Administrative Law

Definition

- Administrative law is the law which regulates the functions and composition of the Executive its relationship with the other organs of the State and the relationship with the private individual.
- Constitutional law deals with the three organs. AL with just one.
- The main function of Administrative Law is to ensure that the Administration governs within the parameters of law. A most important part of the subject is judicial review i.e. how the courts control the Administration and keep it penned within the law.
- To be distinguished from constitutional law (CL) . In CL one asks the question is a law or a government measure in line with the Constitution? In AL we never question the law itself : but we ask ourselves : has the Administration acted according to law. We cannot challenge the law itself but the actions of any public authority under the law.

Administrative Law deals with other matters such as the structure of the Administration(Adm.) , and the legislative and judicial powers of the Adm. , the functions of Local Government , the Attorney General, the State Advocate , the Malta Police Force, the Armed Forces of Malta , the Ombudsman and of the Commissioner for Standards in Public Life; Administrative Tribunals and the Administrative Review Tribunal (ART) but these are examined within the general function of keeping the Government in check.

- SOURCES
- The **Constitution** Chapter X. The regulation of the Public Service . It defines who is a public officer, how they are recruited disciplined and promoted. The establishment of the Public Service Commission (PSC) ,its powers, the judicial review of its actions etc; the Constitution regulates the offices of Prime Minister and Ministers the Attorney General the State Advocate the Ombudsman, the governments' accountability to Parliament, the powers of the President , the office of Permanent Secretaries.
- Ordinary Legislation. The Public Administration Act 2019; Article 469A of the COCP. The Ombudsman Act, The Local Councils Act The Interpretation Act, the Commissioner for Standards
- Subsidiary or Delegated Legislation e.g. PSC Disciplinary Regulations for public officers
- EU Law eg Ramblers case Juridical Interest
- English Common law- the *Lacuna* Doctrine: lacuna in maltese Public Law, Courts MATY apply English common law (not statute)
- Judgments: important shedding light on grounds of review
- Writers and Authors

Structure of Public Administration

1. The Public or Civil Service – recruitment to public service through Public Service Commission (PSC). Employees in this sector are public officers . Discipline and Promotions: PSC
2. Bodies Corporate established BY law or public corporations e.g. Planning Authority, University of Malta . These public bodies state owned are established by a specific piece of legislation either through an Act of Parliament e.g. Lands Authority or subsidiary legislation e.g. *Zfin Malta*
3. Government companies e.g. Air Malta, Arms Ltd, : these are ordinary commercial companies registered under the Companies Act, where Government bodies have a controlling interest or majority shareholdin

Judicial Review of Administrative Action

- Art 469A Chapter 12 (COCP)
- An administrative act
- A Public authority (Ministries govt. departments and bodies corporate e.g. local councils
- Grounds of Review
- Excess of Authority
- Procedural *Ultra Vires* and Rules of Natural Justice
- Abuse of Power , bad faith ,improper purpose, unreasonableness ,irrelevant considerations, fraud, abdication of discretion,
- Contrary to Law
- Juridical Interest , Six Months , Other Mode of Contestation, Damages only bad faith and unreasonableness

Powers and Remit of Local Councils

- Limited: (i)maintenance of non-arterial local roads (b)proper road signs (iii) public cleanliness in locality including garbage collection (iv)maintenance of playgrounds (v) Local libraries (iv) participation in process of naming of roads
- As to **planning** a copy of any application for buildings permits is to be sent to LC .
- Consultation on any matter affecting residents .

