

[Home](#) > 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

### *Enforcement of administrative court decisions*

#### *- Council of State*

When the Council of State or the Council of Permit Disputes annuls a challenged administrative decision, such a judgment has retroactive effect and the administrative decision is considered never to have existed.

At the request of one of the parties, the Council of State clarifies the grounds for its annulment judgment and the measures to be taken to remedy the illegality which led to that annulment. If the judgment entails a new decision by the concerned administration, the Council may order that this administrative decision should be taken within a specified period. It may order this in a subsequent judgment, provided that the party at whose request the annulment was pronounced has given notice of default to the administration to make a new decision, by registered letter, and that at least three months have passed since the date of the notification of the annulment judgment. If the administration has no discretionary power regarding the new decision, the judgment of the Council of State shall take the place of that decision (substitution). Where the judgment of the Council of State implies that the authority concerned refrains from taking a decision, the Council may order such an obligation to refrain from taking a decision.

If the administration fails to comply with that obligation, the party at whose request the annulment was pronounced may request that the Council of State impose a penalty payment on this authority. The periodic penalty shall be enforced at the request of the party at whose request it was imposed and with the intervention of the Minister of the Interior. Half is allocated to the general resources of the Treasury. The other half is paid to the party at whose request the penalty payment has been imposed. Such penalty can be important. For example, in a case of illegal permits for clearing forests, the Council imposed a penalty of € 50,000 per site and breach. In another case, the penalty payment was set at € 15,000 per breach and per day.

At the request of a defendant or intervening party, and if it considers it necessary, the Council of State shall designate those consequences of annulled administrative decisions which shall be deemed to be definitively or provisionally maintained for the period it determines. Such a measure can only be ordered for exceptional reasons that justify an infringement of the principle of legality by a decision that is specifically reasoned and after a contradictory debate. This decision may take into account the interests of third parties.

#### *- Council of Permit Disputes*

The rules applicable to the Council of Permit Disputes are similar. If the Council of Permit Disputes declares the appeal to be well-founded, the Council will annul the contested permitting decision in whole or in part. The Council has a right of injunction: it can order the authority that took the annulled decision to take a new decision within a period determined by the Council. The Council can also impose certain conditions. Only in the event that the authority that should take a new decision has no discretionary power can the Council substitute its judgment for that decision. In all other cases, the Council cannot replace the authority that took the contested decision. It is then up to that authority to take a new decision respecting the Council's ruling. This new decision can be appealed again. The Council of Permit Disputes can impose penalty payments under conditions similar to those for the Council of State.

The Council can apply an "administrative loop". In the event that the Council finds an illegality in a challenged decision, it can, under certain circumstances, give the administrative authority the possibility to take a new decision, not containing the same error, that will be reviewed again by the Council.

The Council of Permit Disputes can also maintain the legal consequences of an annulled permit decision under

circumstances similar to those for the Council of State.

### *Compensation for reparation*

Anyone requesting the annulment of a decision with the Council of State can request that compensation be awarded to them in order to rectify the damage suffered as a result of the illegality. Compensation for damages may be sought in the application for annulment during the course of the procedure or no later than 60 days after notification of the judgment finding the illegality. The Council of State has to take into account all circumstances of public and private interest. After a claim for compensation has been introduced with the Council of State, the petitioner can no longer bring civil liability claims before the ordinary courts regarding the same disadvantage. Anyone who has already brought a civil liability claim with the ordinary courts can no longer claim damages from the Council of State.

### *Silence of the administration*

When an administrative authority is obliged to take a decision, upon expiry of a period of four months, counting from a reminder notified to it by an interested party, the silence of the administration is deemed to be a negative decision that can be appealed before the Council of State. This provision is without prejudice to special provisions which stipulate a different period or attach different consequences to the silence of the administrative authority, as is the case in some environmental permitting procedures (see point 1.7.1).

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