

Invalidity of Legal Action in the Albanian Legal System

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Abstract

This work is devoted to issues related to legislation on invalidity of legal actions, causes, consequences of invalidity and court districts practice issues related to the nullification of judicial acts. In this paper, major attention is given to the Civil College decisions and unifying decisions of the United Colleges of the High Court, as a highly professional and interpretative practice. This paper starts with a general explanation of the meaning of *legal action* and *invalidity* as a concept, of the forecasts built in the Civil Code, the classification of conditions for declaring an action null and void absolutely or relatively, the consequences of invalidity, cases of judicial practice, etc. The final section is a summary of the conclusions of the whole paper.

Keywords: legal action; absolute nullity; relative nullity; unified judicial practice.

1. Introduction

This paper was conceived as a result of the unifying decision No. 5, dated 30.10.2012 of the United Colleges of the High Court, which specifies that there cannot be presented as a separate indictment the determination of absolute nullity of a legal action, if this is not accompanying the judgment of an underlying issues and/or is not associated with the resolution of the consequences; thus, for this reason was concluded that [1]: 1. *The invalid legal action may be considered by the court without being asked by the party interested, and even against its will (desire).* 2. *In order to consider an absolutely void legal action it is not necessary to present a special request, be it claim or counterclaim, as this type of invalidation is considered despite of the claim appearance in court.* 3. *Absolute Nullity may be filed by any litigant who has an interest. The form of submission can be also an objection, that is because of the fact that the absolutely null and void legal action cannot be effected by previous action.*

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4. Search and detection of absolute nullity of a legal action cannot be done as an independent research; it should always be done during the trial on the merits of a case by the court, or at least as an accompanying resolution of the consequences of its execution. 5. The consequences of execution (fulfillment) of an absolutely void legal action are solved only on request of the litigants and in cases when the court have determined the invalidity of a legal action, it solves only the consequences that are subject of research for the claim or counterclaim, without defining the consequences for which there is no specific request made by the parties. This does not preclude the parties or any third persons, from demanding the solving in another the trial, the consequences left unsolved by the trial, in cases where a legal action is found null and void.

2. The general meaning of legal actions and legal invalidity

According to the law, the legal action is a legitimate display of the will of a person or legal entity that aims to create, change, or erase obligations or civil rights [2]. Legal actions are the most numerous and most important among the judicial facts. Analyzing the concept of the legal action, we highlight some of its features: *Moment of Will Appearance; The appearance of will should aim the achievement of a Judicial Result, The External Expression of the Will, Concordance between the Displayed and the Interior will.*

In the Civil Code of 1994, the invalidity of juridical action is addressed in the context of the causes that produce it and the consequences that it brings. The question arises: What are the situations that classify a legal action as void? The Civil Code [3] does not define the conditions for the validity of legal actions, but sets the circumstances that cause the invalidity of legal actions. From the totality of norms that regulate the institute of invalidity of legal actions, *the void legal action* can be defined as a legal action, which due to a violation of law or because of any defect (attachment) of the will appearance of the judicial parties, doesn't preserve its judicial power, but this can be removed (terminated) by court decision on the request of the interested party.

The legislator treats the invalidity of legal actions in the Civil Code in Title III in the legal actions paragraph, Chapter I, in sections 92-102 and 105-111, regarding the invalidity of legal action in general, which is addressed to all legal actions, while more specifically it is treated in section 116 as *the invalidity of the agreement amending the statutory deadlines*, in section 316 as *the invalidity of the agreement upon a unopened legacy*, in Article 540 as *the invalidity of the agreement that limits the responsibility of the damage*, in Article 540 as *the invalidity of the agreement to transfer the ownership of the mortgage collateral*, in Article 963 as *the invalidity of the contract for the transfer of property to the creditor*, in Article 1009 as *invalidity of the agreement on the responsibility of Hospitality* and in section 1121 as *the invalidity of the insurance contract* [4], etc. Reference [4] states that "It is a kind of situation of uncertainty, suspension, if legal action is not canceled or convolved until the limitation period has expired. After the date of limitation act shall be considered definitely valid not only in the future, but as if they had been born without vices."

According to our definition to the invalidity, it appears that there are two types of void legal actions: *legal action rendered invalid absolutely (null)* and *relatively invalid legal action (reversible)*.

Our legislation does not recognize the terms '*absolutely void legal action*' and '*relatively void legal action*' or

'null' and 'cancelable'. But, in terms of absolute nullity the expression 'invalid legal action' is used, while in terms of relative invalidity the expressions 'legal action may be declared invalid' or 'cancelable legal action' is used.

The absolutely null and void legal action does not cause legal consequences to the interested parties: it does not void a valid juridical act, thus such a legal action shall not be declared as such by a court decision. When the court during the hearing of the case determines that a legal action is absolutely null and void, it does not specify it as null and void, but is limited to the certification of invalidity and starting from this, resolves the conflict of parties about relevant legal relationship. The interested party may file complaint only to determine an absolute invalidity's conclusion, but not for its disclosure. The lawsuit and the decision given for that are of the certificate type (recognition).

