

dispute resolution - legal changes published in February 2017

Decision no. 36/2016 on examining the referral made on application of the provisions of art. 4 of Law no. 554/2004 published in the Official Gazette of Romania, Part I, no. 104 dated February 7, 2017.

The panel of the High Court of Cassation and Justice for interpreting matters of law has been notified for ruling on the interpretation and application of art. 4 of Law no. 554/2004. As stated in this Article, "the legality of an individual administrative act, irrespective of the date of issue can be examined at any time within a trial, by way of objection, ex officio or at the request of the interested party." The referral regarded the question of whether the legal rule provides the opportunity to raise an objection of illegality directly in the stage of reviewing the trial court's decision or, on the contrary, contains a restriction related to the time when one may object over the illegality of the administrative act.

After analyzing the referral, the High Court concluded that the said provisions are prescribing a legal institution whose purpose is to remove the effects of the individual administrative act on which the opposing party might rely in a pending case. On the same time, it emphasized that to place a restriction over raising the objection of illegality during the stage of judicial review would deprive the other party of the opportunity to challenge the legality of the administrative act and defend itself. Furthermore, it noted that since art. 4 stipulates that the objection of illegality may be raised at any time during the procedure, the interpretation whereby the objection cannot be invoked directly in the stage of reviewing the trial court's decision is contrary to the principle that the law must be interpreted towards its application, and not to its non-application.

In view of these findings, the High Court admitted the referral and established that the provisions of art. 4 of Law no. 554/2004 allow the objection of illegality of an individual administrative act to be raised directly during the stage of judicially review.

For additional details on this material, please do not hesitate to contact us.

Voicu & Filipescu SCA

31 General Ernest Brosteanu Street

010527, Bucharest, Romania

Tel: +40 21 314-02-00

Fax: +40 21 314-02-90

E-mail: office@vf.ro

Web: www.vf.ro