

**PROPERTY REGISTRATION
OFFICE. PROPERTY ACTS
REGISTRATION IN PUBLIC
REGISTERS AND PROBLEMS
CONSIDERED WHILE
AUDITING THEM.**

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Based on executive board decision and chief-registrant Albanian Republic territory is divided in registration zones. Every registration zones operates as a Regional Office of Property Registration and has its residency. Based on chief-registrant decision every registration zone is divided in local areas without territorial borders, each of them having a unic,unrepeatable number.

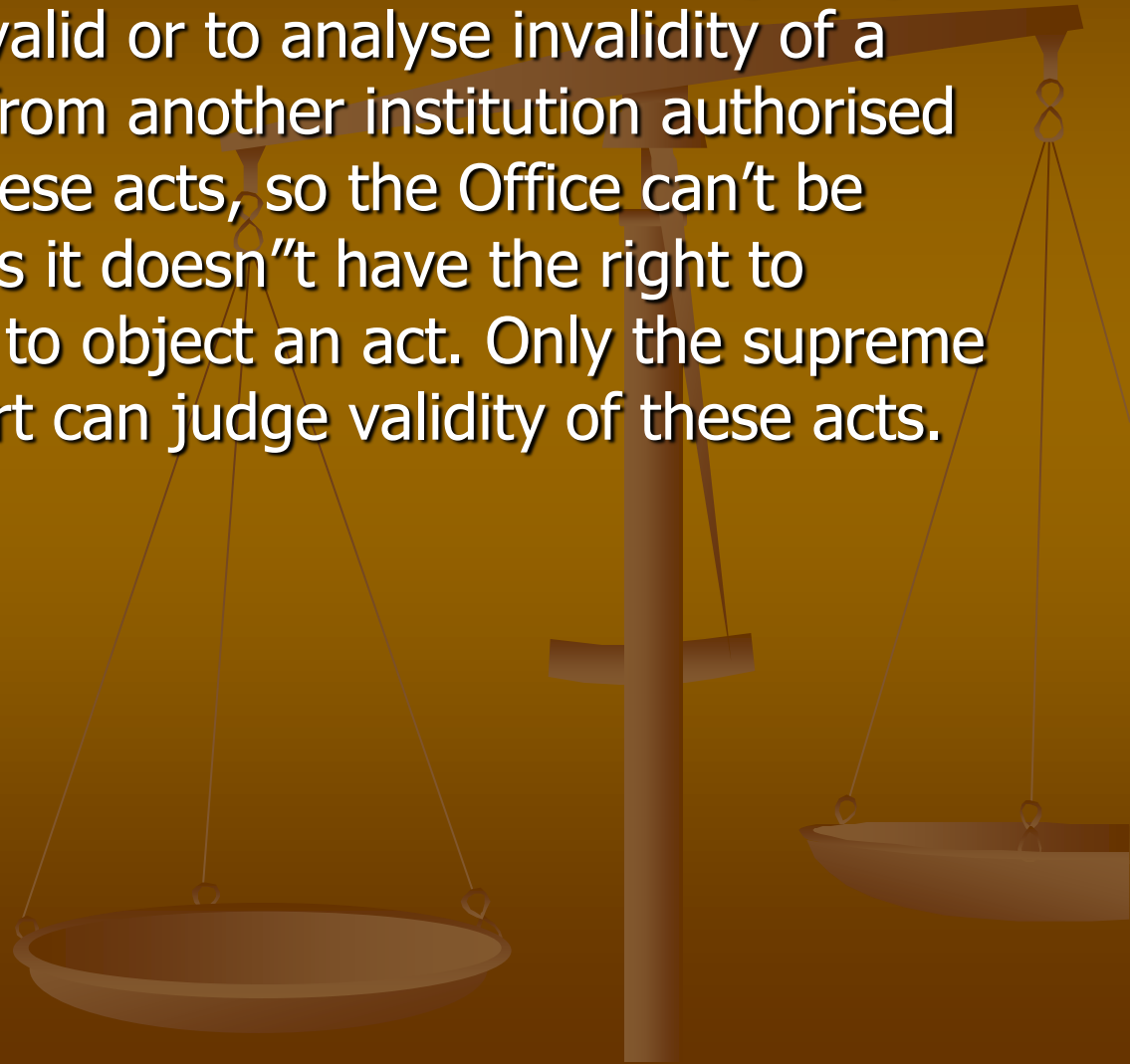
The purpose of this paper is styding Property Registration Office activity and procedure while registrating a proprietary document act. If we see literature,law and their amendments, court practice and auditing process of this offices we can raise a question whether office activity aims to publish and declare to third persons proprietary documents and their holders rights or has to verify legality and validity of these documents. Also how does process of controlling Property Registration Office transform it in a "investigative institution".

