

JUDICIAL REVIEW FROM A PLANNING LAW PERSPECTIVE

FACULTY OF LAWS – 2017

ADMINISTRATIVE LAW

Planning Authority – Chapter 552

- 5. There is hereby established an authority, to be known as the Planning Authority... which shall consist of the Executive Council and the Planning Board.
- 6. (1) The Authority shall be a body corporate having a distinct legal personality
- 41. (1) The Executive Council shall, out of its own motion, but after consultation with the Minister, or if so requested by the Minister, **make a plan or a policy on any matter** relating to development planning.... **(NOTE: Eventually, these plans/policies are approved by the Minister)**
- 71. (1) Any person, including a department of government or a body corporate established by law, wishing to carry out any development referred to in article 70, shall apply to the Planning Board for such permission, in such manner, on such form and giving such information as the Planning Board may prescribe.

(2) The Planning Board may grant three types of development permissions [...]

EPRT – Chapter 551

- **3.** There shall be set up in accordance with the provisions of this Act, an independent and impartial tribunal, to be known as the Environment and Planning Review Tribunal (EPRT), for the purpose of reviewing the decisions of the Planning Authority and the decisions of the Environment and Resources Authority, referred to it in accordance with this Act or any other law,...

- **11.** (1) Subject to the provisions of Chapter 552 (LOM), the Tribunal shall have jurisdiction to:(a) hear and determine all appeals made by applicant from a decision taken following an application:
 - (i) for a development permission;
 - (ii) for a permission under a development
 - (iii) notification order
 - (iv) for a permission under a regularization process;
 - (iv) for a change in alignment under a planning control application; [...]

(See entire Article 11 of Chapter 551 to appreciate extent of jurisdiction enjoyed by the EPRT)

Judicial Review

- Up until the 1980's, there was no written legislation regulating judicial review
- Yet, the Maltese Courts had held to have the power to review administrative acts, particularly so when such acts were allegedly in breach of human rights.
- At the time, the general rule was to supplement the legislative deficiencies using common law principles. This notion was highlighted in the seminal case in the names **Cassar Desain James vs James Louis Forbes** presided by the late Chief Justice Sir Arturo Mercieca and was subsequently echoed in a string of other judgments.
- The first piece of written legislation dealing with judicial review of the legality of administrative actions was eventually promulgated in 1981 in response to the Blue Sisters judgment which had annulled the Minister's decision to impose a set of 'arbitrary' conditions, describing his actions as 'unreasonable'.

ART 469 A (Chapter 12)

- Article 469A of Chapter 12, introduced by way of Act XXIV of 1995, provided the judiciary with a new set of parameters, beyond which an administrative act would be declared null and without effect.

' Saving as is otherwise provided by law, the courts of justice of civil jurisdiction may enquire into the validity of any administrative act or declare such act null, invalid or without effect only in the following cases:

(a) where the administrative act is in violation of the Constitution;

(b) when the administrative act is ultra vires on any of the following grounds:

(i) when such act emanates from a public authority that is not authorised to perform it; or

(ii) when a public authority has failed to observe the principles of natural justice or mandatory procedural requirements in performing the administrative act or in its prior deliberations thereon; or

(iii) when the administrative act constitutes an abuse of the public authority's power in that it is done for improper purposes or on the basis of irrelevant considerations; or

(iv) when the administrative act is otherwise contrary to law.'

ART 469 A – 2 important provisos

- An 'administrative Act' is defined as 'any act' involving 'the issuing by a public authority of any order, licence, permit, warrant, decision, or a refusal to any demand of a claimant' provided that such act 'does not include any measure intended for internal organization or administration within the said authority'.
- Redress only available when '**the mode of contestation or of obtaining redress, with respect to any particular administrative act before a court or tribunal is not provided for in any other law.**'

ART 469 A –points to remember

- Barnett: 'the ultra vires principle is consistent with the principle of Parliamentary Sovereignty.'
- **Not authorized to perform it'**.. to ensure that public authorities have not acted in such manner having not being granted such authority in the Parent Act' **(Ex: Planning Authority decides on possessory title)**
- **'Non observance of Natural Justice or Mandatory Procedural Requirements'**... distinct from each other.....the procedural rules that are expressly laid down in the legislative instrument should be pursued even where the objective of such procedures does not involve any denial of natural justice **(Ex: Planning Authority fails to publish the application details on DOI website as required by Chap 552)** ...as regards 'the principles of natural justice', the notions of 'audi alteram partem', 'nemo iudex in causa propria' and the 'duty to give reasons' **(Ex: Planning Authority fails to inform registered objectors about date of hearing)**
- Abuse of public authority's power...abuse of power 'done for improper purposes on the basis of irrelevant considerations' ... 'improper purpose' and 'unreasonableness'. **(Ex: Planning Authority orders applicant to install gold apertures)**
- Otherwise contrary to the law' ... 'clausola lenzuolo' – the legislator wanted to ensure that public authorities do not resort to any behaviour which is prohibited by statute, though not being in breach of the first three grounds.

ART 469 A – from the aforesaid, it seems to follow that...

