



No time limit applies to appeals against *de facto* material actions or administrative inactivity

Judgment of the Supreme Court of 1 October 2021

Appeals against *de facto* material actions

Appeals against material actions of the Public Administration without any legal basis, also known as *de facto* material actions, illustrate how the classical view of administrative courts as mere reviewers of administrative acts may be overcome.

Two alternatives arise in the case of a *de facto* material action (articles 30 and 45 of the Law of the Administrative Jurisdiction): a) to file a court appeal within a twenty-day period from the date on which the *de facto* administrative action initiated or became known; b) to request the acting Public Authority to cease the relevant action and, if the request is not fulfilled within ten days, to file the court appeal within a another ten-day period.

Now, what if the court appeal is not filed within the ten-day period set out in Article 45 of the Law of the Administrative Jurisdiction, after having requested the Public Authority to cease a *de facto* action? This ruling of the Supreme Court provides an answer to this question by stating that, in the event of a *de facto* action, the request to cease the relevant action may be repeated for as long as the situation persists. Hence, each request that is not complied with by the Public Authority grants a new opportunity to file a court appeal, and so the applicable period starts running again.

This allows reacting against a *de facto* action for as long as it persists, without any time limit. Reiterating the request to cease the relevant action would suffice to file the relevant court appeal within ten days if the Public Authority does not respond.

Appeals against administrative inactivity

This doctrine complements that which applies to cases of administrative inactivity, set out in a judgment dated 26 June 2018.

In the case under analysis, the Supreme Court analysed the rights of interested parties whenever a Public Authority is obliged to conduct a specific action by virtue of a general provision that does not require acts of implementation or by virtue of an administrative act, contract or agreement, and fails to do so. Pursuant to the Law of the Administrative Jurisdiction, a court appeal may be filed if inactivity persists three months after the request for compliance. This appeal must be filed within two months from the expiry of the preceding three months. However, the Supreme Court ruled that, if the appeal is not filed within the aforementioned two-month period, the interested party may reiterate its request for compliance and a new three-month period will start running again. If administrative inactivity persists after this three-month period, a new period of two months to file an appeal will begin, and so on.