■ ACTIVITY OF REAL PROPERTY REGISTRATION OFFICE

Activity of real property registration office is based in terms of law reliability, transparency, legality, priority in registration and establishment of property register by matching proprietary documents with its geographical position. So the Registration office in its activity doesn't have the obligation to analyse legality and validity of proprietary documents.

According to above reasoning and definitions of article 23 of law 33/2012, staff of Saranda Registration Office don't have any legal responsibility for the way acts and documents are created from other institutions: *Chief-Registrant, Registrant and any other staff member of the Property Registration Office don't have any legal responsibility for documents or acts of third subjects, when their actions or non-actions are in their authority.*

Property Registration Office isn't responsible of the way acts and documents are created from authorised institutions forwarded for registration to the office. Also Property Registration Office doesn't have the legal right to consider an act invalid or to analyse invalidity of a juridical act created from another institution authorised from law to create these acts, so the Office can't be responsible as long as it doesn't have the right to initialize a procedure to object an act. Only the supreme institution or the court can judge validity of these acts.



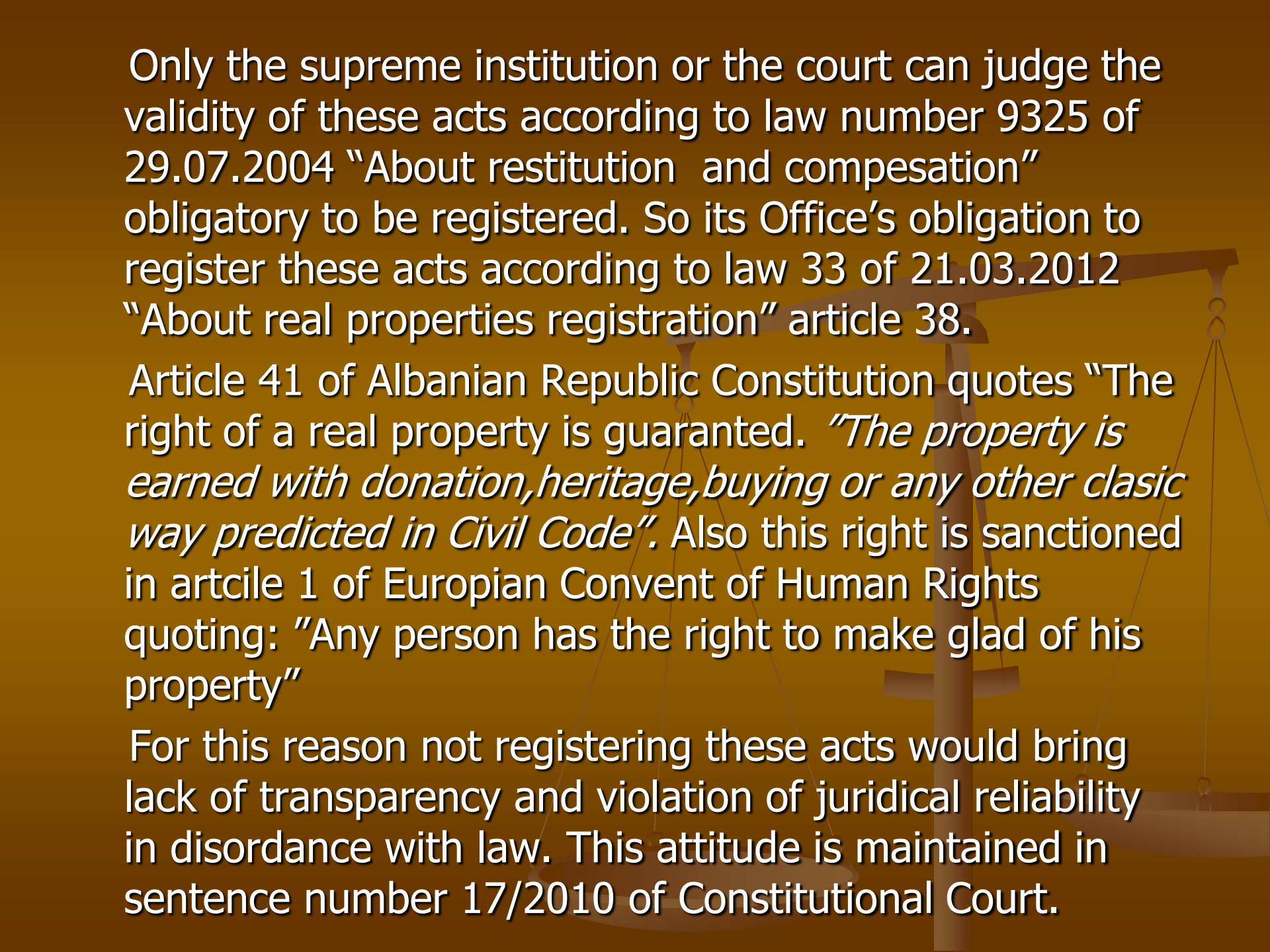
- Problems considered while auditing Property Registration Office

