



**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 Greek legal system sets specific time limits within which authorities are obliged to take administrative decisions or complete administrative actions. Moreover, the principle of rule of law obliges the authorities and public administration to respond to petitions within the time limits set by law.

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 Code of Administrative Procedure (Law 2690/1999, article 4), providing that the authorities, the municipalities and the public legal entities shall complete administrative actions within fifty days from the day of receipt of the submission of the petition. This time limit has an indicative purpose and it acts as a reminder for the authorities to take administrative decisions within this time limit.

Special laws may specify other time limits. For example, according to the Law on recruitment of lawyers in public legal entities (Law 4194/2013), the Council that evaluates the candidates and decides on the recruitment shall issue a decision regarding the candidates' ranking within one month after the last candidate's interview. According to the Competition Law the Competition Council shall take a decision within six months from the day of the initiation of a case.





Moreover, there are also strict time limits within which the authorities are obliged to complete administrative actions. For instance, according to the Law on Regional Administration (Law 2218/1994) the Regional Governor's decisions shall be contested on a legal basis before the General Secretary of the Decentralized Administration who shall take a decision within sixty days after the day of the submission of the appeal. If the General Secretary of the Decentralized Administration issues a decision after the expiry of the above mentioned time limit, this decision is not enforceable because he had no jurisdiction to issue such decision after the expiry of the time limit.

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 Greek legal system and case-law the concept of "reasonable time" is commonly used to define administrative time limits where the law does not clearly set a time limit for an action. The courts take into consideration the special circumstances of each case in order to assess if the authorities have exceeded the reasonable time.

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

There is not a general time limit in which administrative decisions are made. Special laws may specify different time limit. As mentioned in the answer to question No.2, the general administrative time limit in which administrative actions shall be completed is fifty days.

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

It is possible to extend the administrative time limits. According to the Article 4 paragraph 2 of the Code of Administrative Procedure, if it is impossible to complete an administrative action due to objective reasons, the authority may extend the above mentioned time limit by notifying the submitter thereof five days before the expiry of the prescribed time limit.

Special laws may also provide for extension options. For example, according to the Competition Law, if the general time period of six months cannot be met due to objective reasons, the Competition Council may extend it for a period of up to two months counting the time period from the day of the initiation of a case.

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

The decision on the extension of the time limit may be contested to a higher authority or if there is no such higher authority as well as the decision on the extension of the time limit of the higher authority, it may be appealed directly to the court.





Moreover, every citizen has the right to submit a complaint before the Greek Ombudsman in case he/she has not been able to solve his/her dispute with the relevant authority.

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, even unfavourable to the submitter or the potential addressee of the decision, after the time limit set by law has expired. However, in cases where there is a strict time limit and not an indicative one the administrative decision cannot be made after the expiry of such time limit, whether or not the decision is unfavourable to the submitter. In these cases, if the authority makes a decision after the expiry of the strict time limit, this decision is not enforceable because the authority that issued this decision had no jurisdiction to issue such decision. (See the answer to question No. 2)

However, in the event of failing to comply with the time limit has caused a significant infringement of rights or legal interests of a person, a person has the right to contest and appeal such decision in order to abrogate this decision and also in order to claim compensation.

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 (e.g. lack of staff) or improper organisation of administrative activities.

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 Disciplinary Liability of State Civil Servants, non-fulfilment or delayed, negligent fulfilment of official duties, specific order or task shall be recognised as a disciplinary offence (Article 107 paragraph 1 section 13).

### **Administrative silence**

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

Yes, the Greek national legislation defines "administrative silence" as a legal concept. According to the Administrative Procedural Code (Article 63 paragraph 2) the definition of "administrative silence" is the following: in cases where an authority is obliged to take an administrative decision but fails to do so within a specific time limit set by a special law, after the day of the submission of the petition. If a specific time limit is not set by law, administrative silence occurs when an authority is obliged to take an administrative decision but fails to take this decision within three months after the day of the submission of the petition.

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

Yes, the Greek legal system provides for the negative model in the case of administrative silence. It means that administrative silence shall be recognized as a deemed refusal of a claim unless the law provides otherwise.

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

Yes, the Greek legal system provides for the positive model of administrative silence. For example, according to Law on Open-Air Market (Law 2323/1995) the operating license of a retail trade store is granted by the competent regional committee within fifty days from the day of the submission of the petition. In cases where the above





mentioned committee fails to take a decision within this specific time limit, the operating license is deemed granted.

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

The negative model of administrative silence is more typical for the Greek legal system.

### The negative model

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

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)?

