



## Good administration in the face of administrative silence

*Judgment of the Chamber for Contentious-Administrative Proceedings of the Supreme Court (2nd Section) of 7 March 2023*

### The right to good administration and administrative silence

The principle of good administration has always been part of the principles governing the actions of public administrations, even if is not explicitly formulated. The recognition of the right to good administration in Article 41 of the EU Charter of Fundamental Rights has been a catalyst for its invocation by the courts, increasingly in cases when public administrations overstep their prerogatives.

This is the case of the judgment of the Spanish Supreme Court of 7 March 2023, which puts an end to two privileges that favour an administration that neglects its duty to resolve: the obligation to exhaust administrative remedies in the event of negative administrative silence, and the obligation to extend the scope of appeal when the administrative decision is taken beyond the stipulated timeframe.

### There is no need to file an administrative appeal in the case of negative administrative silence

On the one hand, negative administrative silence has always raised doubts in cases where, if an explicit act had been issued, the administrative remedies would not have been exhausted and it would have been necessary to file an administrative appeal (*recurso de alzada*). The Supreme Court firmly confirms that is not necessary to exhaust administrative remedies in cases where a presumed dismissal because of administrative silence is challenged. This decision rests on the right to effective judicial protection (Article 24

of the Spanish Constitution), as regards access to justice and the principle of good administration. Therefore, in a situation of negative administrative silence, it will be possible to file an administrative appeal or appeal directly with the competent judicial body. This will avoid the need to wait three months for the administration to resolve the administrative appeal.

### There is no need to extend the scope of appeal in the event of an untimely decision

On the other hand, negative administrative silence raises doubts when the administration takes a late decision after the presumed dismissal has been challenged in court. Is it necessary to appeal specifically against this decision, should the appeal already filed be extended, or is there no need to do anything at all? The Supreme Court emphasizes that there is consolidated jurisprudence stating it is unnecessary, once the appeal has been filed, to extend it to the belated express act of dismissal, unless the belated decision ignores the presumed dismissal by administrative silence.

Therefore, if the administration issues an express dismissal decision while the matter is before the courts, it will only be necessary to extend the scope of the appeal if the decision changes the meaning of the implicit dismissal (e.g. partial dismissal). If this is not done, the belated administrative act becomes final, since it does not correspond to the administrative silence that is being challenged. In any case, in case of doubt, it is always possible to extend the scope of appeal (even if it is not necessary).