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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
   - No
   - Only in certain areas of law

   Please specify your answer briefly, if necessary

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:

Time limits are set in article 35 § 3 of Act of 14 June 1960 Code of Administrative Procedure (Law Journal 2022 item 2000 consolidated text) and in some specific legal acts as *lex specialis*.

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 Polish Act of 14 June 1960 Code of Administrative Procedure (Law Journal 2022 item 2000 consolidated text) – c.a.p., there is a concept of dealing with cases “without unnecessary delay” (article 12 § 2, article 35 § 1). It is not defined in the legal act but is connected with a general principle [of administrative procedure] of simplicity and speed of proceedings: The authority should act in a detailed and prompt manner, applying the simplest possible measures to dispose of the manner. Matters in which it is not necessary to collect evidence, information or explanations, shall be disposed of immediately.
In our case law, this concept is usually defined as follows:
“Acting "without undue delay", as referred to in Article 35 § 3 c.a.p., should be understood as a prohibition of unreasonable refraining from dealing with the case and an obligation to conduct the proceedings without unnecessary inhibition and protraction in action.” (for example: Judgment of the Supreme Administrative Court of 21.02.2020, I OSK 1105/19, http://orzeczenia.nsa.gov.pl/doc/D64AF41F6D).

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

The general rule states that public administration bodies shall deal with cases without unnecessary delay Iimmediately)
The Code of Administrative Procedure makes the time limit for dealing with a case dependent on the complexity of the case:
Any case requiring an explanatory proceedings should be dealt no later than within a month from the commencement of proceedings and more complicated cases within two months from the commencement of proceedings. Appeals cases should be dealt with within a month of the appeal being received (article 35 § 3 c.a.p.).
Higher bodies may define types of cases that are to be dealt with within a deadline shorter than those set out in § 3 (article 35 § 4 c.a.p.).
Other deadlines for issuing decisions may also result from specific laws, such as in the Act of 12 December 2013 on foreigners, in which the deadline for issuing a temporary residence and work permit is 60 days (article 112a of this act).
In practice, the time taken to decide a case is often longer because: deadlines set down by law for particular acts, periods during which proceedings are suspended, delays caused by one of the parties or factors that are beyond the control of the body shall not be counted in calculating the deadlines in the preceding provisions (article 35 § 5 c.a.p.).

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

It is possible, since the time limits set for dealing with a case have a procedural character what means that their lapse does not deprive the public administration body of the ability to rule on the case.
Article 36 § 1 c.a.p. states that the public administration body shall inform the parties of any failure to deal with a case within the deadline laid down by Article 35, setting out the reasons for the delay and setting a new deadline for dealing with the case.
The same obligation shall also apply to the public administration body in the event of a delay caused by factors that are beyond the control of the body (article 36 § 2).
The obligation to inform a party of a delay is therefore independent of whether the delay occurred through the fault of the authority or not.

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

The decision to extend the time limit is made in the form of an order of an authority. This order cannot be appealed, but the party may file a notice of reminder to the authority.
article 37 c.a.p.: A party is entitled to lodge a reminder if:
1) the matter has not been dealt with within the time limit laid down in Article 35 or in the special provisions or within the time limit indicated pursuant to Article 36(1) (failure to act);
2) the proceedings are being conducted for a longer period than is necessary to resolve the case (protraction).

The lodging of a reminder is necessary in order to be able to successfully complain to the administrative court about the authority's inaction (failure to act) or the protracted conduct of the proceedings.

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

See the answer to question 5.

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

The main problem is the large number of applications on certain administrative matters to administrative bodies that have limited capacity.

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

Regarding the staff liability:

Article 38 c.a.p. stipulates that an employee of a public administration body shall be subject to disciplinary or disciplinary liability or any other liability provided by law if, for unjustified reasons, he/she has not dealt with a case in time or has conducted the proceedings for longer than was necessary to deal with the case. His/her liability arises from the provisions of the particular acts such as *inter alia*:

- Act of 20 January 2011 on the financial liability of public officials for gross violations of the law (Law Journal 2016 item 1169 consolidated text);
- The Act of 16 September 1982 on Government Officers (Law Journal 2022 item 2290 consolidated text);

- The Act of 21 November 2008 on local government employees (Law Journal 2022 item 530 consolidated text)

Regarding a public authority's liability:

The administrative court, taking into account a complaint about the inaction of an authority or the protracted conduct of proceedings, may, *ex officio* or at the request of a party, order a fine or a sum of money in favour of a party (article 149 § 2 c.a.p.). The sum of money in favour of a party is a kind of compensation. The fine constitutes income to the public treasury. The main purpose of the above financial sanctions is to discipline the authority for the future.

