

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

Remedies against the silence of the administration (the administrative passivity)

Non-pronouncement of the administrative authority in due time is considered as a tacit refusal to issue the act and can be challenged by the persons concerned (NGOs are presumed to be concerned persons for administrative acts in the environmental field). Where the proceeding has been instituted before a specific authority and said authority is supposed to make a proposal to another authority for the issuance of the act, a tacit refusal shall occur regardless of whether the authority issuing the act was approached with a proposal. Where a tacit refusal is reversed by an administrative or legal review procedure, the express refusal which follows prior to the decision on reversal is likewise considered reversed.

Within the administrative review, the tacit refusal may be challenged by the persons concerned within 1 month from expiry of the timeframe in which the administrative body was obliged to issue the act. Where the persons concerned have not been notified of the initiation of the proceedings, the time limit for contesting shall be 2 months from expiry of the time limit for ruling. (Art.84(2) APC).

Within the legal review before the court, a tacit refusal or a tacit consent is contestable within 1 month after the expiry of the time limit for the administrative authority to pronounce its decision. Where the act, tacit refusal or tacit consent have been contested according to an administrative procedure, the time limit begins to run from the communication that the superior administrative authority has rendered a decision and, if said authority has not pronounced, from the latest date on which said authority should have pronounced. Where a prosecutor has not participated in the administrative proceeding, said prosecutor may contest the act within 1 month after issuance. There is no time limit for challenging administrative acts by a motion to declare their nullity. (Art. 149 APC)

Where a tacit refusal or tacit consent has been revoked, an express refusal or express consent succeeding prior to the court decision on revocation shall likewise be considered to be revoked. (Art. 172 (3) APC)

Any official who fails to fulfil the requirements for cooperating with and providing information to the public incurs liability to administrative penalties according to the procedure established by the APC, without this affecting the validity of the administrative act. (Art.28(3) APC)

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

Any official who fails to meet an obligation arising from an effective judicial act, outside the cases covered under Section V (Enforcement of administrative decisions and decisions of the court) of the APC, is liable to a fine of BGN 200 to BGN 2,000. Any repeat violation of the same nature is punishable by a fine of BGN 500 for each week of non-performance, unless this is due to objective impossibility. Sanctions for other violations of the APC are imposed on any person (e.g. obliged to act or conform to certain obligations) who fails to meet another administrative procedure obligation and they shall pay a penalty of BGN 150 to BGN 1,500, unless subject to a severer sanction. (Art. 304-305 APC)

Upon culpable non-performance, the enforcement authority shall impose a fine of BGN 50 up to BGN 1,200 per week on the officials performing the functions of a state body until the obligation to perform a specific action is fulfilled. If the obligated authority is collective, no fines shall be imposed on the members thereof who voted in favour of performance of the obligation. The same fines are imposed upon any non-performance of the obligation to refrain from action.

Other relevant rules and administrative/court practice

The Parliament is obliged to address the consequences of declaring a law as non-constitutional. In the meantime, the courts should directly apply the Constitution and the legal principles while deciding on cases, according to a [ruling of the Constitutional Court on Case №5/2019](#). No legal vacuum in the legislation is possible. The National Assembly must regulate the legal consequences of the application of the unconstitutional law.

In line with this ruling and new case law of the Constitutional Court (CC), the Supreme Court of Cassation (SCC) delivered Decision № 71/6 of April 2020 with the same conclusions, preceding the decision of the Constitutional Court, on the claim for compensation under the Law on the Liability of the State and the Municipalities for Damages. The claim was for damages suffered by inaction in addressing the consequences of unconstitutional amendment to the State Budget Act in the Act on Energy from Renewable Sources (AERS). According to the conclusion of the court expertise for the trial period relevant for the case (01.01.2014 to 09.08.2014) from the plaintiff were withheld 20% fees fee for production of electricity from wind and solar energy under Art. 35a AERS (declared unconstitutional by CC, Case No. 13/2014). After repeal of this provision by the Constitutional Court, § 6, item 2 and item 3 of the Law on the State Budget of the Republic of Bulgaria for 2014, the consequences were not addressed. The SCC ruled that the state should pay compensation of BGN 564,986.04 to the operator of a photovoltaic power plant that suffered from the inaction of the National Assembly. The awarded amount was a sum of the due indemnity, part of the interest on it and the incurred court costs of the three court instances. The court reasoned that the indemnity was due to the wrongful conduct of the Parliament, which firstly adopted a law declared as non-constitutional and secondly was inactive in addressing the consequences - in other words, it confirmed liability of the state in the event of failure to replace unconstitutional laws.

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