Administrative silence is recognized as a deemed refusal of a claim. The regulation does not provide for any extra actions in order for the person to be able to appeal the refusal. When submitting a complaint to a higher authority or a court, the person may have to provide a copy of the claim or application he or she made to the "silent" authority.

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.

The process for appealing against a deemed refusal of a claim resulting from an administrative silence is not different from the general appeals process.

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

Yes, according to the Administrative Procedural Code (Law 2717/1999, article 63) and the Codification of laws concerning the Council of State (Presidential Decree 18/1989, article 45) a deemed refusal of a claim resulting from an administrative silence can be appealed in court. The court examines and assesses the lawfulness and validity of the issuance of the decision.





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

According to Article 79 of the Administrative Procedural Code if a court finds a deemed refusal of a claim resulting from an administrative silence to be unjustified, it shall assign the authority to examine the petition and issue a relevant decision. In cases where the Tax Authorities have failed to issue a decision within a specific time limit, the court shall abrogate the administrative silence and decide upon the existence and the content of a right or an obligation.

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?

According to the Constitution of Greece the authorities are obliged to comply properly and in good time with a court order and complete all the necessary actions in order to enforce a judgment (Article 95 paragraph 5).

According to Law on Compliance of the authorities with court orders (Law 3068/2002) in cases where an authority does not comply properly and in good time with a court order, a participant to the administrative proceedings may submit a complaint regarding improper or non-conforming enforcement of a court ruling, and it shall be examined in the written procedure by a three member council of the court which has rendered the ruling. If this council finds that delay or failure to comply or improper comply with a court order is unjustified, it issues a decision and asks the authority to comply with the court order in a reasonable time not exceeding three months. This time limit can be extended due to objective reasons only for one time. If the authority fails to comply with the court order in the time limit set by the above mentioned council, the council declares the non compliance of the authority and orders the authority to pay a certain amount to the participant as a fine for non compliance with the court order. If the authority after the imposition of this sanction does not comply with the court order, the three member council of the court which has rendered the ruling shall impose a new pecuniary penalty on the authority.

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

See the answer to question No.5.

### 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

Please specify your answer briefly

The positive model was implemented in the Greek legal system by transposing the Article 13(4) of Directive 2006/123/EC into national legislation which states that failing to respond within the time period set or extended, authorisation shall be deemed to have been granted (Law 3844/2010, article 14 paragraph 4). The purpose of such regulation is mainly related to reducing the administrative burden for the establishment and development of services, as well as simplifying and modernising public administration.

2. Are there any prohibitions or restrictions on the application of the positive model in certain areas of law in your legal system?

The Greek legal system does not contain any specific prohibitions or restrictions on the application of the positive model.

The positive model so far has been implemented in some of the specific service areas covered by the Directive 2006/123/EC, assessing, before implementation, whether the application is not in contradiction with public interest or interests of third parties.

3. When (a specific moment or particular circumstances) is the person's claim deemed to have been granted?

According to Law 3844/2010 transposing the Article 13(4) of Directive 2006/123/EC, provided that all administrative formalities have been met, it shall be considered that an authorisation has been issued if the competent authority does not take and does not notify its decision regarding the granting of an authorisation or the refusal to grant it within the time period specified in the regulatory enactment. 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?

No confirmation or proof is required. The fact that a claim is deemed to have been granted is specifically regulated in the law. When a petition to grant an authorisation is submitted the authority shall issue a confirmation of receipt of such petition that states the time limit within which the authority shall examine the petition, the legal remedies that are provided in case of rejection of the petition and a declaration that if the competent authority does not examine the petition within the statutory time limit, the authorisation is deemed to have been granted.

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 contest and appeal such a decision according to the general procedure.

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?

In order to implement and transpose the requirements of the Directive in the administrative practice of the competent authorities, the ministries had assessed in which areas and which services the positive model could be applied, provided that the application is not contrary to the public interest. For example, it was recognized that in the sector of amateur dancing schools and higher schools of dramatic art, such a model may be in contradiction with public interest or interests of third parties and is not applicable in these areas due to reasons relating to safety of the building of such schools and the need to provide high educational level.

To the moment, the positive model has been implemented in at least 40 services [registration of travel agent or tour operator, real estate agent, ship broker, dental technician, hairdresser etc, issue of special permit (license) for the performance of recreation theme parks, golf courts, convention centres, ski centres, mountain refuges, day-care centres and night-care centres providing assistance to elderly persons, nursery





schools, physiotherapy centres, spa centres, health-regulated food and beverage establishments, pet shops, gas stations, car rental establishments, optician's shops etc.]. There have not been any recorded difficulties in the implementation of the positive model provided for in the above mentioned Directive.

