



## INFORMATION NOTE No.36/2014

### THE SPANISH CONSTITUTIONAL COURT CONFIRMS THAT NO DEADLINE APPLIES WHEN CHALLENGING UNFAVOURABLE DECISIONS ADOPTED FURTHER TO THE PRINCIPLE OF ADMINISTRATIVE SILENCE

The Plenary Meeting of the Spanish Constitutional Court (TC) has rejected the constitutionality queries raised by the High Court of Justice of Castilla-La Mancha (TSJCM) with respect to Art. 46.1 of Act 29/1998, of 13 July, regulating the contentious-administrative jurisdiction (LJCA), which establishes the deadlines in which to challenge in court any decisions of the Administration delivered further to the principle of administrative silence. According to the body filing the unconstitutionality motion, the article apparently infringed the fundamental right to effective judicial protection and right of defence (Art. 24.1 CE), interpreted as access to justice.

Article 46.1 LJCA establishes a six-month term in which to challenge any decisions delivered by the Administration on the grounds of administrative silence (i.e. in the absence of an express resolution). In addition, this six-month term will be calculated *“for the applicant and other potential interested parties, as of the day following the date when the alleged act has taken place, in accordance with specific regulations”*.

The source of the unconstitutionality motion, filed by the High Court of Justice of Castilla-La Mancha, is a fine imposed by the Regional Department of Agriculture and the Environment on a citizen who had pruned his oak trees without the necessary authorization. The citizen challenged this sanction in administrative channels, but the appeal did not receive a reply. Given the Administration’s silence, the citizen filed a contentious-administrative appeal before the TSJCM. In its allegations, the Administration requested that the Court reject the appeal on the grounds of untimeliness, as it had been filed outside the six-month term foreseen in Article 46.1 LJCA.

The judgment of the Plenary Meeting, in which Adela Asúa provided her particular dissenting vote, has held that when administrative silence has negative effects, as in this case (i.e. the citizen’s request is rejected), an appeal is not subject to any time limit whatsoever and so this disputed provision is not applicable. Consequently, any doubts are also cleared as to its constitutionality, given that the right to effective judicial protection is not affected.

The Plenary Meeting reached this conclusion after examining how the principle of administrative silence had evolved since the first law was enacted regulating contentious-administrative proceedings, back in 1958, until the latest reform of the law on the legal regime applicable to public administrations and common administrative procedure, in 1999.

Act 4/1999, of 13 January, makes a difference between the positive (i.e. an application is granted) or negative (i.e. an application is refused) effects of administrative silence. If an application is granted by administrative silence, the Plenary Meeting points out, *“it will to all effects be considered an administrative act that ends the proceedings”*. However, if an application is rejected by administrative silence, *“the only effect will be to enable the interested parties to file an administrative or contentious-administrative appeal, as applicable”*. In other words, negative administrative silence is no longer considered an *“act”* with legal effects, and the traditional interpretation is readopted, to the extent that it is *“a mere legal fiction opening the door to a challenge”*.

In light of the foregoing considerations, the TC stated that, further to the new rules on administrative silence introduced by Act 4/1999, *“any situations where the law foresees that the application made will be rejected will no longer fall within the legal definition of a “alleged act”*. Consequently, *“a judicial challenge of any silence-based refusals will not be subject to the statute of limitations foreseen in Article 46.1 LJCA”*.

Consequently, the judgment affirms, *“it is clear that the legal provision being examined does not prevent or otherwise hinder access to the courts by the applicants or any interested third parties affected by a silence-based refusal. As a result, we should declare that the disputed legal provision does not breach Art. 24.1 CE”*.

In her particular dissenting vote, the Judge Adela Asúa considered, on the one hand, that the TC was making an interpretation of ordinary legality it was not authorized to do and, furthermore, that it was *“unsystematic”*; on the other hand, the unconstitutionality motion should have been upheld because the disputed article *“limits jurisdictional access”* by citizens. In her opinion, the constitutionality issues affecting Art. 46.1 LJCA reside in the fact that the legislator has established a timeframe in which to file the appeals that *“inexcusably”* begins to run without taking into account *“whether the interested parties have or have not taken any steps suggesting that they are aware of the effects of this silence and whether the application has been upheld or rejected”*, when it is in fact the Administration’s duty to inform on the matter.

Madrid, 25 April 2014