

THE RULE OF THE DECISION TO STAY OF EXECUTION IN TAX JUSTICE AND THE PROBLEM OF COMMENTS REFLECTING BIAS

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Abstract

There are basic and procedural requirements for the decision to suspend the execution. The procedural requirements include a justified decision to suspend the execution. In this case, the above-mentioned *ihsas-ı rey* situation may be encountered.

In this study, firstly, the legal nature and conditions of the concept of stopping execution will be explained in detail. Then, the issue of *ihsas-ı rey* will be elaborated and the cases where the refusal of the judge is requested will be indicated. Ultimately, a number of recommendations will be made to prevent the issue of *ihsas-ı rey* as to the reason for the decision to suspend the execution.

Keywords: Tax jurisdiction, stay of execution, comments reflecting bias

Jel codes: K34, K10.

1. Introduction

The principle of impartiality of the judge in the administrative judiciary is important. The referee may be asked to deny the judge. Regulations related to this subject have been made in the relevant provisions of the Civil Procedure Laws and 5271 numbered Criminal Procedure Code.

The tax judiciary consists of the parties and individuals. The disputes that may arise at this point are resolved in the tax courts, regional administrative courts and the Council of State. If the administrative proceedings are applied, it is necessary to decide on the suspension of the executive if the damages that are difficult or impossible to compensate will arise and be clearly against the law.

However, there are basic and procedural requirements for the decision to suspend the execution. There is a rule that the decision to stay of execution under procedural conditions is justified. In this case, the above-mentioned commercial situation may be encountered.

At this point, the legal nature and conditions of the concept of stay of execution will be explained in detail. After that, the problem of comments reflecting bias will be elaborated and the cases where the refusal of the judge is requested. Finally, some suggestions will be made in order to prevent the problem of the decision to stop execution.

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2. Stay of Execution

One of the consequences of tax litigation is the stay of execution. Unless otherwise provided for in the law, a lawsuit or appeal against administrative courts should, as a rule, stay of execution of administrative proceedings. At this point, it is necessary to explain the administrative procedure for a better understanding of the suspension of execution.

2.1. Administrative Process Concept

Various definitions are given in the literature regarding administrative procedure. A general definition of administrative action may be explained as one-sided legal procedures established by the administration in the field of administrative law (Gözübüyük, 2015: 143). According to a more detailed definition, the administrative action, the administration of public interest in the field of administrative law, the effective and efficient manner of public services in a way to ensure that the service is seen in accordance with the unilateral declaration of management and without the need for the request and to approve the legal status of the relevant ie, the executive property, which can be applied practically, to benefit from the presumption of compliance with the law, subject to judicial review and, as a rule, are established in writing (Atay, 2009: 407-408).

The decision of the Constitutional Court dated 21.09.1995 also shows that the administrative procedure is implicitly defined. Accordingly, sahip the administration has many powers outside and above the powers of private law persons. With these powers specific to the administration, it can make actions and actions on individuals with a one-sided declaration of will and legal effects. Persons may be subject to various obligations without the assistance of an authority or authority to carry out these procedures. On the other hand, administrative proceedings use the presumption of legality and it is presumed that the administrative procedures are appropriate and lawful.

2.2. The concept of the Stay of Execution, The Legal Nature and Conditions

The most important assurance against the execution of the administrative action is the suspension of execution. In order to prevent the executive from showing the effect of the administrative procedure on the exercise of the eligibility and performance of the law, the operations of the administration on the basis of superior public power in the areas where the administration is responsible for the law, in order to ensure that the public services are seen in an effective manner, in continuity, efficiency and stability; when it is necessary to implement it, it is an institution in a cancellation case that suspends the qualifications of being obliged to comply with the law and the obligation to be obeyed by everyone until the end of the case, in other words, rendering the mentioned features of the managerial procedures inoperable (Kandil, 2007: 2).

In the end, the suspension of the executive, with the nature of the execution of the law with the effect of lawfulness of the administrative procedures that benefit from the presumption of compliance with the administrative procedures to prevent the compensation of difficult or impossible to prevent the implementation of the process until the end of the cancellation of the case, as a rule can be given by the administrative courts on the request of the concerned, the cancellation case and the rule of law is an effective measure. The explanations made here are

in fact a result of the narrow evaluation of the executive. In the broadest sense, the cessation of execution not only covers administrative proceedings but also judicial decisions. At this point, opening a tax case is in the definition of stopping the execution in a narrow sense and constitutes the result of stopping the administrative process only.

