Report on the Exchange Programme held between December 5\textsuperscript{th} and December 19\textsuperscript{th} 2010 at the Consiglio di Stato in Rome, Italy

I. Programme

The programme envisioned an in-depth hands-on experience of the workings of the Consiglio di Stato, the highest Administrative Tribunal in Italy. It consisted mainly of attendance at selected Court sittings and appreciation of the process of filing and registering of claims made to that Tribunal, as well as encounters with the judges, counsellors and personnel constituting several branches thereof. Unlimited access was also granted to the library and archive facilities of the Consiglio.

No pre-set specific programme of the exchange had been provided, but a schedule of the days of Court hearings to be availed of was established at the outset after consultation with the respective presiding judges of the relevant sections of the Court.

II. The Hosting Institution
As stated above, the exchange was held exclusively at the seat of the Consiglio di Stato at Palazzo Spada, in Piazza Capo di Ferro, Rome, Italy between the 6th of December, and the 18th of December, 2010. Travel to and from the said venue was undertaken a day before and after the said period to allow for an uninterrupted and full attendance during the selected days of the exchange. The selected days had been established some weeks prior to the actual exchange with President Giuseppe Barbagallo who also devised the programme to be followed and the many contact persons who were to assist the undersigned during the exchange. The operative language of the exchange was Italian, with which the undersigned is reasonably familiar and fluent.

The Consiglio di Stato is the highest judicial authority regarding administrative matters in Italy and has been in existence and constant activity since 1889. Its competence in the various jurisdictional sections is principally that of reviewing judgments handed down by the regional administrative tribunals (T.A.R.) and overseeing the provisional staying of such judgements and/or of administrative decisions pending such review. It exercises also a function of enforcement of administrative decisions which local or regional authorities have failed to abide by as a result of judicial decisions.

In spite of the considerable number of applications filed before the Consiglio di Stato during the course of every year, and the substantial number of cases called and heard during every sitting, it was observed that proceedings are expeditious without being superficial, that the collegial tribunal is amply familiar and well prepared with all the cases summoned, and that the publication of the various judgements, (precautionary) decrees and ordinances takes place within a very reasonable time from the actual hearing. Statistically, it was demonstrated to the undersigned that the length of proceedings before the Italian Administrative Courts (from inception to the final determination by the Consiglio di Stato) is markedly shorter than the comparative length of proceedings obtaining before the Courts of Ordinary Civil Jurisdiction (considering that such process can conceptually involve three levels of proceedings), even though in quite a number of cases the administrative tribunal deals with the subject-matter in dispute funditus and on the merits.

III. The Law of the Host Country

Italy’s administrative justice system envisages a separate and distinguishable process from the “ordinary” civil jurisdiction, although reliance is made on the code of civil procedure (C.P.C.) in administrative procedure as well. As a judge hailing from a judicial system which has for a great number of years been influenced by the so-called “Common Law System” of having the administrative process forming part of the “ordinary” civil jurisdiction (although, at present, a new national law setting up an administrative tribunal in Malta has been brought into force), the undersigned was particularly interested in understanding and appreciating the interplay of the two separate forms of procedure in order to be able to glean the common roots as well as the particular distinctive features pertaining to the two systems.
Although for a number of years the *modus operandi* of the administrative tribunals in Italy evolved mainly through precedent and judicial convention, it was a remarkable and providential circumstance that some weeks prior to the exchange (precisely on September 16th, 2010) a new *Codice del Processo Amministrativo* (C.P.A.) was brought into effect, effectively enshrining the existing procedure (Allegato 1), abrogating a myriad legislative decrees (Allegato 4), establishing transitory provisions (Allegato 3) and introducing some new procedural norms aimed at speeding up the administrative process (Allegato 2). The brevity of this report does not allow the undersigned to do it justice and to dwell at length on the various aspects of that new Code.

IV. The Comparative Law Aspect of the Exchange

As stated above, the context of Maltese procedural law and judicial set-up varies fundamentally from that obtaining in Italy, particularly as regards administrative justice. However, what is perhaps often overlooked by a foreign observer of the Maltese system is the fact that major institutes of judicial procedure have been derived from the “civil law system” applied in Italian Courts, notably those relative to *integrazione del giudizio, ultra et extrapetizione, interesse giuridico* and the issue of standing or *locus standi*, and the observance of the basic norms of natural justice (*audi et alteram partem* and *nemo judex in causam propriam*). Some of the more basic procedural institutes are commonly understood and applied in both Italian and Maltese Courts. The undersigned was also impressed with the (doctrinal) affinity between the two systems when it came to the interpretation and application of substantive law (a particular example which recurred in many of the cases heard during the exchange is that relating to the Law of Contracts, including the aspect of (pre-)contractual liability featuring in public procurement cases).

