



Different Interpretations Given by Judicial Practice to Exceptions that Can be Invoked in the Procedure Due to the Wealth Research Commission

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Abstract: The legal framework of the procedure before the Wealth Research Commission is regulated by Chapter II, respectively the provisions of art. 10-15 and Chapter V Final provisions of Law no. 115/1996, for the declaration and control of the assets of dignitaries, magistrates, persons with management and control functions and of civil servants, published in the Official Gazette Part I no. 263 of 28/10/1996. In chapter V, art. 31 it is expressly provided that the provisions of Law no. 115/1996 are completed with the provisions of the Code of Civil Procedure and with those regarding the execution of budgetary receivables. Thus, in the procedure carried out before the Research Commission, the provisions of the Code of Civil Procedure are applied. This conclusion was not unanimously appropriated by the national courts and there are opposing views in the sense that the provisions of the Code of Civil Procedure would apply truncated, the procedure before the Commission for the Investigation of Assets is not a judicial one, but a purely administrative one. In this paper we will demonstrate that before the Commission for the Research of assets can be invoked including exceptions specific to a judicial procedure, otherwise being circumvented the imperative provisions of law 115/1996. We consider it within the competence of the Wealth Research Commission to resolve exceptions such as the prescription of the right of the National Integrity Agency to issue the Evaluation Report of the investigated person and of his right to notify The Wealth Research Commission, except for the nullity of the documents drawn up by the integrity inspectors in the absence of information and summons of the investigated person, the research of the legality of the random distribution of the integrity inspectors who prepared the Evaluation Report, as well as procedural incidents related to the incompatibility of members of the Wealth Research Commission.

Keywords competence of the wealth research committee; procedural exception; wealth research; national integrity agency

JEL Classification K39; K41

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1. Legal Framework

In exercising the activity of the National Integrity Agency, integrity inspectors, in case of finding an unjustified income of the verified civil servants, orders the notification of the Wealth Research Commission by issuing an evaluation report.

According to art. 10 of Law no. 115/1996 for the declaration and control of the wealth of dignitaries, magistrates, persons with management and control functions and civil servants (R2): *“(1) In addition to each court of appeal, a wealth research commission will operate, hereinafter referred to as the research commission, consisting of:*

a) 2 judges from the appeal court, appointed by its chairman, one of whom was president;

b) a prosecutor from the prosecutor's office operating next to the court of appeal, appointed by the first prosecutor of this prosecutor's office.

(2) The chairman and members of the research committee are assigned for a period of 3 years. During the same period and by the same persons, 3 alternates will be appointed, who will replace the holders if they, for legal reasons, will not be able to take part in the work of the research commission.

(3) The research commission has a secretary, appointed by the president of the court of appeal among the clerks of this court.”

The research commission will start the control action as soon as it is notified by the National Integrity Agency with the evaluation report, the procedure being an administrative-jurisdictional one, as it provides for the right of the person under investigation to defend himself against the support of the National Integrity Agency.

According to art. 102 of the aforementioned Law:

(1) The acts and works of the research commission are not public. The person concerned may become aware of the documents and proceedings of the file and may be assisted by a lawyer.

(2) The President ordered the urgent summons, before the research committee, of the representative of the National Integrity Agency, as well as of the person whose wealth is subject to control and of the husband or wife, as appropriate, to be heard. The Research Commission may cite any person who may give useful relations to clarify the origin of the assets of the controlled person and may request from the

public authorities or any other legal person information necessary to resolve the case. Those who, during the period subject to control, have acquired goods from the person in question will be compulsorily listened to.

(3) The research commission may conduct local research or order an expertise to clarify the case.

(4) Research conducted by persons other than members of the research commission is null”.

Those cited before the research committee will be heard one by one and will present the evidence underlying the evaluation report. The person whose assets are subject to control will be able to produce evidence in defense before the research commission or will be able to request their administration by the research commission and, if he deems it necessary, may submit a declaration showing the income earned and the manner in which the property is acquired.

From reading these provisions, we notice that the right to defense of the investigated person is guaranteed, the latter being quoted as saying that he can hire a defender, as well as the fact that he can propose evidence.

The usefulness, relevance and conclusion of the proposed evidence are to be evaluated by the Wealth Research Commission, being in principle admissible any evidence regulated by the Code of Civil Procedure.