Administrative regime in many of the already adopted country and of course the principles adopted in terms of the consequences of initiating administrative proceedings in Turkey, an administrative decision against being filed in a jurisdiction, otherwise the front unless deemed by the law, it does not stay of execution of the administrative decision (Kıratlı, 1966: 173). In this case, the court should clearly decide to stay of execution. In line with this principle, the principles of the court's decision to stay of execution of the execution are determined in the 1982 Constitution and Administrative Procedure Act (APA).

The results of the evaluation of these laws together are as follows (Yüce, 2013: 192);

- In the case of administrative action, it is necessary to produce compensation that is difficult or impossible to compensate.
- The administrative procedure must be clearly against the law.
- The decision to stay of execution shall be granted on condition that a guarantee is made.

In this context, it can be said that the stay of execution depends on some conditions. These conditions are divided into two as to procedural and merit.

Terms and conditions;

- Compensatory power or impossible damages,
- The administrative act is clearly against the law.

Procedural conditions;

- Justification in the decision,
- A case has been filed with the request of cancellation,
- Written request,
- A deposit is requested.

With the realization of these conditions, it may be decided to stay of execution.

2.2.1. Conditions for the Conduct of the Executive

The important point to be mentioned here is the necessity that the unlawfulness and irregularity of the damages to be carried out at the same time can be made at the same time. In other words, if the execution of an administrative act is against the law but does not cause any irregular or irreparable damage, or if it is not only against the law, it cannot be decided to stay of execution in relation to this administrative procedure. Article 125 of the Constitution, as well as Article 25 of the Law No: 2577, the conditions for the realization of these conditions are explicitly stated. In the event that these two conditions are fulfilled by the administrative jurisdiction, it

may be decided to stay of execution by stating the reasons for which the administrative action is clearly contrary to the law and the damages which are difficult or impossible to compensate if the transaction is implemented. At this stage, these two requirements should be elaborated on the merits.

2.2.2. Standing Conditions of the Stopping of Proceedings Rationale in the Decision

It was stated in the previous headings that the suspension of execution was based on various conditions. These conditions are divided into two as procedural and fundamental. In the circumstances of the procedure, it is necessary and therefore important that a lawsuit has been filed with the request of cancellation, a written request has been made, the justification in the decision to stay of execution and the demand for a guarantee are required. These conditions are described below.

While there is no provision regarding the obligation to give reasons in the decision to stay of execution before the execution of the Law no. 2577, the discussions about the obligation to give reasons with the entry into force of this Law have ended. Although it is stated in Article 27 (2) of IZUK that it can be decided to suspend the execution by the administrative court, in the continuation of the jurisdiction, the reasons of the administrative procedure are clearly contrary to the law in the decision of the execution, is mandatory.

APA's 27/2. and in accordance with Article 125 of the 1982 Constitution, the court has to give a reason for the suspension of execution. Both items have been emphasized for irreparable or irreparable damages and it is mandatory to specify what these damages are. Writing the decision to suspend the execution without justification or writing the justification that does not clearly explain the unlawfulness is incompatible with the regulation in Article 125 of the 1982 Constitution, which orders the reasons for the suspension of execution. The most important criticism of the reasoning in the case files decided to stay of execution is to extend the decision process. In fact, when the judge decides to suspend the execution, the case file is actually examined. Here, the judge faces the risk of *rey*. Because the reasoned decision can be evaluated as the decision of the judiciary to express an opinion on the case. Due to some reservations about the award of the judge's refusal, not to use the institution to stay of execution of the administration may result in a decision that can make the administrative court decisions (Ermumcu 1998: 36). In this case, it constitutes a legal problem. Therefore, it is useful to re-evaluate the decision to suspend the execution of the decision to be justified.

3. Denial of Judge in Tax Trial

The principle of impartiality of the judge is important in the proceedings. In cases where the judge cannot objectively pursue the case, the judge either refuses him or the plaintiff or one of the defendant parties may refuse the judge. Article 29 of the Law on Civil Procedure states the reasons for the refusal of the judge. Accordingly, the reasons for the refusal of the judge;

- Have given advice or guidance to one of the parties on the case,
- In the case of either party or third party under the terms of the law without the need to declare his *reyini*,

- Having heard or acted as witness or ehlihbre or arbitrator or judge in the case,
- The case is up to the fourth degree (including this degree),
- If there is a case or an enmity between the two parties in the case,
- It is usually a suspicion of a bias of the judge and the discovery.

4. The Concept of Specialization (Game Definition)

Although there is no necessity and need, it is accepted that the judge, whose game is shown in a trial, cannot be impartial. Because the judge must decide according to the judgment at the end of the trial, if it does not comply with the trial before the completion of the game, if prejudiced and thus violates the principle of fair trial.