While auditing Property Registration Office, Supreme State Control doesn't consider it as an institution that handles legal documents that prove proprietary, create and manage public registers and maps, so managing all the system of registering real properties. In this auditings are found irregular procedures of registering decisions of Real Properties Restitution and Compensation Office because they were based on court sentences before 01.11.1994. This sentences had on focus definition of property bounders and position and not giving proprietary document.

Property Registration Office doesn't have any responsibility for the way this acts are created in this case decisions of Real Properties Restitution and Compensation Office that are ultimate and obligatory for registration when forwarded to Registration Office.

Registration of these decisions fulfill law standards according to article 193 point h of Civil Code quoting: *Court decisions or other institution decisions that contain earning or recognition of real properties have to be registered in real porperties register.*

Also according to article 25 of law 33/2012 "Initial Registration Procedure" the Office has to verify that properties and their confines have to be registered based on below criterias: *Proprietary and confines of properties are defined from proprietary documents according to article 193 of Cicil Code"*

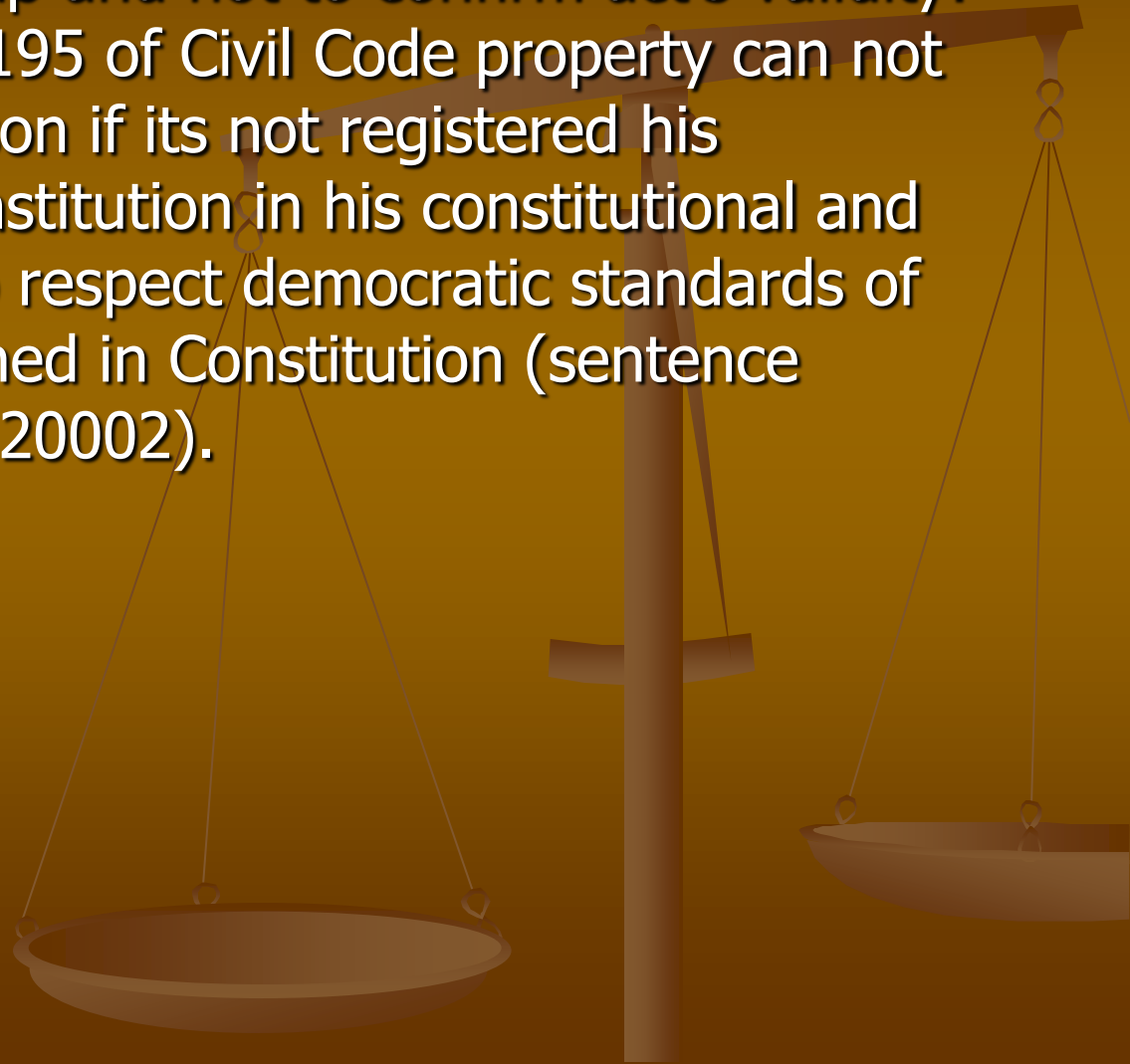


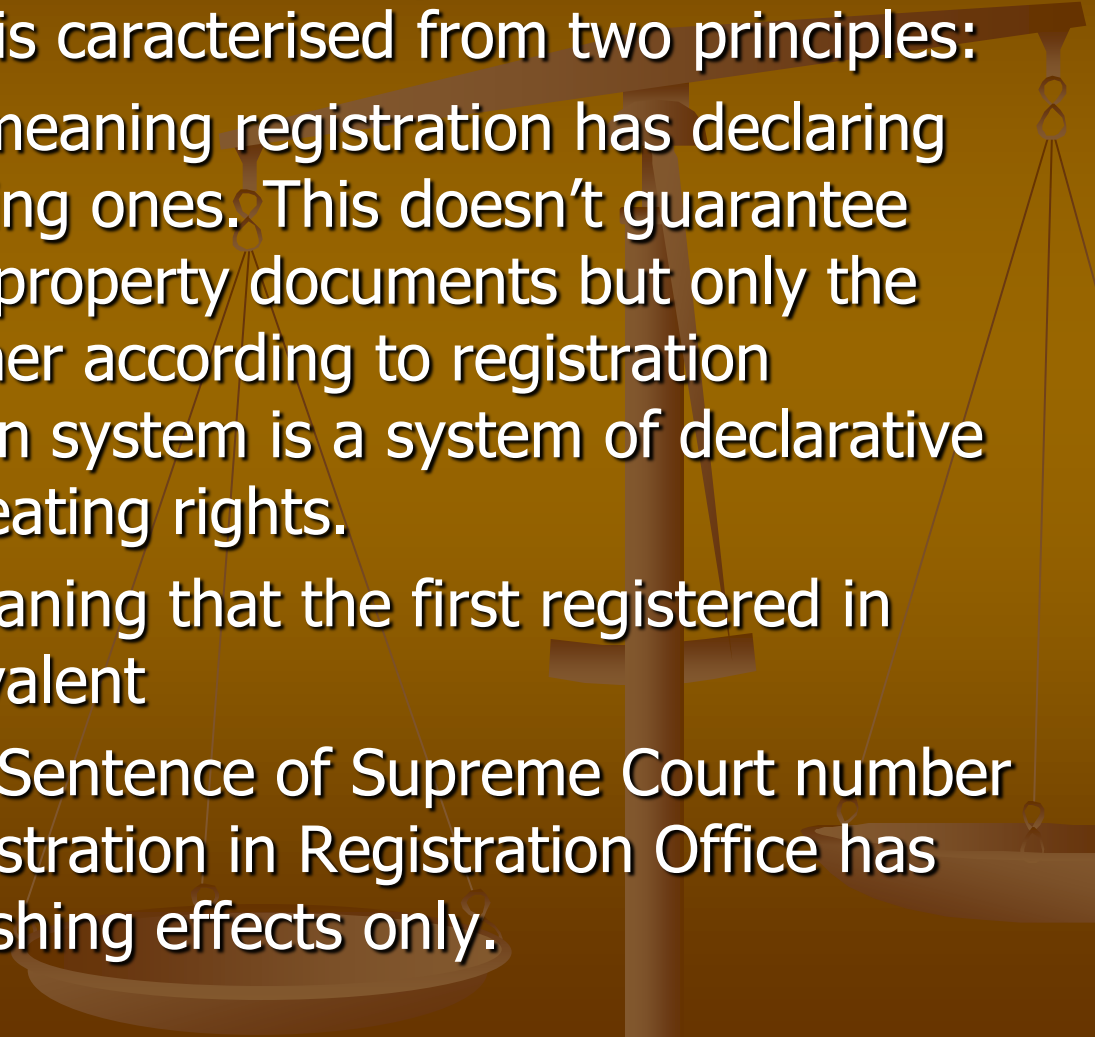
Only the supreme institution or the court can judge the validity of these acts according to law number 9325 of 29.07.2004 "About restitution and compensation" obligatory to be registered. So its Office's obligation to register these acts according to law 33 of 21.03.2012 "About real properties registration" article 38.

