ADMINISTRATIVE JUSTICE IN EUROPE

Replies to the Questionnaire by Malta

Preliminary Questions

1. Could you give the main dates in the evolution of the review of decisions and acts of Administrative authorities?

Malta was a British colony for over 150 years[1] and as a consequence public law in Malta – in particular constitutional and administrative law – has been heavily influenced by the English common law position, even though English common law was never formally part of Maltese law. Maltese courts have repeatedly stated that, in the absence of specialised administrative tribunals such as those that exist in, for example, Italy and France, the ordinary civil courts had jurisdiction to determine the legality of administrative acts.[2] Until 1981 cases of judicial review were determined by the ordinary courts in the light of English jurisprudence. Specific Acts of Parliament also grant rights of appeal to specialised *ad hoc* tribunals created by the same Acts.

In 1981, the position was changed in the sense that the Maltese Parliament enacted Act VIII which is the first legislation which expressly dealt with judicial review of the legality of administrative action, and in particular with the grounds on which this review could be made, and with the remedies which could be given by the courts.

The grounds of judicial review of the legality of administrative action provided for by Act VIII of 1981 were limited in scope, and the relative provisions were substituted by Act XXIV of 1995, which introduced new and wider provisions in the Code of Organisation and Civil Procedure on judicial review of the legality of administrative actions.

2. Does the review by the courts of administrative acts and actions aim to submit administrative authorities to law and protect individual rights, in other words to the rule of law ? Alternatively, is it only a review of the good functioning of the administration ?

Review of administrative action in Malta can take two forms: either judicial review of the legality of the administrative action or an appeal (which normally reviews both the legality and the merits of the case) to one of the various *ad hoc* tribunals for specialised areas. These *ad hoc* tribunals – also sometimes referred to as administrative tribunals, to be distinguished from the administrative tribunals as known in, for example, Italy or France - have varying degrees of competence and in almost all cases there is a right of appeal, normally on a point of law only, from the decision of these tribunals to the Court of Appeal. In hearing such appeal proceedings, the Court of Appeal is normally composed of one judge, but it could also

[1] Malta was a British colony between 1813 and 1964.

[2] *Ullo Xuereb Riccardo v. Magro Enrico nomine* Court of Appeal 17/06/1908 Vol. XX-I-147; *Doublett Eduardo et v. Campbell Alexander Victor nomine* First Hall of the Civil Court *per* F. Buhagiar 21/01/1928 Vol. XXVII-II-12

be composed of three judges, depending on what the Act of Parliament constituting the particular tribunal provides.. Where no such right of appeal to a court is provided for, the decision of the tribunal is itself subject to judicial review of its legality before the ordinary courts.

Review by the Maltese courts of the legality of administrative acts is clearly aimed at implementing the rule of law. In other words it aims to submit the administrative authorities to law and protect individual rights. It is based on the fundamental principle, inherent throughout the legal system, that powers can be validly exercised only within the limits established by Parliament. In fact, Section 469A(1) of the Code of Organisation and Civil Procedure stipulates that: *"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."

Similarly the right of appeal to a tribunal specialised in a particular area – if and when granted - is also aimed at implementing the rule of law.

3. What is the definition of an administrative authority in your country? Does this definition include all public legal entities and private legal entities exercising public authority?

Section 469A of the Code of Organisation and Civil Procedure, dealing with judicial review of the legality of administrative action, does not speak of or define administrative authority, but it speaks of and defines the term *"public authority"*. According to Section 469A(2), the term *"public authority" "means the Government of Malta, including its Ministries and departments, local authorities and any body corporate established by law."* There is case-law to the effect that this definition includes commercial companies in which the government has a controlling interest.[3]

[3] *Hotel Cerviola Limited et v. Malta Shipyards Limited* decided by the Court of Appeal on the 23rd. September 2009.

4. Is there a classification of administrative acts in your country?

Maltese law does not contain any express classification of administrative acts. However Section 469A of the Code of Organisation and Civil Procedure dealing with judicial review of the legality of administrative acts, states that the term *"administrative act" "includes 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: Provided that, saving those cases where the law prescribes a period within which a public authority is required to make a decision, the absence of a decision of a public authority following a claimant's written demand served upon it, shall, after two months from such service, constitute a refusal for the purposes of this definition."*

There is case-law to the effect that a decision of an entity exercising a judicial or quasi-judicial function cannot be considered to be an administrative act within the meaning of Section 469A. Hence decisions of administrative tribunals, i.e. the tribunals specialised in particular areas which hear appeals in case of dispute between the administration and natural or legal persons concerning administrative acts, seem to be excluded from review under Section 469A. However, it was held that the decisions of these judicial or quasi-judicial entities are still subject to judicial review of their legality, in virtue of the power conferred on the civil courts by ordinary law to provide a remedy where a judicial or quasi-judicial authority exceeds its jurisdiction or sanctions an illegality.[4]

There is also case-law to the effect that delegated (or subsidiary) legislation[5] cannot be considered to be an administrative act within the meaning of Section 469A, but it is a legislative act issued by the administration in virtue of a delegation of power from Parliament. Again it was held that such delegated legislation is still subject to judicial review of its legality under the ordinary law in virtue of the power conferred on the ordinary civil courts to examine and decide whether a delegated legislation is within the limits of the powers conferred by law upon the competent authority and that this right to challenge the validity of a law is also guaranteed by the Constitution.[6]

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[4] *Dr. Anthony Farrugia v. Electoral Commission* decided by the Court of Appeal on the 18th October 1996; *Director General of the Courts v. Axiaq Pinu* decided by the Court of Appeal on the 3rd. March 2006..

[5] Delegated (or subsidiary) legislation refers to those regulations issued by an administrative authority in virtue of the powers conferred upon it by an Act of Parliament. These regulations have the force of law equal to that given to an Act of Parliament.

[6] *Borg Carmelo v. Minister responsible for Justice and Home Affairs* decided by the Court of Appeal on the 8th November 2005.

I - WHO REVIEWS ADMINISTRATIVE ACTS?

A – COMPETENT BODIES

5. Is the review of administrative acts undertaken by general bodies related to the administrative authorities, and similar to courts?

No. In Malta, judicial review of the legality of an administrative act is undertaken by the ordinary courts of civil jurisdiction. Review in the form of a full appeal on the law and the merits is sometimes granted to *ad hoc* tribunals specialised in particular areas and with a varying degrees of competence. In almost all cases there is a right of appeal, normally on points of law only to the Court of Appeal from the decisions of these tribunals. If there is no such right of appeal, the decisions of these tribunals are subject to judicial review of their legality by the ordinary courts.

6. Could you describe the organization of the court system in your country, indicating which courts or tribunals are competent to hear disputes concerning acts of the administration? If possible, try to respect the pattern hereafter.

The Maltese judicial system is basically a two-tier system with a court of first instance presided by a judge or magistrate, and a Court of Appeal, consisting of three judges when the appeal is from a court presided by a judge (superior appeal), or consisting of a single judge, when the appeal is from a court presided over by a magistrate (inferior appeal). The courts presided by a judge are the superior courts whilst the courts presided by a magistrate are the inferior courts. There are, besides, various tribunals for specialised areas with varying degrees of competence. In almost all cases there is a right of appeal from decisions of these tribunals, normally on points of law only, to the Court of Appeal. In such appeal proceedings, the Court of Appeal is normally composed of one judge, but it could also be composed of three judges, depending on what the Act of Parliament constituting the particular tribunal provides. When Malta attained independence in 1964, the Constitutional Court was established as the appellate court in matters relating to the Constitution.