Art. 104 of the Law provides: “(1) *The research commission decides by majority of votes, within 3 months from the date of the notification, issuing a motivated ordinance, which may order:*

a) sending the case to the court of appeal within the radius of which the person whose wealth is subject to control resides, if found, on the basis of the evidence administered, that the acquisition of a share of it or of certain goods is not justified;

b) classification of the case, when it finds that the origin of the goods is justified;

c) suspension of control and referral of the case to the competent prosecutor's office, if in connection with the goods whose provenance is unjustified the commission of an offense results.

(2) The ranking ordinance shall be communicated to the parties and the prosecutor's office next to the appellate court within which the research

commission operates or, as the case may be, the prosecutor's office attached to the High Court of Cassation and Justice or the tax authorities.

(3) Control shall be resumed by the research committee if:

a) after the case is closed new elements appear that can lead to a solution to the contrary;

b) the criminal investigation body, after performing the investigations, in the situation provided in par. (1) letter c), does not notify the criminal court ”.

We appreciate that the stage held before the Wealth Research Commission is a filter procedure, aiming to analyze both the legality of the notification act, as well as the appearance of validity of the evaluation report. Within this procedure, the provisions of the Code of Civil Procedure are applicable, as it results from the provisions of art. 31 of Law no. 115/1996:

“The provisions of this law are in line with the provisions of the Code of Civil Procedure and those regarding the execution of budgetary receivables ”.

Consequently, any procedural incident occurring during the settlement of the procedure before the Wealth Research Commission is resolved according to the Code of Civil Procedure.

2. Exception for the Incompatibility of the Members of the Wealth Research Commission

In the case we are discussing, the person under investigation was cited for the first term granted in the procedure before the Wealth Research Commission. Due to the invocation of some aspects prior to the discussion of the validity of the evaluation report, the procedure was postponed for a new term.

At the second term, taking into account the suspicions of the investigated person regarding the impartiality of the members of the wealth research commission in view of their behavior manifested in the courtroom, the person under investigation lodged a request for a recusal against two of the three members of the Commission.

The Wealth Research Commission ignored the request for a recusal, its members claiming that “ does not feel challenged ”, and the request for recusal was received on file as a “ simple document ”.

The request for recusal was rejected as inadmissible by the members of the Wealth Research Commission, so even by persons considered incompatible.

One of the reasons for the recusal was to include the prioritization of the solution to be pronounced by the Wealth Research Commission, who at the second term of judgment acknowledged that the vote should not be said in the courtroom.

According to the disp. art. 49 C.pr.civ. The wording of a request for recusal does not lead to the suspension of the trial. However, the delivery of the solution in question may take place only after the request for recusal has been resolved.

The High Court of Cassation and Justice ruled by Decision no. 14 of 28.06.2021¹ (paragraph no. 105) the fact that “ The pronouncement of that decision by which the court is unearthed, either by resolving an exception, or by ruling on the merits of the right to be brought to justice, it is stopped until the time of the settlement of the request for recusal ”.

The final judicial decision due to the discussion is a decision of disinvestment issued by a Commission for the investigation of assets whose impartiality has been considered affected by the person under discussion.

This decision was pronounced by a court composed of 2 judges and a prosecutor, according to art. 10 of Law no. 115/1996 for the declaration and control of the property of dignitaries, magistrates, of persons with management and control positions and of civil servants.

Although the request for recusal was not resolved, the Wealth Research Commission ruled on the notification of the National Integrity Agency in violation of the rules on the incompatibility of the panel.

We consider that this procedural incident was not resolved in compliance with the right to a fair trial of the investigated person.

The fact that the procedure before the Wealth Research Commission is an administrative jurisdictional one and not purely jurisdictional does not remove the right of the investigated person to be “researched” by an independent and impartial commission, especially in the conditions in which he is recognized and guaranteed the right to defense in this procedure.

Accepting the fact that the investigated person can be evaluated by people in hostile relationships with him or who would have an interest in confirming the

¹ pronounced in RIL, Decision published in the Official Gazette, Part I no. 907 of 22/09/2021.

evaluation report prepared by A.N.I., vitiates the very purpose of the procedure carried out before the Wealth Research Commission.

At the same time, we appreciate that the investigation of the civil servant's wealth by a relative or a person close to him would vitiate the fairness of the procedure.

