



**Seminar organized by the Supreme Court of the Republic of Latvia in cooperation with  
ACA-Europe**

**Riga, 27 April 2023**

### ***Questionnaire***

#### ***The judge and inert administration. Administrative discretionary power***

#### **Introduction**

The seminar will address the issue of inert administration and the role and competence of the courts in this regard. The inaction or silence of the authorities and its consequences affect the rights of individuals no less significantly than the administrative actions or administrative acts of the authorities. While institutional silence is mainly related to the managerial aspects of public administration, it also interacts and correlates with legal aspects, such as principles of legal certainty, good administration and the prohibition of arbitrariness. The aim of the questionnaire and the seminar is therefore to summarise and analyse the regulation and practice of the Member States in order to determine whether the rights of individuals in the context of administrative silence converge and are comparable in the different legal systems.

As the administrative silence is mainly related to the failure of authorities to act or to reply within the prescribed procedural time limits, the questions in the first section of the questionnaire will provide insights into the regulation and application of procedural time limits in the Member States. The following sections of the questionnaire contain questions that are directly related to the current national regulations of the administrative silence. The regulations are generally classified into a negative model (silence as deemed refusal of a claim) and a positive model (a claim not refused in due time is deemed granted). Most legal systems usually provide for both models and various specific combinations. However, the understanding and regulation of these models, as well as the various exceptions and specific rules, differs among legal systems. The questionnaire also seeks to identify national experiences in implementing Article 13(4) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, intended as a mechanism of simplifying and speeding the administrative activity. And finally, as one of the most important aspects, the questionnaire will clarify the role and competence of the courts in the process of appeal against fictitious acts resulting from administrative silence, also identifying the legal remedies. The questionnaire is intended to identify mentioned aspects for further workshop discussions.

The seminar is also intended to discuss issues of administrative discretionary power. The most ambiguous aspects of this matter relate to the identification of the discretionary power in each specific case, as well as to the competence of the court and limits of judicial review of use of discretionary power by the authority. The practice and approach of the Member States on this issue vary. Some legal systems between discretion in a narrow sense and margin of





appreciation in the interpretation of undefined legal concepts. However, in most legal systems no such distinction is made. There are also differences in the methods, characteristics or mechanisms used to determine whether an authority has discretionary power in a particular case. The questionnaire thus aims to identify national regulations and practices on the mentioned issues.

### Administrative time limits

1. Are specific administrative time limits within which authorities must take administrative decisions or complete administrative actions set in your legal system?

- Yes
- No
- Only in certain areas of law

Please specify your answer briefly, if necessary

The Croatian legal system sets specific time limits within which authorities are obliged to take administrative decisions or complete administrative actions.

2. Where are the administrative time limits set:

- The Constitution
- The general code of administrative law or administrative procedure law
- Special laws
- Other

Please specify your answer briefly, if necessary

General administrative time limits are set in the General administrative procedure act, providing that the authority shall issue a decision (an administrative act) within 30 days from the day of receipt of the submission (in cases of direct adjudication). In cases when the investigatory procedure is performed, the authority is obliged to issue a decision and deliver it to the party within 60 days from the day of receipt of the submission.

The special laws may also specify other time limits.

For example, according to the Law on the right of access to information the authority is obliged to enable to the applicant the access to the information at the latest within 15 days from the day of request (article 20).

3. Is the concept of "reasonable time" for the setting of administrative time limits defined and applied in your legal system or case law?





In the Croatian legal system, the administrative time limits are usually specifically set out in law and the concept of "reasonable time" is not commonly used to define administrative time limits.

However, according to the Article 10 of the General administrative procedure act adjudication of administrative matters shall be as simple as possible, expeditious and with as few costs as possible (principle of efficiency and cost efficiency). So, in cases where the law does not clearly set a time limit for an action, the authorities are obliged to act within a reasonable time.

4. Describe the general time limits in which administrative decisions are made in your legal system.

As mentioned in the answer to question number 2, the general administrative time limit in which administrative decisions are made is 30 days (or 60 days).

5. Is it possible to extend the administrative time limits? Under what circumstances?

According to General administrative procedure act it is not possible to extend the administrative time limits.

6. Does a person have the right to complain about the authority's decision to extend the time limit?

n/a

7. If an administrative decision is unfavourable to the submitter or the potential addressee of the decision, can it still be made after the expiry of the time limit?