Judicial review of the legality administrative action is exercised by the ordinary superior courts of civil jurisdiction, which means that at first instance the case is decided by the First Hall of the Civil Court. This Court is composed of one judge, and any party aggrieved by a judgement of the First Hall of the Civil Court can lodge an appeal to the Court of Appeal, composed of three judges. However, appeals from decisions of the First Hall of the Civil Court on judicial review of delegated legislation fall within the jurisdiction of the Constitutional Court, which is also composed of three judges.

The First Hall of the Civil Court is presided over by various judges, and any one of them can hear and determine an action for judicial review of the legality of an administrative act. There is no specialised division of the court for actions against the administration.

Sometimes the law grants a review in the form of full appeal on both points of law and the merits from disputes concerning administrative acts to *ad hoc* tribunals

specialised in particular areas (e.g. tax, social security, electronic communications). There is no jurisdictional organization of these tribunals since each is set up with a particular jurisdiction by different Acts of Parliament. However, in most cases there is a right of appeal, normally on points of law only from the decisions of these tribunals to the Court of Appeal. In such appeal proceedings, the Court of Appeal is normally composed of one judge, but it could also be composed of three judges, depending on what the Act of Parliament constituting the particular tribunal provides. If there is no such right of appeal, the decisions of these tribunals are subject to judicial review of their legality by the ordinary superior civil courts.

The Constitutional Court hears *inter alia* appeals from judgements of the First Hall of the Civil Court, in its constitutional jurisdiction, concerning allegations that an administrative act or action violates a fundamental human right, as protected in the Constitution and/or in the European Convention on Human Rights and Fundamental Freedoms. A person is normally required to exhaust all ordinary remedies, including instituting proceedings for judicial review of the administrative act concerned, before instituting constitutional proceedings for alleged breaches of human rights. The Constitutional Court also hears issues regarding elections and the validity of laws.

B - RULES GOVERNING COMPETENT BODIES

7. If the review of administrative acts and action lies within the competence of the ordinary courts, is that competence delimited by texts (such as a Constitution, or parliamentary legislation) or by case-law?

The Code of Organisation and Civil Procedure as amended by Act XXIV of 1995 (Section 469A) defines the competence of the ordinary civil courts to exercise judicial review over the legality of administrative actions, as defined by the same section. However, as explained above, there exists case-law to the effect that the ordinary civil courts have jurisdiction in terms of the ordinary law to exercise judicial review to ensure the legality of decisions of administrative tribunals and of delegated legislation, since they have jurisdiction under the Code of Organization and Civil Procedure to determine all cases of a civil nature.[7]

The competence of administrative tribunals in hearing appeals depends on their particular constitutive Act of Parliament.

8. If the review of administrative acts is carried out by administrative courts or tribunals, are the existence, competence and duties of those courts or tribunals governed by specific rules? Are such rules set out in texts or in the case-law?

Not applicable.

[7] Section 32 of the Code of Organization and Civil Procedure

C - INTERNAL ORGANIZATION AND COMPOSITION OF COMPETENT BODIES

9. If judicial review is assumed by ordinary courts, describe their internal organization and specify if they comprise specialized chambers, and how these are composed.

See answer to Question 6

10. If judicial review is assumed by administrative courts, present their internal organization. Distinguish between the highest and the lower courts. Could you provide a chart or a diagram?

Not applicable

D - JUDGES

11. Do the judges who review administrative acts belong to a specific category? Specify whether different categories of judges exist according to the various kinds of control of administrative authorities. [10 lines max.]

The judges who sit in the First Hall of the Civil Courts, and therefore hear actions for judicial review of the legality of administrative acts, do not belong to a special category.

From a practical point of view, the adjudicators who sit on administrative tribunals should preferably have an extensive knowledge of the subject which falls within the competence of each respective tribunal, for example tax, social security or electronic communications, but this is not normally a legal requirement.

12. How are judges in charge of judicial review of administrative authorities recruited?

The judges who preside over the First Hall of the Civil Court (an ordinary court) are appointed, like all other judges, by the President of Malta acting in accordance with the advice of the Prime Minister. In order to qualify to be appointed a judge (to sit in the ordinary courts) a person must have practised as an advocate in Malta or served as a magistrate in Malta, or has partly so practised and partly so served, for a period of, or periods amounting in the aggregate to, not less than twelve (12) years. Judges remain in office until retirement age at the age of sixty-five (65).

Adjudicators sitting in the *ad hoc* administrative tribunals are normally appointed by the Minister responsible for the particular area over which the tribunal has jurisdiction. The manner of their appointment is determined by the particular Act of Parliament constituting the particular tribunal. In order to qualify to be appointed as an adjudicator of a particular *ad hoc* administrative tribunal, a person must satisfy the requirements, if any, specified in the particular Act of Parliament constituting that particular tribunal. Hence such adjudicators may not necessarily be legally qualified,

although, if the tribunal is composed of more than one adjudicator, the relevant law normally stipulates that one of these adjudicators should be an advocate. Such adjudicators remain in office for the period specified in the relevant Act of Parliament.

13. What is the professional training of judges in general?

In order to qualify to be appointed a judge, a person must have either practised as an advocate in Malta or served as a magistrate in Malta, or has partly so practised and partly so served, for a period of, or periods amounting in the aggregate to, not less than twelve (12) years.

In order to qualify to be appointed as an adjudicator of a particular *ad hoc* administrative tribunal, a person must satisfy the requirements, if any, specified in the particular Act of Parliament constituting that particular tribunal.

14. How is their career structure organized?

Not applicable, since there are no promotions.

15. How is their professional mobility organized?

The President of Malta assigns to each judge the court or the chamber of the court in which he is to sit, and he may transfer a judge from one court or chamber of a court to another. In assigning duties to judges, the President of Malta must act on the advice of the Minister responsible for justice, so however that, the Minister must, in advising the President, act in accordance with any recommendation on the matter by the Chief Justice.

A judge may be assigned to sit in more than one court or more than one chamber of one or more courts, but he cannot take up a position in the public administration. In fact, judges are prohibited from carrying out any other profession, business or trade, or to hold any other office of profit whatsoever, even though of a temporary nature, with the exception of any judicial office on any international Court or tribunal or any international adjudicating body, or the office of examiner at the University of Malta.

A person can be appointed adjudicator in more than one of the *ad hoc* administrative courts. As already stated, it is the relative Act of Parliament constituting the particular *ad hoc* tribunal which determines the qualifications, if any, the adjudicator should have. In principle he can take up a position in the public administration. However, in practice, this is limited by the fundamental right to an independent and impartial tribunal guaranteed by the Constitution and by the European Convention Act.