Administrative silence

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

Undoubtedly, administrative silence has in the Polish legal order relevance. It is not defined directly (within a concrete legal regulation) but is present in the Code of administrative proceedings as general rules and in particular statutes concerning building or water law. Administrative silence is understood as a counterpart of an administrative decision. It is combined with the inactivity of public administration authority within a defined period of time after lodging a motion by a petitioner who applies for giving some permission. If a public administration authority does not react to that motion by bringing an objection or issuing an administrative decision, it is understood as an approval of the motion, that evokes positive effects in the area of substantive law. In the Polish legal order "administrative silence" has a positive meaning. Adoption of this instrument can give an applicant positive rights to perform factual action.

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

Administrative silence provides a positive effect that is combined with a lodged motion and inactivity of the public administration body that is in the substantive law understood as an approval of the motion.

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 concept of administrative silence in Poland is combined with positive effects combined with the lack of reaction of the public administrative body in a prescribed time period on the motion lodged by a petitioner. A lack of reaction is understood as approval for the requested right.

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

Definitely, the positive model is for the Polish legal order typical.

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

In the Polish legal order, negative silence is not known.

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)?

Within the Polish regulation, an objection or an order issued by the public administration body means, that administrative silence is not being present. This reaction means, that traditional administrative proceedings is being initiated. The motion is not rejected but continued in classical administrative proceedings with the administrative decision at the end of it.

The general rules of administrative silence regulated in the Code of administrative procedure offer a possibility for a petitioner to receive proof of the authority accepting his application being silent for a prescribed time period. In that case, the authority is obliged to give a petitioner a certificate. Otherwise, the authority gives an order rejecting the effect. A petitioner can appellate against this order to the authority higher instance and eventually to the administrative judiciary.

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.

It is not possible to appeal against a “fictitious refusal” in an administrative or court-administrative direction. The only exception is the extraordinary administrative measures like the resumption of the proceedings or a claim for making the “silent resolution” invalid. In other words, a petitioner or other people having legal interests can apply against the “silent resolution” presenting extraordinary legal or factual circumstances. Then, both the administrative and court-administrative are opened.

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

See the previous answer. Only the “positive administrative silence” can be appealed in extraordinary administrative measures.

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

The "fictitious refusal" is not appealable within the administrative and court-administrative proceedings.

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 possible to lodge a claim against the inactivity of public administration in this case. If an authority issued a decision not coherent with the court`s instructions, it is possible to appeal against this decision, too. The Polish system of court-administrative adjudication has a cassation nature. Only in extraordinary circumstances is possible to decide by the court on the matter itself. The core of the case (both legal and factual) has to be fully clear and the authority has to be inactive for issuing a decision itself.

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

Please specify your answer briefly

The institution of tacit settlement of a case is aimed at speeding up and simplifying administrative proceedings, as well as streamlining and reducing the costs of administrative functioning. It is an alternative to the classic model of ending administrative proceedings with a

decision and is one of the issues regulated by Directive 2006/123/EC of the European Parliament and of the Council of December 12, 2006.

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

The fundamental limitation of the use of tacit settlement of a case results from the fact that this solution can be used only when a specific act so provides. In practice, this rarely happens, and therefore this solution is extremely rarely used. In other words, it is the legislator who arbitrarily indicates in which areas a case can be settled tacitly.

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

The matter shall be considered settled tacitly, in a way that fully takes into account the request of the party, if within one month from the date of delivery of the party's request to the competent public administration authority or another period specified in a specific provision, this authority:
1) fails to issue a decision or order concluding the proceedings in the case (silent termination of the proceedings), or
2) does not raise an objection by way of a decision (tacit consent).

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?

Silent handling of the case shall be carried out on the day following the day on which the deadline for issuing a decision or decision terminating the proceedings in the case or for filing an objection expires. If the authority, before the expiration of the time limit for handling the case, notifies the party that there is no objection, the tacit handling of the case shall take place on the day on which this notification is served. At the request of a party, the public administration body, by order, shall issue a certificate of tacit settlement of the case.