No. 5271 of the Criminal Procedure Code 24/1. in which the judge may be refused. According to this; In cases where the judge cannot look at the case, the refusal may be requested, and the rejection may be requested for other reasons that would put his impartiality to doubt. In the law, the reasons why the impartiality of the judge was rejected and the objectivity of the judge was not counted. The reasons for the refusal of the judge can be categorized under 6 headings (Centel, 1996: 89);

- Personal relationship with the accused or victim;
- Tense relationships,
- Relations with other persons,
- Print,
- Previous activities,
- Don't show the game.

In practice, the last item, which is known as the game, is encountered. If there is a situation that would affect the judge's presence or impartiality, the refusal of the judge may be requested (Constitutional Court Individual Application Decision, 2014/1725).

5. Examination Of The Decision To Suspend The Reasoned Execution And The Refusal Of The Judge

As it is known, Article 27, paragraph 2 of the Law No. 2577, it can be decided to halt the execution if the administrative process is applied, if the compensation for the damages is difficult or impossible, and if the conditions of the administrative action are clearly unlawful, the reason for the execution is given.

Considering that the decision to suspend the execution in the administrative jurisdiction places should be clearly stated as justified, it is controversial whether or not the defendant in the defendant position declared the gerek judges' rule gerek upon the decision to stop the reasoned execution. (Caraveloğlu, 2001: 1348-1349) Here is the reason for the rejection of the reason stated in the law does not occur. Because at this point ihsas-rey is legitimate. Because

it's 125/5. Article 27/2 of the Law No. 2577. in the case of justification and against the law ve. For this reason, in accordance with the provisions of the Constitution and the Law, the judge has expressed his opinion on the unlawfulness of the transaction without having yet to file a file. For this reason, this can be called di legitimate award rey s and the rejection stated in the law is not the reason.

The decision to suspend the execution and the reasoned decision should be evaluated and the decision of this request to be considered should be evaluated in two ways. The first is that the request to stay of execution is made during the opening of the case, and the second is to make the request in the proceedings.

In the first case, if the judge decides to stay of execution at the beginning of the case while the cancellation case is filed, it cannot be commented on. Because the case has not yet started to appear and the judge has not formed any opinion. At this point, the decision to stop the reasoned execution at the beginning of the case can be considered as legitimate ihsas-ı rey.

In the second case, if the cancellation case is requested, if one of the parties requests to stay of execution and the judge decides to stay of execution on the justified basis, the legitimate legitimacy in the first case can be discussed. Because the case began in the judge and has reached a certain point is likely to have formed a number of convictions. In this case, there will be a risk of showing the side of the judge in the reasoned decision. This will lead to the request for the refusal of the judge.

6. Conclusion

The prosecution of a judicial authority against an administrative decision does not require the suspension of the execution of the administrative decision, unless otherwise specified in the law. In this case, the court should clearly decide to stop execution. At this point, the decision to stop execution is subject to certain conditions. In general, these conditions can be classified in narrow terms, as the basic and procedural conditions.

The reason for the decision to suspend the execution is the reasoning of the decision between the procedural requirements. The necessity of reasoned decision is a problem in terms of extending the period for a structure which is connected with the principle of economics such as tax judgment. In addition, another problem is that the jurisdiction or judge may be deemed to have heard about the case in question. If the judge must decide on the basis of his judgment, he will be prejudiced and thus violate the principle of a fair trial, if he does not comply with it, before the trial is completed. This will ultimately reveal the problem of iliyid-i rey.

The reason for the reasoned decision can be evaluated as two situations. Here, he asks for a request to stay of execution of the case in which the case was requested. In the first case, if the execution is requested at the beginning of the case, this legitimate ihsas-ı rey can be counted. If the case is demanded to stay of execution of the case, this can also be deemed illegitimate. Because while the case is still in the judge may have formed a certain opinion about the case. This situation requires the refusal of the judge.

As a recommendation at this stage;

- 24/1 of the Criminal Procedure Law no. 5271. in which the judge may be refused. According

to this; In cases where the judge cannot look at the case, the refusal may be requested, and the rejection may be requested for other reasons that would put his impartiality to doubt. It would be appropriate to include the reasons for which the impartiality of the judge was rejected and the reasons for his impartiality to be doubted.

- In the case of administrative proceedings, the request for the suspension of execution may be filed with the cancellation of the case and the request can be closed. Thus, the risk of loss can be eliminated,

can be offered.

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