E - ROLE OF COMPETENT BODIES

16. What are the different kinds of recourse against administrative acts and action in your country?

In proceedings for judicial review of the legality of an administrative act, the court can declare that act to be null, invalid and without effect, but it cannot substitute its discretion for that of the administrative authority concerned. In judicial review proceedings of the legality of administrative acts under Section 469A of the Code of Organization and Civil Procedure, the plaintiff can include in the demands a request for the payment of damages based on the alleged responsibility of the public authority in tort or quasi tort, arising out of the administrative act. These damages are not to be awarded by the court where notwithstanding the annulment of the administrative act, it is not proved that the public authority has not acted in bad faith or unreasonably or where the thing requested by the plaintiff could have lawfully and reasonably been refused under any other power.

In proceedings for a review in the sense of a full appeal on both law and merits to an *ad hoc* administrative tribunal, the tribunal can in most cases reverse the decision of the administrative authority, but it all depends on the powers granted to the particular tribunal by the relative Act of Parliament which constitutes it.

17. Do mechanisms exist for the delivery of a preliminary ruling? (Apart from the procedure under Article 234 of the Treaty establishing the European Community)

There is case-law[8] in the sense that if in proceedings before the First Hall of the Civil Court, as for example proceedings for judicial review of the legality of administrative acts, a question arises as to the violation of any of the fundamental human rights protected by the Constitution and/or by the European Convention Act of 1987 and if the First Hall deems that the raising of the question is not merely frivolous and vexatious, the First Hall can determine the constitutional issue before it determines the merits of the case. There is a right of appeal to the Constitutional Court from the decision of the First Hall regarding this issue.

If the issue of the legality of an administrative act arises in a civil case pending before an ordinary court other then the First Hall of the Civil Court or before one of the *ad hoc* administrative tribunals, the party claiming the illegality of the administrative act has to institute proceedings before the First Hall of the Civil Court so that that act will be declared null or void. The court or tribunal hearing the main civil case will in practice suspend the proceedings until the judgement of the First Hall or of the Court of Appeal, where an appeal is lodged, is delivered.

If the issue of the illegality of an administrative act arises in a criminal case, the position is not quite clear. There are judgements in the late 1940's and early 1950's, where the court of criminal jurisdiction decided itself the question of the illegality of the administrative act concerned. It could possibly be argued that in view of the

[8] *Angelo Spiteri v. Commissioner of Police* decided by the Constitutional Court on the 16th April 1999.

promulgation of Section 469A of the Code of Organisation and Civil Procedure, the courts of criminal jurisdiction can no longer decide on the legality of administrative acts. However, there are no judgements on this issue.

18. Does a competent body have only judicial functions or does it also have an advisory role vis-à-vis the executive or the legislature? In the affirmative, specify the various aspects of these consultative functions, and if they are exclusive to the body or the highest jurisdiction.

Both the judges sitting in the ordinary courts as well as the adjudicators sitting in the *ad hoc* administrative tribunals have only a judicial function, and do not have any advisory role.

19. Where the body plays both a judicial and an advisory role, how are its respective duties organised?

Not applicable.

F - ALLOCATION OF DUTIES AND RELATIONSHIP BETWEEN COMPETENT BODIES

20. Do the highest appeal courts have an instrument or a procedure to ensure the harmonised and uniform application and interpretation of law?

There is no such procedure in Malta. The judgements of the Court of Appeal are of a highly persuasive force, but they are not binding on future cases.

II - HOW ARE ADMINISTRATIVE ACTS AND ACTIONS REVIEWED BY THE COURTS ?

A. ACCESS TO JUSTICE

21. How significant are the pre-conditions for access to the courts in your system of control of administrative authorities?

As regards judicial review of the legality of administrative action, Section 469A of the Code of Organization and Civil Procedure provides that a request for such judicial review cannot be made where the mode of contestation or of obtaining redress, with respect to any particular administrative act before a court or tribunal is provided for in any other law.

Moreover, an action challenging the validity of an administrative act cannot be instituted, except after the expiration of ten (10) days from the service against the administrative authority concerned of a judicial letter or of a protest in which the right claimed or the demand sought is clearly stated.

As regards review in the form of a full appeal on both law and the merits to an *ad hoc* administrative tribunal, normally there are no pre-conditions to exercise such right of appeal, but it all depends on the particular Act of Parliament constituting the relative tribunal.

22. Who may bring a case before the court? (natural persons, legal entities such as associations, companies, etc., local authorities or other administrative bodies or authorities).

Any physical or legal person showing that he has a juridical interest in the action can institute proceedings for judicial review of the legality of the administrative act. In one case, the Court of Appeal has held that a trade union has a juridical interest to institute proceedings to challenge the validity of an administrative act, when the issue concerns the legality of an administrative act issued as a reaction to a directive given by that trade union to its members.[9] Moreover, where the plaintiff is challenging the validity of a delegated legislation for reasons other than breach of fundamental human rights, he does not need to prove any personal interest in the action.[10]

As regards appeals to *ad hoc* administrative tribunal, normally the Act of Parliament constituting the tribunal provides that it is the person against whom the decision is given who can file an appeal. but it depends on the wording of the particular Act of Parliament constituting the tribunal.

It has been held that one government department cannot sue another government department challenging the legality of an administrative act issued by the defendant government department, because government has a unitary personality.[11] Local councils have by law a separate legal personality and so it could possibly be argued that they can file an action challenging the legality of an administrative act, but the issue has not yet been determined by the courts.

23. For every situation, specify the conditions that must be satisfied in order for an application for judicial review to be admissible?

Like in any other civil case, a person who wants to challenge the validity of an administrative act has to prove that he has an interest in the outcome of the case. This interest. as defined by case-law, should possess three concurrent characteristics: (i) legitimate or juridical (ii) personal or direct and (iii) actual. The requirement that interest must be legitimate or juridical means that it must be in conformity with the law. The second requisite requires that there must be a determinate and actionable link between the parties to the action. The third requisite implies that the interest must exist at the time of the filing of the action and it cannot be hypothetical – in other words the right which the plaintiff is seeking to protect must have been violated or at least directly threatened.

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[9] *Alfred Buhagiar pro et noe v. Minister for Education* decided by the Court of Appeal on the 25th January 1991.

[10] Section 116 of the Constitution

[11] *Director for Social Accommodation v. Director of Public Registry et* decided by the First Hall of the Civil Court on the 13th January 1993.

As already stated, the Court of Appeal has held that a trade union has an actual, direct and juridical interest to institute proceedings to challenge the validity of an administrative act, when the issue concerns the legality of an administrative act issued as a reaction to a directive given by that trade union to its members.[12] Moreover, where the plaintiff is challenging the validity of a delegated legislation for reasons other than breach of fundamental human rights, he does not need to prove any personal interest in the action.[13]

As regards appeals to *ad hoc* administrative tribunal, as already stated normally the Act of Parliament constituting the tribunal provides that it is the person against whom the decision is taken who can file an appeal.

24. Is recourse to the courts subject to time-limits?

Section 469A of the Code of Organization and Civil Procedure provides that an action before the ordinary courts for judicial review of the legality of administrative acts must *"be filed within a period of six months from the date when the interested person becomes aware or could have become aware of such an administrative act, whichever is the earlier."* It is not obligatory to inform the claimants of this time-limit. This time-limit is one of forfeiture,[14] and hence cannot be extended by the court or by the parties.

As regards actions for judicial review of the legality of administrative acts outside the ambit of Section 469A of the Code of Organization and Civil Procedure (e.g. review of the legality of delegated legislation or of the decisions of administrative tribunals), there is no specific legal provision specifying a time-limit within which the action has to be instituted.

