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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?

   - **X** Yes
   - No
   - Only in certain areas of law

   Please specify your answer briefly, if necessary.
   Within the administrative procedure, time limits are periods set by law for a certain action to be taken, by an administrative body or by an interested party, or how a time limit in certain legal situations, and its non-fulfilment may invalidate or alter the procedure or the process result.

2. Where are the administrative time limits set:

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

   Please specify your answer briefly, if necessary
   In the national legal order, the administrative time limits are established in the Code for Administrative Procedure (procedural time limits) and in special legislation (time limits established for special administrative procedures)[1].

3. Is the concept of "reasonable time" for the setting of administrative time limits defined and applied in your legal system or case-law?
   Although the Portuguese law does not define the parameters for the concept of "reasonable time", every citizen has the right to a judicial decision delivered in due time, as provided in the Constitution of the Portuguese Republic[2] (cf. article 20, no. 4); in the Code for the Administrative Procedure (cf. article 59) [3]; and in the Code for Civil

[1] As an example, the reference made to the disciplinary time limits in the General Law for Labour in Public Functions, approved by Law no. 35/2014, of June 20, and last amended by Decree-Law no. 51/2022, of July 26.
[2] The 1976' Constitution of the Portuguese Republic amended by the Constitutional Law no. 1/2005, of August 12.
[3] Approved by Law no. 4/2015, last amended by Law no. 72/2020, November 16.

Procedure (cf. articles 2 and 6) [4], as well as in the Regime for Extra-Contractual Responsibility of the State and other Public Entities[5] (cf. article 12).
The interpretative criteria are defined by the Portuguese case law. Examples of these are the following: the decisions by the Supreme Administrative Court on the 18th of February 2021 (Case no. 02386/16.6BEPRT), and on the 9th of October 2008 (Case 0319/08), and the decision made by the South Administrative Central Court on the 27th of July 2020 (Case 405/12.4BELSB) [6].

4. Describe the general time limits in which administrative decisions are made in your legal system.
In accordance with the Code for the Administrative Procedure, administrative decisions are subject to the following deadlines:
- 10 days, considering the absence of a special provision, the administrative bodies perform certain administrative acts (cf. article 86, no.1);
- 10 days for the interested parties request or carry out any acts or measures they consider necessary (cf. article 86, no. 2);
- 90 days, extendable, for the procedure conclusion (cf. article 128);
- 90 days, extendable, for the constitution of the approval tacit act (cf. article 130).

However, the Administration may set smaller time limits (for acts to be performed by the Administration itself) and/or longer ones (for acts to be performed by private parties, at their request).

5. Is it possible to extend the administrative time limits?
Yes, time limits can be exceeded when there's a particularly complex procedure or when there are difficulties in obtaining evidence. In these situations, the burden of proof regarding the need to extend the deadline for a better decision lies within the Administration.

6. Does a person have the right to complain about the authority's decision to extend the time limit?
Yes, the decision to extend the deadline can be administrative and judicially challenged.

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
   - X Other

Please specify your answer briefly, if necessary

[4] Approved by Law no. 41/2013, June 26, last amended by Law no. 12/2022, June 27.
[5] Approved by Law no. 67/2007, December 31, last amended by Law no. 31/2008, July 17.
[6] Accessible at http://www.dgsi.pt/.

Pursuant with the Code for the Administrative Procedure the unofficial initiative procedures that may lead to issue a decision containing unfavourable effects to the interested parties, expires in the absence of a decision within 120 days' time (see article 128, no. 6).

8. Is failing to comply with established administrative time limits a common problem in your country?
   - X 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
   - X Lack of institutional capacity
   - ○ Deficiencies in the administration of the authorities
   - ○ Deficiencies at national policy level
   - ○ Other

   Please specify your answer briefly
   Portugal approved through the Resolution of the Council of Ministers no. 55/2020 of July 31, the "Strategy for the Innovation and Modernisation of the State and Public Administration 2020-2023", notwithstanding the fact that there are problems still related to the quality of the public services provided by the Administration, mainly related to the lack of human resources management and the growing volume of the existing work.

