



# Analyzing and Investigating Administrative Court of Justice's Qualifications in Invalidating the Governmental Regulations

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**Abstract:** Based on the Act 173 of the constitution, Administrative Court of Justice is formed under the inspection of the judiciary branch and it is the qualified authority for examining and invalidating the enacted bills and rules that are against the canonical regulations, law and/or outside the domain of the government's jurisdiction corresponding to the acts 170 and 173 of the constitution and articles 1, 12 and 13, note 2 to article 84 as well as articles 86 and 87 of the new law in administrative tribunal, approved in 22/12/2011. The present study deals with analyzing the most important kinds of supervision exerted on the governmental regulations and the authorities that are qualified to recognize their being against the canonical rules and finally it explores the invalidations' effective period in Iran. Despite the fact that act 138 of the constitution authorizes board of ministers to codify bills, rules and regulations and so on, as part of their administrative assignments, safeguard law enforcement and organize administrative institutions, in the same act as well as in acts 4-170 and 173 of the constitution there are limitations set stipulating that the governmental regulations should not mean any sort of contradiction to the Islamic rules and the law, as a whole, and also that they have to be inside their specified jurisdictions. The statutory mandate for the non-observation of such limitations is their invalidation by the administrative tribunal. Parallel to canonical inspection, the respectable Guardians Council is the sole qualified authority to recognize the governmental rules and regulations' contradiction to the Islamic rules and the verdicts opined by the jurisprudent members of the Guardians Council should be indispensably followed by the Administrative Court of Justice. However, based on the necessity for the judicial system's exertion of supervision and according to the Guardians Council's ideas regarding the governmental regulations' contradiction of the canonical rules as well as verifying the other reasons contributing to the invalidation of certain rules and regulations, administrative tribunal is the only official authority qualified to disprove governmental regulations.

**Keywords:** administrative tribunal, Guardians Council, act, regulation, canonical supervision, judicial inspection, rules' disqualification

## INTRODUCTION

Law science sources in Iran are the constitution, Islamic canonical rules, common law, judicial procedures and law's general principles and doctrine. The law is the most important and the most genuine source, inter alia, in Iran and it can be case-specifically divided into two general and special types. The law in its general sense includes the written legal rules enacted by the qualified authorities like legislature, executive branch, judiciary branch and the founding institutions etc. However, the law, in its specific sense, only includes the enactments made in the Islamic Consultative Assembly. But, it is noteworthy that the regulations (acts and statutes) approved by the executive branch are one source of the law as a science. Based on the constitutional principles, especially acts 4 and 174 of the constitution, the aforementioned rules and regulations should not contradict the Islamic rules (canonical law). Thus, the constitution has given the responsibility for matching

these regulations with the Islamic laws to the Guardians Council. Also, each of the abovementioned institutions can enact rules and regulations and so forth in line with the advancement of their programs within their specified jurisdictions. But, the present study focuses on the acts and laws passed by the government and it deals with the determination of the qualified authority allowed to invalidate the rules and laws passed by the government in case their contradiction to the Islamic laws is verified. Therefore, parallel to determining the invalidating authority or authorities, firstly, there is a need for the concept and kinds of supervision over such regulations to be elaborated and then it has to be made clear whether the authority responsible for figuring out the governmental regulations compliance with the Islamic laws and the authority responsible for invalidating them in case of being contradictory are one or not? What are the qualifications required for the general board of the Administrative Court of Justice? When will the governmental regulations disqualification take effect?

### **The Objectives of Administrative Court of Justice Formation:**

The objectives sought in founding the Administrative Court of Justice can be studied in two paragraphs: adjudicating the people's rights and establishing administrative justice.

### **Adjudication of the People's rights:**

Islamic Republic of Iran's Constitution has enumerated rights for the people, though the people's rights are not only exclusive to what is presented therein. However, the people's rights as outlined by the constitution can be explored in the third chapter (principles 19-42). Act 173 knows the objective of founding the Administrative Court of Justice as "taking care of the people's complaints and adjudicating their rights". Each of the citizens, when having complaints regarding the non-observation of their rights by the administrative system, can take it to the Administrative Court of Justice as a qualified authority for handling the complaints and objections.

People's rights, beside in act 173, have also been taken into consideration in the article 90 of the constitution and attending carefully to the people's rights is strongly recommended by the undoubted religion of Islam. This is a topic which seems to be outside the domain of the current research paper. Here, we only point to part of Amir Al-Mo'menin Ali (peace be upon him)'s speech regarding the importance of observing the people's rights and making them happy.