However, there is case-law to the effect that where the plaintiff is seeking to annul the decision of an administrative tribunal and is also requesting damages, the time-limit for filing the action of judicial review is the same time-limit applicable for filing an action for damages arising from tort, that is two (2) years from the date of the event which allegedly caused the damage: in this case two (2) years from date of the decision of the tribunal which is being challenged.[15] The issue whether this time-limit of two years can be extended was not raised in that case.

The issue of whether there is a specific time-limit within which to challenge the legality of delegated legislation has never been determined by the courts.

As regards to appeals to *ad hoc* administrative tribunals, the time-limit to file the appeal varies according to the particular tribunal, but usually it is in the range of 15 to 30 days from the date of the decision or from the date of the notification of the decision. Normally, the Act of Parliament constituting the tribunal does not impose

[12] *Alfred Buhagiar pro et noe v. Minister for Education* decided by the Court of Appeal on the 25th January 1991.
[13] Section 116 of the Constitution
[14] *Roberto Zamboni noe v. Direttur tal-Kuntratti* decided by the Court of Appeal on the 31st May 2002.
[15] *Barbara Emanuele et Bugeja Salvino noe* decided by the Court of Appeal on the 12th January 2007.

notification of these time-limits to the person concerned. This time-limit cannot be extended by the *ad hoc* tribunal.

25. Are there certain administrative acts or actions that are not open to review by the courts?

As already stated in the reply to Question 4, the definition of "administrative act" in Section 469A of the Code of Organisation and Civil Procedure specifically excludes *"any measure intended for internal organization or administration within the said (public) authority."* Hence, such acts of internal organization are not subject to judicial review under Section 469A.

Apart from this definition, there is no specific list of actions which cannot be reviewed by the courts, but a small number of Acts of Parliament do purport to exclude the jurisdiction of the courts. The most important are the following:

(a) Section 742A of the Code of Organisation and Civil Procedure provides that: *"No civil proceedings whatsoever shall be taken against the President of Malta in respect of acts done in the exercise of the functions of his office."* However this ouster clause is of limited importance since in Malta the office of President is a political appointment and the President occupies mainly a formal and ceremonial function. Although executive authority in Malta is always exercised in the name of the President, it is only rarely (in a situation of constitutional crises) that he can actually act on his own initiative, for usually he has to act on the advice given to him by the Prime Minister and the Ministers.

(b) The Constitution also provides that *"the question whether the Public Service Commission has validly performed any function vested in it by or under this Constitution shall not be enquired into in any court."*[16] The Public Service Commission is entrusted with giving advice to the Prime Minister on the appointment, removal and exercise of disciplinary power over public officers.

(c) The Constitution also provides that *"the question whether the Commission for the Administration of Justice has validly performed any function vested in by or under this Constitution shall not be enquired into in any court."*[17] The Commission for the Administration of Justice is *inter alia* entrusted with giving advice to the Minister responsible for justice on any matter relating to the organisation of the administration of justice, to draw the attention of any judge or magistrate to any failure on his part to abide by the code of ethics relating to him, and to exercise discipline over the legal profession.

[16] Section 115
[17] Section 101A(14)

26. Are applications for review by the courts subject to screening procedures? Distinguish between first instance, appeal, and highest jurisdiction.

None of the proceedings for challenging administrative acts is subject to a screening procedure at any stage.

27. How must the application be presented? Are there specific forms or is the applicant free to choose the format?

Proceedings for judicial review of the legality of administrative acts must be instituted by a sworn application. The format of the sworn application and its requisites are regulated by law.

Proceedings of appeal before the *ad hoc* administrative tribunals are less formal and are normally instituted by application. The relevant legislation usually specifies what the application should contain. Where the relevant Act of Parliament grants a right of appeal from the decision of the ad *hoc* tribunal to the Court of Appeal, the contents of the application of appeal are regulated by law.

28. Has the possibility of bringing proceedings via the Internet been envisaged in your country or is it already possible? Are there reflections or plans for the introduction of tele-procedures or e-procedures (e-registry office)?

It is not possible to bring proceedings via the Internet, nor are there any plans to introduce tele-procedures or e-procedures in the immediate future.

29. Is there a pecuniary charge for lodging an application for judicial review (in the form of stamp duty, tax, or registry fees)? [5 lines]

A registry fee has to be paid to institute proceedings in the ordinary courts for the judicial review of the legality of administrative acts.

As regards proceedings of appeal to the *ad hoc* administrative tribunal, the relevant legislation may or may not require the payment of a registry fee. However, a registry fee has to be paid to file an appeal from the decision of these tribunals to the Court of Appeal, in those cases where the relevant legislation allows such right of appeal.

30. Is recourse to a solicitor / lawyer or counsel compulsory?

As regards proceedings in the ordinary courts for judicial review of the legality of administrative acts, written pleadings have to be signed by an advocate and also by the legal procurator if any. The assistance of an advocate is not necessary during the oral hearing. Nevertheless, the court may order the party who is not assisted by an advocate to engage one if, in its opinion, such party is unable adequately to plead his case; and if such party fails to engage an advocate, the court can appoint one of the official curators for the purpose. However, in practice nearly in all cases there is an advocate assisting the party during the oral hearing.

As regards proceedings of appeal before the *ad hoc* administrative tribunals, legal assistance is not normally required by law. However, in practice, an advocate or

some other professional specialised in the particular area of law concerned (e.g. an accountant in tax issues, an architect in planning issues) is very often engaged. As regards those cases where the relative legislation grants a right of appeal to the Court of Appeal, the assistance of an advocate is not necessary, but the Court has a discretion to order the party to engage one if, in its opinion he is unable to adequately plead his case, and in default, the Court can appoint one of the official curators for the purpose.

31. As regards the costs of the proceedings, can they be paid through legal aid?

The costs of proceedings for judicial review of the legality of administrative actions can be paid through legal aid. Legal aid is granted by the First Hall of the Civil Court, and before giving its decision it seeks the advice of the Advocate for Legal Aid. In order to qualify for legal aid, the applicant must confirm on oath that excluding the subject-matter of the proceedings, he does not possess property of any sort, the net value whereof amounts to, or exceeds, €6,988.12, not including everyday household items that are considered reasonably necessary for the use by applicant and his family, and that his yearly income is not more than the national minimum wage established for persons of eighteen years and over. In calculating the said net asset value, no account is taken of the principal residence of applicant or of any other property, immovable or movable, which forms the subject matter of court proceedings, even though such other property is not the subject-matter of the proceedings in respect of which legal aid is being applied for. In calculating the income, the period of computation is the twelve months' period prior to the demand for the benefit of legal aid.

Legal aid can also be granted in proceedings of appeal to the *ad hoc* administrative tribunals, if the Act of Parliament constituting the particular tribunal grants the benefit of legal aid, but this is not usual. Where this benefit is granted by law, the request has also to be made to the First Hall of the Civil Court. The aggrieved party can in any case request the First Hall to grant him legal aid if he wishes to appeal from the decision of the *ad hoc* tribunal to the Court of Appeal, if such right of appeal is granted by the relative law.