10. A Are there any penalties, disciplinary or criminal liability for authorities or their staff with regards to not complying with the time limits?
    Yes. Providing that other responsibility legal assumptions are verified, the unjustified deadline breach may determine the establishment of disciplinary responsibility, either by the agent, under the terms of article 128, no. 5 of the Code for the Administrative Procedure, either by the prevaricator entity, under the terms of the Regime for Extra-Contractual Civil Responsibility.

ADMINISTRATIVE SILENCE

1. Does your national legislation define "administrative silence" as a legal concept? Please specify.
   The national legislation does not define administrative silence as a legal concept, although the in the doctrine, silence can be "understood as the absence of a decision by the Administration concerning a petition addressed to it by an individual". In this context it should also be noted that the "duty to decide", a corollary of the principle of good administration, is supported by article 59 of the Code for the Administrative Procedure.

2. Does your legal system provide for a negative model of administrative silence (deemed refusal of a claim)?
   The current Code for the Administrative Procedure of 2015 doesn't provide, any longer, the negative effects of silence as a tacit act of refusal, enshrined in its previous version (1991), in article 109, now repealed.

3. Does your legal system provide for a positive model of administrative silence (a claim not refused in due time is deemed granted)?
   The Code for the Administrative Procedure acknowledges, in article 130, the silence positive effects: in situations in which the law or the regulation determines that the lack of notification of the final decision on a claim addressed to the competent body has the value of approval.

4. Which regulatory model of administrative silence is more typical for your legal system?
   Currently, the administrative silence is considered an administrative illegality which may be challenged through litigation. The typical situation occurs when the interested party, facing with the Administration inertia, files an administrative action seeking to condemn it due to the lack of the administrative act.

The negative model

Not applicable (see the answer given to question 2).

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)

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.

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

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

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?

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
   In the national legal order the tacit approval ensures, on one hand, the procedural speed and, on the other hand, guarantees the protection of rights, which exercise depends of an administrative control.

2. Are there any prohibitions or restrictions on the application of the positive model in certain areas of law in your legal system?
   Yes. The new Code for the Administrative Procedure announces as exceptional the rule of tacit approval, eliminating the list of situations applied in the previous regime (paragraph 3 of the former article 108 of the 1991 Code for the Administrative Procedure).

3. When (a specific moment or particular circumstances) is the person's claim deemed to have been granted?
   In accordance with the Code for the Administrative Procedure the time limit considered for the tacit approval constitution is the notification period. It means, the law considers "that there is tacit approval if the act's notification is not sent until the first working day following the decision's deadline" (see article 130, no. 4).

4. Does the person have to get any kind of confirmation or proof that the claim has been granted?
   The national legal order doesn't require a confirmation or proof that the request has been accepted.

   Where and within what time limit does it need to be received?
   Regarding the notification deadline, article 130 of the Code for the Administrative Procedure, only refers the notification's dispatch deadline and not to the moment when the individual receives it. So it will be necessary to turn to the time limit considered in no. 5, article 114 which says that the individual will have to wait the following eight working days after the end of the deadline for the final decision.

5. Are there any legal remedies available to third parties affected by the "fictitious decision" of granting a claim, if necessary?
   Yes. The inertia from the Public Administration, embodied in an approval tacit act, allows to the third party, counter-interested, to contest the positive silent act in the same way as he/she would contest a written administrative act.

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?
   Yes, the tacit administrative act with positive effects is always a legal fiction. In reality these are situations in which the law attributes positive effects to the silence, equivalent to those of the express approval of the interested party's claim. In these cases, the administrative annulment of the tacit act may occur within six months counting from the date of knowledge by the competent body of the invalidity cause. (cfr. article 168, no. 1 of the Code for the Administrative 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.
   The, above-mentioned, Directive 2006/123/EC was transposed into national law through the Decree-Law no. 92/2010 of July 26, which sets out the necessary principles and rules to simplify free access and service activities exercise to be carried out through an economic counter-payment.