- Yes
- No
- No, unless the delay on the part of the institution has a proper justification
- Other

Please specify your answer briefly, if necessary

The law does not prohibit an authority to make any decision after the time limit set by law has expired.

8. Is failing to comply with established administrative time limits a common problem in your country?

- Rather yes
- Rather no





9. What are the main reasons for failing to comply with administrative time limits in your country?
- Lack of clear regulation
  - Lack of institutional capacity
  - Deficiencies in the administration of the authorities
  - Deficiencies at national policy level
  - Other

Please specify your answer briefly

Situations where an authority fails to take administrative decisions or complete administrative actions within the time limit set by law are usually related to a lack of resources within the authority (for example: lack of staff).

10. Are there any penalties, disciplinary or criminal liability for authorities or their staff with regards to not complying with the time limits?

If the failure of an authority staff member to comply with the time limit has caused serious or significant consequences, the particular staff member could be held administratively liable. For example, according to the Law on civil servants, non-fulfilment, negligent or delayed fulfilment of official duties, is recognised as a disciplinary offence (article 99.)

### **Administrative silence**

1. Does your national legislation define "administrative silence" as a legal concept? Please specify.

According to Article 3. of the Act of administrative disputes the subject of the administrative dispute is assess of the legality of the failure of an authority in the field of administrative law to decide within time limits prescribed by law on the right, obligation or legal interest or regular legal remedy of the party, i.e. to act according to the regulation.

According to Article 101. paragraph 3. of the General administrative procedure act if the authority does not issue a decision and deliver it to the party, within time limits prescribed by law, the party has the right to file an appeal, or to initiate an administrative dispute.

2. Does your legal system provide for a negative model of administrative silence (deemed refusal of a claim)?

The Croatian legal system provides neither for a negative nor positive model as a general principle in the case of administrative silence.

3. Does your legal system provide for a positive model of administrative silence (a claim not refused in due time is deemed granted)?





According to article 102. of General administrative procedure act, when it is prescribed by law, the claim of the party is deemed granted if in the procedure initiated at the request of the party, in which the authority is authorized to directly adjudicate the administrative matter, authority does not issue a decision within the time limit set by law (presumption of granting the party's request).

4. Which regulatory model of administrative silence is more typical for your legal system?

The Croatian legal system provides neither for a negative nor positive model as a general principle in the case of administrative silence.

### The negative model

**As Croatian legal system does not provide for negative model of administrative silence (deemed refusal) the answers to following questions (1. - 7.) describe appeal process in the cases of administrative silence.**

1. What are the types of administrative procedures that the negative model can be applied to:
- Procedures that are initiated on the basis of an application or claim by a person
  - Ex officio procedures
  - Other

Please specify your answer briefly, if necessary

As Croatian legal system does not provide for negative model of administrative silence (deemed refusal) the following answer considers the case of administrative silence. The administrative silence can be applied to procedures that are initiated on the basis of an application or claim by a person.

2. Does the negative model mean that a person's application or claim is automatically considered to be rejected or are extra actions required in order for the person to be able to appeal the rejection (for example, does the person have to provide proof that authority has been silent on the particular matter in order for it to be able to appeal the rejection)?

As Croatian legal system does not provide for negative model of administrative silence (deemed refusal) the answer to following question describes appeal process in the case of administrative silence.





The regulation does not provide for any extra actions in order for the person to be able to appeal the "silence". When submitting a complaint to a higher authority or a court, the person has to provide a copy of the claim made to the "silent" authority (to prove that the time limit set by law has expired).

3. Is the process for appealing against a "fictitious refusal" resulting from an administrative silence different from the general appeals process (for example, is there a different time limit or review body than in general appeals process)? Please describe the main differences.

(As Croatian legal system does not provide for negative model for administrative silence (deemed refusal) the answer describes appeal in the case of administrative silence.)

In the case of silence by a lower authority, the person has the right to submit a claim to a higher authority. In the case of silence of a higher authority in the process of contesting a decision of a lower authority, the person has the right to submit a claim directly to the court. If there is no higher authority, in case of silence of the authority the person has the right to submit a claim to the administrative court for a decision on the matter. A person has the right to apply to a higher authority or to a court when the time limit set by law for the authority to take a decision or an action has expired and the authority has failed to act. The appeals process follows the general procedure.

4. Can the "fictitious refusal" resulting from an administrative silence be appealed in court?

In accordance with the general regulation, in situations of administrative silence the person may have recourse to the court for a decision on the matter.