32. Is there a fine for abusive or unjustified applications?

In an action for judicial review of the legality of administrative acts, the Court of Appeal can award double costs against the appellant in favour of the respondent for frivolous and vexatious appeals.

In proceedings before *ad hoc* administrative tribunals, it depends on the legislative act constituting the tribunal, but it is not usual for an Act of Parliament to impose such a fine.

B. MAIN TRIAL

33. Which fundamental principles govern the main trial hearing? The right to *inter partes* proceedings, the rights of the defence/the right to a fair hearing, the balance of written and oral elements in the proceedings. Do these principles derive from national law (legislation or/and case-law) or European law (Convention for the Protection of Human Rights and Fundamental Freedoms for example) or both?

The fundamental principle which governs the main trial hearing in all kinds of action is the right to a fair hearing as protected by the Constitution of Malta and by the European Convention for the Protection of Human Rights and Fundamental Freedoms. Hence the trial is an adversarial one, seeking to ensure equality of arms between the parties. There is a specific law regulating the procedure before the ordinary courts, namely the Code of Organization and Civil Procedure.

As regards the *ad hoc* administrative tribunals, the relevant legislative act normally either stipulates the procedure to be adopted or authorises the tribunal to regulate its own procedure – however this procedure cannot be in breach of the right of a fair hearing as protected by the Constitution and by the European Convention. In fact Act V of 2007 promulgated the Administrative Justice Act (Chapter 490 of the Laws of Malta), which, amongst other things, specifically imposed a number of rules of procedure which *ad hoc* administrative tribunals must follow. These rules are basically modelled on what is provided in Article 6 of the European Convention on Human Rights on the right to a fair hearing, and the principles evolved on it in the case-law of the European Court of Human Rights. However, as I already said, these rules of procedure where already applicable to the procedure before *ad hoc* administrative tribunals before the promulgation of this Act.

34. How is the judicial impartiality ensured in your country?

Judges have their security of tenure guaranteed by the Constitution. They cannot be removed from office except by the President of Malta upon an address by the House of Representatives supported by the votes of not less than two-thirds of all the members thereof and praying for such removal on the ground of proved inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour.

Moreover, in terms of the Code of Organization and Civil Procedure, a judge may be challenged or abstain from sitting in a cause -
(*a*) if he is related by consanguinity or affinity in a direct line to any of the parties;
(*b*) if he is related by consanguinity in the degree of brother, uncle or nephew, grand-uncle or grandnephew or cousin, to any of the parties, or if he is related by affinity in the degree of brother, uncle, or nephew, to any of the parties;
(*c*) if he is the tutor, curator, or presumptive heir of any of the parties; if he is or has been the agent of any of the parties to the suit; if he is the administrator of any establishment or partnership involved in the suit, or if any of the parties is his presumptive heir;

(*d*) (i) if he had given advice, pleaded or written on the cause or on any other matter connected therewith or dependant thereon;
(ii) if he had previously taken cognizance of the cause as a judge or as an arbitrator: Provided that this shall not apply to any decision delivered by the judge which did not definitely dispose of the merits in issue or to any judgment of non-suit of the plaintiff;
(iii) if he has made any disbursement in respect of the cause;
(iv) if he has given evidence or if any of the parties proposes to call him as a witness;
(*e*) if he, or his spouse, is directly or indirectly interested in the event of the suit;
(*f*) if the advocate or legal procurator pleading before a judge is the son or daughter, spouse or ascendant of the said judge;
(g) if the advocate or legal procurator pleading before a judge is the brother or sister of the said judge;
(h) if the judge or his spouse has a case pending against any of the parties to the suit or happens to be his creditor or debtor in such manner as may reasonably give rise to suspicion of a direct or indirect interest that may influence the outcome of the case.

Moreover, the Constitutional Court has in a number of cases held that these grounds of challenge are not exhaustive, and the impartiality of a judge has also to be assessed in accordance with the right of a fair hearing by an independent and impartial tribunal as guaranteed by the Constitution and European Convention of Human Rights.[18]

As regards adjudicators sitting on the *ad hoc* administrative tribunals, their independence varies depending on the provisions of the particular Act of Parliament constituting the tribunals. Normally the Act of Parliament stipulates that the provisions on the challenge of judges in the Code of Organization and Civil Procedure apply equally to the adjudicator/s of the ad *hoc* tribunal. But in any case, a person can challenge the independence and impartiality of an adjudicator of such tribunals under the Constitution of Malta and under the European Convention of Human Rights.

35. After the application has been lodged, can the applicant rely on legal arguments raised for the first time in the course of the proceedings?

In proceedings for judicial review of the legality of administrative actions, the plaintiff cannot request the court to do something which he has not requested it to do in the judicial act which initiates the proceedings. Neither can he normally rely on legal arguments raised for the first time in the course of the proceedings.

The position is usually the same for proceedings of appeal before the *ad hoc* administrative tribunals, although it depends on the relative Act of Parliament constituting the tribunal.

36. Which other persons can intervene during the main hearing?

In proceedings for judicial review of the legality of administrative actions, any person can request the court to intervene, provided that he proves that he has the same kind of interest as that required from the plaintiff, as explained in the reply to Question 23.

[18] For example in the case *Sandro Chetcuti et v. Attorney General et* decided by the Constitutional Court on the 12th July 2005

Apart from intervention by an interested third party, in proceedings for judicial review of the legality of administrative actions, the court can order any person to be joined into the suit as defendant. Such an order can be made either upon the request of the parties to the suit, or without such a request. In order for such joinder to take place, the court must be satisfied that such person has the same kind of interest as that required from the plaintiff, as explained in the reply to Question 23. The person joined to the suit is considered a defendant and as such he is entitled to file written pleadings, raise any plea and avail himself of any other benefit which the law allows to a defendant; and the claim may, according to circumstances, be allowed or disallowed in his regard, as if he were an original defendant.

In proceedings of appeal before the *ad hoc* administrative tribunals, one has to refer to the relative Act of Parliament constituting the tribunal to determine whether an interested person can intervene and/or whether a joinder of an interested person can be ordered by the tribunal.

37. Is there a representative of the State ("ministère public") who may submit pleadings in cases concerning administrative law?

In all cases concerning administrative law, the action is always instituted against the representative of the government department concerned with the grievance, and such representative naturally becomes a party in the case, and has a right to defend his department and can file pleadings in the case, like any other private party to a case.

38. Is there, in your legal system, an institution or a person who plays a role analogous to that of role played by the French "commissaire du gouvernement" before the Conseil d'État, that is to say, who is completely independent and impartial and who delivers an opinion in open court, analysing the legal arguments and suggesting how the case ought properly to be disposed of in a case?

There is no such institution in the Maltese legal system.

39. How can proceedings come to an end before a decision is reached by the Court?
Specify the reasons why the proceedings could come to an end prematurely, such as the death of the applicant or withdrawal of the application?

Proceedings can come to an end either because the plaintiff/appellant withdraws the proceedings or the court/*ad hoc* administrative tribunal declares the proceedings to be abandoned, if the plaintiff/appellant does not diligently follow the proceedings. The death of the aggrieved party does not automatically terminate the proceedings, because his heirs can continue the suit.

40. Does the court registry itself forward the various written applications and pleadings to the parties?

In proceedings for judicial review of the legality of administrative action, it is the court registry itself which forwards the various written applications and pleadings.