Elections

- Every five years through STV
- ‘Voters Maltese citizens 16 years and over
- Eu and UK nationals
- MPs cannot contest elections
- Mayor: is the candidate with highest number of first preference votes form amongst candidates of majority party
- May or may be removed by vote of no confidence
- Number varies from 5 to 13
- Legal Representation Mayor and Executive Secretary

Financing and Dissolution

- LCs are financed by a subvention provided for by the Central govt. Distributed according to size of population and area
- Auditor General may appoint local govt auditors to supervise spending;
- The President may by Order in the Gazette on advice of Prime Minister dissolve a LC (a) on Report by Auditor General (b) persistent breach of laws and regulations on report by Governance Board © inability to elect Mayor or approve Estimates (d) following recommendation by Inquiry
- Dept may step in if LC refuses to fulfil some function
- Bye laws may be issued by Lc on their functions but must be sent to Minister first;
- Five Regions: North ,Central, South, South East ,Gozo

The Executive Secretary and Judicial Review

- Full time . May only be removed by Director LC
- Guarantees the legality of all actions of the LC
- LC s are subject to rules of judicial review
- In cases of breaches of Code of Ethics may be reported to Governance Board even by private citizen through complaint . Members appointed by Minister of LC
- Notice of Warning by Minister

Attorney General and State Advocate

- The holders of both offices are appointed by the President on the binding advice of the Prime Minister . In both cases a call for applications is made to be assessed by an Appointments Commission which then submits a report to the Prime Minister . In giving advice to President , Prime Minister shall give due consideration to the report of the Commission .
- In both cases the holders of the respective offices can only be removed for proven incapacity physical or mental or misbehaviour sanctioned by a motion getting the support of at least two thirds of all members of the legislature .
- The Attorney General deals with criminal cases and he decides on whether a person should be criminally prosecuted. The State Advocate is the chief legal advisor to Government but is obliged to act in the public interest and guarantee the legality of the actions of the State.
- Prior to 2020 both roles were vested in the Attorney General.

Important Rules and Norms in Judicial Review

- In judicial review the Court will not substitute its discretion for that of the public authority but will only declare as null an act of the administration e.g *Borda* Case
- In judicial review , plaintiff has to prove actual, personal, juridical interest to start the action(*Life Network* Case morning after pill)
- In judicial review the question which courts asks is not whether something is right or wrong but whether it is lawful
- The difference between appeal and review. Appeal is granted by law on matters of fact and law. In judicial review only points of law may be raised , and then only under the specific conditions mentioned in article 469A Chapter 12 COCP. Therefore, even though there is no appeal in a given case from a decision of public authority, there can always be REVIEW but in such case the grounds are MUCH MORE LIMITED than an appeal.
- Govt Liability and Judicial Review : Liability means when government is responsible for acts done by its servants causing damage. Review deals with question whether an act is lawful irrespective of damages

The Law on Judicial Review in Malta

- Up to 1995 Malta did not have a special law on judicial review. Therefore according to *lacuna* doctrine, the Courts used to apply English rules of COMMON LAW
- IN 1995 wef from 30 October, article 469a entitled" Judicial review of Administrative Action" was introduced laying down the conditions and the grounds under which an administrative act may be challenged.
- The two main requirements are that there must be an administrative act and that act must be performed by a public authority .

Unfortunately this does not cover the legislative powers of the administration and administrative tribunals.

Fragmentation

- If the act is an administrative act then the provisions of article 469A apply
- If the act is legislative e.g the power of Ministers to issue regulations or delegated legislation then the operative article is article 116 of the Constitution which allows any citizen even without any juridical interest to challenge as *ultra vires* subsidiary legislation ;
- As to administrative tribunals e.g Rent Regulation Board or the Industrial Tribunal , there is no provision in the law for judicial review and therefore one applies m English common law

Administrative Act

- There is a definition in 469A “the issuing by a public authority of any order, licence , permit, warrant, decision or a refusal to any demand of a claimant , but does not include any measure intended for internal organization or administration within the said authority ”. *Borda* case recruitment, transfers dismissal (*Portelli* case)
- If after two months from a written request, no answer, then it is legally presumed that the request has been refused ;

Public Authority

- The government of Malta including its Ministries and departments , local authorities , any body corporate established by law, and includes boards which are empowered in terms of law to issue warrants for the exercise of any trade or profession
- Consequently govt companies are not included e.g. Air Malta. However in the *Malta Shipbuilding* case, the courts have ruled that they are public authorities as well.
- Exceptionally, a private company has fallen under the rules of JR. The *Tramontano* case as to admission at the Casino de Malte . In UK Private Companies which exercise a public function e.g. electricity generation fall under JR