Article 41 of Albanian Republic Constitution quotes "The right of a real property is guaranteed. *"The property is earned with donation, heritage, buying or any other classic way predicted in Civil Code"*. Also this right is sanctioned in article 1 of European Convention of Human Rights quoting: "Any person has the right to make glad of his property"

For this reason not registering these acts would bring lack of transparency and violation of juridical reliability in disordance with law. This attitude is maintained in sentence number 17/2010 of Constitutional Court.

So registration in public registers is necessary to change the ownership and not to confirm act's validity. According to article 195 of Civil Code property can not pass to another person if its not registered his name. Every public institution in his constitutional and lawful acitvity has to respect democratic standards of regular process defined in Constitution (sentence number 75 of 19.04.20002).



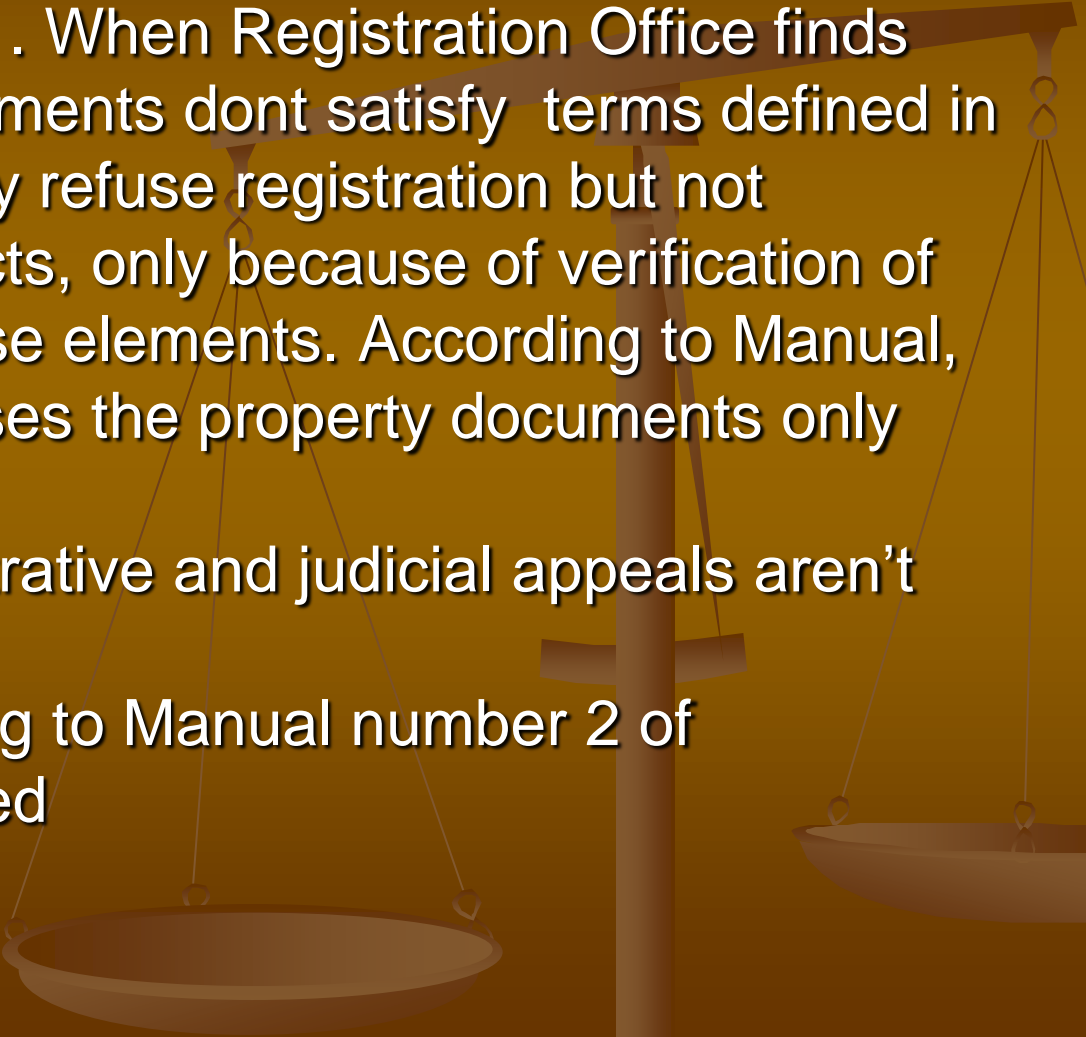


Registration Office doesn't create property acts or documents, its role is limited in publishing and declaring according to Unified Sentence of Supreme Court number 1 of 06.01.2009 and is characterised from two principles:

-Declaring principle meaning registration has declaring effects and not creating ones. This doesn't guarantee legality or validity of property documents but only the fact that seller is owner according to registration database. Registration system is a system of declarative publication and of creating rights.

-Priority principle meaning that the first registered in public register is prevalent

According to Unified Sentence of Supreme Court number 1 of 06.01.2009, registration in Registration Office has declarative and publishing effects only.



About definition of registration procedures in Registration Office, changed with Manual number 2 of 12.09.2012 of Minister Council About acts and elements to be verificated from Registration Office . When Registration Office finds out that forwarded documents dont satisfy terms defined in Manual number two they refuse registration but not becuae of legality of acts, only because of verification of form and content of these elements. According to Manual, Registration Office refuses the property documents only when:

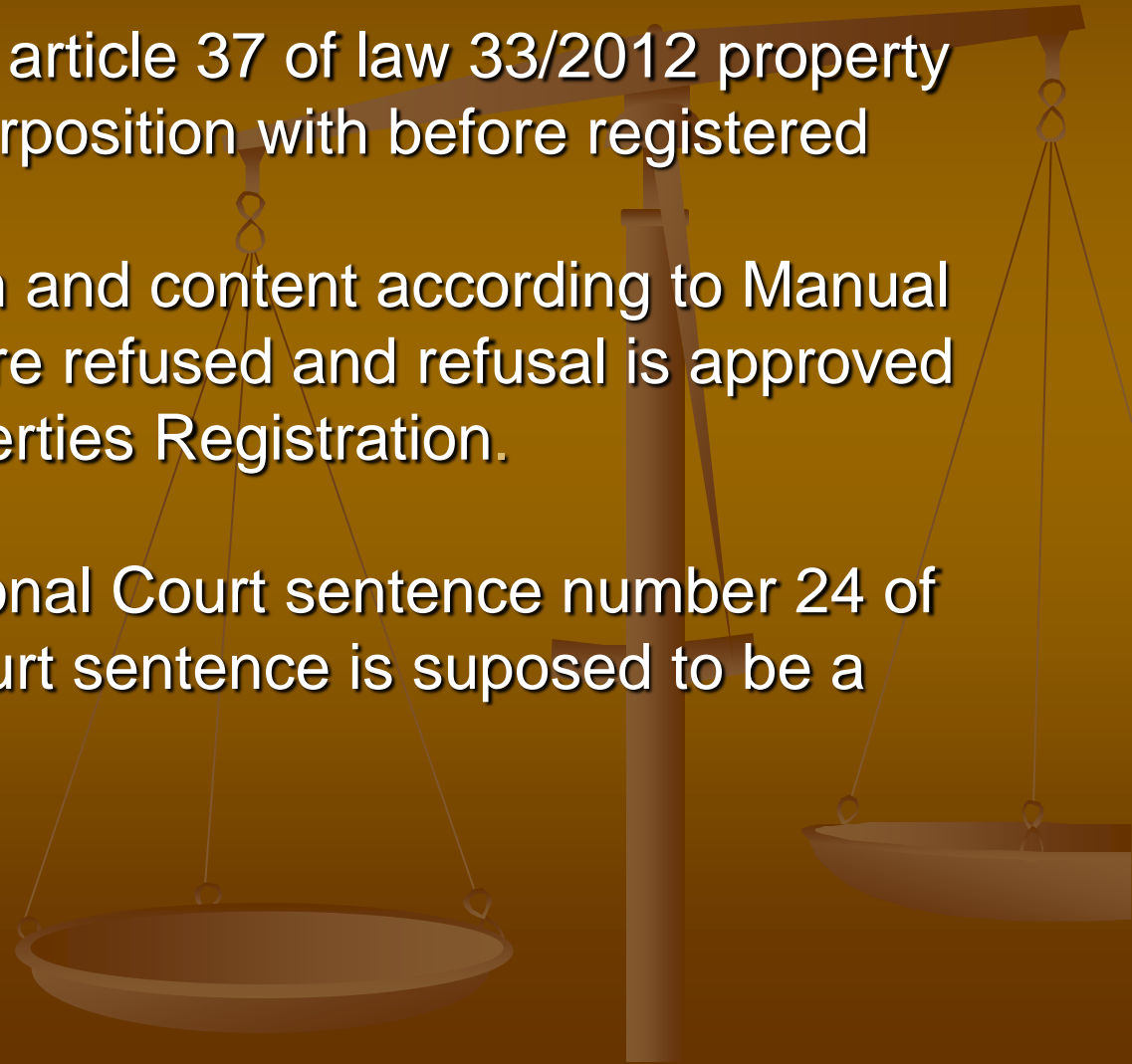
- Legal dates of administrative and judicial appeals aren't done
- Terms of form according to Manual number 2 of 12.09.2012 aren't fullfilled