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. If the decision made in the form of a silent settlement of the case turns out to be defective, then in such a case extraordinary modes of appeal may be applied. Thus, if the prerequisites indicated in the regulations are met, it is possible to annul, change or declare invalid the decision made in the form of silent settlement. At the same time, it should be emphasized that this kind of revision of the final decision of the administrative body is of an exceptional nature.

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?

As mentioned in the previous answer, if a 'fictitious decision' to grant a claim violates a person's rights or legal interest, he or she has the right to challenge such a decision by means of extraordinary remedies.

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 in the administrative practice of the responsible authorities, the sectoral ministries had assessed in which areas and which services the positive model could be applied, in particular whether the application is not contrary to the public interest. To the moment, the positive model has been implemented in around 20 services - e.g. frequency reservation in telecommunications law, entry in the register of a student sports club. The potential implementation of the positive model is also assessed in the context of actual amendments to national legislation.

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 subject of a complaint to the administrative court may be the inaction of the administration and the lengthy conduct of administrative proceedings.

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 under the general rules of civil law.

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 a case-law in Poland.

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.

Yes, we have a line of jurisprudence on the interpretation of the (repealed in 2018) provision of Act of 2 July 2004 on freedom of economic activity, which implemented article 13(4) of the Directive 2006/123/EC.
Article 11(9) of the freedom of economic activity cct read as follows:
(1) The competent authority is obliged to deal with the affairs of entrepreneurs without undue delay.

(...)
9. If an authority fails to deal with an application within the deadline, it is deemed to have given a decision in accordance with the trader's application, unless provisions of separate laws due to an overriding public interest state otherwise.
In cases before the Supreme Administrative Court, operators applied for television broadcasting licences. Citing the general provision – article 11 (9) of the Freedom of Economic Activity Act, they considered that the concession had been granted to them by tacit consent.
The Supreme Administrative Court ruled in these cases that it therefore follows from the wording of the Directive on services in the internal market and the justification of the draft Act on the provision of services in the territory of the Republic of Poland that, in view of the intended systemic objectives of the national legislator, the material scope of Article 11(9) of the Act on freedom of economic activity should be defined taking into account the exclusions and limitations contained in Directive 2006/123/EC. The Court therefore held that the provision of Article 11(9) of the cited Act was not applicable in the case for granting a concession for the distribution of television programmes, in the part concerning the concession fee.
(e.g. in the judgment of 222 May 2019, ref. II GSK 1616/19,
http://orzeczenia.nsa.gov.pl/doc/F0AF961E7E and cited there cases)

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.

Polish administrative courts have not submitted such a question to the CJEU for a preliminary ruling.

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

4.1. Construction, spatial development planning and environmental protection

In these area of law, only the positive model of administrative silence applies.
In terms of construction law, the tacit consent of the authority refers to the notification of construction works. Construction works may commence if, within 21 days of the date of delivery of the notification, the competent the competent authority, by way of a decision, does not raise an objection. Similarly, no objection from the authority within 14 days from the date of delivery of the notification of completion of construction of a building object, for the construction of which requires a construction permit, results in the applicant being able to start using the object. The same principle applies to a change of use of a building object (30 days for the authority). These are examples of so-called active administrative silence.
The Polish legislator has also provided for the construction of "tacit cooperation" of the authorities when issuing decisions in the framework of opinions and agreements on the establishment of spatial development conditions, in law related to the natural environment.

4.2. Social security

There are no specific regulations on administrative silence in this area of law.

4.3. Freedom of information

There are no specific regulations on administrative silence in this area of law.

Administrative discretionary power

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

In Polish legal system the administrative discretionary power is regarded as an institution appearing in substantive administrative law and administrative procedure, enabling relatively flexible operation of a public administration body in certain cases determined by law.
Firstly, it may consist in the fact that with the actual state of affairs, the administrative authority may resolve the case in various manners, and each settlement will be legal. Secondly, in some situations, the administrative authority may behave in a certain way, but the factual state in which the action may be carried out is not indicated (the body may take action at the moment it deems it appropriate). Finally, the justification of the body's operation in the description of the facts may be expressed in legal provisions in a vague, indeterminate manner, by using undefined legal concepts (e.g. public interest).
Discretionary power occurs when a legal norm does not determine the legal consequences in an unambiguous manner, but explicitly leaves such a choice to the administrative authority.
It should be emphasized that the public administration body, using the discretionary power, does not have full freedom and discretion in deciding which course of action to take. Every action of public administration must take place on the basis and within the limits of the law. This means that the discretionary power in any case must have a specific legal basis and result from applicable legal regulations (legal norms / provisions).
The scope of discretionary power is quite considerable, although sometimes limited by so-called directives of choice of consequences, through which the legislator gives the administrative body guidance how the choice is to be made.