In the case of proceedings of appeal before the *ad hoc* administrative tribunals, it is usually the secretary of the relative tribunal who does this work.

41. Who is responsible for providing the evidence? The parties or the court?

In proceedings for judicial review, it is the parties who are responsible for providing the evidence. The principle is the he who alleges a fact has the burden of proving it. The court can only decide on the evidence submitted by the parties.

In the case of appeals to *ad hoc* administrative tribunals, the position is usually the same; however it depends on the provisions of the Act of Parliament concerned.

42. How is the hearing conducted? Is it public? Can it take place in camera and in which circumstances? Who can take part in the hearing and how (in writing, orally)?

Proceedings for judicial review of the legality of administrative action are held in public, and the parties to the case (typically the plaintiff and a representative of the government department concerned) can take part in the proceedings both by attending the sittings as well as by presenting written submissions. It is lawful for the court to order that the cause be heard behind closed doors, should decency or good morals so require. It is also lawful for the court, in any other case, at the request of both parties, upon good reason being shown, to order that the cause be heard with closed doors.

In the case of appeal before an *ad hoc* administrative tribunal, it is the Act of Parliament constituting the relative tribunal which determines whether the hearing is conducted in public or behind closed doors, and the manner in which the parties can take part in the hearing.

43. When and how is judicial deliberation conducted? Who can take part in it?

Only the judge/s sitting in the court or the adjudicator/s sitting in the *ad hoc* administrative tribunal take part in the deliberations. No other person can take part.

C. JUDGEMENT

44. How are the grounds of the decision given? In details or more briefly?

In proceedings for judicial review of the legality of administrative actions, the court is obliged by law to premise the reasons on which its decision is based, and it must include in the judgement a reference to the proceedings, the claims of the plaintiff and the pleas of defendant.

As regards proceedings of appeal before the *ad hoc* administrative tribunals, the relevant Act of Parliament sometimes expressly states that reasons must be given for decisions. Before 2007, even if the Act of Parliament did not expressly state so, the courts have always presumed that this is an implied obligation of the *ad hoc*

administrative tribunal. However, the Administrative Tribunal Act 2007 eliminated all doubts on the matter by specifically providing that ad *hoc* administrative tribunals must give reasons for their judgements. The Act also provides that *"the administrative tribunal shall indicate, with sufficient clarity, the grounds on which it bases its decisions. Although it is not necessary for a tribunal to deal with every point raised in argument, a submission that would, if accepted, be decisive for the outcome of the case, shall require a specific and express response."*

The judgements delivered by the courts tend to be more detailed than those of the *ad hoc* administrative tribunals. If a decision of a court or of an *ad hoc* administrative tribunal is not sufficiently motivated, it can be annulled.

45. What are the reference norms [international norms, European norms (Convention for the Protection of Human Rights, Community law), constitution, law, jurisprudence, personal conviction]?

The norms most used are the particular law which plaintiff is claiming to have been breached, Maltese case-law, English case-law and authors (since as already stated for historical reasons Maltese public law is influenced by the British common law), the Constitution of Malta, and the European Convention for the protection of Human Rights, and now Community law, since Malta has now become an EU member.

However, one should bear in mind that an aggrieved person normally cannot institute proceedings claiming that an administrative act is in breach of his fundamental rights as protected by the Constitution and/or by the European Convention on Human Rights, unless he has exhausted ordinary remedies, including instituting proceedings for judicial review of that administrative act.

46. Which criteria and methods of review are used by the court?

In proceedings for judicial review of the legality of administrative action, the court only has jurisdiction to determine whether the administrative act concerned is valid or otherwise in terms of the enabling Act of Parliament, but it cannot substitute its discretion on what course of action is/was to be taken for that of the administrative authority concerned. Hence in such proceedings, the court can only declare the administrative act valid or null. The position is the same irrespective if the case is being heard at first instance before the First Hall of the Civil Court or whether it is being heard at appellate stage before the Court of Appeal or by the Constitutional Court in the case of review of delegated legislation.

In proceedings of appeal before an *ad hoc* administrative tribunal, the relevant Act of Parliament normally allows the tribunal to substitute its discretion on what course of action to take, for that of the administrative authority concerned. However, since most appeals from the decisions of these tribunals are limited to points of law only, very often the Court of Appeal can only declare the decision of the tribunal to be valid or null.

47. How are legal costs apportioned?

In proceedings for judicial review of the legality of administrative action, the court usually condemns the party losing the case to pay all the costs, including those of the opposite party. However, the court has discretion to order that the each party bears his own costs, when either party has been cast in some of the points at issue, or when the matter at issue involves difficult points of law, or where there is any other good cause.

In proceedings of appeal before *ad hoc* administrative tribunal, reference has to be made to the relevant Act of Parliament constituting the tribunal to see the manner in which the issue of costs is regulated.

48. Is it more usual for the case to be decided by a single judge or by a number of judges?

Proceedings for judicial review of the legality of administrative action are determined at first instance by the First Hall of the Civil Court composed of one judge, and on appeal by the Court of Appeal composed of three judges.

The composition of the *ad hoc* administrative tribunals varies from one tribunal to another depending on the drafting of the relative Act of Parliament. Where an appeal is granted from the decisions of such tribunals to the Court of Appeal, the Court of Appeal is normally composed of one judge, but it could also be composed of three judges, depending on what the Act of Parliament constituting the particular tribunal provides.

49. Where the case is heard by several judges, is the expression of individual judicial opinions allowed (dissenting opinions?)?

Dissenting opinions are not allowed, and there is no distinction between the courts/ *ad hoc* tribunals...

50. Is the decision delivered in writing, or orally?

Judgements of the courts are delivered in writing and pronounced in public, but are not notified to the parties.

Decisions of the *ad hoc* administrative tribunals are also normally delivered in writing. Before 2007, the question whether they should be delivered in public and notified to the parties depended on the drafting of the relative Act of Parliament. The Administrative Justice Act 2007 now provides that, save as otherwise provided by law, the proceedings before an administrative tribunal must be conducted in public.

D - EFFECTS OF DECISIONS AND EXECUTION OF JUDGEMENT

51. What is the authority of the decision? Res judicata, *stare decisis*?

The authority of a decision of the court/*ad hoc* administrative tribunal from which no appeal has been lodged within the prescribed time-limit, or which is not subject to a further appeal, has the authority of a *res judicata.* This authority is not influenced by the nature of the challenged administrative act, and the decision only produces effects for the parties to the case. The decision can be quoted as precedent in other cases where similar legal issues arise, however in Malta precedent has only a persuasive value, and has no binding force.

52. Can the court limit the effects of the judgment in time?

There is no law prohibiting the limitation of the effects of a judgement in time. Hence, in its judgement a court can set a time-limit within which one of the parties has to do something, and if he fails to do so, the judgement will not have effect.

This is normally also applicable to decisions of *ad hoc* administrative tribunals, unless the relevant Act of Parliament provides otherwise.

53. Is the right to the execution of judicial decision guaranteed in your country? Specify if it is uniformally guaranteed, or through a specific judicial procedure. Indicate if there is a distinction between implementation of the judgment by administrative authorities and implementation of the judgment by private persons. Specify if the court has the power of injunction, possibly completed by coercive fine, in order to secure compliance with the judicial decision.