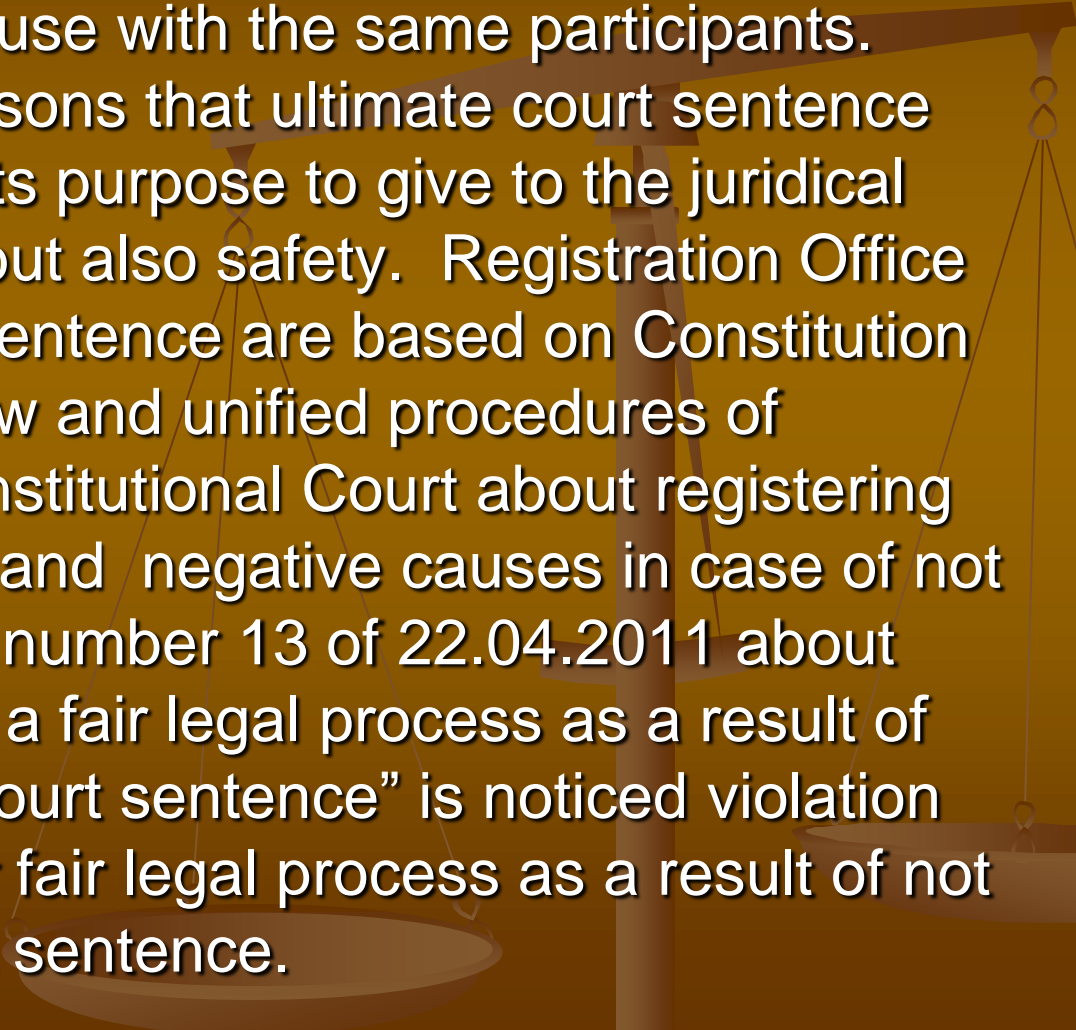
-Property documents already registered for third persons that aren't part of administrative or judicial act of earning the property.

-According to point 3 of article 37 of law 33/2012 property documents create superposition with before registered acts.

After verification of form and content according to Manual number 2 documents are refused and refusal is approved in Central Office of Properties Registration.

According to Constitutional Court sentence number 24 of 12.11.2008 ultimate court sentence is supposed to be a judged issue.





In accordance with the principle of legal safety, civil procedure law has sanctioned the principle of res judicata, which prevents a new judgment on a matter already decided.

According to article 451/a of the Civil Code Procedure, no court can judge the same case with the same participants.

The Constitutional Court reasons that the ultimate court sentence, as a final judgment, has the purpose of providing clarity and legal safety to the legal relationship. The procedures for a court sentence are based on the Constitution of the Albanian Republic, the law, and the unified procedures of the Supreme Court and the Constitutional Court regarding the registration of final court sentences and the consequences of non-registration.

In sentence number 13 of 22.04.2011, the Constitutional Court found a violation of the constitutional right to a fair legal process as a result of not executing the final court sentence.

CONCLUSIONS

Properties Registration Office is as an institution obliged from law to register real properties within territory of Albanian Republic based on property documents or restitution of rights on properties according to demands deposited from holders of these rights. Property documents and acts are forwarded to Registration Office from authorities that create them. Registration has on purpose publishing and declaring, when owner proves that has legitimate interests in a property he has the right to take information and copy of documents deposited in Registration Office. This Office doesn't create acts and doesn't guarantee absolute validity of them as long as property documents can be violated from supreme administrative authority or the court. Registration system is a system of publishing and declaring, that makes interested people know rights and obligations in real properties registered in public registers.