- An 'administrative act' should necessarily concern a public authority in its decision-making capacity
- The Planning Authority should prima facie qualify as a 'public authority' for the purpose of Article 469A, deriving its public status as a decision-making body from the Development Planning Act

Questions

- Is it possible for applicant to obtain redress via Art 469 A following a decision of the Planning Authority on a planning application? **(HINT: SEE ART 11 of CHAP. 551 & PROVISIO TO ART 469 A)**
- Is it possible for an interested party to obtain redress via Art 469 A following the approval of a policy prepared by the Planning Authority and approved by the Minister? **(HINT: Is a decision by Minister an administrative act? BUT who prepares the spadework for the Minister to approve?)**
- Is it possible for an appellant to obtain redress via Article 469A following a decision of the EPRT? **(HINT: Is a Tribunal a public Authority? See SM Cables Ltd v Monaco.)**

Case Law

- Bunker Fuel Oil Company Limited et vs Paul Gauci u Planning Authority decided on 6th May 1998 by the First Hall,
- Joseph Muscat et vs Chairman tal-Awtorita tad-Djar decided partially on 28th January 2004 by the Court of Appeal and Dr. Philip Galea et vs Tigne` Development Co. Ltd. et decided on 28th January 2004 by the First Hall, Civil Court - [1682/99].
- Jupiter Co. Ltd. u Veronica Gauci ghal kull interess li jista' jkollha vs Awtorita` ta' Malta dwar l-Ambjent u l-Ippjanar decided on 3rd April 2009 by the Court of Appeal - [112/2004/1].
- Kunsill Lokali Marsaskala, Joseph George Sant, Paul Cutajar, Lawrence sive Lorry De Raffaele u b' digriet tal-14 ta' Marzu 2012 l-atti tal-kawza gew trasfuzi f'isem Peter De Raffaele, Stephen De Raffaele u martu Evelyn De Raffaele, u dan wara l-mewt tal-attur Lawrence sive Lorry De Raffaele fil-mori tal-kawza vs L-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar, L-Avukat Generali decided on 29th November 2012 by the Court of Appeal - [336/2007].

Case Law

- Attard Piju u Antida v Kunsill Lokali Munxar decided on 29th February 2008 by the Court of Magistrates (Gozo) - [113/2001/1].
- John Cauchi vs Chairman Awtorita` tal-Ippjanar decided on 5th October 2001 by the Court of Appeal.
- Sponge Limited vs Awtorita` ta' l-Ippjanar et decided on 18th May 2000 by the First Hall, Civil Court.
- Richard Zammit vs Chairman ta' l-Awtorita` ta' l-Ippjanar decided on 31st May 2002 by the Court of Appeal.
- Pietru Pawl Borg et vs l-Awtorita` ta' l-Ippjanar u l-Kummissarju tal-Pulizija decided on 8th May 2003 by the Court of Appeal- [255/1997/2].
- James Calleja u Carmelo Borg vs Awtorita` tal-Ippjanar decided on 7th March 2002 by the First Hall, Civil Court - [1328/00].
- Kunsill Lokali Birzebbuga vs Awtorita` ta' Malta dwar l-Ambjent decided on 7th July 2004 by the First Hall, Civil Court.

Case Law

- George Catania (95963 M) u martu Marie Louise Catania (618064 M) ghal kull interest li jista' jkollha u Tarcam Company Ltd. (C 16852). vs L-Awtorita` ta' Malta dwar l-Ambjent u l-Ippjanar decided 27th June 2007 by the First Hall, Civil Court – [451/2004].
- Il-Perit Austin Attard Montaldo *nomine* vs Chairman ta' l-Awtorita` ta' l-Ippjanar in rappresentanza ta' l-istess decided on 19th August 1996 by the Court of Appeal.
- Richard Zammit vs Chairman ta' l-Awtorita' ta' l-Ippjanar decided on 31st May 2002 by the Court of Appeal.
- Pietru Pawl Borg u martu Nancy Borg vs L-Awtorita` ta' l-Ippjanar u l-Kummissarju tal-Pulizija decided on 8th May 2003 by the Court of Appeal - [255/1997/2].
- Alex Montanaro *nomine* vs il-Kummissjoni ghall-Kontroll ta' l-Izvilupp decided on the 9th of February, 2001 by the Court of Appeal as cited in *op.cit.* at footnote 33.

Case Law

- Albert u Maria Dolores sive Doris Satariano vs Awtorita` tal-Ippjanar decided on 28th March 2014 by the Court of Appeal - [1721/2001/1].
- James Calleja u Carmelo Borg vs Awtorita` tal-Ippjanar decided on 7th March 2002 by the First Hall, Civil Court - [1328/00].
- Mario Cuomo et. vs l-c-“Chairman” in rappresentanza ta' l-Awtorità ta' l-Ippjanar et. decided on 8th January 2015 by the First Hall, Civil Court - [937/06].
- Falcon Investments Limited vs Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar u Avukat Generali decided on 17th June 2013 by the First Hall, Civil Court - [1198/11].
- Malcolm Mallia et. vs Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar et. decided on 6th July 2012 by the First Hall, Civil Court - [562/10].
- Joseph Sciriha et. vs Awtorita' ta' Malta ghall- Ambjent u l- Ippjanar et. decided on 28th January 2016 by the First Hall, Civil Court - [127/07].