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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

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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 X
   - No
   - Only in certain areas of law

   Please specify your answer briefly, if necessary

   In the Italian legal system, the article 2 of Administrative Procedure Law (n. 241 of 1990) provides that each proceeding must be concluded within a predefined deadline.
   Consistently, the aforementioned article 2 provides, as supplementary rule, the 30 days as general term for the conclusion of all proceedings where it is not provided for by legislation or regulatory acts.
   Specific laws and even the article 2 of Administrative Procedure Law 241 of 1990 provide for cases in which the term for the conclusion of the procedure can be more than 30 days.

2. Where are the administrative time limits set:

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

   Please specify your answer briefly, if necessary

   In the Italian legal system, the Administrative Procedure Law n. 241 of 1990 provides for general rules on the administrative procedure and regulates the various phases from the start, to the preliminary investigation up to the decision.
   The aforementioned article 2 provides for terms not exceeding ninety days different from the general one (30 days) within which the procedures of competence of the state administrations and national public bodies must be concluded.
   If terms exceeding ninety are necessary for the conclusion of the proceedings, due to the administrative organization, nature of public interests and the complexity of the proceeding, the state administrations and national public bodies adopt decrees to

establish them on the proposal of the Ministers for public function and for simplification of the legislation.
The terms provided therein cannot in any case exceed one hundred and eighty days, with the exception of the procedures for Italian citizenship and those relating to immigration.

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

   Article 97 of the Italian Constitution contains the implicit provision of the principle of the "reasonable time" of the administrative procedure, operating in the legal system as a living right, for the cases of ablative, sanctioning and/or control procedures aimed at the adoption of withdrawal acts.
   It is evident that in all cases in which the administration has the power to unilaterally affect the legal sphere of the private with the ablation or weakening of constitutionally guaranteed rights or acquired advantageous positions, the procedure concerned tends to become as afflictive as the criminal process.
   The case law of the Council of State, sensitive to the protections provided by the European and constitutional law in the matter of fundamental rights, has extended to the aforementioned type of administrative proceedings the guarantees of due process, ruled by article 111 of Italian Constitution.
   The principle of the “reasonable time” of administrative proceedings is a corollary of the so-called "principle of legal certainty".

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

   As mentioned in the answer to question No.2, the general administrative time limit in which administrative decisions are made is 30 days.

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

   As mentioned in the answer to question No. 1 and 2, specific laws and even the article 2 of Administrative Procedure Law No. 241 of 1990 provide for cases in which the term for the conclusion of the procedure can be more than 30 days.

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

   According to article 2, paragraph 6, of the aforementioned Administrative Procedure Law, the terms of the proceeding can be suspended, only once and for a period not exceeding thirty days, to get information or certifications relating to facts, conditions or qualities not attested in documents already in possession of the administration or to acquire technical assessments of bodies or entities.

In Administrative Procedure Law, there is no general provision that allows the administration to extend the time limit set for the conclusion of the proceeding.
The only general exceptions to extend the time limit are the suspension of time limit (the term begins to run taking into account, the days already elapsed) or his interruption (the term resumes running entirely).
The case-law has admitted the appeal against the acts by which the authority requests unnecessary formalities or issues decisions that circumvent the content of the request or otherwise suspend the procedure without a deadline.
In these cases, the claimant can use the special rite of silence (articles 31 and 117 Code of Administrative Procedure) because the decision of the administration is only formal and does not accept or reject the request of the private, determining a state of uncertainty that could represent a real lack of protection

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

   Please specify your answer briefly, if necessary

   In Italian legal system, the infringement of the time limit for administrative proceedings does not determine the illegality of the decision, unless the time limit is peremptory.
   The delay in the adoption of the final decision is not a defect of the act, but it is a requirement that can determine, along with other conditions, a liability of the administration and the consequent compensation of damages.
   .

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

   - Rather yes X
   - 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 X
   - Deficiencies at national policy level X
   - Other

Please specify your answer briefly

Situations where an authority does not take administrative decisions or perform administrative actions within the time limit set by law are usually related:
- To lack of resources within the authority (e.g. lack of staff);
- To the improper organisation of administrative activities;
- To time limit provided for which is not appropriate to the complexity of the proceeding (for example, if many advices need to be obtained).