V. The European Aspect of the Exchange

This having been an authentic attendance to cases which were not pre-selected, the question of the application of Community Law featured within the context of such cases where the issue arose (example, in cases relating to environmental impact assessments – E.I.A. – where issues of development were concerned). There were no instances where an actual decision to refer a particular matter to the E.C.J. for a preliminary ruling was felt necessary, although in one particular case2 (relating to the eligibility of a surveying company in certificating an approved public development project) one of the parties invited in its written pleadings the *Consiglio di Stato* to do so, it was felt that the matter involved could be determined without such reference.

An issue relating to the E.C.H.R. arose in one particular case regarding the removal order of an irregular immigrant who had overstayed. After a lengthy debate in Chambers, it was decided that, rather than refer the matter to the Constitutional Court, the matter would first be referred to the *Adunanza Plenaria* of the *Consiglio*, under art. 99 of the C.P.A., for a definitive ruling on the matter.

VI. The Benefits of the Exchange

2 Soa-Rina di Attestazione S.p.A. c. Ministero della Infrastruttura et
Apart from the hands-on personal experience which the exchange provided to the undersigned, a major benefit of the exchange would certainly be the understanding of the practical advantages and peculiarities of the system of administrative justice. It is the intention of the undersigned to make these observations and the material acquired available to the Maltese Association of Members of the Judiciary and to individual interested fellow members of the judiciary. Since the undersigned is currently also assigned to hear all Superior Court cases relating to Judicial Review of Administrative Action in Malta, the experience will undoubtedly provide new insight into a more proficient exercise of the administrative process.

Furthermore, it has emerged from one-to-one discussions with a number of Italian colleagues during the programme that it might be very useful to further enrich knowledge of our respective legal systems by offering to host Italian judges to experience the situation in Malta (in spite of the thorny but not-insurmountable question of the operative language of judicial proceedings in Maltese courts).

VII. Suggestions

Since for the undersigned this exchange was the first experience of its kind, it would be presumptuous to raise suggestions as to improvement regarding the Exchange Programme.

Suffice it to say that the welcome afforded to the undersigned was keen beyond expectation. A fully-furnished and logistically panoramic office within the precincts of Palazzo Spada itself was provided throughout the exchange with functional amenities and services of a personal computer linked to the Consiglio di Stato’s own network with unlimited access to all the research data of the Consiglio di Stato’s own archives and not only. This warm reception was manifested almost without fail by all the Presidents of the various sections involved in the exchange, the consiglieri and the supporting staff, who were prompt to advise and inform on all the queries raised by the undersigned. It was also a particular privilege for the undersigned to be allowed to participate throughout the selected hearings in their entirety as well at camera di consiglio stage (this being the most productive and fruitful experience obtained). For all this, special thanks go to President Pasquale de Lise, and sectional Presidents Gaetano Trotta, Giancarlo Coraggio, Luigi Maruotti and Giorgio Giaccardi, as well as consiglieri Anna Leoni, Paolo Buonvino and Rosanna de Nictolis.

A very special acknowledgement ought to be made of President Giuseppe Barbagallo’s unstinting efforts to provide the undersigned with a meaningful programme of activities and meetings with the various hierarchies of the Consiglio di Stato. One could not overlook the fact that, through notable personal effort, he consistently presented himself punctually for every introductory meeting even when this entailed having to call at Palazzo Spada specifically and solely for such purpose on days when he held no sittings and during some tumultuous events taking place in Rome at the time! His scrupulous concern for the undersigned’s welfare and fullest reaping of benefits from this exchange render Professor Barbagallo more than just a valued colleague but indeed a veritable point
of reference as regards the desired standards which the promoters of the Exchange Programme justifiably strive to attain.

Joseph R. Micallef LL.D.,
Judge – Superior Courts, Malta

28th December, 2010
I- Programme of the exchange
Institutions you have visited, hearings, seminars/conferences you have attended, judges/prosecutors and other judicial staff you have met…
The aim here is not to detail each of the activities but to give an overview of the contents of the exchange.
If you have received a programme from the hosting institution, please provide a copy.

II- The hosting institution
Brief description of the hosting institution, its role within the court organisation of the host country, how it is functioning…

III- The law of the host country
With regard to the activities you took part in during the exchange, please develop one aspect of the host country’s national law that you were particularly interested in.

IV- The comparative law aspect in your exchange
What main similarities and differences could you observe between your own country and your host country in terms of organisation and judicial practice, substantial law…? Please develop.

V- The European aspect of your exchange
Did you have the opportunity to observe the implementation or references to Community instruments, the European Convention of Human Rights,…? Please develop.

VI- The benefits of the exchange
What were the benefits of your exchange? How can these benefits be useful in your judicial practice? Do you think your colleagues could benefit of the knowledge you acquired during your exchange? How?

VII- Suggestions
In your opinion, what aspects of the Exchange Programme could be improved? How?