There is no specific legal provision on the enforcement of judgements of the ordinary courts of law dealing with administrative law, but the general law of enforcement of judgements is applicable. Among the executive warrants there is the warrant *in factum,* which is issued by the court. The person against whom the warrant is issued is sent to prison at his own expense until the performance of the act ordered by the judgment or until such time as the court may deem necessary to ensure such performance. However, this warrant is scarcely resorted to in practice. There is no distinction between implementation of the judgement by administrative authorities and implementation of the judgment by private persons.

As regards the implementation of decisions of the *ad hoc* administrative tribunals, this depends on the provisions of the relevant Act of Parliament constituting the tribunal, but usually the Act does not contain any provisions concerning enforcement of decisions of the tribunal.

54. Is there a policy in your country to reduce the length of time needed for the proper disposal of cases before the courts? If so, how is that policy implemented?

There is a policy in Malta to reduce the length of time needed for the proper disposal of cases before the courts. These reforms are mostly legislative in nature. Until 2007, there was no such express policy for proceedings before the *ad hoc*

administrative tribunals. However, the Administrative Justice Act 2007 now provides that the time within which an administrative tribunal must take its decision must be reasonable in the light of the circumstances of each case.

In all cases, a person can institute constitutional proceedings seeking a declaration that he has not be given a fair hearing within a reasonable time in breach of the Constitution and of the European Convention, and if his action is successful, he may be awarded both material and moral damages.

E - REMEDIES

55. How are various functions or/and competencies shared out between the lower courts and the supreme courts?

In proceedings for judicial review of administrative actions, both the court of first instance, that is the First Hall of the Civil Court, and the Court of Appeal or the Constitutional Court (in the case of review of delegated legislation) have the same functions. It is irrelevant which administrative authority took the action in question.

As already stated, the decisions of the *ad hoc* administrative tribunals are often subject to appeal, normally on points of law only, to the Court of Appeal.

There is no reservation of functions to higher courts, except that certain disputes relating to elections do not fall within the jurisdiction of the ordinary courts but are determined directly by the Constitutional Court, notably when there is an allegation of illegal or corrupt practices during an election.

56. Are there remedies to challenge a judgment before a higher court? Describe these remedies and their functioning.

As already stated from the decisions of the First Hall of the Civil Court on the legality of administrative actions, there is a right of appeal on both facts and law to the Court of Appeal. From the decision of the First Hall of the Civil Court on the legality of delegated legislation, there is a similar right of appeal to the Constitutional Court.

As regards decisions of the *ad hoc* administrative tribunals, the relative Act of Parliament usually grants a right of appeal from the decisions of such tribunal to the Court of Appeal, but such right of appeal is normally limited to points of law.

F. EMERGENCY PROCEEDINGS AND SUMMARY JURISDICTION / APPLICATIONS FOR INTERIM RELIEF

57. Are there emergency and summary jurisdiction proceedings?

As regards actions for review of the legality of administrative actions, an aggrieved party can obtain *interim relief* by requesting the First Hall of the Civil Court (which is always composed of one judge), to issue a precautionary warrant in order to secure the rights claimed by him, pending the hearing of the case. The precautionary

warrant is issued on a *prima facie* basis. Hence the judge who hears the application for the issue of a precautionary warrant may also be the same one who hears the main proceedings.

As regards *interim relief* in proceedings of appeal before the *ad hoc* administrative tribunals, one has to refer to the relative Act of Parliament constituting the tribunal. However, normally such Acts of Parliament do not grant *interim relief*.

58. What types of requests can be made to the emergency and summary jurisdictions? Ascertainment of a situation? The obligation for administrative authorities to communicate a document? The suspension of the execution of an administrative act? The payment of a provision?

As far as the administration is concerned, a precautionary warrant can take the form of either a warrant of description or a warrant of prohibitory injunction. A warrant of description is requested in order to secure a right over movable things, for the exercise of which the applicant may have an interest that such movable things remain in their actual place or condition.

On the other hand, the object of a warrant of prohibitory injunction is to restrain a person from doing any thing whatsoever which might be prejudicial to the person suing out the warrant. The court cannot issue this warrant against the administration unless a representative of the administrative authority against whom the warrant is demanded confirms in open court that the thing sought to be restrained is in fact intended to be done and the court is satisfied, after hearing the explanations given, that unless the warrant is issued the prejudice that would be caused to the person suing out the warrant would be disproportionate when compared with the actual doing of the thing sought to be restrained.

59. Are there different kinds of summary jurisdiction? General or specific to certain litigants?

The law on the precautionary warrants of description is the same as that applicable between private parties. The procedure on the warrant of prohibitory injunction is slightly different in the case where the respondent is the administration and not a private person, because in the former case the law requires that a representative of the administration confirms in open court that the thing sought to be restrained is in fact intended to be done, and the court has to be satisfied, after hearing the explanations given, that unless the warrant is issued the prejudice that would be caused to the person suing out the warrant would be disproportionate when compared with the actual doing of the thing sought to be restrained. The confirmation on oath by the respondent that the thing sought to be restrained is in fact intended to be done is not required where the warrant is requested against a private person.

However there are another two kinds of precautionary warrants which can be issued against private persons, but they cannot be issued against the administration. These are the garnishee order[19] and the warrant of seizure.[20]

[19] The garnishee order may be issued where the creditor wishes to attach in the hands of a third party money or movable property due or belonging to his debtor.

As in all other cases, the court can, for a just cause, order that the proceedings for judicial review of administrative action (on the merits) be heard with urgency, in which case the hearing will be held more expeditiously.

III - CAN ADMINISTRATIVE DISPUTES BE SETTLED BY NON-JUDICIAL BODIES?

60. Can disputes be settled by administrative authorities themselves? How?

An administrative authority can in most cases, of its own free will, review its decision and amend it. There can also be a negotiated settlement between the administration and the aggrieved person.

61. Can administrative disputes be settled by independent bodies (offices, agencies, ombudsman, mediators, regulation authorities)?

An aggrieved person can refer an administrative dispute to the Ombudsman. However, the decision of the Ombudsman is not binding, since it is only a recommendation.

All the parties to the dispute may also agree to settle the dispute by arbitration, and the administration can enter into an arbitration agreement with a private person.

It is also lawful for all the parties to a dispute to refer the matter to a mediator. A court or other adjudicating authority on its own initiative may, where it considers it appropriate, direct that proceedings be stayed for the duration of the mediation process.

62. Can administrative disputes be resolved by means other than recourse to the courts?

The same rules which regulate arbitration and mediation in the case of private disputes are equally applicable in the case of disputes with the administration.

As regards complaints to the Ombudsman, such complaints must be instituted within six (6) months of the event giving rise to the dispute and the complainant must have a personal interest in the subject-matter of the complaint. However the Ombudsman can also conduct investigations on his own initiative.

Naturally, disputes can also be settled by amicable agreement at any time.

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[20] The warrant for the seizure of movable property contains an order to the marshal to seize from the possession of the debtor, property equal in value to the sum claimed by the creditor, or to seize the thing mentioned in the title by virtue of which the execution takes place.