"The loveliest things for you should be being most moderate in adjudication, most pervasive in justice and most extensive in attracting people's satisfaction because general public's wrath diminishes the elites' (relatives) satisfaction but the elites' anger shall be rendered nullified by the public's satisfaction ... General public is the stable pillar of religion and the zealous crowd of Muslims and the reserve force for defense so be attentive to them and be enthusiastic towards them" (Nahj Al-Balagha, tr. Dashti, p.568, letter: 53).

### **Establishing Administrative Justice:**

As we know, every quarrel and complaint has two parties: one party is the complainant or plaintiff and the other is the defendant or respondent. The two parties are sometimes two ordinary citizens; but, it is not always the case. There are cases in which a party is a citizen and another party is the administrative system or a general office. The lawsuit will be tried in general courts in cases that both of the parties are ordinary citizens. But, in case of the second type of the complaints, the general courts are not qualified to try. Such lawsuits are tried in the Administrative Court of Justice. As it was mentioned previously, there are other authorities, plus the administrative tribunal, that try the people's complaints of the administrative system like the commission of Act 90 as specified in the constitution and the State General Inspection Organization. It is worth mentioning that these authorities are solely investigative and inspective ones and their exploration of a case does not feature judicial and adversarial nature (Tabataba'ee Mo'etameni, 1999, p.425). Judicial trial in such cases is solely at the discretion of the Administrative Court of Justice.

### **Conceptualization of Supervision:**

The executive branch's influence is not confined to administrative and executive affairs and it also enjoys legislating authorities as prescribed by the legislature. However, in spite of its legislating authorities, because it is likely to surpass its jurisdiction in its enactments and passing bills and therefore invade the legislature's area of influence or approve regulations contradicting the law and religious rules and, consequently, bring about a condition of people's deprivation of their rights or abuse thereto, there are contemplated controlling methods. Such controlling supervisions are some sort of safeguarding the principle of the country's three forces separation of jurisdictions and this insures that the power is not exclusively concentrated in the hands of a part of the government (Shari'at Bagheri, 2009, p.249). Hence, different types of supervision can be explained as below:

#### **A) Canonical Supervision:**

One of the most important features of the Islamic Republic of Iran is its being of a school type nature. A system's school-like nature makes the eminent and valuable norms of the school be implemented in every affair and stance of the society and become particularly important to the extent that no single cause can cause their reversal. Islam's religion and regulations are the most significant superior axioms and norms of the Islam as a school the violation or breach of which is not acceptable in the Islamic society. Thus, the entire governmental actions and affairs should be carried out, especially by the legislator in the Islamic Republic of Iran's legal system, based on Islamic rules and regulations. As it is prescribed by the constitution, Guardians Council is responsible for exerting canonical supervision over the entire rules and regulations (Dervish Motavalli and Raji, 2013, p.11). Canonical supervision over the enactments in terms of the supervision time, is exerted based on two methods, namely a priori and a posteriori, each of which is succinctly described below:

**A priori Supervision:** this supervision is exerted after an enactment was approved and before it is rendered enforceable and the act cannot be enforced without it being confirmed by the supervisor. Besides matching the regulations with the Islamic laws, the Guardians Council's jurisprudents are obliged to evaluate the regulations in terms of their accordancy and non-contradiction to the Islamic rules. Such an assignment can be deduced from the Act 4 of the constitution because, according to the Act 4 of the constitution, the entire array of the rules and regulations should be enacted corresponding to the Islamic standards and Guardians Council's jurisprudents are responsible for such assignments. A priori supervision is evident in the above principle and the other principles including the Act 94 of the constitution.

**A posteriori Supervision:** the enactment can be enforced indispensably after being approved and without it requiring the supervisor's confirmation. In such a supervision, the supervisor, after the enactment becoming enforceable, is qualified to investigate the enactment's qualification and makes it invalidated in case it is found contradicting the Islamic standards. Therefore, the governmental acts and rules are not exceptions to that procedure. The second and, somehow, the most important constitutional principle that indirectly deals with the canonical supervision exerted by the Guardians Council's jurisprudents aiming at the regulations' accordancy with the Islamic standards is the Act 170 of the constitution. The foresaid act has been operationalized in the area of a posteriori canonical inspection of the regulations by means of ordinary regulations, to wit laws followed by Administrative Court of Justice. Parts of the verdicts posited in Act 170 imply that invalidating the regulations contradicting the canonical rules is at the discretion of the Administrative Court of Justice (Dervish Motavalli and Raji, 2013, p.17). The head of the judiciary branch, in 2/11/2004, demanded the Guardians Council to express its interpretation of the Act 170 of the Islamic Republic of Iran's constitution regarding the Administrative Court of Justice's jurisdiction because according to the Act 170, "the judges are obliged to avoid implementing the governmental acts and the statutes that are deemed contradicting the Islamic laws or are out of the executive branch's jurisdiction and anyone can ask for the invalidation of such regulations from the administrative tribunal" (Delawari, 2012, p.1). In its interpretations offered in 28/11/2004, Guardians Council asserted that "according to the symmetrical stance of the executive branch in the recent part of the Act 170 of the constitution, executive branch is meant by the governmental interpretation". Eventually, Guardians Council, in its interpretive explication, expresses that determining the contradiction or compliance of the rules and

