

The Environment and Planning Review Tribunal

The power to appoint experts and make corrections

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He is the founding partner of the architectural firm RMPERITI and prior to being admitted to the Maltese Bar in 2016, he had practiced as a perit since 1998. He is a former chairperson of the Building Industry Consultative Council (BICC) and presently holds the post of advisor within the office of the Prime Minister of Malta. Dr Musumeci was directly involved in the reforms which led to Malta Environment and Planning Authority's demerger and the establishment of the new Lands Authority in 2016.

Dr Musumeci has published several academic articles related to planning legislation. He was selected by the Faculty of Laws (University of Malta) for the prize of Best Doctor of Laws Thesis Award 2016 for his thesis entitled 'The Development Planning Act 2016 - A critical Appraisal'

1 Appointment of experts

For the first time, *'the Tribunal may appoint an expert or more than one expert to draw up a report on any matter which the Tribunal deems relevant to the appeal'*.¹ Essentially, a similar system already exists in our Courts. Nonetheless, the idea was rejected by Professor Aquilina² who described it as *'a wrong move as it will contribute only to increase expenses to parties who appear before it and delay the decision making process.'* Although, the appointment of experts during a process would definitely increase expenses, it is equally acknowledged that certain technical aspects may require the input

¹Article 30(2) of the the Environment and Planning Review Tribunal Act, 2016.

²Kevin Aquilina: *Twenty reasons against MEPA's demerger*. Article published on maltatoday.com.mt. 29th July 2015.

of specialised expertise, all more so since the competence of the Tribunal has increased. Being a *'planner'* sitting on a Board is not necessarily tantamount to being an expert, for example, in aspects of fire safety and ventilation systems which now fall under the competence of the Tribunal. Even more so, the envisaged expenses related with experts would be probably minimal when compared to the huge investment which is typically associated with construction projects. On the other hand, the appointment of experts may be considered as an unnecessary added expense and consequently have an adverse effect in disheartening third parties, including eNGOs, from filing an appeal.

2 Power to make corrections

Section 46 (1) of the Environment and Planning Review Tribunal Act, 2016 introduced the possibility for the Tribunal to correct mistakes arising from an oversight or omission. Indeed, the Tribunal may, prior to the decision, allow the modification, adding or striking of names of any parties as well as the correction of *'any other mistake'* at the request of any of the parties. The Tribunal may also out of its own motion remedy *'any administrative omission or mistake in an act'* until it delivers the decision. Once a decision is delivered, the Tribunal has the power to amend only *'an error of calculation incurred in the decision'* or correct *'an error in the wording of the decision'* or *'an expression which is equivocal, or which may be construed differently from that evidently intended by the Tribunal'*. In any event, the Tribunal must act within 20 days from the date of the decision and the 20 day period within which one may appeal the 'corrected' decision before the Court will restart from the date of the notification of the decree given on the demand for the amendment.

On the other hand, the parties may also request the Tribunal during proceedings to *'make further submission of fact or of law by separate note as long as such changes do not change the substance of the action or of the defence on the merits of the case.'*

These provisions are clearly intended to avoid situations where a Tribunal decision may not be implemented in practice or even annulled by the Courts due to some simple omission in the decision such as an error in the name of the parties.³

³Louise Anne Sultana vs Kummissjoni għall-Kontroll ta' I-Izvilupp, decided on 14th April 1997 by the Court of Appeal (Inferior Jurisdiction).