I criticize the Commission's interpretation of the assets research committee for the purpose of the debate that members of the Commission cannot be challenged or abstained in this procedure, as the provisions of the Code of Civil Procedure would not be applicable.

It is obvious that the legislator would not have failed to regulate such a situation, but understood to explicitly specify that any other incidents are to be resolved according to the Code of Civil Procedure.

3. The Exception of the Nullity of the Evaluation Report Motivated by the Lack of Random Distribution of the Paper

According to art. 9 para. 1 of Law no. 176/2010 (r) In order to carry out the activity in conditions of professionalism, in compliance with the principles provided in art. 8 para. “ 3 („the distribution of works is done randomly, by the management of integrity inspectors, by electronic system”).

The National Integrity Agency submitted to the case file documents called Random Distribution Report prepared by integrity inspectors.

These documents cannot prove the random distribution of the work because they are drawn up by the integrity inspectors to whom the work has been distributed, does not result from the content of this report who is the person who made the random distribution and does not result in the rescheduling of inspectors used for random distribution to determine whether the mentioned inspectors were indeed chosen in computer system or not.

Moreover, due to the discussion there were subsequent redistributions of the paper.

None of the subsequent redistributions include a reason for ordering the redistribution of the case.

On the one hand, there was no evidence of random distribution, and on the other hand, there was no minimum statement of reasons for ordering the redistribution of

work, which was to be sanctioned by the Wealth Research Commission with the absolute nullity of the Report.

Therefore, the purpose of this declaration is to respect the principles of impartiality and operational independence provided by art. 8 para. (3) of Law no. 176/2010 governing the evaluation activity carried out by integrity inspectors.

During 2017, his case was redistributed twice, but there is no request to the initially invested inspector regarding the redistribution of the work.

In the absence of a reasoned request regarding the redistribution of the work, the investigated person cannot analyze if the reason that was the basis for the redistribution of the work is a well-founded and objective one.

At the same time, in the file, the investigated person found an address signed by an integrity inspector in respect of which there is no random distribution report.

Acts drawn up by a non-competent person (in the absence of a random distribution, so illegally invested) are struck by absolute nullity.

In this context, the imperative provisions of Law no. 176/2010 were obviously violated in the case under discussion, the redistribution of the work can be ordered only for good reasons:

- Article 9 para. (1) provides: *„In order to carry out the activity in conditions of professionalism, in compliance with the principles provided in art. 8 para. (3), the distribution of works is done randomly, by the management of integrity inspectors, by electronic system.”*

(2) The distribution of the works distributed to the integrity inspectors can be done only in the following cases:

a) impossibility to exercise the attributions for at least 20 days;

b) reasoned request of the integrity inspector to whom the work was assigned;

c) suspension from activity, under the law;

d) incompatibility;

e) conflict of interest;

f) there are significant differences within the meaning of the provisions of art. 18 between the changes occurred in the property of the integrity inspector during the exercise of the public office and the incomes obtained during this period;

g) leaving the integrity inspector for reasons attributable to the integrity inspector for more than 30 working days.

The rules governing the random distribution of the work are rules of public policy, so that their disregard entails the absolute nullity of all the acts drawn up in question.

4. The Exception of the Nullity of the Evaluation Report Motivated by the Lack of Notification of the Investigated Person

Article 13 para. (1) of Law no. 176/2010 on integrity in the exercise of functions and public dignities, for the amendment and completion of Law no. 144/2007 regarding the establishment, organization and functioning of the National Integrity Agency, as well as for amending and supplementing other normative acts, mandatory legal provision governing the assessment activity carried out by integrity inspectors by reporting at the time of information and invitation to present a point of view of the person subject to the evaluation, as follows:

„After the random distribution of the work, the integrity inspector shall proceed to the activity of evaluating the declarations of assets, data, information and patrimonial changes existing, for the purposes of this law, as follows:

a) until the person subject to the evaluation is informed and invited to present a point of view, conducts administrative procedures, by exclusive reference to public information;

b) after informing the person subject to the evaluation and inviting them to present a point of view, requests natural or legal persons and data or information that is not public. ”

According to art. 13 para. (2) of Law no. 176/2010 on integrity in the exercise of functions and public dignities, for the amendment and completion of Law no. 144/2007 on the establishment, organization and functioning of the National Integrity Agency, as well as for the amendment and completion of other normative acts, the absolute nullity is a sanction applicable to the acts drawn up by the integrity inspector based on non-public data or information, requested to natural or legal persons, after the beginning of the evaluation activity, without the person being invited and informed according to the provisions of art. 14 para. 1 which provides that *“If from the evaluation activity it results that there are significant differences, within the meaning of the provisions of art. 18, the integrity inspector*

shall inform the person concerned and shall be required to invite him to present a” point of view.