regulations with the Islamic laws is to be solely shouldered by the Guardians Council's jurisprudents and such recognition is to be made based on their verdicts. Therefore, it can be stated that Guardians Council's ideas in canonically supervising the governmental enactments are to be necessarily followed by the Administrative Court of Justice and the administrative tribunal has to ask for the ideas and, consequently, follow the verdicts issued by the jurisprudent members of the Guardians Council in regard of the acts and enactments against the canonical rules. In line with this, article 87 of the Administrative Court of Justice's new law, approved in 22/12/2011, expresses that "when there is an enactment presented for investigation in regard of contradicting the canonical standards, it has to be referred to the Guardians Council and its sentences are to be necessarily followed by the general board". Considering the two aforementioned supervision types clarifies the idea that guaranteeing the observation of the standards of interest and discarding the enactments that are contradictory thereto takes place more frequently in a priori supervision than in a posteriori supervision because the enactments conflicting the religious standards are not enforced when investigated a priori but the opposite happens in a posteriori supervision and when a supervisor gets involved in the inspection process a posteriori, s/he will bar the continuation of the enactment enforcement (Dervish Motavalli and Raji, 2013, p.11).

#### **B) Judicial Supervision:**

Such an inspection has been formed post-Islamic Revolution according to article 1 of the law on the formations and the Administrative Court of Justice's procedure enacted in 2011; "in the implementation of the article 173 of the constitution, Administrative Court of Justice, as the official authority for trying the people's complaints and objections of the state officials and units as well as in regard of the governmental enactments that are against the canonical standards or outside the jurisdiction of the enacting authority". With the inferences made from Acts 170 and 173 of the constitution and the articles 1, 12, 86 and 87 of Administrative Court of Justice's new law, it can be stated that the judicial authority qualified to exert supervision over the governmental enactments and regulations is the Administrative Court of Justice.

Corresponding to Act 170 of the Constitution, "the judges are obliged to refrain from executing those governmental enactments and the principles that are contradictory to the Islamic standards or are found outside the jurisdiction of the executive branch and anyone can demand the invalidation of such regulations from the Administrative Court of Justice". According to the aforementioned principles and acts, there are two methods defined for the judicial system to exert its supervision: 1) Administrative Court of Justice; 2) Judges (Delawari, 2012, p.1).

Since the invalidation of the governmental regulations by the Administrative Court of Justice is well beyond the individual rights and interests, everyone, even the individuals who do not seemingly take advantage, can ask for the invalidation of such regulations from the Administrative Court of Justice (Shari'at Bagheri, 2009, p.252). In regard of the governmental regulations nullification in the Administrative Court of Justice based upon the principles of the constitution and the new Administrative Court of Justice's law, approved in 2011, it can be stated that when complaints are presented by individuals regarding the governmental regulations being against the canonical rules and the administrative tribunal finds it contradictory to the canonical laws through acquiring verdicts from the Guardians Council, then it will take steps in line with their invalidation in a public board. Therefore, case-specifically, the public board of the Administrative Court of Justice is authorized to invalidate the enactments and the regulations passed by the state and found contradictory to the Islamic laws. The qualifications of the Administrative Court of Justice's general board are explained in more details below:

#### **The Advantages of Administrative Tribunal's Judicial Inspection:**

The constitutions in various counties have vested the responsibility of trying the lawsuits and complaints, guarding the people's rights and freedoms and adjudication within the boundaries stipulated by the law in the hands of the judiciary branch. Act 156 of the Islamic Republic of Iran's Constitution has, as well, assigned this duty to the judiciary branch in line with its goal of actualizing justice. But, Administrative Court of Justice as a high-ranking judicial authority is generally responsible for trying the people's complaints of the governmental agents, departments or the regulations as well as adjudication activities based on the Act 170 of the constitution. Administrative Court of Justice's exertion of judicial inspection on the governmental

regulations ensures several advantages, some of which are outlined as follow: 1) delimiting the government's jurisdiction as a consequence to adhering to the principle of respecting the law sovereignty; 2) observing the principle of the three country's forces separation of jurisdictions by way of which the courts become the major supporters of the law enforcement; 3) the acceptance of a limited controlling system where the judges' qualifications, objectives and standards are accurately defined and specified; 4) trials and sentence issuance by the high-ranking judges; 5) retroactivity of the Administrative Court of Justice's verdicts that seem to be the most important advantage stemming from administrative tribunal's judicial inspection because it is directly effective on the citizens' rights (Fallahzadeh and Abrishamkesh, 2014, pp.119&120).

#### **Qualifications of the General Board of Administrative Court of Justice:**

- A) Invalidation of the acts and the enactments contradicting the law, religious standards and out of the executive branch's jurisdiction parallel to Acts 4 and 170 of the constitution that imply "if a conflict indicative of a contradiction between the rules and regulations enacted by the government and the Islamic laws are found out, the administrative tribunal sentences their nullification through referring to the Guardians Council which is responsible for recognizing them being against the canonical rules (according to note 2 to the article 84 as well as the articles 86 and 87 of the Administrative Court of Justice's new law, 2011). Additionally, if the presented complaint is found suggestive of the governmental rules opposition to the law or outside the jurisdiction of the executive branch, it will be tried in the general board of the administrative tribunal that will disprove, by the majority of the votes, the contradictory rules after it was ensured that the complaint holds true.
- B) Issuance of the procedural unity sentence and procedure devising sentence based on paragraphs 2&3 of the article 12 of the Administrative Court of Justice's law, passed in 2011. Article 12 of the Administrative Court of Justice has dealt with providing a detailed exposition of the general board's qualifications; in other words, it has taken measures to extend these qualifications and in spite of its being authorized to try the complaints, lawsuits and individual objections in cases like governmental regulations contradiction of the religious laws and the law, in general, and/or the related authorities' disqualifications or their breaches of their duties and, consequently, invalidation of the regulations based upon paragraphs 2&3 of the aforementioned article, it can issue procedural unity sentence in similar cases that conflicting verdicts are sentenced by the administrative tribunal's divisions as well as procedure devising sentence in cases that numerous similar sentences are issued regarding a single case by various divisions.

#### **Administrative Tribunal's Qualifications in terms of the Lawsuit's Elements:**

- A) **The court's qualification from the plaintiff (claimant)'s perspective:** Act 173 of the constitution asserts: "to try the complaints, lawsuits and objections filed by the people ... a court named Administrative Court of Justice ... is established ..." This Act realizes "people" as the plaintiff (Imami and Ostovar Sangari, 2013, p.61) or claimant in the administrative tribunal. The term is ambiguous and there is a need for referring to the ordinary laws to understand the legislator's intention. Article 13 of the Administrative Court of Justice, in expressing the court's qualification in regard of its defendant and claimant, states that "the Administrative Court of Justice's qualification and jurisdiction are as follows: trying the complaints and the lawsuits and objections filed by real or legal persons from ..." Based on this expression, the plaintiff or claimant in the court are the "real or legal persons". This expression also does not remove the dilemmas; because, there is raised the question as to whether it exclusively incorporates the "legal persons addressed by the private law" or the "legal persons addressed by the public law". There are two different theories regarding the plaintiff's legal specifications as determined for the Administrative Court of Justice: 1) the theory of the tribunal's absolute qualification in respect to the plaintiff; 2) the theory of devoting the plaintiff position to the people (Sadrolhefazi, 1993, p.105). After investigating the reasons provided in support of these two theories, we deal with an optimum theory in the following section which is in fact the sum of the first and second theory.

