



**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***

**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

2. Where are the administrative time limits set:

Other: code of civil procedure

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

Legal system

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

Two months. Article 469A(2) of chapter 12 Laws of Malta

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

No

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

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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?





- Other: yes unless the addressee has already taken legal action.
8. Is failing to comply with established administrative time limits a common problem in your country?
- No
9. What are the main reasons for failing to comply with administrative time limits in your country?
- Due to deficiencies in the administration of the authorities
10. Are there any penalties, disciplinary or criminal liability for authorities or their staff with regards to not complying with the time limits?

No

#### **Administrative silence**

1. Does your national legislation define "administrative silence" as a legal concept?
- Yes. If the administration does not pronounce itself on an issue within two months it is deemed to be a refusal of a request.
2. Does your legal system provide for a negative model of administrative silence (deemed refusal of a claim)?
- Yes. Article 469A of the Code of Organisation and Civil Procedure.
3. Does your legal system provide for a positive model of administrative silence (a claim not refused in due time is deemed granted)?
- No.
4. Which regulatory model of administrative silence is more typical for your legal system?
- Same as 2 above.

#### **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





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)?

The applicant has to provide proof of silence.

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)?

There is a time limit of six months to bring forward an action based on a 'fictitious refusal'. Failure to do so time bars the action.

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

There is an appeal from a First Court judgment.

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 within a certain time limit

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?

Contempt of court proceedings, warrant *in factum/in procintu*

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

- Never, because only the authority can make a decision

#### **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?

Maybe a human rights can in particular circumstances.





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.

#### 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?

Yes but in rare occasions.

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

#### Administrative discretionary power

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

*Ultra vires*, article 469A of the Code of Organisation and Civil Procedure

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,.

Test of reasonableness





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?

No

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, Article 469A(1)(a). administrative act is null if it breaches the Constitution.