5. What is the competence of the court if the "fictitious refusal" is found to be unjustified:
- The court can order the administrative authority to issue a decision, but cannot set a specific time limit in which it shall be done
  - The court can order the administrative authority to issue a decision within a certain time limit
  - The court can decide upon the matter itself
  - Other

Please specify your answer briefly

(As Croatian legal system does not provide for negative model for administrative silence (deemed refusal) the answer describes competence of the court in the case of administrative silence.)

When the court establishes that the authority did not issue a decision within the prescribed time limit within which it should have issued it, it shall adopt the statement of claim in a judgment and resolve the matter itself, except where it may not do that in view of the nature





of things or where the authority acted according to its discretion. In such a case, the court will order the authority to issue the decision and set a reasonable time limit within which to do so.

6. What legal remedies are available in your legal system if an authority has failed to comply properly with a court order to issue a decision?

It is the obligation of an authority to properly and in good time enforce a judgment or another decision directed against it, rendered or taken by a court in an administrative case. In the enforcement of the judgment, the authority is obliged to act in accordance with the sentence, within 60 days after delivery of the final judgment and is bound by the legal understanding and remarks of the court. If the authority does not enforce the judgment within a certain period, the party can demand enforcement of the judgment from the court of first instance.

7. In which cases the court has the competence to decide upon the matter itself instead of the "silent" authority:

- In all cases
- Only in cases of objective urgency
- Only in cases which concern significant rights of the person
- Only in cases in which the authority has no discretionary power or it is limited to zero
- Never, because only the authority can make a decision
- Other

### The positive model

1. What is the main purpose of the positive model in your legal system?
  - To simplify certain administrative procedures
  - To protect the rights of individuals in case an authority fails to comply with the administrative time limits
2. Are there any prohibitions or restrictions on the application of the positive model in certain areas of law in your legal system?  
Yes
3. When (a specific moment or particular circumstances) is the person's claim deemed to have been granted?

According to article 102. of General administrative procedure act, when law prescribes it, the claim of the party is deemed granted if in the procedure initiated at the request of the party, in which the authority is authorized to directly adjudicate the administrative matter, when the





authority does not issue a decision within the time limit set by law. This means that a person's claim is deemed to have been granted immediately after the expiry of the time limit.

4. Does the person have to get any kind of confirmation or proof that the claim has been granted? Where and within what time limit does it need to be received?

The fact that a claim is deemed to have been granted is specifically regulated by law.

5. Are there any legal remedies available to third parties affected by the "fictitious decision" of granting a claim, if necessary?

National regulation does not provide for specific legal remedies available to third parties affected by the "fictitious decision" of granting a claim. However, if such "fictitious decision" of granting a claim affects the rights or legal interests of a third party, that party has the right to complain against the decision.

6. Is there a certain procedure that allows to annul a "fictitious decision" of granting a claim? If yes, are there any differences from the general procedure?

If a "fictitious decision" of granting a claim affects the rights or legal interests of a person, he or she has the right to appeal such a decision according to the general procedure. The only exception to the general procedure concerns the counting of the time limit for appeal in case the decision has not been notified to the person. According to the Article 24. Paragraph 3. of the Act of Administrative disputes if an individual decision has not been delivered to the party in accordance with the prescribed delivery rules, an appeal may be submitted within 90 days from the day when the party has become aware or could have become aware about the decision, and no later than within five years after the deadline from paragraph 1 of this article.

7. Please describe the implementation of the positive silence model provided for in Article 13(4) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market in your legal system. In which legal areas has it been implemented? Have there been any difficulties in its' implementation?

For example, the Directive is implemented in the Act on services. According to Article 12. of the Act on services, the request for permission to perform service activities can be submitted to the single point of contact or directly to the competent authority. The competent authority is obliged to decide on the orderly request with a decision within 30 days from the day of delivery of the submitted request to the competent authority and deliver it to the applicant immediately. If the competent authority does not issue a decision within the prescribed time limit, the request is considered to be granted. In order to protect public interests, special regulations may prescribe exceptions to this rule. A special regulation may set longer time limit than the time





limit of 30 days if the procedure for obtaining permission for specific service activities requires it.

### Other legal remedies

1. What legal remedies exist in your legal system in situations of administrative silence where the law does not regulate the administrative silence neither in accordance with the positive, nor the negative model?