**The first Theory: Administrative Court of Justice's absolute qualification in respect to the plaintiff (claimant)**

The proponents of the theory believe that the term “people” as expressed in Act 173 of Constitution with no condition involves all the real and legal persons including the addressees of the private law and public law. The following reasons are presented by the proponents of the first theory in support of their claim:

1. Although the Act 173 of Islamic Republic of Iran’s Constitution knows “people” as the plaintiff in lawsuits for which the tribunal has the qualification of trial, in the ending section of the same act there is defined the boundaries of its jurisdiction and the way it has to perform according to the ordinary laws’ verdicts. Based on this, Articles 13 and 19 of the Administrative Court of Justice’s law, passed in 2006, knows the “legal and real persons” as the plaintiff in the tribunal.
2. The term “legal persons” in the first paragraph of the articles 13&19 of the Administrative Court of Justice’s law necessitates realizing the tribunal qualified for trying the complaints filed by legal persons addressed in the public law provisions.
3. Corresponding to Act 170 of the constitution, “everyone” can demand the tribunal to invalidate the acts and the enactments that are deemed contradictory to the Islamic decrees and regulations. Also, article 25 of the Administrative Court of Justice, approved in 1981, without providing a clear-cut specification of the claimant (plaintiff) stipulates that “in enforcing the act 170 of the constitution, the Administrative Court of Justice is assigned to the complaints indicating the opposition of some governmental acts and enactments to the Islamic regulations ...” In the aforementioned article, the expression “complaints indicating the opposition of some governmental acts and enactments” does not imply that such complaints can be filed by certain claimants rather it conveys the idea that the complaint can be submitted by the people or the governmental departments and so forth.

**The second theory: Devoting the plaintiff position to the “people”**

In the idea of the proponents of this theory, the plaintiff position in the Administrative Court of Justice can be taken by the “people” or “the legal persons addressed in private law”. The followings are but some reasons put forth by the proponents of this latter theory in justifying their theory:

1. In interpreting the laws, it is very important to know the intention and the aim pursued by the legislator. This perception that the plaintiff can be a legal person as addressed in the public law appears to be not complying with the legislators’ intention; because, the legislators’ intention of codifying the act 173 of the constitution is preventing the government from abusing the people’s rights (the detailed proceedings of the parliament’s negotiations in final survey of the Islamic Republic of Iran’s constitution, 1985, p.1656). Moreover, the common law does not use the term “people” to mean legal persons addressed in the public law.
2. As a private judicial authority, the tribunal’s jurisdiction is limited to what is determined by the legislator. Based on this, trying the lawsuits by the governmental departments filed against one another is what seems to be out of the qualification of the tribunal; since resolving the discrepancies between the executive departments takes place as stipulated by “the procedures for resolving the disagreements between the executive departments through the use of mechanisms devised by the executive branch, itself, in 26/03/2007”. Therefore, trying the discrepancies between the executive and administrative branches is not in the jurisdiction and within the qualification domain of the tribunal. In other words, when the two parties to a claim are legal persons as addressed in the public law, trying such lawsuits are out of the tribunal’s jurisdiction.
3. Paragraph 1 of the article 13 and article 19 of the Administrative Court of Justice’s law uses the term “legal persons” without describing it as being incorporated by the “private law” because the introductory section of the Administrative Court of Justice’s law draws on the Act 173 of the Constitution and the foresaid Act is narrative of the tribunal’s qualification for trying the people’s complaints of the governmental agents, departments and procedures. To put it differently, by the legal persons in the articles 13&19 the legal persons as addressed in the private law is intended, as symmetrical to the term “people” in act 173.
4. The issuance of the procedural unity sentence, nos.37, 38 and 39 in 10/10/1989 by the general board of the Administrative Court of Justice confirms this same perception. The sentence states that “because the objective sought by the establishment of the Administrative Court of

Justice as outlined in Act 173 of Islamic Republic of Iran's constitution is trying the people's complaints, lawsuits and objections regarding the governmental agents or departments and based on the literal and common meaning of the term "people", the governmental departments are, accordingly, excluded and the legal and real persons as addressed in the private law are included" (Nasira'ee, 1998, p.114). It was made clear based on the theory that the plaintiff or the claimant in the Administrative Court of Justice is the people; that is to say the "legal persons" and "real persons" as addressed by the private law.

#### **The Third Theory: Summing the first and second theory**

It is evident that the first theory that absolutely qualifies the Administrative Court of Justice for trying the lawsuits against the government by every individual, including the real or legal (private or public law) and, in other words, accepts the complaints by the governmental departments against the government in an absolute manner cannot be accepted.

On the other hand, the second theory that does not, by any means, accept the governmental departments' claims in the tribunal is not also seamless. In spite of the prevalent trend in the Administrative Court of Justice implying the acceptance of the complaints by the "legal and real persons addressed in the private law" as the "defender" it has to be reminded that the aforementioned tribunal has in several occasions violated its sentence of procedural unity and it has accepted the complaints filed by some "legal persons as addressed in the public law" or, in other words, the complaints by the governmental departments.