### 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?

As already mentioned, the Greek legal system provides for the negative model in the case of administrative silence that allows a person to bring an action before the competent administrative court. Thus, the Greek legal system regulates the administrative silence in accordance with both the positive and the negative model.

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?

Yes, a person is entitled to claim compensation if the administrative silence of the authority has caused him/her financial loss or non-financial damage. In this case, he/she will have to prove that he/she suffered damage as a result of the illegal administrative silence of the authority and also to prove that there is a causal link between the administrative silence of the authority and the damage.

### 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, there is no such case-law in Greece.

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, there is no such case-law in Greece.

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, Greece has never submitted such a question to the Court of Justice of the European Union.

4. Briefly describe the national regulation on administrative silence in the following legal areas:

- 4.1. Construction, spatial development planning and environmental protection

The general principle of negative model described previously is mainly applied in this area of law.

However, there are also provisions that regulate the positive model. For instance, according to Law 4926/2022 in case of sitting of a tourist port within an existing port, the Tourist Port Committee is obliged, before expressing its opinion, to forward the relevant file to the competent authority of the Ministry of Maritime Affairs and Insular Policy in order to express its opinion within the time limit of two months whether the tourist port will obstruct the operation of the existing port. If the Ministry of Maritime Affairs and Insular Policy does not express an opinion within the above mentioned time limit, it shall be regarded that the above Ministry has expressed a positive opinion.

- 4.2. Social security

The general principle of negative model described previously is mainly applied in this area of law.

- 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?

In the Greek legal system an administrative authority has discretionary power in cases where the rules that determine its competence do not specify exactly the action to be taken but the administrative authority has the freedom to choose among several alternative actions. This freedom is usually indicated by the use of the words "may", "allowed", "have the right" in the particular legal provision.

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*)?





Yes, the Greek legal system distinguishes between discretion and margin of appreciation in the interpretation of undefined legal concepts. The concept of discretion has already been explained in the answer to the first question. The margin of appreciation is recognized in cases where the authorities specify undefined legal concepts on the basis of common experience.

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.

#### **Discretion**

An authority has discretionary power in cases where it is allowed but not obliged to issue a decision, or is obliged to issue a decision but will determine the exact time of its issuance, or may choose among several alternative actions to be taken that are provided by the legal provisions.

Moreover, in cases where the administrative authority issues regulatory administrative acts it is recognized that the authority has discretionary power. In this case, the authority may adopt provisions that serve the public interest in a better way.

A typical example of discretionary power is recognized in cases where the competent authority selects the Chief of the Army or the Chief of the Police among candidates who have the same qualifications.

#### **Margin of appreciation**

It is recognized that an authority has margin of appreciation in cases where it has a mandatory duty to specify an undefined legal concept, such as the concept of nuisance that is caused by an industry or the concept of public interest. In this case the court shall assess whether or not the industry is recognized as a pollution generating industry or it shall assess whether or not specific facts constitute a reason related to public interest.

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 case of discretionary power judicial control is limited. In this case the court shall examine whether the authority has exceeded its limits provided by the law. In particular, the limits within which the authority shall act are defined by general principles of constitutional value, such as the principle of equality, the principle of proportionality, the principle of the protection of legitimate expectations and the right to good administration. The court shall examine if the authority has discretionary power or mandatory duty, then it shall examine if the authority exercised its discretionary power and if there was an incorrect use of discretion or if the authority has exceeded the limits





of discretion. In general the court examines the reasoning of the administrative act. If the court establishes that there was an incorrect use of discretion, this is a ground for annulment of the decision. If a petition to issue a decision was submitted before an authority and the competent authority did not issue such decision, the court cannot itself specify the content of the decision, because the content of the decision must be determined by the authority in the exercise of its discretion.

If the authority has margin of appreciation judicial control is wider. In this case the court having taken into account the common experience shall examine whether or not the authority has made a correct assessment on the specification of an undefined legal concept. If the assessment is found to be incorrect then the court shall make its own assessment.

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?

Yes, judicial review is affected by the fact that discretionary power used by the authority has resulted in a restriction of human rights. In such cases, the courts are usually more rigorous in their assessment of the principle of proportionality. If the restriction is found to be not proportionate, the court annuls the unfavorable decision that restricts the human rights according to the Constitution, the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union where applicable. In taking this approach, the courts seek to assess proportionality with the same scrutiny as the European Court of Human Rights and the Court of Justice of the European Union.

