

[Home](#) > ... > [Your Rights](#) > [Access To Justice In Environmental Matters](#) > Other relevant rules on appeals, remedies and access to justice in environmental matters

## Other relevant rules on appeals, remedies and access to justice in environmental matters

If an authority does not respond to a request to take action within 3 months, the requesting party might take the case to court without having to wait for an administrative decision, § 75 of the Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung, VwGO*). If an administrative decision lacks the necessary information on legal remedies (*Rechtsbehelfsbelehrung*, see above, 1.7.4 2) and 3) or if this information is incorrect, the deadline to appeal the decision is extended from 1 month to 1 year, § 58 (2) VwGO (see above, 1.7.1. 1). Apart from those “procedural sanctions”, there are no penalties imposed.

According to § 167 (1) VwGO, the rules for non-compliance of the public administration with a judgment of an administrative court follow the special rules in § 172 VwGO instead of the general rules for enforcement of the Code of Civil Procedure (*Zivilprozessordnung, ZPO*).

According to § 172 VwGO, a financial penalty of up to EUR 10,000 can be imposed if an authority fails to comply with the obligation imposed on it in a judgment or interim order. The financial penalty might be ordered repeatedly, until the relevant authority complies.

Within the scope of the Code of Civil Procedure, however, in cases when the debtor fails to carry out an act, the maximum penalty is EUR 25,000, but also coercive detention is possible, § 888 (1) and (2) of the ZPO.

As can be seen from the preliminary ruling in the [CJEU’s air quality case \(C-752/18\)](#), the referring court, the Higher Administrative Court of Bavaria, was in doubt whether it could interpret the national law in a way giving effect to its ruling and make use of the option of coercive detention in a situation where the only other instrument provided by the law, the penalty, had failed several times and representatives of Bavaria, even the Minister-President, declared publicly that they would not comply with court ordered measures for the improvement of air quality.

A recent decision of the Stuttgart Administrative Court - 17 K 5255/19 - shows that regarding the penalty the higher fine provided by civil law can be made use of by means of interpretation. Further, the court can demand that the fine is to be paid to a public-interest organisation. There are also suggestions that fines could also be made more effective by imposing them for every day of non-compliance.<sup>[1]</sup>

In another recent decision the Higher Administrative Court of Baden-Württemberg (the “*VGH Mannheim*”) decided<sup>[2]</sup> that when a concrete case is at stake where the public administration already demonstrated that subtle pressure was not enough to ensure compliance, not § 172 VwGO but § 167 (1) sentence 1 VwGO, § 888 ZPO, i.e. again the general rules for enforcement, should be the basis for enforcing compliance with the judgment.

Furthermore, the court decided that in cases where the state, here the *Land Baden-Württemberg*, has to pay a fine, it cannot be the recipient as well. Instead a non-governmental public interest organisation has to be chosen as the recipient, which the court is empowered to under § 167 (1) sentence 1 VwGO, § 888 ZPO and, secondarily, § 153a (1) sentence 2 of the German Code of Criminal Procedure (*Strafprozessordnung, StPO*).<sup>[3]</sup>

[1] Kaerkes, comment on VG Stuttgart, decision of 21 January 2020 – 17 K 5255/19, *Zeitschrift für Umweltrecht (ZUR)* 2020, p. 242 seq. (245).

[2] VGH Mannheim, decision of 14 May 2020 – 10 S 461/20, *Neue Zeitschrift für Verwaltungsrecht (NVwZ)* 2020, p. 972.

[3] VGH Mannheim, decision of 14 May 2020 – 10 S 461/20, *Neue Zeitschrift für Verwaltungsrecht (NVwZ)* 2020, p.

972.

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