In the case of silence by a lower authority, the person has the right to submit a claim to a higher authority. In the case of silence of a higher authority in the process of contesting a decision of a lower authority, the person has the right to submit a claim directly to the court. If there is no higher authority, in case of silence of the authority the person has the right to submit a claim to the administrative court for a decision on the matter. A person has the right to apply to a higher authority or to a court when the time limit set by law for the authority to take a decision or an action has expired and the authority has failed to act. The appeals process follows the general procedure.

2. Is a person entitled to claim a compensation for financial loss or non-financial damage, which has been caused as a result of the administrative silence of the authority?

In general, if the administrative silence of the authority has caused the person financial loss or non-financial damage, the person is entitled to claim appropriate compensation. The administrative silence is considered as a procedural violation admitted by the authority in administrative procedure in failing to comply with the time limit. However, compensation cannot be claimed for any procedural violation, but only for a violation if it has caused a significant infringement of rights or legal interests of a person. When claiming compensation, the person shall justify the losses or damage has been caused to him/her by the violation of the authority.

### Case law and regulation in non-harmonised sectors of law

1. Do you have any case law where national regulation on administrative silence has been found unfounded or inapplicable in a particular case?

No

2. Do you have any case law on the application or interpretation of the positive model provided for in Article 13(4) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market? If so, please describe the substance of the most relevant cases.

No





3. Have you submitted a question to the Court of Justice of the European Union in order for it to make a preliminary ruling in a case concerning national regulation on administrative silence? Briefly describe the request and the substance of the judgment.  
No.
4. Briefly describe the national regulation on administrative silence in the following legal areas:

4.1. Construction, spatial development planning and environmental protection  
There are no specific regulations on administrative silence in this area and the general principle described previously is applied.

4.2. Social security

There are no specific regulations on administrative silence in this area and the general principle described previously is applied.

4.3. Freedom of information

There are no specific regulations on administrative silence in this area and the general principle described previously is applied.

### **Administrative discretionary power**

1. How is administrative discretionary power defined in your legal system?

Typical variants of discretionary power are decision within the range (for example, the choice of inspection measures, disciplinary penalties, administrative fines etc.) and the decision whether to adopt the party's request at all, when it is not a matter of subjective law (eg some of the grounds for admission to Croatian citizenship). The administrative court is authorized to assess that the specific selection is not in accordance with its purpose, although it cannot choose another variant within the range instead of the authority.

2. Does your legal system distinguish between discretion (*deutsch – Ermessen*) and margin of appreciation (scope of appraisal) in the interpretation of undefined legal concepts (*deutsch – Beurteilungsspielraum*)?

No.

3. What are the characteristics, criteria or methods used in your legal system to determine whether an authority has discretionary power in a particular case? Provide the most typical examples of case law where the discretionary power has been recognised.  
If your legal system distinguishes between discretion and margin of appreciation, please describe both.





To determine whether the authority has discretion in a particular case, it is necessary to analyse the text of the legal provision. Discretion has two forms: freedom of issue and freedom of content.

Freedom of issue allows an authority to decide whether to issue or not to issue a decision but in the event of issue, it determines specific content thereof. Freedom of issue is usually indicated by the use of the words "may", "allowed", "have the right" in the particular legal provision.

Freedom of content means that an applicable legal provision prescribes that a decision is to be issued but does not determine specific content thereof. An authority shall issue such decision by taking account of the frameworks laid down in the applicable legal provision. A legal provision may contain a precise list of possible legal consequences or define a range of possible legal consequences, allowing choosing any legal consequences within the range.

A legal provision may provide for both types of discretion at the same time.

4. Is there a limit of judicial review of use of discretionary power by the authority in your legal system? If so, please explain possibilities of court examination and assessment in such a case?

If your legal system distinguishes between discretion and margin of appreciation, please describe both.

Yes, in the case of discretion, judicial control is limited. According to article 4. paragraph 2. of the Act of administrative disputes an administrative dispute cannot be conducted on the regularity of an individual decision made by applying the discretion of an authority, but it can be conducted on the legality of such a decision, the limits of authority and the purpose for which the authority was given.

5. Is judicial review affected by the fact that the discretionary power used by the authority has resulted in a restriction of human rights? Is the intensity of judicial review in such a case different from that in the case of no administrative discretion?

The judicial review usually affects the fact that the discretionary power used by the authority has resulted in a restriction of human rights. In such cases, the courts are more rigorous in their assessment of the principle of proportionality. If the restriction is found to be not proportionate, the court annuls the unfavourable decision that restricts the human right.

