



ADMINISTRATIVE PROCEDURE AND PROCESS: THE EXTRAORDINARY MEASURES ADOPTED IN THE COVID-19 EMERGENCY PERIOD

20 April 2020

I. The 'special' rules adopted for the administrative procedure.

Decree-Law no. 18 of 17 March 2020, on "Measures to strengthen the National Health Service and provide economic support for families, workers and companies related to the COVID-19 epidemiological emergency", provides for "special" provisions concerning the **suspension of time limits in administrative procedures** and the effects of expiring administrative acts. The reason for the generalised suspension provided for (with the exceptions indicated in paragraphs 3 and 4 of Article 103 of the Decree Law in question) is aimed at **avoiding that the P.A. - during the period of reorganization of their work activities, due to the current health and emergency situation - incur in possible delays or significant silence (so-called "silenzio significativo")**.

In this matter, **Article 103** of the above Decree Law, entitled "*Suspension of time limits in administrative*

¹ The provision has a general scope, with the only exceptions of the time limits laid down in specific provisions of the current epidemiological emergency decrees and their implementing decrees, as well as the time limits relating to payments of salaries, pensions, wages, emoluments for benefits of any kind, allowances

proceedings and effects of expiring administrative acts", provides for the **suspension of all time limits relating to the conduct of administrative proceedings** pending on 23/02/2020 or commenced after that date, for the period between the same date and that of **15/05/2020** (extension provided by **Article 37, paragraph 1, of Decree Law no. 23 of 8 April 2020**).¹

For the same period, the **terms for the formation of the final will of the administration in the forms of "significant silence"** (silent acquiescence or silent rejection) provided for by the law (see art. 103, paragraph 1, D.L. 158/20) are also extended or deferred.

I.1 The scope of application.

The above mentioned procedural suspension - without any exceptions referable to types of administrations or particular categories of public bodies - applies to **all administrative procedures**, both those at the request of the parties and those at the initiative of the parties, as well as to **all types of time limits** (peremptory deadlines,

from social security or welfare benefits, whatever they may be called, as well as contributions, subsidies and benefits to enterprises (see paragraphs 3 and 4).

non-peremptory deadlines, final and executive deadlines, endoprocedural and preparatory deadlines).

I.2 How to calculate the time limits.

In calculating the time limits, (i) the period between the date on which the application was lodged, or the notification of the initiation of proceedings, and the date on which the suspension took place, and (ii) the subsequent period which starts again from the date on which the suspension ends (which is from **16/05/2020**), must both be taken into consideration. **The terms, then, are not reset to zero.**

I.3 Exceptions.

Except for the provisions of Article 103 of Legislative Decree 18/2020, paragraphs 3 and 4, the provisions examined do not provide for exceptions.

The same article, however, has provided that the P.A., despite the suspension, are required to adopt all organizational measures suitable to ensure a **"reasonable duration" and a "rapid conclusion of the proceedings, with priority for those to be considered urgent, also on the basis of reasoned requests by the parties concerned"** (Article 103, paragraph 1, Decree Law 18/2020).

In light of the above, it therefore follows that:

- the procedural suspension shall operate automatically, except for the need for each administration to take appropriate measures to ensure the continuation of proceedings as quickly and efficiently as possible;
- the individual, in order to ensure that the administration guarantees a reasonable duration and the speedy conclusion of the proceedings, may submit a reasoned application, stating the reasons for the urgency of the conclusion of the proceedings.

*

II. The "special" rules adopted for the administrative process.

The above mentioned **Decree-Law no. 18 of 17 March 2020** and the following **Decree-Law no. 23 of 8 April 2020** (published in the Gazzetta Ufficiale on 9 April, entitled "*Urgent measures concerning access to credit and tax compliance for companies, special powers in strategic sectors, as well as measures in the field of health and work, extension of administrative and procedural deadlines*"), also provide for 'special' provisions concerning the extension and suspension of the time limits of the judgments governed by the Administrative Procedure Code ².

Specifically, with reference to administrative proceedings, Article **36** of the above mentioned **Decree Law no. 23/2020**, entitled "*Procedural deadlines in civil, criminal, administrative, accounting, tax and military justice*", in paragraph 1, **limited the extension of the suspension until May 3 to the deadlines for the notification of appeals** (both at first and second instance), with the exclusion of those proposed for precautionary purposes only (i.e. precautionary appeal *ante causam* and appeal against a precautionary order).

