalid deals with excess of competences of the institution by lacking in content of act or break of form and content. Illegality of act is removed by canceling the act, correcting it partly or total cancel and these are attributes of the institution that created it or from court. According to law 49/2012 "About procedures of administrative court and judge of administrative disagreements" disagreements coming from administrative acts are verified in administrative court. Nevertheless according to Unified Sentence of Supreme Court number 4 of 10.12.2013 when an accuse involves different kinds of objects of civil and administrative character, Unified Tribunals reason that the court first has to analyse if objects are related and can be judged in a single process. When object of judgement are different demands civil and administrative ones, found related to each other from the court, if one of them is contesting an act that brings civil consequences than Administrative Court is the competent one. Also administrative court is competent when the object is of a civil nature but related to administrative act that bring consequences from state will. When disagreements as object of

process is of a civil nature but consequences can be resolved from administrative acts, administrative court will be competent of judging it. Unified Tribunals reason that processes that contest Sentences of Restitution and Compensation of Properties Agency are of a civil and not administrative nature because pretending part asks property rights by giving evidences. Interested parts in order to contest an administrative act have first to complete administrative contest procedure and then ask the court process. Conclusively supreme authorised institutions and court are the competent ones to verify legality and validity of administrative acts initialised from involved parts. No other subject or institution that is aware of these acts can verify their validity.

Difference between administrative and civil invalidity

Administrative acts equally to civil juridical acts are classified in absolutely invalid and relatively invalid. Differently from civil rights defined in law administrative acts are partly defined in law because they are led from general principles. While absolutely invalid contracts in private right have no juridical consequence despite the will of parts, invalid administrative acts bring consequences and are effective as long as their cancellation is decided from court or administrative sentence. Their juridical consequences can last even when act is canceled. Administrative acts can be declared absolutely invalid or relatively invalid. When act is contradicted to legality principles it is considered absolutely invalid. Given that authorised institutions have to respect principles of legality, the amount of breaking the law classifies acts in absolutely and relatively invalid, differently from civil invalidity where law disposes clearly define absolute and relative cases of invalidity. In order to consider a civil act invalid is only needed to be proved violence or deceive of law.

Administrative act absolutely invalid

Administrative acts are considered invalid because of the violence of the law institutions are based to create them, having no juridical power from the moment created. When these acts are judged invalid they are considered as if have never existed and can bring no juridical consequences for the purpose they were made. Invalidity of these acts can be sentenced with cancellation from supreme institution or from the court. When invalidity is proved the court also resolves consequences caused from the act. Absolutely Invalid act can never turn valid with no after act like proval from parts or disappearance of the cause of invalidity. These acts can't be considered valid even if prescription time is fulfilled. Declaring Absolutely invalid acts is defined in article 331 of Civil Procedure Code. Also this Code defines as prescription date 30 days from being aware of the contest of the act in court. Nevertheless in this case it is not specified if prescription date refers to absolutely or relatively invalid acts because absolutely invalid acts can't be considered valid with any after act even if time of prescription has passed. As long as law doesn't define prescription date for contesting the act it mostly refers to relative invalid acts. Absolutely invalid act can bring no consequences even when date of prescription has passed.

This reasoning is also expressed in article 117 of Administrative Procedure Code defining: "Every interested part can ask an act to be considered invalid and these demand can be raised in any time". Referring to court practice there are cases when only a part of the act is considered invalid but as long as this was the most important one all the act is considered invalid (footnote article 117 of Administrative procedure code).

Nevertheless it is to be noticed that difference between absolute and relative invalidity isn't defined in disposites of law but can only be judged in our process based on the amount of breaking the law, risk of dangerousness of invalid act and possibility of adjusting juridical consequences of act from the institution that has created it. Article 115 of Administrative Procedure Code defines invalidity of administrative acts as below:

- a} absolutely invalid administrative acts (acts made in total violence of law)
- b} relatively invalid administrative acts (acts made in contrast with law)

Cases of acts considered absolutely invalid are defined in article 116 of Administrative Procedure Code "Administrative acts are to be considered invalid in below cases":

- a} act is created from unidentified administrative institution
- b} act is created from an institution overpassing its legal competences
- c} act is created in contradiction with form and procedure demanded in law

a- When administrative act is created from unidentified institution and who is not known as such.

An administrative institution has its competences defined in law in creating acts that should not be overpassed. If these competences are overpassed acts created have no juridical consequences. So the institution has to be known from identified law. There are cases in court practice where the institution used to be competent in creating an act but with law changes these competences were removed so if the institution would continue to create acts they would be considered absolutely invalid.

b- When act is created from institution overpassing its competences

Every administrative institution in its practice acts within competences and can not profess other institution's rights because practice of overpassed competences is violence of legality principles and brings absolutely invalid acts. So the act is considered absolutely invalid not only when created from non-competent institution but also when resolves a case not in his authority.

c- form and procedure of creating the act is violated

When creating an administrative act authorised institutions have to fulfill demands of form and procedure defined in law because violence of them would bring absolute invalidity if them. Violence of elements has to be in a way that influences directly in creating the act because not all violences of form and procedure bring absolute invalidity of acts. When a formal demand or procedure isn't respected the act can not be considered invalid because this violence would not bring changes in execution towards the act. On the other side a serious violence of form and procedure would bring total nullity of administrative act. If involved parts demands aren't taken in consideration during procedure the act would be invalid. Usually absolutely invalid act is canceled from supreme authorised institution or from the court. The institution has the right to cancel the act only when this one is considered relatively invalid.