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

Article 2 bis of Administrative Procedure Law no. 241 of 1990 provides for the consequences of the delay of the administration in concluding proceedings.
The mentioned article foresees the obligation of compensation for damages caused by the intentional or negligent failure to comply with the time limit for the conclusion of proceedings.
According article 2, paragraph 9, of the Administrative Procedure Law, failure or delay to issue the final decision is element of individual performance assessment and disciplinary and administrative-accounting responsibility of the defaulting official.
Infringement of this term has criminal consequences only in the presence of a criminal offence.
Article 328 of Criminal Code provided for "the public official or the person responsible for a public service who, within 30 days of the request, does not perform the act of his office and does not answer to explain the reasons for the delay, is punished with imprisonment up to a year or with a fine up to 1,032 euros. The request must be made in writing and the thirty-day period starts from the receipt of the request".
To perfect the crime, it is sufficient that, after thirty days from a specific request, the public officer is not able to complete the act of his office and explain the reasons for the delay, regardless of a real damage.

Administrative silence

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

According Article 2, paragraphs 1 and 5 of Administrative Procedure Law No. 241 of 1990, the silence of the public administration is a misbehaviour of the administration who is obliged to conclude the proceeding by adopting a final decision within time limit.
The Italian legal system distinguishes different kind of silence:
- Silence equivalent to a positive decision;
- Silence equivalent to a negative decision;
- Non-compliance silence when the infringement of time limit does not assume any meaning.

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

Yes, the Italian legal system provides for a negative model but it is a residual figure
The law has expressly to provide for that administrative silence shall be recognised as a refusal of a claim.
For example:

- Article 25, paragraph 4, of the Administrative Procedure Law provides that a request for access to administrative documents is deemed to be refused after 30 days;

- Article 36 of the Building Act No. 380 of 2001 states that an application for a regularisation permit for an unauthorised building is deemed to be refused if a favourable decision is not taken within 60 days.

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

   The Italian legal system provides for a positive model of administrative silence as a rule. Article 20 of Administrative Procedure Law no. 241 of 1990 provides that silence of public administration be deemed to constitute assent for all proceedings initiated by a request for an administrative act.

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

   See answer n. 3.

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
     X
   - 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)?

Where administrative silence is recognised as a deemed refusal of a claim, the Italian legal system does not provide for any additional action for the applicant to challenge the refusal.

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.

   In the case of a "fictitious refusal" resulting from an administrative silence, the Italian Code of Administrative Procedure does not provide for any special rules. The time limit, the Court to go before and the type of review are the same as for an explicit refusal.
   The applicant will not be able to complain about the unlawfulness of the fictitious refusal for lack of reasoning.

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

   See answer no. 3.

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 X

   Please specify your answer briefly

   A "Fictitious refusal" is equivalent to a refusal decision.
   If the Court has found the “fictitious refusal” to be unjustified, it shall annul it as it does in the case of a negative decision. In this case the Court explains to the administrative authority the principles to be considered for issuing a new decision, without setting a specific deadline for its adoption.
   In principle, the annulment of the “fictitious refusal” gives rise to an obligation for the administration to issue a new decision no longer containing errors (known as conforming effect).
   In general, the judgment of the Court cannot replace the decision of the administrative authority, with the sole exception of a mandatory decision (where a provision of applicable law requires that a specific content decision be issued and the authority is no longer required to carry out considerations of usefulness).

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?

   In the Italian legal system, a special rite for the enforcement of judgments is provided for if the administration does not comply spontaneously or does not give exact execution to the judgment (article 114 of Administrative Procedure Law).
   The claimant may submit a complaint concerning the improper or non-compliant execution of the judgment and it shall be examined by the court, which issued the judgment, or by the Council of State if the judgment has been amended on appeal (article 113 of Administrative Procedure Law).
   In deciding the execution, a court may:
   a) Order compliance, giving prescriptions, including by determining the content of the administrative act or by issuing it instead of the administration;
   b) Annul the decision taken in breach of the res judicata;
   c) In the event of compliance with judgments, which have not been res judicata or other measures (e.g. interim measures), determine the modalities of enforcement, considering the acts issued in violation of the decision to be ineffective;
   d) Appoint an *ad acta* commissioner;
   e) Impose a pecuniary penalty due for any subsequent infringement or non-compliance, or for any delay in the execution of the res judicata (article 114 of Administrative Procedure Law).