3. Terms of validity and causes of invalidity of legal actions

Speaking of legal action, as a cause of the will to inflict certain legal consequences, we have said that in order to have legal power, some conditions other than the necessary elements required for its actual composition, are required, the lack of which entails the invalidity of a legal action. Such conditions for the validity of legal actions are: the ability to act of the parties who carry out the legal action, compliance between the inner will and his and external appearance, presenting of the legal action in the form required by law, the legality of the content of legal action. These conditions are of a general character, which is they are required for all legal actions or their relevant groups.

Reference [6] stated that *"It is not necessary that the legal action that comes in conflict with the law be conducted by parties with the intention of breaking the law or to be required the knowledge of the parties at the time of performing the action for violation of rules, as long as legal action regardless of the subjective element, comes objectively in conflict with the law."* The current Civil Code does not mention directly the conditions of validity of legal actions, but the general causes of invalidity of legal actions are discussed in the chapter "On legal actions", which, following rank order of law, are: Lack of form provided by law [5] ; Illegality of legal action; When legal action is performed to deceive [6]; Complete inability to act [7]; Pretension and simulation of the appearance of the will [8]; Lack of awareness for the importance of the actions carried out by mistake, fraud and intimidation (Article 95-98).

4. Consequences of invalidity

From the above definition, the nature of the absolute invalidity brings about a set of other consequences: an absolutely void legal action cannot be effected by any subsequent action, either by consent or with the passage of time lapse and nor from the later disappearance of the cause of invalidity. Absolute nullity [9] may be submitted by anyone who has an interest; it may be relied upon against the other action party as well as, as a general rule, upon any other third party even if this is done with confidence. Claiming rights from an invalid legal action will be taken into account by the court without asking the interested party, or even against its will.

As abovementioned, there are two types of invalid actions: the absolutely void or null actions, for which the law

uses the term '*invalid*' and the relatively invalid or cancellable legal actions for which the law uses the term '*null and void*'. The null and void legal action does not because legal consequences aimed at parties and does not have the power of a valid legal action. While the cancellable legal actions can bring legal consequences aimed at parties and have the power of a judicially valid action, until they are declared invalid (canceled) by court decision, on request of the interested persons. From the moment when the decision becomes final, the judicial action ceases to exist. A legal action declared invalid [10] by the court is considered as such from the time when it was committed, meaning that it equates with the absolutely invalid judicial actions. The declaration of invalidity has retroactive effect. In accordance with the nature of the relatively invalid legal action and in contrast to the absolute nullity, the relatively invalid legal action becomes completely valid when the right to seek a declaration of invalidity by a court is terminated due to waiver, the statutory deadline, consent, etc. The right to seek the declaration of invalidity by a court belongs only to the persons for whose protection is granted that right, as well as to their heirs and legal representatives. Third persons cannot ask for the declaration of invalidity by a court and nor can the court review the declaration of invalidity, without the request of the interested parties.

5. Conclusions

At the conclusion of this study and from the interpretation made to Article 107 of the Civil Code, as well as from the problems that have arisen during its implementation, we conclude that it is not formulated correctly. Although the intent of the legislator in this article has not been the unilateral implementation of restitution, in fact from its wording appears that this article recognizes the mutual restitution, also accepted in three other articles of the Civil Code, precisely Articles 108, 109 and 110, a fact that would lead the reader to believe in a lapse during the writing of this article.

In practice the issue has arisen, of how to act in cases when the will display of a person is erroneously transmitted by the mediator (i.e.: telegraph, messenger, etc.). Some legislation mistakenly accepts the invalidity of legal action in this case. Such a thing is not right because in this case we do not have any kind of mistake during the showing of will [11], but a discrepancy between the will displayed by two adverse parties, which is caused by a mistake in the transmission of that will to the other party.

As a consequence of general principles which are followed by the Albanian legislator (*if we look at the current judicial practice of Albanian courts will notice a non-uniform treatment of the consequences of the invalidity of legal actions. Frequently in the case of legal actions committed in contrary to the law or with the aim to deceive the law it is placed enforcement as a result of mutual restitution although none of the parties has not been in good faith.*) [12], we see that the absolute invalidity cases are less from those that will result from applying criteria for which the will, action should have been invalidated. The law does not implement the all consequences of the invalidity of simulate action, in which lack the will. There is no invalidity as a result of an insubstantial error.

References

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- [8] Article 92/c, Law no. 7850, dated 29.07.1994 '*On the Civil Code of the Republic of Albania*' (amended).
- [9] Article 92/d, Law no. 7850, dated 29.07.1994 '*On the Civil Code of the Republic of Albania*' (amended).
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