IV - ADMINISTRATION OF JUSTICE AND STATISTIC DATA

A. Financial resources made available for the review of administrative acts?

63. On average, what proportion of the State budget is allocated to the administration of justice? Specify for administrative justice when it exists and is distinguished from ordinary justice.

For the year 2003, the proportion of the State budget allocated to the administration of justice was 0.48%. In that year, LM2735445 (*circa* 6291524 Euros) were allocated to personal emoluments (salaries), LM574675 (*circa* 1321753 Euros) were allocated to operational and maintenance expenses and LM474711 (*circa* 1091835 Euros) were allocated to capital expenditure

For the year 2004, the proportion of the State budget allocated to all the administration of justice was 0.37%. In that year, LM2826133 (6500106 Euros) were allocated to personal emoluments (salaries), LM680412 (*circa* 1564948 Euros) were allocated to operational & maintenance expenses and LM145533 (*circa* 334726 Euros) were allocated to capital expenditure.

For the year 2005, the proportion of the State budget allocated to all the administration of justice was 0.42%. In that year, €6,366,762 were allocated to personal emoluments (salaries), €3,001,477 were allocated to operational, maintenance and other expenses and €187,156 were allocated to capital expenditure.

For the year 2006, the proportion of the State budget allocated to all the administration of justice was 0.41%. In that year, €6,290,999 were allocated to personal emoluments (salaries), €2,744,838 were allocated to operational, maintenance and other expenses and €580,957 were allocated to capital expenditure.

For the year 2007, the proportion of the State budget allocated to all the administration of justice was 0.39%. In that year, €6,549,713 were allocated to personal emoluments (salaries), €2,620,659 were allocated to operational, maintenance and other expenses and €21,476 were allocated to capital expenditure.

For the year 2008, the proportion of the State budget allocated to all the administration of justice was 0.37%. In that year, €6,877,481 were allocated to personal emoluments (salaries), €2,597,008 were allocated to operational, maintenance and other expenses and €311,246 were allocated to capital expenditure.

This money was allocated to the Courts of Justice. These figures do not include the money allocated for the operation of the *ad hoc* administrative tribunals. The financing of each of these tribunals is allocated to the relative government department responsible for the issues over which the particular tribunal has jurisdiction.

64. Specify the total number of magistrates and judges working within the legal system concerned.

There are currently nineteen (19) judges and eighteen (18) magistrates working in the ordinary courts.

The number of adjudicators sitting on the *ad hoc* administrative tribunals is not available.

65. What percentage of judges is assigned to the review of administrative authorities?

As already stated judicial review of the legality of administrative action falls within the competence of the First Hall of the Civil Court, and appeals both from the First Hall of the Civil Court and heard by the Court of Appeal in its superior jurisdiction (composed of three judges). Appeals from decisions of the *ad hoc* administrative tribunals are normally heard by the Court of Appeal in its inferior jurisdiction (composed of one judge), but sometimes the appeal is heard by the Court of Appeal in its superior jurisdiction (composed of three judges), depending on what the Act of Parliament constituting the particular tribunal provides. There are currently eight (8) judges sitting in the First Hall of the Civil Court, one (1) judge sitting in the Court of Appeal (inferior jurisdiction) and five (5) judges sitting in the Court of Appeal (superior jurisdiction), bringing the total number of judges who hear cases concerning administrative acts to twelve (14) or 37.8% of the total number of magistrates and judges working in the ordinary courts. However, it has to be pointed out that these judges do not hear only cases against the administration.

The number of adjudicators sitting on the *ad hoc* administrative tribunals is not available.

66. Apart from registry staff, are judges helped by assistants in their research and decisions? Specify the number of assistants (overall and per judge) and their professional training (university, the Bar, etc.).

In their research and decisions, judges are helped by judicial assistants. There are a total of thirteen (13) judicial assistants helping the judges dealing with administrative law cases, which are divided as follows: every judge sitting in the First Hall of the Civil Court has one (1) judicial assistant assigned to him, and there are five (5) judicial assistants assigned to the Court of Appeal (superior jurisdiction).

Judicial assistants must have graduated as lawyers from the University of Malta and they must possess the warrant of advocate.

Adjudicators sitting on the *ad hoc* administrative tribunals do not have any assistants to help them in their research and decisions.

67. Do you have a library and what kind of works and documentary resources can be found there?

The law courts have a small library, in which the more renowned published works are kept. There is also a set of volumes of the published judgements of the Maltese courts.

The adjudicators of the *ad hoc* administrative tribunals do not normally have a library.

68. Do you have access to information technology? In which proportion? And for which kind of task (file management, data bases, computer assistance for writing decisions?)

Information technology is extensively used in the ordinary law courts. Besides word processing facilities for writing judgements, there is a database of all civil pending cases as well as a database of judgements delivered.

Use of information technology as regards the *ad hoc* administrative tribunals varies from one tribunal to another.

69. Do competent bodies and courts have a website to publicise themselves and to communicate with the public?

The Government of Malta has its own website. The websites of the various ministries, including that of the Judiciary of Malta and that of the Ministry of Justice and Home Affairs, are linked to this website.

The website of the Judiciary of Malta contains, amongst other things, information on judgements delivered. This information is intended mainly for the general public. It aims at giving a general view of the diverse issues which come up for decision before the appellate courts. The full text of the judgments is available on the website of the Ministry of Justice and Home Affairs. The website of this Ministry also enables the user to search for judgements, or obtain information on pending cases.

The decisions of some of the *ad hoc* administrative tribunals can be viewed on the website of the department responsible for the issues over which the particular tribunal has jurisdiction.

B. Other statistics and figures

70. How many new applications are registered every year with the court registry or the authority in charge of registering them?

Information specific to new cases of judicial review instituted in the ordinary law courts is not available.

Neither is information on the number of appeals filed before the *ad hoc* administrative tribunals available.

71. How many cases are heard every year by the court or other competent bodies?

Information specific to the number of cases of judicial review heard by the ordinary courts is not available.

Neither is information on the number of appeals heard before the *ad hoc* administrative tribunals available.

72. Could you provide figures concerning cases currently lodged with courts or competent bodies which have not yet been disposed of?

This information is not available neither as regards pending cases of judicial review pending before the ordinary courts nor as regards pending appeals before the *ad hoc* administrative tribunals.

73. What is the average time taken between the lodging of a claim and judgement?

There is no scientific calculation on the average time taken between the lodging of a claim and judgement in the ordinary courts, but roughly, the case will take at least two (2) years to be decided by the First Hall of the Civil Court and another two (2) years to be decided by the Court of Appeal.

As regards the time taken in proceedings of appeal before the *ad hoc* administrative tribunals, no information is available.

74. Indicate the percentage and rate of the annulment of administrative acts decisions against administrative authorities by the lower courts.

This information is not available neither as regards cases decided by the ordinary courts nor as regards to appeals to the *ad hoc* administrative tribunals.

75. Could you indicate the volume of litigation per field (asylum, foreigners, tax, urban planning, etc.)?

This information is not available.

C. The economics of administrative justice

76. Do studies by researchers or work produced by practitioners demonstrate particular concerns by the courts, for example about orders for damages; do they deal with the influence of heavy awards against administrative authorities on public budgets? Do they consider the implications of their decisions in terms of costs for public finances?

No such studies were ever carried out.