In the case under analysis, the investigated person was not informed by the A.N.I. regarding the procedure initiated against him.

The sent notifications were returned to the National Integrity Agency as the investigated person could not be found at the address.

These notifications were communicated to the wrong address.

A.N.I. has the obligation to identify the domicile of the investigated person and to inform him effectively, the communications made at the wrong address being devoid of legal effects.

The researched person became aware for the first time of the steps initiated by the A.N.I. against him on the occasion of requesting the expression of a point of view, request communicated by registered letter at work.

Consequently, between the period of initiation of the procedure and until the request regarding the expression of a point of view, the investigated person was not informed by the procedure initiated against him.

Consequently, all acts performed by integrity inspectors during this period are struck by absolute nullity.

In the case under debate, A.N.I. prepared the evaluation report without referring exclusively to public information as provided by art. 13 para. (1) letter a) from the Law, but requested and received non-public information from various institutions.

Law no. 544/2001 on free access to information of public interest, with subsequent amendments and completions, defines, by art. 2 lit. b) information of public interest as *„any information relating to the activities or resulting from the activities of a public authority or public institution, regardless of the support or the form or expression of the information ”*.

Therefore, the information provided by banking institutions or local public authorities is private information, to which the National Integrity Agency has had illegal access.

All this information was the basis for the preparation of the Evaluation Report. Based on the principle of resolution and solvitur ius excipientis, the investigated person requested the nullity of the evaluation report.

5. Conclusions

The exceptions raised by the person investigated in the case under discussion were rejected en bloc by the Wealth Research Commission with the motivation *“because it does not say the right, the wealth research commission cannot decide on the nullity of the evaluation report for the reasons mentioned by the person evaluated.”*

We criticize the information provided by the Wealth Research Commission for the debate, whereas the purpose of this procedure is to verify whether it is necessary for the civil servant to be subject to the rigors of legal proceedings.

In the situation where A.N.I. did not comply with the mandatory legal provisions regarding the research of the assessed person's property, these aspects leading to the nullity of the evaluation report, obviously it will not be necessary to notify the court and start an exclusively judicial procedure against the civil servant.

We appreciate that the reasoning used by the wealth research commission due to the debate lacks the very purpose of regulating this filter procedure.

If we accepted such reasoning, it would mean that the procedure carried out before the committee is purely formal, summarized in matters relating to “the” touch on the merits of the evaluation report, respectively to verify if the allegedly unjustified property exceeds the threshold of 10,000 euros regulated by art. 18 of Law no. 176/2010 on integrity in the exercise of public functions and dignity, for amending and supplementing Law no. 144/2007 on the establishment, organization and functioning of the National Integrity Agency, as well as for the amendment and completion of other normative acts.

At the same time, the right of defense of the investigates person recognized before the Wealth Research Commission would be limited to proving that the difference between the income and expenses of the civil servant does not exceed the amount of 10,000 euros, therefore a right to defense truncated and also purely formal.

Moreover, if in the procedure before the wealth research commission it could not be ascertained the aspects related to the nullity of the evaluation report, “serving” this responsibility to the administrative litigation court, the role of the courts would be unjustifiably loaded. Granting deadlines for the administration of evidence only that in the end the court finds that the evaluation report is invalid implies a waste of court resources, as well as the person investigated.

Such a situation was found in the case of the debate, in which the Commission for Research on Wealth refused to find the nullity of the assessment report, the

administrative litigation court within the Court of Appeal was notified, extensive evidence was administered, and at the end the solution consisted in the nullity of the evaluation report, which could also be seen by the Commission.

For the reasons set out above, we consider that in the procedure before the Commission for Research on Wealth, aspects related to the legality of the evaluation report prepared by the National Integrity Agency can be invoked.

References

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