   With regard to the conditions to establish an administrative permission that aims access or service exercise, the diploma clarifies that "the rule of tacit approval foreseen in

article 108 of the Code for the Administrative Procedure (read current article 130) must be adopted or positive effects must be attributed to the silence of the competent administrative authority when this one does not issue a statement within the legal deadline, except if the opposite is justified by an imperious reason of public interest, as defined in the current article 30, no. 1, including the legitimate interests of third parties" (cf. article 9, no. 2, paragraph *b)*).

In which legal areas has it been implemented?
Following the Directive 2006/123/EC, the Decree-Law no. 48/2011, April 1, simplified the regime of access and exercise of several economic activities under the "Zero Licensing" initiative. This initiative aims to dematerialise various administrative procedures in several areas, such as: *(i)* Regime for the Exercise of Commerce, Service and Restaurant Activities; *(ii)* System of Responsible Industry (SIR)[7]; *(iii)* Regime of Public Space Occupation[8]; as well as *(iv)* the provision of services under the Programme for Simplification, Modernisation and Innovation "Simplex"[9].
It should also be noted still, that the diploma eliminated the licensing regime for other economic activities, for those which is not necessary a previous control regime, such as the sale of tickets for public shows in commercial facilities and auctions in public places.

Have there been any difficulties in its' implementation?
No. In Portugal, a working group was set up within the Ministry of Economy (in cooperation with the several Ministries and administrative entities) in order to undertake and monitor the various stages of the Directive's implementation. According to the Regulatory Decree no. 5/2015, the Directorate-General for Economic Activities (DGAE) is the competent entity that ensures the national coordination to the monitoring of the Directive no. 2006/123/EC of the European Parliament and of the Council of 12 December 2006 (cf. article 2, no. 2, item *f)*).

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?
   Under the article 129 of the Code for the Administrative Procedure, the failure to comply with the duty to take a decision confers to the interested party the chance to use jurisdiction means ("conviction to practice the due administrative act")[10], as well as administrative ones ("complaint" and "hierarchical appeal")[11].

[7] Approved by Decree-Law no. 169/2012, last amendment by Decree-law no. 9/2021 of January 29.
[8] Amended by Decree-Law no. 10/2015, of January 16.
[9] Approved by Decree-Law no. 141/2012, of July 11, last amendement by Decree-Law no. 18/2016, of April 13.
[10] Cf. articles 66 and 71 of the Code for Administrative Procedure and article 197, no. 4 of the Procedure Code for the Administrative Courts.
[11] Cf. article 184, no. 1, item *b),* article 193, no. 2; and article 197, no. 4, of the Code for Administrative Procedure.

2. Is a person entitled to claim a compensation for financial loss or non-financial damage which has been caused as a result of the administrative silence of the authority?
   Yes, the State's responsibility includes patrimonial and non-patrimonial damages, as well as, the damage already caused and the future one. Within the repair scope, it prevails, the natural reconstitution rule, that is, the pecuniary compensation will only be considered when natural reconstitution is not possible (cf. article 12 of the Regime of the State's Extra-Contractual Responsibility).

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?
   There's no national case law on the matter.

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.
   There's no national case law on the matter.

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.
   Portugal has not made any request for a preliminary ruling to the Court of Justice of the European Union on this matter. However, given that European Union law has "zero tolerance" for tacit acts in environmental matters, and providing our legislation such cases of tacit approval regarding environmental permits, it shouldn't be despised that such request should be made.

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

   4.1 Construction, spatial development planning and environmental protection

   Administrative Silence in the Legal Regime for Urbanisation and Building (RJUE):
   Under the Legal Regime for Urbanisation and Building (RJUE)[12], the concession of the administrative license for construction falls under the competence of the municipality, article 5, no. 1. In the event of silence from the Administration occurs, no tacit act is formed and it is up to the individual to recur to the procedural means foreseen in article 112 of the Regime, *i.e.* the interested party may file at the administrative courts a request for a subpoena addressed to the competent entity for the fulfilment of the duty to decide. It is a judicial subpoena for the practice of an act legally due.

[12] Approved by the Decree-Law no. 555/99 of December 16, last amendment introduced by Law no. 118/2019, of September 17.