From **April 16**, on the other hand, it will restart:

- i) the celebration of the hearings;
- ii) the running, according to the general rules of the

² Article 3 of Decree Law no. 11 of 8 March 2020, on "*Urgent measures to counter the epidemiological emergency from COVID-19 and contain its effects on administrative justice*", has instead been abrogated, as established by Article 84, paragraph 11, of Decree Law no. 18/2020.

c.p.a, of all procedural deadlines other than those for the notification of appeals (suspended until 3 May - see above), including those for the filing of documents, statements of case and replies, in view of the hearing.

II.1 The simplified procedure provided for the treatment of hearings (public and chambers).

Despite the fact that the celebration of hearings is resumed, **Article 84 of Decree Law 18/2020, paragraph 5** (confirming the provision already contained in Article 3 of Decree Law 11/2020) provides that disputes, both substantive and precautionary, **from April 16 to June 30**, are decided following a simplified procedure or **excluding the possibility of discussion in a public hearing or in chambers hearing**: "*After April 15, 2020 and until June 30, 2020, as an exception to the provisions of the Code of the administrative process, all disputes settled, whether in a chamber hearing or in a public hearing, shall be decided, without oral discussion, on the basis of the documents filed, without prejudice to the possibility of settlement of the case pursuant to Article 60 of the Code of the administrative process, without any notice*" (Article 84, paragraph 5, Decree Law 17/2020).

The same provision, moreover, attributes to the constituted parties the **double and alternative** power, to be exercised within 2 free days before the date fixed for the hearing (i) both to **file "short notes"**, aimed at passing the decision of the case; ii) and **to ask, with specific request** (which must be filed within 2 free days before the date of the hearing), **the remittance in terms**.

Following the filing of the above application, the judge must order **the remittance in terms and, consequently, the postponement of the hearing itself**. In this case, the terms referred to in Article 73, paragraph 1, of the c.p.a. are reduced by half, limited to ordinary proceedings.

II.2 The organizational power attributed to the bodies of the administrative jurisdiction.

In order to counteract the COVID-19 epidemiological emergency and contain its negative effects on the performance of judicial and advisory activities, **from 8 March 2020 until 30 June 2020**, Article 84, paragraph 3, of Decree Law No. 18/2020 states that the offices' management bodies³ must (obligatorily) take, in agreement with the local health authorities and the local forensic order, "**measures**" necessary to prevent the spread of viral phenomena, in order to prevent the formation of groups. Specifically, the above-mentioned provision, in addition to providing for the reduction of office access hours, the suspension of the opening to the public and the provision of reservation services, also provides for the adoption of binding directives for the setting and discussion of hearings, as well as the possibility for offices' management bodies to order the postponement of hearings until after June 30, 2020.

In relation to this last provision, the rule established that the treatment "*with priority*" must in any case be guaranteed, also by means of a rescheduling of the hearings "*with the exception of precautionary and electoral hearings and chambers of councils, and for cases in respect of which the delayed treatment could cause serious harm to the parties; in this case, the declaration of urgency is made by the presidents (referred to in paragraph 3) with*

³ Specifically to: the Presidents of the Chambers of the Council of State, the President of the Council of Administrative Justice for the Region of Sicily and the Presidents of the Regional Administrative Courts and their separate Chambers.

a decree that cannot be challenged".

197 of 25 October 2016.

II. 3 Exemption from the obligation to deliver courtesy copies.

Article 84 of Decree Law no. 17/8/2020, paragraph 10 – in taking over what is already provided for by the abrogated Article 3, paragraph 11, of Decree Law no. 11/2020, paragraph 10 of Article 8 - provides for the **suspension, until June 30, 2020, of the obligation to deposit courtesy copies of the appeal and the defensive writs, with the attestation of conformity to the relative electronic deposit.**

The same paragraph also definitively consolidated the method of executing such activity, already provided for in the abovementioned Decree-Law no. 11/2020, through the use of the postal service, without subjecting it to any time limit, making, to this end, an addition to Article 7, paragraph 4, of Decree-Law no. 168 of 31 August 2016, converted, with amendments, by Law no.

ONTIER ITALIA



Contact:

Laura Gentili - lgentili@ontier.net