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 X
   - Never, because only the authority can make a decision
   - Other

   See the answers to question No.5 and 6.

The positive model

1. What is the main purpose of the positive model in your legal system?

   - To simplify certain administrative procedures X
   - To protect the rights of individuals in case an authority fails to comply with the administrative time limits X

   Please specify your answer briefly

In the Italian legal system the positive model of administrative silence is a tool to simplify administrative procedures and to ensure legal certainty, fundamental in procedures involving economic interests linked to investments.
Article 20 of Administrative Procedure Law no. 241 of 1990 provides that silence of public administration be deemed to constitute assent for all proceedings initiated by a request for an administrative act
According to the aforementioned Article 20, in proceedings initiated by a request for an administrative act, if within 30 days the administration does not convene a conference of services or does not refuse the act, silence be deemed constitute assent.
Another tool of simplification is the silent consent between public administrations provided for article 17 bis of Administrative Procedure Law no. 241 of 1990, defined "horizontal silence".

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

   In the Italian legal system, some exceptions to the positive model of silence consent are provided for the legislator to safeguard interests for which a formal procedure is required.
   These are cases provided for in Article 20, paragraph 4 of Law no. 241of 1990, relating to procedures aimed at the protection of cultural heritage, of the environment or decisions issued by national defence, public security, immigration, health and public safety administrations.
   In addition, the cases in which European legislation requires the issue of formal administrative decision and those in which the law qualifies the silence of the administration as a refusal of the claim are excluded from the positive model of silence.

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

   According to Administrative Procedure Law, authorisation is deemed to have been granted with silence consent if the authority does not take its explicit positive or negative decision for the applicant.
   If the negative decision is issued after the expiry of the time limit for silence, the administration must first annul the authorization tacitly formed.

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.

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

Administrative Procedure Code does not provide specific remedies available to third parties affected by the "fictitious decision". However, if a "fictitious decision" affects the legal rights or interests of a third party, that party has the right to complain before an administrative Court against the decision using ordinary remedies.

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?

   In the Italian legal system, there is no specific remedies to annul a fictitious decision just if it is related to grant a claim.
   It is always possible, in the presence of a set of conditions and in the balancing of all the interests involved, for the public administration to annul ex officio its expressed or tacit decisions for defects of legitimacy or for opportunity reasons.

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 requirement of the Directive the Italian legislator has amended the certified report to initiate activities that exclude the need to wait for an enabling decision with the ex post exercise of the public authorities, to balance the immediate start-up of activity and the powers of control and inhibitory intervention of the public administration.
   According to the Directive 2006/123/EC was provided a single point contact, through which service providers can carry out, by electronic means, all the formalities necessary for access to and operation of an economic activity and obtain information and assistance (Art. 6-8,Directive 2006/123/EC).

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?

   The Italian legal system distinguishes different types of silence and regulates the hypothesis in which the violation of the time limits does not have any meaning.
   When a person requests authorisation and the administration responsible does not issue a final decision within the time limits set by law, the Code of Administrative Procedure provides specific remedies available to make a complaint before an administrative court against silence.
   According to Articles 31 and 117 of Administrative Procedure Code, the applicant may appeal against the silence, which does not mean a fictitious positive or negative decision.

The object of the special rite is the inaction of the administration, which is required to issue a decision at the request of the party.
The Court orders the administration to provide within the time limit not exceeding thirty days and has the power to appoint a commissioner ad acta to replace the administration that does not comply with the order to issue the final decision.
According to Article 31, Paragraph 3, of Administrative Procedure Code the court may rule on the merits of the claim only when it is a mandatory decision or when the authority is no longer required to carry out considerations of usefulness or there is no need to carry out investigations.

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?

Administrative Procedure Law no. 241 of 1990 provides for compensation for unjust damage resulting from the unlawful exercise or lack of activity:

- if the authority issues a positive decision requested by the party after the time limit set by law;
- if the delay or failure to issue a negative decision causes damage.

