

[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

- *Remedies against the silence of the administration*

The Administration is obliged to decide on a written resolution and notify it in all administrative procedures (Article 21.1. Law on the Common Administrative Procedure).

However, on many occasions the administration does not take a decision within the applicable deadlines. In these cases, so called “administrative silence” or inaction enters into play. There are two kinds of administrative silence under Spanish Law:

1. Positive silence, which implies that the administration approves the request or application filed by a natural or legal person. In this case, the administrative silence is considered as an administrative act which concludes the administrative procedure. In addition, given the obligation of the administration to take a decision, if it takes it later it has to confirm the positive response.
2. Negative silence (which implies an implicit refusal of the application), whose effect is to allow the concerned public or party to file the correspondent administrative review. In light of the obligation of the administration to decide, if it takes it later it does not have to be attached to the negative silence.

Presumed acts (tacit decisions) produced by administrative silence can be challenged through administrative review and/or judicial review.

The administrative review is of two types:

1. Review by the hierarchical superior (recurso de alzada): this review has to be filed when the administrative silence is produced by a presumed act issued by a public servant having a hierarchical superior. This review is compulsory when the challenged presumed act does not close the administrative means of redress and must be filed before filing a judicial review.
2. Review by the same administrative authority that issued the presumed act: this review is voluntary as it can only be filed against a presumed administrative act bringing to an end the administrative means of redress. However, an act bringing to an end the administrative means of redress can be directly challenged through judicial review.

This is possible when the first level administrative decision closes or brings to an end the administrative means of redress. This happens in the following cases:

- Decisions taken in procedures in which a specific law has substituted the hierarchical superior challenge for another procedure
- Decisions of administrative bodies not having a hierarchical superior
- Agreements, pacts, conventions or contracts considered as finalizing the procedure
- Administrative decisions in procedures related to liability of the Administration
- Decisions in complementary procedures related to infringements
- Other administrative decisions when a law or a regulation establishes that they end the administrative procedure.
- The decision or act was issued by a Minister or a Secretary of State

Once the administrative means of redress have been closed, the presumed act by administrative silence can be subject to judicial review.

With respect to the AAI procedure established in RDL 1/2016, concerning integrated pollution prevention and control, and in line with the condition that the IPPC permit has to be a written permit, Article 21.2 states that once

the deadline of nine months given to issue the authorization has elapsed without an explicit resolution, it shall be considered to be rejected.

- *Penalties that the judiciary or any other independent and impartial body (information commissioner, ombudsman, prosecutor, etc.) can impose on the public administration for failing to provide effective access to justice.*

Under Spanish law there is no possibility for the concerned public to request the judiciary or any other independent or impartial body to impose penalties on the public administration for failing to provide effective access to justice or for any other violation of legal provisions. When a judicial body rules that an administration has not complied with provisions on access to justice on environmental matters it can impose the costs of the judicial procedure.

- *Penalties for the de-facto contempt of the court, e.g. when the judgment of the court is not followed and respected.*

Once a judge's or a court's ruling becomes firm (because it has to be appealed or it cannot be appealed), the judicial secretary notifies this to the administrative body whose act, or decision was challenged, for it to comply with the orders in the ruling. If the orders are not complied with within two months, the concerned public can request "compulsory execution". In these cases, the judicial secretary has to call upon the non-compliant administration to file allegations, and if the lack of compliance with the ruling is proved, the judge or court may:

1. Impose penalties from 150 to 1.500 euros per day on the authorities, public servants or agents who do not respect the orders of the judge as well as reiterate those penalties until complete execution of the ruling, without prejudice to other financial responsibilities.
2. Compile the corresponding testimonials by the concerned public to claim criminal liability.

- *Need of specialized courts or trained judges*

Given the complexity of environmental protection cases, one of the main challenges in Spain regarding access to justice in environmental matters is to have specialized courts or trained judges. This would guarantee that the cases are heard and ruled on based on appropriate knowledge and understanding and with the necessary resources.

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