Relatively invalid administrative act

This act brings juridical consequences until involved parts ask the institution or the court for its invalidity within legal terms defined for its contest because the request is valid within prescription date. Juridical consequences are over from the moment act is declared invalid. differently from civil invalidity relatively invalid administrative act erases even consequences from the moment created. Article 118 of Administrative Procedure Code quotes “Administrative acts are to be considered relatively invalid when created in contradiction with law, nevertheless are not to be considered absolutely invalid. Relatively invalid administrative act is contestive in administrative and judgment way according to this Code and Civil Procedure Code”. Referring to this dispositive there is no clear definition of the relative invalidity cases unsimilar to absolute invalidity or civil invalidity. Administrative acts are to be considered invalid when:

a-Its content doesn't correspond to law content.

If public institutions create acts giving or rejecting rights to people in discordance with law these acts are relatively invalid.

b-Administrative acts content doesn't correspond to the purpose of the law.

Administrative act created in any time has to bring specified consequences. If the purpose of the act is in discordance with law (this has to be proved from the authorised subject) it is considered relatively invalid.

c-Administrative act created from institution in conditions of threatening, deceive or violence.

In this case administrative act is created in the needed form and content but institutions will be corrupted (equal to civil invalidity).

Relatively invalid administrative acts have a lower rank of breaking the law and bringing consequences because are not created in conditions of heavy violence of law or lack of competences so their cancellation can be executed from the authorised institution.

Court Practice

Constitutional Tribunal of Albanian Republic has decided in sentence number 40 of 10.03.2015 to analyse the case of asking part TH.LL with interested parts Central Registration Office of Immovable Properties Tirane, Regional Registration Office of Immovable Properties Sarande with object : *“Cancellation of sentence number 422 of 09.07.2013 of Civil Tribunal of Supreme Court as in discordance with Albanian Constitution”*.

While analysing the facts resulted that asker has built a 462 m² multistore building according to an investment agreement. A part of the land specifically 262 m² was earned from L.B.E.D by sales contract number 552/421 of 07.12.2006 from Municipality of Saranda. The registration of this land was refused from Central Registration Office of Immovable Properties Tirane by sentence number 270 of 04.04.2008 because it resulted that sales contract for the land is created in discordance with law of lands sales and article 195 of Civil Code because the land wasn't preliminary registered in the name of Municipality in the moment of signing the contract. For this case in sentence number 748 of 16.07.2008 Saranda Region First Level Court has decided *“Cancellation of sentence number 270 of 04.04.2008 of Chief-Registrant as found unbased in law and proves. Obligation of accused to register the property”*. This sentence was confirmed by sentence number 544 of 04.11.2008 of Second Level Court of Gjirokastra. Meanwhile Civil Tribunal of Supreme Court decide *“Change of*

two sentences of previous level courts and cancelation of the accuse". This Court concludes that previous sentences are not based in law because there are to be registered in registration office only properties earned in legal ways and not the concrete one where more than half of the land is earned by juridical act in discordance with law. The Tribunal reasons that sentence number 270 of 04.04.2008 of Central Registration Office of Immovable Properties is legal and the 260 m² land could not be sold from Municipality before the end of the process of restituting former owners. The asker addressed the case to the Constitutional Court pretending that the previous process in Supreme Court was irregular because :

-Principle of appointed court based on law is threatened because Supreme Court has analysed the case basically by reevaluating proves collected from lower level courts deciding in contradiction with them.

-Civil Tribunal has decided without hearing interested parts in the process

-Civil Tribunal has disinterpreted law about invalidity of administrative contract and juridical act.

-Civil Tribunal in his sentence has violated principles of juridical reliability for properties previously earned.

According to Constitutional Court the process is not considered irregular when Civil Supreme Tribunal decides to cancel previous sentences based on the same proves and resolve the case by itself because of violation of law. Supreme Tribunal can not leave behind proves previously analysed neither can accept proves not previously collected. According to this reasoning as Supreme Court has concluded that the process was lacking of investigation it should have brought the case back for judgment and not judge the case as first level court. Therefore Constitutional Court has threatened principle of judging from court authorised in law. Regarding the pretend of violation of the right to be heard and principle of contradictory in judgment Constitutional Court concludes that absence of parts doesn't violate principle of contradictory. Regarding the pretend of disinterpretation of law about invalidity of sell contract the Court

emphasizes that the way of analysing the proves and execution of material law is an attribute of random courts while Constitutional Court decides if the whole process is regular. This pretend doesn't stand because problems interpretation and law execution is not a matter of Constitutional judicature.

CONCLUSIONS

Referring to the amount of breaking the law in different court cases we find terms like nul acts, without power or juridical effects, invalid acts etc. There are many cases of administrative acts invalidity when the court refers to absolutely invalid act as cancellable acts or decide for their cancellation while these acts can't be canceled because they are considered nul from the moment created and can not bring legal consequences. In these cases the act can not be declared as invalid but the court only notices its invalidity. Necessarily the court has to dispose the consequences brought from the acts.

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