



## Causes and Indicators of Annulment of Government Regulations in the Field of Administrative Offenses of Government Employees in the Administrative Justice Court

Mohammad Nekouie<sup>1</sup>

<sup>1</sup> Ph.D. in Private Law, Shahid Beheshti University, Tehran, Iran

\* Corresponding Author Email: [m.nekouie93@gmail.com](mailto:m.nekouie93@gmail.com)

### Abstract

Causes of annulment of government regulations in the administrative justice court are generally based on the three cases of contradiction with the law or Sharia, incompetence or going beyond the scope of the jurisdiction of the approving authority. However, the general assembly of the administrative justice court has not issued decisions regarding the annulment of government regulations due to contradictions with Sharia in the field of dealing with administrative offenses of government employees. Therefore, the annulment of government regulations in this area can be investigated based on their contradiction with the law or lack of competence and going beyond the scope of the jurisdiction of the approving authority.

According to principle 138 of the Constitution, government approvals, regulations and circulars should not contradict the text and spirit of the laws. Based on this principle of the constitution and the principle of the rule of law, the administrative authorities are obliged to follow the laws in their approvals. The contradiction with the law means that government regulations have not complied with the provisions of the law or certain laws. While government regulations are subject to the hierarchy of laws, they must be in accordance with the law of their superiors. Based on this, the contradiction with the law is considered as one of the causes to annulment of government regulations in the administrative justice court in the field of administrative offenses of government employees. Also, in the rulings of assembly of the administrative justice court, any expansion and narrowing of the scope of the law in government regulations is considered against the law.

Incompetence or going beyond the scope of the jurisdiction of the approving authority is the second cause to annulment of government regulations in the administrative justice court in the field of administrative offenses of government employees. The annulment of government regulations in the administrative justice court due to the lack of competence of the approving authority happens when the authority of the approving is not given authorization in the supreme law. It is possible that the approving authority has authorization to enact the regulation, but going beyond the scope of the jurisdiction. In this situation, the annulment of government regulations in the administrative justice



court will be due to the departure from the authority of the approving authority.

In the field of dealing with administrative offenses, approval of any mandatory rule, determining the authority and criteria for dealing with administrative offenses, determination of offenses and administrative penalties and prescription of prosecution and investigation are considered as Indicators of annulment of government regulations in the field of administrative offenses of government employees in the administrative justice court.

The approval of any mandatory rule, meaning legal rules involving rights and obligations, in the judicial procedure of the administrative Justice Court, is assigned to the legislature or authorized authority on its behalf and it is beyond the scope of the powers of the executive in approving government regulations and based on this, in the field of dealing with administrative offenses in a special way, the government regulations implying the imposition of mandatory rules have been annulled by the general assembly of the administrative justice court.

In the judicial procedure of the administrative justice court, determining the authority and criteria for dealing with administrative offenses, in accordance with the principle of legality of crime and punishment and principles 36 and 37 of the Constitution, is a matter of legislation and one of the special powers of the legislator or authorized authority on his behalf. Therefore, according to the decision No. 427-14/12/1380 of the general assembly of the administrative justice court, the note to Article 43 of the employment regulations of the banking system regarding the dealing with administrative offenses, determination of offenses and administrative penalties and prescription of prosecution and investigation in banks, have been recognized contrary to the law and beyond the powers of the executive branch in approval of regulations and annulled. Also, the last part of Note 1 of Article 19 of the regulations of the dealing with administrative offenses, which sets the criteria for the decision of the administrative offenses trial Boards regarding the submission or non-submission of documents, according to decision No. 350-28/04/1388 of the general assembly of the administrative justice court has been announced contrary to the law and beyond the scope of the jurisdiction of the approving authority and it has been canceled

The final point is that delegating the task of approving the regulations related to how to work of the Supreme Board of Supervision for handling administrative offenses to this board itself, based on the note of Article 37 of the Executive Regulations of the administrative offenses trial law, according to the decision of the General Board of the Administrative Court of Justice, is considered contrary to the law and beyond the limits of authority and annulled.

**Keywords:** Annulment of Regulations, Administrative Offenses, Administrative Justice Court, Contradiction with the Law, Going Beyond the Scope of Authority.

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