#### **The effects of Enactments Invalidation by the General Board:**

When a law or a statutory provision is issued and based on the expediencies or numerous other reasons, some of these rules and regulations are invalidated by the Administrative Court of Justice. Now the important thing that matters here is the time that such regulations take effect in regard of the employees and staff.

That means who are the targets of the invalidations and when do they take effect? Corresponding to Act 170 of the Constitution, the Administrative Court of Justice has attained the authority for nullifying the governmental enactments and acts which are found contradictory to the Islamic rules and regulations or which are deemed outside the executive branch jurisdiction. The act states that "the judges are obliged to avoid applying the enactments and acts that are passed by the government but are discerned contradictory to the Islamic rules and regulations or are outside the executive branch jurisdiction and everyone can demand the invalidation of such regulations from the Administrative Court of Justice".

According to the fact that details of this option of the Administrative Court of Justice could not be expressed in the ordinary regulations, the tribunal asked for interpretations from the Guardians Council regarding the inclusion circle of the act and the effects that are derived out of the regulations' invalidation. The cases that are inquired by the tribunal can be summarized in the following items:

1. What does "governmental" mean in the expression "governmental enactments and acts"?
2. In case that an enactment creating certain rights for some individuals is invalidated since the date it is issued and some individuals are found not benefited from the enactment when it was valid, is it possible to provide them with the right after the enactment is disapproved or not?
3. What effects does the invalidation have? Should the enactment be invalidated in its entire effects from the beginning or the invalidation takes effect since the date it is issued?

Regarding the first question, the Guardians Council asserts that "according to the exact utilization of "executive branch" in the recent part of the Act 170 of the Constitution, the executive branch is intended by the term "governmental".

Also, in response to the second question, Guardians Council states that "the enforcement of an invalidated enactment in cases that it is far from being implemented and, also, enacting an act with the same content or implying a criterion that has brought about the grounding for the nullification of the enactment such as the

inexistence of the statutory permits without acquiring a new permit is against the interpretive theory of Guardians Council”.

Since, at present, according to the explanations presented below, regarding the third question, we have explicit legal verdict there is no need to refer to the interpretive theory by Guardians Council and following the law suffices.

### **Regulations’ Invalidation in Administration Act and Administrative Court of Justice’s Procedure:**

One of the major pillars of the Administrative Court of Justice is its general board and corresponding to the first paragraph of the article 12 it is given the same authority that is vested in the Administrative Court of Justice as put forth in Act 170 of constitution. Based on the paragraph, the qualifications and the jurisdiction of the general board are as stated below:

“Trying the complaints, lawsuits and objections filed by real or legal persons of the enactments and other rules and governmental and municipal regulations as well as nongovernmental public institutions in cases that the aforementioned regulations due to being contradictory to the canonical rules or the law or the incompetency of the related authority or breach or misuse of power or violations in implementing the regulations and rules or refraining from fulfilling the duties cause the individuals’ rights wastage”.

Also, article 13 of the administration act and the Administrative Court of Justice’s procedure, passed in 2011, immediately express that “the enactments’ invalidation takes effect since the day it is issued by the general board except for the enactments which are envisaged against the Islamic law or in cases that the foresaid board postpone its validation to the enactment approval date so as to prevent the wastage of the individuals’ rights”.

The article is exactly corresponding to the interpretive theory offered by Guardians Council of the act 170 of the constitution indicating that the invalidation of the enactments contradictory to the canonical rules takes effect since the date the invalidation verdict is issued unless it is proved that the enactment features two conditions as mentioned in the above article 13. For instance the verdict NO..... issued at ..... by the general board can be considered an example of disregarding the two conditions in their invalidation of an enactment since the date the circular had been issued as a result of which the board had to revoke its verdict and reissue another one. It can be read in the new verdict that “corresponding to the article 13 of the administration act and the Administrative Court of Justice’s procedure, it is prescribed that the enactment invalidation takes effect since the enactment’s contradiction to the religious laws has been approved and/or its wastage of the individuals’ rights has been affirmed. Considering that the execution of ... [the circular] issued by the president’s management and human capital development vice chancellorship has not caused individuals’ rights wastage, therefore in the [previous] verdict ... there is no cause for exercising the article 13 of the abovementioned law and extending the invalidation effect to the approval date and ... the invalidation ... is announced to take effect since the date the verdict has been issued, i.e. 4/0./2014”.

