

Administrative Silence – Historical Treatment and Comparative Perspective in EU Countries and Developing Nations, Including Albania

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Abstract: The institution of administrative silence, reflecting the lack of response from public administration to requests made by citizens or legal entities, has undergone significant evolutionary phases at the international level. Initially considered as inaction without legal consequence, it has evolved into a concept interpreted as either implied refusal or, in certain cases, tacit approval. This paper examines the historical development of administrative silence, its legal treatment in the legislation of EU member states, developing countries such as Albania, Kosovo, and North Macedonia, and provides a systematic comparison of these approaches. Relying on relevant jurisprudence and literature, contemporary trends, implementation challenges, and recommendations for improvement are identified.

Key Concept

Administrative silence refers to the failure of a public administration to respond to a request within the legal time limit, resulting in various legal consequences. It has evolved from being unrecognized, to being treated as implied refusal, and more recently as tacit approval, especially in EU countries. In Albania and the region, the refusal model still dominates; therefore, legal and administrative framework improvements are recommended to enhance efficiency and protect citizens' rights.

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1. Definition and Legal Nature of Administrative Silence

1.1 Definition

Administrative silence occurs when a public authority fails to respond within a legally prescribed deadline to a legitimate request submitted by an individual or legal entity. This silence can lead to different legal outcomes depending on the legal system of each country.

Administrative silence denotes the inaction of a public authority regarding an official request submitted by a citizen or legal entity within a time limit established by law. Depending on national legal regulations, this silence may entail:

- **Legal effect** (e.g., implied refusal or tacit approval), or
- **No legal effect**, when an express decision is legally required.

1.2 Legal Nature

Administrative silence can take various forms, as its legal nature depends on the applicable context and legislation:

- **Implied Refusal (refus tacite)** – where the absence of a response is considered a rejection of the request.
- **Tacit Approval (acceptation tacite)** – where non-response is interpreted as approval or implied consent.
- **No legal effect** – in some cases, silence bears no legal effect, which is more common in traditional jurisdictions or those with weak administrative systems.

Administrative silence is closely linked to the principles of the rule of law, administrative efficiency, legal certainty, and the right to a timely response.

2. Historical Evolution of the Concept of Administrative Silence

2.1 First Phase: Absence of Legal Recognition – Silence Not Considered a Decision

Historically, silence had no legal effect. An express administrative response was required to proceed with procedures. Individuals had no legal recourse against administrative inaction.

- **France before 1889** – Silence was not recognized as a decision: “Silence did not equate to a decision.”
- **Albania before 2015** – No clear regulation of the institution; citizens lacked effective protection.

2.2 Second Phase: Silence as Refusal (Classical Principle)

The notion of implied refusal was institutionalized to prevent citizens from being penalized by administrative passivity. Initially adopted in France and subsequently in other countries, this principle considers silence within the legal time frame as a refusal.

Legal Examples:

- **France – Law of July 17, 1889** – Silence was deemed a refusal, enabling citizens to appeal.
- **Italy – Law No. 241/1990** – Silence was treated as refusal in most cases; similar positions were held by Spain and Germany in the 20th century.

- **Albania before 2015** – In practice, silence left citizens without effective legal remedies. (Law No. 44/2015): formally codified "implied refusal" as a contestable administrative act.

2.3 Third Phase: Silence as Approval – A Modern, Positive Approach

This modern approach aims to strengthen administrative efficiency and reduce bureaucracy. Silence is treated as automatic approval in clearly defined cases. Over time, and to improve efficiency and protect rights, the concept of administrative silence evolved to be interpreted, in certain situations, as tacit consent.

Examples:

- **France (2013–2015)** – "Le silence vaut accord" (Silence equals agreement): silence after 2 months = approval, with exceptions.
- **Spain and Belgium** – Similar practices apply to certain requests, with legal provisions equating silence with approval.
- **Albania (Law No. 44/2015, Article 97)** – For the first time, it was clearly regulated that in the absence of a response, applicants may appeal an "implied refusal," but the principle of silence as automatic approval has not been adopted except in specific cases.

3. Comparative Theoretical and Practical Approach – EU and Developing Countries

Country	Approach to Administrative Silence	Legal Reference	Observations
France	Silence = approval (with public interest exceptions)	Code des relations entre le public et l'administration	Foundation of the progressive model
Germany	Silence = refusal (in most cases)	Verwaltungsverfahrensgesetz, § 42a	Emphasis on legal certainty
Italy	Usually refusal, exceptions in sectoral laws	Law 241/1990	Careful about potential misuse
Spain	General principle of silence as approval	Ley 39/2015	Citizen-focused approach
Romania, Bulgaria	Transitional use of French/Italian models	National legislation	Inconsistent implementation
Albania	Silence = refusal, appeal allowed in court	Law No. 44/2015, Article 97	Innovative post-2015, but weak enforcement
Kosovo, Macedonia	N. Similar to Albania, unclear regulation in many cases	Law on Administrative Procedure	Still in development phase

4. Comparative Analysis: Arguments For and Against the "Silence = Approval" Model

Arguments in Favor:

- **Efficiency:** Speeds up administrative processes and promotes responsiveness.
- **Protection of rights:** Prevents citizens from being penalized by administrative delays.
- **Reduced court burden:** Fewer appeal cases related to delay lighten the judicial workload.

Arguments Against:

- **Risk of legitimizing illegality:** Especially in sensitive sectors (e.g., construction, environment).
- **Difficulty in reversal:** Silent decisions can be hard to undo if against public interest.
- **Weakened legal oversight:** Allows administrations to evade responsibility.

5. Albania – Current Challenges and Recommendations for Improvement

Current Challenges:

- **Bureaucratic culture:** Authorities often disregard deadlines; lack of a timely response culture.
- **Low legal awareness:** Citizens often lack knowledge or capacity to pursue legal remedies.
- **Weak enforcement mechanisms:** Absence of sanctions and control over administrative silence.

Recommendations:

- Define cases where **silence = approval** for technical authorizations – promote selective use of tacit consent.
- **Digitalize public administration** and introduce deadline monitoring systems.
- **Train public officials** on legal effects of silence to ensure proper implementation.
- **Educate citizens** on their right to a response and appeal – increase transparency and digitize processes.

Conclusion

The institution of administrative silence is a significant indicator of a citizen-oriented public administration. In the Albanian and developing country contexts, a careful balance must be struck between safeguarding citizens' rights and protecting public interest

from potentially abusive silent approvals. Albania should gradually adopt the principle of silence as approval in well-regulated and clearly defined sectors.

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