In the plenary Assembly's ruling no. 7 of 2021, the Council of State has affirmed that the responsibility of the administration for inertia or delay due to illegitimacy of the provision or to intentional or culpable non-compliance with the time limit set by law leads to non-contractual liability and must be shown to be an infringement of a legal interest.

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?

   As already mentioned the Italian legal system distinguishes different kind of silence:
   - Silence equivalent to a positive decision;
   - Silence equivalent to a negative decision;
   - Non-compliance silence when the infringement of time limit does not assume any meaning.

   Each type of silence has its own procedural remedies and therefore if the remedy provided for a different type of silence is used the Court may consider the appeal unfounded or inapplicable.
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.

   In Italy, there is a lot of case law on beach concessions.

The main problems of the Italian legal system with the European directive concern:
- The procedures for exercising administrative powers;
- The competition in choosing the concession holder;
- The end of the concession;
- The quality and cost of tourist services,
- The tools of public control;
- The economic development;
- The free use of beaches.

Other problems are related to environmental protection and balance with other interests on maritime property.
The CJUE, on 14 July 2016, has declared the illegitimacy of the automatic delay of the beach concessions for tourist-purposes in absence of any competition between candidates if they are of certain cross-border interest.

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, Italy 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

In Italian legal system, the positive model of silence is the general rule.
Some exceptions to the positive model of silence consent are provided for legislator to safeguard specific interests for which a formal and explicit procedure is required.
These are cases provided for in Article 20, paragraph 4 of Law no. 241 of 1990, relating to procedures aimed at the protection of cultural heritage, of the environment or decisions issued by national defence, public security, immigration, health and public safety administrations.
In addition, the cases in which European legislation requires the issue of formal administrative decision and those in which the law qualifies the silence of the administration as a refusal of the claim are excluded from the positive model of silence.

4.2. Social security

In the Italian legal system, social security is a matter for the ordinary courts and not for the administrative courts. However, there are exceptional cases of silence assent (e.g. automatic registration of public employees to the retirement funds, provided for by Article 1, paragraph 157, of Law No. 205/2017).

The general rule is the negative model: the request is considered refused once the deadline has expired (e.g. any administrative request to the National Social Security Institute).
The health emergency and the economic and social crisis, including the implementation of the recovery plan, have led the legislator to intervene on the activities of the public administration, to make it more efficient and effective and to simplify relations with citizens and businesses.
Decree-Law No. 76 of 2020 and Decree-Law No. 77 of 2021 amended Administrative Procedure Law no.241 of 1990 regarding:
- the compliance with procedural time limits and measures to accellerate some procedures;
- the discipline of substitute power and silence-assent;
- the notice of refusal and the annulment of the decision;
- the self-certification and strengthening the use of digital tools.

4.3. Freedom of information

Article 25, paragraph 4, of the Administrative Procedure Law no. 241 of 1990 provides that a request for access to administrative documents is deemed to be refused after 30 days.
Legislative Decree No. 33 of 2013 provided for two types of access for each citizen:
- simple civic access: any citizen can ask the Administration to fulfil the obligation of "advertising"(article 5, paragraph 1);
- general civic access: it gives the right to know acts or documents held by the Administration, other than those subject to online publication obligations (Article 5, paragraph 2).
Upon receipt of the application, the administration has 30 days to issue a reasoned refusal or an order for acceptance. After 30 days access is denied.
In the event of an explicit, tacit or partial refusal, the applicant may submit a request for a review to the responsible for corruption and transparency.
The applicant may challenge the refusal before the Administrative Court in accordance with the special procedure provided for in Article 116 of the Code of Administrative Procedure or, in the case of regional administrations or local authorities, bring the matter before the local ombudsman. In the latter case, if the Ombudsman does not confirm the refusal or postponement within 30 days of receiving the Ombudsman's communication, access is deemed to be granted.

Administrative discretionary power

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

In the Italian legal system, decisions are discretionary where the decision maker has the power to make a choice about whether to act or not act, to approve or not approve, or to approve with conditions; he/she has to take into account all relevant information.
In the Italian legal system, discretion is a tool to guarantee the legality of administrative action: it is "a power that varies in a positively limited free margin".