It seems that there are numerous interpretations regarding the idea that a temporal difference exists between the time that the Administrative Court of Justice invalidates a statutory provision since its enactment date (a) or since invalidation verdict is issued (b). Here, there are three notions:

1. Under any circumstances, the obligation/right that has been created corresponding to the approval of an enactment will be removed with the issuance of a verdict indicating its invalidation; but, if the invalidation takes effect since the date it is approved the entire rights that should have been given to individuals in the interval from (a) to (b) should be restored. For example, if a verdict is issued indicating the invalidation of an enactment which is the basis upon which the adjustment difference has to be paid to the employees recruited after 2009, there are two assumptions to be considered.
  - a) **Invalidation since the approval date:** in this case, besides the adjustment amount being removed from the recruitment form of the liable individuals, the entire amounts that have been paid in the time interval between (a) and (b) within the format of the enactment should be returned.

- b) **Invalidation since the issuance date:** in this case, the adjustment difference would be removed from the recruitment form of the liable individuals (even from the ones for whom it was previously established in the time interval from (a) to (b)) but there is no need for deducing the sums that they had received before the issuance date.
2. The difference between the invalidation since the verdict issuance date and since the provision enactment date is in that in case of the former, because the statutory provision has been considered valid in the time interval from (a) to (b), there would be no change for those who had been subject to the rights/obligations during this period. But, in the case of the latter (point b), the statutory provision would not be executed for the other individuals. However, in case that an enactment is disproved since the approval date, the rights and the obligations resulting thereof would be removed of everyone. It can be seen that, corresponding to this recent idea, the returning of the received rights or amounts of money is not proposed at all. For specimen, one can investigate the same assumption of the invalidation of an enactment which has been the basis upon which the adjustment difference should have been awarded according to the above-cited cases.

It seems impossible to straightforwardly exert one of the two abovementioned theories on all of the examples without paying attention to the differences in the titles of the subjects of the verdicts. This could be a reason why in all of the regulations such an issue has not been clearly defined. The theory could be clarified by two examples: for instance, it is true that, based on the first theory, it is necessary in some of the cases to return the money given to an employee but because it is in conflict with several principles such a measure could not be done.

Also, in the second theory, the effects of the enactment invalidation since the verdict issuance should be distinctively elucidated in regard of the various examples. As an example, there is a difference between cases in which an enactment forming the basis of an individuals' recruitment is invalidated since the invalidation verdict issuance with the case form the basis of adding a salary item to the individual's recruitment form. Because the inclusion permit is issued one time and there is no need to check the permit basis every month or every year, based on the second theory, recruiting such an individual does not mean any harm; but because paying a sum of money in the salary payroll takes place on a monthly basis, the related permits should be investigated in the rules and regulations every month and it has to be removed in case it is found nullified.

### **Conclusion:**

According to the cases mentioned above, it is clear that despite that fact that Act 138 of Islamic Republic of Iran's Constitution enables the board of ministers (state) to deal with the accomplishment of the administrative assignments and safeguarding the rules' enforcement and establishment of the administrative organizations and enactment of the acts and procedures, the act 4 of the above law has stipulated constraints and it is adhering to the enactments' lack of contradiction to the Islamic standards. The authority responsible for recognizing such an issue is the Guardians Council. Corresponding to the Act 173 of the constitution, as the basis of Administrative Court of Justice formation, as well as Act 170 of the constitution and article 1 of the administration act and Administrative Court of Justice's procedure, passed in 22/12/2011, the Administrative Court of Justice's general board has been vested in with the authority to invalidate governmental enactments (acts and regulations) which are envisaged as being against the Islamic rules, law, in general, or are found outside the government's jurisdiction. It is worth mentioning that Guardians Council is the only authority responsible for determining the contradictory nature of the aforementioned regulations and in case contradictoriness of the governmental regulations to the religious (canonical) laws is verified by Guardians Council jurisprudents it has to be compulsorily followed by the tribunal. Based on the same verdict issued by the Guardians Council jurisprudents, the tribunal sentences the contradictory regulations' invalidation. This seems to harm the principle of judges' independence.

### **Notes:**

1. **Act 4 of the Constitution:** all civil, penal, financial, economical, administrative, cultural, military, political rules and regulations and other statutory provisions should be based on the canonical and Islamic standards. This principle governs the implications or the plain texts of the entire

constitutional principles, regulations and the other rules and this is the responsibility of the Guardians Council jurisprudents.