In the decision, the judge establishes a deadline of no less than 30 days to comply with the duty to decide and a penalty payment is fixed, as provided by the Procedure Code for the Administrative Courts (cf. article 112, no. 6). Under article 112, no. 9, "After the time limit set by the court and the due act hasn't been carried out, the interested party may avail himself/herself of the article 113' provisions", in which paragraph 1 states that "In the situations referred to, in paragraph 9 of the previous article, the interested party may start and continue the work execution in accordance with the application submitted under article 9, no. 4 or give immediate use to the work".

Administrative silence in Environmental Law:

In environmental matters, the tacit approval' figure is enshrined in the following preventive environmental instruments: Legal Regime of Environmental Licensing (RJLA) [13]; Regime for Environmental Impact Assessment (RAIA) [14]; Regime for the Exercise of Livestock Activity[15]; Regime for the Use of Water Resources (RURH) [16]; and in the Regime for Major Accidents Prevention (RPAG) [17].

4.2. Social security

Administrative silence and legal aid:

In the Law of Access to Law and Courts[18], the absence of a final decision by the Social Security services on the request for legal aid leads, within thirty days, to the approval of a tacit act.

4.3. Freedom of information

Administrative silence and freedom of information:

Pursuant with the Law of Access to Administrative Documents[19], everyone has the right of access to administrative documents, which includes the rights of consultation, reproduction and information (cf. article 5).

The entity to whom the request to access to an administrative document was addressed to must, within 10 days, reply (cf. article 15, no. 1). After the time limit expires, and without receiving any reply, the applicant may complain, within 20 days, to the Commission for Access to Administrative Documents.

The complaint presentation interrupts the time limit set to initiate legal proceedings in order to obtain a summons to provide information, consult a file or a certificate. (cf. article 16, no. 1 and 2).

[13] Approved by Decree-Law no. 127/2013, of August 30 and retified by the Declaration no. 45-A/2013, of October 29 (cf. article 23).

[14] Approved by Decree-Law no. 151-B/2013, of October 31, last amendment introduced by Law no.102-D/2020, of December 10 (cf. article 19, no. 2 and no. 4).

[15] Approved by Decree-Law no. 81/2013, of July 14, last amendment introduced by Decree-Law no. 09/20021, of January 29 (cf. article 28).

[16] Approved by Decree-Law no. 226-A/2007, of May 31, last amendment introduced by Decree-Law no. 97/2018, of November 27 (cf. article 17).

[17] Approved by Decree-Law no. 150/2015, of August 5, last amendment introduced by Decree-Law no. 71/2018, of December 31 (cf. article 9, no. 6 and article 19, no. 5).

[18] Approved by Law no. 34/2014 of July 29, last amended by Law no. 2/2020, March 31 (cf. article 25, no. 2).

[19] Approved by Law no. 26/2016, August 22, last amended by Law no. 68/2021, August 26.

Administrative discretionary power

1. How is administrative discretionary power defined in your legal system?
   Although the Portuguese legislator frequently uses the term "discretionary power", it does not define it. Doctrinally, "administrative discretion" may be defined as "the liberty to take a decision, conferred by the law to the Administration, so that it may, within the legally established limits choose, among several possible solutions, the most appropriate to the public interest".

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, in the national legal order the "margin of free assessment", also called by some "technical discretion", is not to be confused with discretion, as such. The national case law has ruled on this matter as follows:
   - Discretion "is characterised by giving the Administration the possibility to choose a decision from a range of possible decisions, all legally valid.
   - The "margin of free assessment" only admits a single decision — objective, fair and truthful, the only one that is wanted by the law.
   Therefore — even when the administration has a "margin of free assessment namely to fulfil undetermined concepts, using technical judgements, rules of experience or reasonability — its decisions may be challenged, although this jurisdictional appreciation is limited to cases of error or breach of the fundamental legal principles that govern the administrative activity.