Other Mode of Contestation

- If ther is another mode of contestation **before a court or tribunal**, then article 469A does not apply. This means that if there is an adequate remedy such as an appeal before a court or tribunal, one cannot file a judicial review case under 469A but must use that appeal to air one's grievances .
- An example would be the appeal which the law provides from decisions of the Lands Authority and the Authority for Transport in Malta to the **Administrative Review Tribunal** (ART) presided over by a serving or former magistrate .
- Similarly since the planning laws in Malta allow an appeal from a decision the Planning Authority on a permit to the Environment and Planning Review Tribunal (EPRT) established by such law , one cannot open a judicial review case regarding a decision of the PA.

Excess of Authority

- Substantive Ultra Vires
- The War internees case. “any place “ applied only to the Maltese Islands Guido Abela et (1942)
- Public Interest in Housing Requisition cases
- Giuseppe Sciberras (1973)
- Socjeta ‘ Filarmonika San Leonardo(*Carmelo Vella* case) (1993) and Josephine Vella (2012)
- Galea vs Holland noe (Public Interest and political party clubs; (1980)
- Philip Grech (2010) John Mousu (Lotto Office) (1999)
- Admission to University: David Harding (1987), Nicholas Attard (1998)Denise Buttigieg (2003)All for Property ; Carmelo Dingli (canned chopped ham)

Rules of Natural Justice

- No definition in the law art 469A Ch 12
- Case Law has listed the following

- *Nemo Iudex in causa Propria*
- *Audi Alteram partem* (*Pace v Anastasi* Pace- 1946)
- Giving Reasons (*Ellul Sullivan* Case and *Alfred Sant* 1992)
- Analogy with" good administrative behaviour" in Administrative Justice Act Ch 490 applicable to adm. tribunals

Sphere of Application

- There is no limitation in art 469A.,
- It would be impossible to apply natural justice norms to every decision of a public authority .
- Originally NJ rules were a form of controlling the new judicial organs callked tribunals.
- Then they started being applied to acts of the entire administration(*Ridge v Baldwin in* UK) in Malta e.g decision of Commissioner of Inland Revenue
- Each time a public authority decision affects rights of a person
- The *Mary Grech* case (1993). A valid building permit was withdrawn. The aggrieved party has a right to be allowed to make representations (not necessarily in an oral hearing) before such decision is taken .
- The *Braggs* case in the 17th century Dismissal from Plymouth Local Council

Audi Alteram partem and Giving reasons

- No need of oral hearing
- Equality of arms principle
- A good decision can be taken in the WRIONG way (eg Grech case)
- No need for law to lay down that one should hear the other side.
- Giving Reasons
- This is important particularly where an appeal lies from a decision of a public authority .

Legitimate Expectation

- When there is an established practice which refers to a permissible practice that individuals have been able to enjoy in the past . Rational and Compelling reasons to depart OR Promsies from public authorities
- Exceptions
- When law explicitly states that benefit is not forever’

- When promise is made as result of incorrert info
- Contrary to law
- Condition of promise not fulfilled
- Promise tainted with ambiguity

Abuse of Power

- Improper purpose and Taking Irrelevant Considerations into account.
- This includes bad faith, unreasonableness , ignoring relevant considerations , abdication of discretion , too much reliance on policy and legitimate expectation
- Landmark case *Blue Sisters: PM v Sister Luigi Dunkin* (26 June 1980)
- What is reasonable will depend on the aim scope and thrust of the authorising Act. In the *Dunkin* case: was a condition to the effect that at least 50% of all hospital beds and facilities at a private hospital had to be made available to the NHS a reasonable condition. The Court ruled that only health related conditions could be imposed .

