



When is an administrative decision deemed notified?

Judgement of the Supreme Court of 10 November 2021

Background

This case is about whether the beneficiary of a subsidy must return the subsidy to the Administration that granted it or not. The Administration considered that the subsidy must be returned because the beneficiary had not complied with its terms.

The matter was brought before the Spanish Audiencia Nacional which ruled that the beneficiary was not obliged to return the subsidy because the refund proceeding had already expired. According to the Audiencia Nacional, the proceeding expired because the Administration's ruling on it was notified to the beneficiary (interested party) out of time.

The notification of the decision was conducted by electronic means and made available to the interested party on the date of expiry of the deadline. However, it was not accessed by the interested party until three days later.

Matter of cassational interest

The matter of controversy is the date on which the Administration's obligation to notify a ruling is deemed to have been fulfilled: the date on which the notification is made available or the date on which the interested party accesses it.

What does the law state?

On the one hand, article 43(2) of Law 39/2015 on the Common Administrative Procedure states that electronic notifications "shall be

deemed to have been made at the time of access".

On the other hand, article 43(3) of Law 39/2015 states that the obligation of the Administration to notify its rulings within a given time frame shall be deemed to have been fulfilled when the notification has been made available at the electronic site of the acting Public Administration or Agency or at the single authorised electronic address. Article 40(4) of Law 39/2015 provides that a "duly accredited attempt to notify" will suffice in order to consider that the obligation to notify the resolution of the procedure within the deadline has been fulfilled.

Conclusions of the Court

The Supreme Court concludes that, in the case of electronic notifications, the obligation of the Administration to conduct the notification within the maximum duration of the procedure is understood to have been fulfilled when the notification is made available at the electronic site of the acting Public Administration or Agency or at the single authorised electronic address, regardless of when the interested party accesses it. In view of this, if the Administration notifies its ruling on the last day of a given term, then such notification shall be deemed made on time. The interested party will not be allowed to allege that because it has accessed the ruling a few days after (and therefore after the expiry of the Administration's deadline) the notification has been made out of time.