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.
   In the national legal order, when the law gives to the Public Administration, amongst the various possible options, the guideline to achieve public interest, we are facing the exercise of discretionary power.
   When the law defines the means — content, competences, and the act's purpose — that the Administration must use to attain the public end, which is foreseen in the norm, we are in the presence of the binding exercise of power. In these cases, the norm confers to the Public Administration the elements and requirements necessary to issue the act, determining the "if," "how," and "when" it must act or decide.

   The Portuguese case law[20] acknowledges the discretionary power, namely in the following activity areas:

[20] Accessible in http://www.dgsi.pt/.

a) Public works contract: "(...) the contract documents may establish the minimum qualification that the contractor's technical representative must possess before the project owner, but when the minimum qualification is defined by reference to qualitative rather than quantitative criteria, the concrete determination of the appropriate qualification is within the discretionary power of the awarding authority, and it is not for the courts to override the criterion used by the contracting authority, except in the event of an obvious or manifest error" — cf. Decision of the Supreme Administrative Court of 23rd June 2022 (Case 02152/20.4BEPRT).

b) Graduation of candidates in public competitions: "(...) The assessment of the juries to the competition or academic tests falls within the scope of the so-called technical discretion, and the decision taken cannot be questioned, except for manifest or gross error (...)" — cf. Decision of 15th February 2019 (Case 01049/13.9BEBRG).

c) evaluation at the inspection: this is "(…) an activity that falls within the margin of free assessment or prerogative of evaluation in the context of the so-called administrative justice, in which the Administration acts and decides on the aptitude, personal qualities and merit of the exercise of the function, in principle not open to question by the court, except with reference to binding aspects or when manifest error or the adoption of criteria that are ostensibly unsuitable (...)" — cf. Decision of 19th June 2019 (Case 0494/17.5BALSB).

d) Exercise of disciplinary power: "In disciplinary proceedings, the penalty determination involves the exercise of discretionary power by the Administration and, therefore, can only be challenged if misuse of power, gross error or violation of the principles of justice or proportionality is alleged" — cf. Decision of the South Central Administrative Court, of 02nd June 2020 (Case 62/12.8BEALM).

e) Opening of a public tender: "(...) the court cannot oblige the administrative entity to put in place the act that is due — the intended opening of the tender. The defendant entity is free to initiate (or not) the tender procedure; this is the same as saying that the Administration enjoys, in this specific case, its own sphere of action and assessment, or discretionary power, through which it is recognised as having the competence to decide on the opportunity and convenience of opening the tender (...)" — cf. Decision of 15th May 2013 (Case 00478/08.4BEPRT).

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. With respect of the separation of powers principles, the Portuguese administrative courts judge the Administration's compliance regarding the legal rules and principles that bind it and not the convenience or opportunity of its performance (cf. article 3 of the Procedure Code of the Administrative Courts).
   Article 71, of the aforementioned Code[21], clarifies that within the "court's powers to pronounce", the judge cannot determine what the Administration must do in a concrete case, and must limit himself/herself to a generic or directive condemnation, and much less substitute himself/herself to the Administration when a discretionary content is at stake, except in situations of "reducing the discretion to zero", that is, situations in which only one solution can be identified as legally possible.

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?
   Accordingly, with article 5 of the Code for the Administrative Procedure, the Public Administration's actions are subject to the "Principle of Good Administration"[22], which means that all activity is subordinated to the law's compliance, the effectiveness of citizenship rights and respect to the constitutionally enshrined fundamental rights.
   Therefore, a discretionary administrative act exercised against the law may be challenged through litigation, namely in the event of: vices of incompetence, lack of grounds, misuse of power, disrespect for the general principles of law (legality control).
   In turn, a discretionary administrative act that does not prove to be convenient or opportune considering the public interest may be removed from the legal order by the Public Administration (merit control).
   Currently, we are witnessing to the implementation of compliance policies by the Portuguese Public Administration with the purpose of disseminating, among the institutions, the best way to apply the rules which derives from the "Principle of Good Administration", avoiding the misuse of discretionary power and consequently maladministration.

[21] Cf. article 95, no. 5, article 168, no. 2 and article 179, no. 1 of the Code for the Administrative Procedure.
[22] Cf. article 41 of the Charter of Fundamental Rights of the European Union.