Irrelevant Considerations Considered Relevant Considerations Ignored

- The *Borda* Case where age was considered to be an irrelevant consideration
- *Gaston Caruana* case where the track record of a gaming co employee was deemed relevant
- The *La Stella Band Club* case. Legitimate expectation and the letting off of light fireworks in Gozo
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Abdication

- The *Grezzju Debono* case : Gozitan taxi owners were prevented from working in Malta so long as Maltese taxi owners objected.
- *Ballut Blocks*: The COP refused explosives permit for a licensed quarry because the PA was against
- The *Johann Said* case; The Circus Tent at the Floriana Granaries during the Xmas Festive Season

Other grounds of Review

- Contrary to Constitution. The Courts have surprisingly ruled that this applies only to non-human rights cases .
- *Ubi lex non distinguit nec nos distinguere debemus*. Human Rights actions can only be instituted under art 46 of the Constitution
- *Christopher Hall*(2009) : no fusion . Why not? once in first instance it is same court First Hall of the Civil Court
- Intention of legislature was clear : Court ruled otherwise

Contrary to Law

- Law does not include the European Convention Act 1987 (Ch 319)
- Sometimes difficult to separate from second ground of review excess of authority
- An umbrella clause
- The Life Network Case : morning after pill
- '*Gera de Petri* case (2008)
- Possession and Use of private Property issued when State should have bought by absolute purchase

Ombudsman

- Constitution art 64A and Ombudsman Act Ch 385

- Commissioner for Administrative Investigation
- Investigate Actions taken by or on behalf of (a) the Government (b) authority, body or persons as may be provided by law including body established by Constitution which were taken in exercise of functions.
- This means that public service , bodies corporate established by law and government companies fall under remit of Ombudsman
- No private entities even if they fulfil a public function

Ombudsman Contd

- Appointed by resolution supported by two thirds of all members of Parliament. First time for any office that 2/3 was needed to appoint
- Removed for proven inability or misbehaviour by 2/3 of all members of Parliament
- This is entrenched in the Constitution.
  Pre -Ombudsman there was :
- Investigation of Injustices Act 1987 (Ch 320) a commission investigated injustice not necessary unlawful acts

remit

- Act which appears to have been contrary to law, or was unreasonable oppressive, or improperly discriminatory; or was in accordance with a law or practice that is or may be unreasonable , unjust, oppressive or improperly discriminatory ; or was based wholly or partly on a mistake of law or fact; or was **wrong**
- Exercise of discretion was for improper purpose or on irrelevant grounds or without giving reasons (taken from 469A)
- Certain matters CANNOT be investigated:
- Security matters certified by PM, Foreign relations, Extradition matters, commencing civil or criminal proceedings before court military offences under AFM Act
- Criminal investigation by Police

Persons and Procedure

- Complaint or Spontaneous
- Persons Excluded :President, HOR, Cabinet, Judiciary, Tribunals , CAJ Electoral Commission Broadcasting Auth., Employment Commission Permanent Commission against Corruption PCAC , AG in instituting criminal proceedings , legal advisor to Govt, Auditor, AFM and Security Service
- AFM can be investigated provided all remedies have been exhausted
- *Said Pullicino* case (CA 31 October 2016) promotion exercise reviewed

procedure

- A complaint must be filed within 6 months
- In case of special circumstances he may waive this rule
- May decide NOT to investigate if matter is (1) trivial (2) frivolous or vexatious (3) not sufficient personal interest
- Last resort
- Stops investigation if matter is referred to Court
- Proceedings do not suspend the 6 month rule under art 469A
- No fees
- Simple letter
- Writes to Head of govt body to submit views.,

- **Recommendations NO EXECUTIVE POWER(2018 :25/88 not implemented**
- That the matter be referred to **appropriate authority**
- ‘that an omission should be **rectified**
- That a decision be **cancelled or varied**
- **T**hat a decision or recommendation be **altered**
- That a law should be **reconsidered**
- That reasons be given for a decision
- That any **other step** should be taken

The Commissioners

- Planning Education and Health’
- Same procedure
- If PM and Leader of Opp. Suggest a person he is appointed
- If no such agreement within 3 weeks, the Ombudsman appoints them himself

Other Characteristics

- Parliamentary Officer
- Financial estimates and Ombudsplan approved by HOR after appearing before House Business Committee of HOR
- Member of the Judicial Appointments Committee
- Courts do not necessarily bound by Ombudsman Report)David Crisp 2007
- The criteria i are different wrong or unlawful