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 Polish legal system distinguishes between discretion and margin of appreciation. The concept of discretion has been explained in the answer to the first question. The margin of appreciation is related to the part of the legal circumstances (conditions) of the legal provision (preconditions for the application of the legal norm).

In case of the margin of appreciation (scope of appraisal), three situations of the conduct of administrative body are indicated:
1) a provision of law may prescribe administrative authority to act in a certain way in a particular case, i.e. may determine in advance the content of that conduct;
2) an administrative authority must, in a certain sphere, act with certain rigour, e.g. in a certain form of action , however, the legal provision does not determine the very content of this action, e.g. the content of the administrative decision, which means that the legal provision establishes here a certain sphere of discretionary powers for the administration (principle of delegation);

3) an administrative authority is empowered, under conditions laid down by a legal provision, to issue certain legal acts, which must comply with certain conditions as to form and content, but their content is not wholly and predetermined.

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.

When it comes to the margin of appreciation and its use by the legislator in legal provisions by i.a. using the undefined legal concepts, vague terms and general clauses in legislation § 155(1) of the Annex to the Regulation of the Prime Minister on principles of legislative technique explicitly provides:
"where there is a need to ensure flexibility of the text of a normative act, non-explicit terms, general clauses or the setting of lower or upper limits for the margin of discretion may be used".
The general clauses and vague terms are a determinants of discretionary power, and the limit by interpreting them is always the legality of the actions of the public administration.

According to established case-law of the Constitutional Tribunal and the Supreme Administrative Court, the use of general clauses or undefined terms is not tantamount to granting those applying the law absolute and uncontrollable discretion, leading to the arbitrariness of decisions.

In case of discretionary power the legal basis for the discretion is a legal norm, constructed on the basis of a legal provision, conferring on the administrative authority the possibility to choose the legal consequence. The legal provisions formulate the relevant authorisations in different ways. The most common phrases are such as "the authority may", "it is permissible", "it is allowed".

As it comes to the most typical examples of case law where the discretionary power has been recognised, these are cases from the areas of construction law, spatial and planning law, tax law, social security law, administrative fines.

In the case law of administrative courts it is indicated that in case of applying the discretionary power the administration body is obliged to examine the facts in detail and record the results of the evidentiary proceedings in the files and additionally the administrative body is obliged according to Article 7 of the Code of Administrative Proceedings to follow the legitimate interest of the citizen, if it is not prevented by social interest or if it does not go beyond the capacity of the public administration body which results from the powers and means granted to it.

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 and margin of appreciation, judicial control is general limited to the criterion of legality. According to the Law on the system of administrative courts, administrative courts shall administer justice through reviewing the activity of public administration. This review shall be performed from the point of view of conformity with law (legality), unless otherwise provided by statute.

This task can only be performed by administrative courts to a limited extent in relation to discretionary decisions, as the choice of legal consequence / legal outcome itself cannot be subject to judicial review. This is due to the fact that the courts cannot control and question the expediency of the decisions issued. The court is limited in its ability to review discretionary decisions, but at the same time seeks to expand it due to ensure the subjective right to a court to the fullest extent possible, as well as to protect the citizen from unilateral actions by administrative authorities.

It is pointed out in the legal scholarship that the concept of the directives of choice of legal consequences and the concept of legality of purpose (goal), on the one hand, limit the freedom of the authority to decide on the shape of the decision and, at the same time, extend the scope of judicial review exercised by administrative courts over discretionary decisions. Especially, the concept of the legality of the purpose allows for a very wide control of the discretionary decision by the administrative court, and in fact allows for full control of decisions issued within discretionary power of the administration.

The administrative courts sometimes turn also to the criterion of reasonableness as a premise for reviewing discretionary decisions. It is also argued in the legal scholarship that, in administrative discretion cases, it is becoming increasingly common for administrative courts to reach for the principle of proportionality as a criterion for the control of discretionary power.

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?

See the answer above.

In case the discretionary power used by the authority has resulted in a restriction of human rights, in comparison to the review regarding the case of no administrative discretion , the intensity of judicial review might be extended by applying of the criterion of proportionality.