2. **Act 94:** all of the enactments made in the Islamic consultative assembly should be sent to the Guardians Council. Guardians Council is responsible to investigate them in their compliance with the Islamic standards and constitution within ten days at most and if contradiction cases are found they shall be returned to the parliament for revision, otherwise the enactment is enforceable.
3. **Act 138:** Besides the cases in which the board of ministers or a single minister becomes responsible for codifying the mandatory procedures, the board of the ministers has the right to enact rules and procedures in line with the accomplishment of the administrative tasks and safeguarding the rules enforcement and establishment of the administrative organizations. Each of the ministers has the right to enact rules and issue circulars within his jurisdiction and according to the other enactments made by the board of managers but the regulations should not oppose in their contents the other regulations' spirit and text. The government can assign a commission comprised of several ministers to the enactment of some regulations pertaining to the better accomplishment of its duties. The enactments made in such commissions become indispensable within the limits of the law after being confirmed by the president. Governmental acts and procedures and the enactments by the foresaid commission as specified in this Act, meanwhile being announced to the enforcement bodies would be sent to the parliament head so as to mention the reasons for their revision to the board of managers in case that they are found against the law.
4. **Act 156:** Judiciary branch is an independent branch that serves supporting the individual and social rights and it is responsible for actualizing the justice and carries out the following duties:
  - 1) Trying and issuing sentences regarding complaints, petitions and abuses; resolving the lawsuits and removing the hostilities and making decisions and taking necessary measures in that section of the probate matters that are specified by the law;
  - 2) Restoring the public rights and dispersing justice and legitimate freedoms;
  - 3) Supervising the well-enforcement of the regulations;
  - 4) Discovering crimes and suing and punishing and running criminal procedures against the criminals and the enforcement of the codified Islamic penal regulations and limitations;
  - 5) Taking appropriate measures for deterring crimes and erecting corrections.
5. **Act 170:** the judges are obliged to avoid applying the governmental acts and the procedures which are found contradicting the Islamic rules and regulations or are found outside the jurisdiction of the executive branch and everyone can demand the invalidation of such regulations from the Administrative Court of Justice.
6. **Act 173:** for trying the people's complaints, petitions and objections regarding the governmental agents or departments or their procedures and enactments as well as for restoring their rights, a court called "Administrative Court of Justice" is established under the inspection of the judiciary head. The qualifications and the jurisdiction and the mechanism of action for this tribunal are specified in the law.

#### References:

- Imami, Muhammad, Ostowar Sangari, Kurush, (2013), p.161, Mizan
- Islamic Consultative Assembly's General Office of cultural affairs and public relations, (1985), "the details of the parliament proceedings in final investigation of the Islamic Republic of Iran's Constitution", v.3, p.1656
- Interpretation No. 80/21/1279 at 18/05/2001 by the Guardians Council regarding Act 170 of the Constitution
- Interpretation No. 41/d/1875 at 26/12/2005 by the Guardians Council regarding Act 170 of the Constitution
- Delawari, Muhammad Reza, (2011), "limitations governing the Administrative Court of Justice's trials"
- Dervish Motavalli, Maysam and Raji, Sayyed Muhammad Hadi, (2013), "analyzing and investigating the position and the qualifications of the Guardians Council; Guardians Council's a priori supervision in surveying the non-contradictory nature of the rules and regulations to the Islamic standards as well as to the constitution, serial number 13920035, pp.1-28, Guardians Council research center

- Shari'at Bagheri, Muhammad Javad, (2009), "the collection of articles from Administrative Court of Justice's conferences and meetings; judicial qualifications and administrative trial", 1<sup>st</sup> ed., Islamic Azad University, Tehran-e-Markazi Branch
- Shari'at Bagheri, Muhammad Javad, (2013), "implications and punishments, the reasons behind governmental enactments' invalidation in the verdicts of Administrative Court of Justice"
- Sadr Al-Hefazi, Nasrullah, (1993), "judicial inspection over the governments' deeds in the Administrative Court of Justice"
- Tabataba'ee Mo'etameni, Manuchehr, (1999), "administrative law", 5<sup>th</sup> ed., p.423, Samt
- Fallahzadeh, Ali Muhammad and Abrisham Kish, Muhammad Amin, (2014), "investigating the superior mechanism of supervising the governmental regulations in Iran: a criticism of the parallel supervision of the parliament head and Administrative Court of Justice on the governmental regulations", seasonal journal of public law, 3<sup>rd</sup> ed., no.9, pp.18-111, Islamic Republic of Iran's Constitution
- Administration Act and Administrative Court of Justice's Procedures, passed in 22/12/2011 by the Islamic Consultative Assembly
- Nasira'ee, Sa'eed, (1998), "collection of the procedural unity sentences issued by the Administrative Court of Justice, p.114, Sekkeh