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Consequences of decisions in cases requiring technical expertise without expert examination in administrative trials

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Article 31 of the Administrative Procedure Code No. 2577 sets out the cases to which Civil Procedure Code No. 6100 (CPC) applies where there are no applicable provisions in the Code of Administrative Procedure. As per the referred provision, CPC shall apply to expert examinations.

Council of State precedents

According to article 266 of CPC, courts decide to obtain expert opinion in cases where the resolution requires special or technical information other than law, either ex officio or at the request of either party. However, courts cannot appoint experts in cases that can be resolved through experience or the legal knowledge of a judge.

As per the precedents of the Council of State, lack of expert examination in cases requiring special and technical information to be resolved constitutes deficient examination, which means a local court's decision could be revoked.

In a case that concerned cancelling the guideline plans for a new road for tourist transit, the 10th Chamber of the Council of State stipulated that the local court had to conduct an expert examination, as the resolution of the dispute related to:

- the impact of the road on the environment;
- whether the road could pass through agricultural wetlands; and
- alternative routes.

All these require special and technical information. Thus, in this situation, the Council of State revoked the local court's decision on grounds of deficient examination.⁽¹⁾

In another case, the 10th Chamber of the Council of State examined a lawsuit regarding a request for administrative action rejecting an application to change the route of a road that would pass through the plaintiff's immovable properties. In this dispute, the Council of State stressed that the court must have evaluated:

- whether the road in question fulfils the construction specifications;
- whether the road can be technically shifted by way of revising the project in line with the plaintiff's request;
- how the change would affect the road construction expenses, environment and other factors;
- the accuracy of the route in technical terms; and
- compliance with the master plans, if any.

The Council of State revoked the local court's decision by stating that, as the above points required technical information and expertise, the local court must have reached a decision by obtaining an expert report upon conducting an on-site examination of the area in question.⁽²⁾

In another case related to the cancellation of the master plan revision that concerned an area transformed into park from parking lot, the Sixth Chamber of the Council of State also emphasised that determining the compliance with the master plans and the existence of public interest is a technical issue requiring expertise. The Council of State revoked the local court's decision by stating that the court must have conducted an on-site examination and expert review.⁽³⁾

In a further case, this time related to the cancellation of the rejection of an application for removing a cesspool connected to a sewage system in the village of Usak, Turkey to another location, the local court rejected the lawsuit on grounds that:

- there was no evidence supporting the plaintiff's claims that the cesspool connected to the sewage system would cause damage to human and animal health; and
- analysis provided no data that showed that ammonium would mix with the drinking water of the village.

The Eighth Chamber of the Council of State revoked the local court's decision on 4 February 2022 on the grounds of deficient examination and stated that the local court should have conducted an expert examination, as the matter requires special and technical information.⁽⁴⁾

Comment

The Council of State's settled precedents demonstrate that court decisions that were rendered without expert examination in cases that required special and technical information will be revoked on the grounds of deficient examination. The precedents further stress that the purpose of applying for expert opinion is to obtain the data required to render a lawful decision, and thus the appointed experts should have special and technical knowledge. In addition, the precedents indicate that expert reports must respond to the questions clearly and accurately, and the content of the report must bear the necessary qualifications to be relied on by the court.

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Endnotes

- (1) 10th Chamber of the Council of State, E 2013/885 K 2015/2981, 15 June 2015.
- (2) 10th Chamber of the Council of State, E 2012/6591 K 2013/818, 11 February 2013
- (3) Sixth Chamber of the Council of State, E 2017/856 K 2021/4755, 30 March 2021.
- (4) Eighth Chamber of the Council of State, E 2017/549 K 2022/553, 4 February 2022.