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*)?

   The Italian legal system distinguishes between discretion and margin of appreciation.
   The margin of appreciation is the margin of discretion when the legislator grants the authority the freedom to decide whether an element of a legal rule containing an indefinite legal concept is satisfied. The authority has no discretion to decide, but only to fill the concept of content.
   The strength of fundamental rights and the primacy of European Union law has reduced the discretionary because of the transition from formal to substantial legality. By virtue of this change, driven by the economic approach inferred from the European Treaties, the pivot of the action of public power in market and economy has shifted from the formal regularity of acts to the achievement of efficiency and result.
   In our legal system, the discretionary power is closely linked to proportionality: the administrative power must be adequate and necessary as regards the means employed, to pursue the public objective established by law. The principle of proportionality prohibits the use of a steam hammer to break a nut if a nutcracker would.

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.
   See answer no. 2
   To determine whether the authority has discretion in a particular case, it is necessary to analyse the text of the legal provision.
   The discretionary power of the administration is distinguished in the identification and analysis of facts and interests and in the moment when the authority issues the most convenient solution to pursue public interest.
   The main objects on which the discretionary choice is concerned are an - the choice whether or not to issue a decision; quid - the content of the decision; *quomodo* - the modalities and the form of the decision; when - the time to issue the decision.
   According to case – law of the Council of State, in the planning of the territory the administration (generally the Municipality) has a wide discretionary power. The burden of the reasoning for the issuing of a plan is general and is met by indicating criteria for the choices made, without the need for a specific motivation of the destination of each individual areas, except in the case of an impact on legitimate expectations.
   These choices obviously remain censurable for defects of disproportion, illogicality, unreasonability.
   Regarding the concession for a lottery dealer, the Administration of Customs and Monopolies may order the revocation if at its discretion the conditions for the loss of trust with the receiver exist
   In public competition, the Commission has an indisputable margin of assessment, with the exception of the profiles of illogicality and manifest and intrinsic irrationality.
   The Council of State stated in the judgments on examinations and competitions:

I) The control of legality is limited to the defect due to manifest illogicality, with reference to the assumptions of error or unreasonableness found *ab externo* and *ictu oculi* from the mere reading of the acts;
II) The numerical score counts as a summary.

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?

In Italian legal system, there is a lot of case law on the extent of judicial review of discretion power.
The excess of power is the most important figure among the defects of legitimacy of the authoritative activity of the administration: it is the misuse of power by the public administration or the deviation of power from the principles of equity, good faith or diligence.
This institute has played and plays an essential role in the history of administrative law. Thanks to its elaboration by case law that the judge can review the authoritative activity of the Administration.
The transition from a formal check on the existence of a reasoning to correctness and logic of decision constitutes a step towards a more strong review on administrative discretion.
The case law has focused on the decision-making process and the procedure, and the administrative Court verifies the coherence and fullness of investigation carried out by the administration.
A fundamental step in evolution of the control on the discretionary power is related to the technical discretion, in which the choice of the administration is grounded on technical rules. Initially, the judge exercised a weak review being able to annul acts based on evidently unreliable technical assessments. For the time being, the administrative judge's review is full and exclusive, although it can never substitute the choice of administration.

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

See answer no. 1 and 2

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?

If the discretionary power used by the authority has resulted in a restriction of human rights, the court is more rigorous in their assessment of the principle of proportionality even if it is never possible to substitute its own assessment for the assessment of the authority.
The court annuls the unfavourable decision that restricts the human right using the principle of proportionality.
The principles of adequacy , necessity and tolerability of the discretionary power are parameters to allow the court to carry out a more penetrating review of the legality of

the administrative activity, also taking into account the impact of the exercise of power on beneficiaries.

By the ruling n. 06050 of 2011, the Council of State accepted the appeal lodged by the European Roma Rights Center and annulled the decree of declaration of the state of emergency and the related ordinances of the Presidency of the Council of Ministers, in the part in which they provided and authorized the identification of all the people present in the nomad camps, regardless of age and personal condition, through photos and fingerprints, as opposed to the fundamental freedom of movement guaranteed by art. 16 Cost. and with the fundamental right to work.