

PRACTICAL EXAMPLES IN ADMINISTRATIVE LAW

FACULTY OF LAWS – 2019

ADMINISTRATIVE LAW

LEARNING OUTCOME

By the end of these two lectures, we shall be able to detect 'failures' involving situations where:

- ❑ Example 1: The administrative body (AB) acted ultra vires...acting beyond one's powers
- ❑ Example 2: The AB delegated a power without empowered to do so
- ❑ Example 3: The AB failed to follow mandatory procedures prescribed in the law
- ❑ Example 4: The AB was impartial
- ❑ Example 5: The AB took irrelevant factors into the equation
- ❑ Example 6: The AB committed procedural unfairness due to complainant being unable to bring forward evidence
- ❑ Example 7: The AB committed procedural unfairness since hearing was held in complainant's absence, though the latter had good reason not to attend
- ❑ Example 8: The AB failed to give reasons in support of its decision

LEARNING OUTCOME

By the end of these two lectures, we shall be able to detect 'failures' involving situations where:

- Example 9: The AB failed to notify individual about hearing, hence procedural unfairness
- Example 10: The AB was 'unreasonable' in its approach

What is an administrative act? [Section 469A of Chapter 12]

- "administrative act" includes the issuing by a public authority of any order, licence, permit, warrant, **decision**, or a **refusal** ...
- "public authority" means the Government of Malta, including its Ministries and departments, local authorities and any body corporate established by law.

Example 1

- The Rabat Local Council decides to issue a residence permit to non EU Nationals who had been living in the locality for the last 20 years. The Council cites humanitarian grounds for reaching such a decision. **That said, it should be noted that Maltese law provides that residence permits can only be issued by ID Malta.**

Comment on Example 1

- An action or decision is illegal on the basis that the public body has no power to take that action or decision, or has acted beyond its powers.

Example 2

- The Planning Authority decides to delegate Local Councils the power to decide minor permits within their respective localities. On the other hand, the Authority makes sure that the controversial applications are not delegated to the Councils. **There is nothing at law which permits the Authority to delegate such power.**

Comment on Example 2

- An action or decision is illegal when the public authority delegates a decision for which it is exclusively responsible, - allowing a third party to take a decision for it

Example 3

- The Mellieha Local Council submits a planning application to upgrade the Ghadira promenade. The Planning Authority is required by law to consult the Malta Tourism Authority. Since summer is nearing, the Authority decides to do away with the said consultation. **Having said that, the law requires that the MTA is consulted for all planning applications.**

Comment on Example 3

- If there are express procedures laid down by legislation that it must follow in order to reach a decision, it must follow them....

Example 4

- The Chairperson of the Planning Commission happens to be the sister of one of the objectors appearing before her. Incidentally, they happen to have a different surname. Hence, it is unlikely for the parental relationship to be discovered.

Comment on Example 4

- An Authority must not breach the rules of natural justice. One of the key issues here is the rule against bias, which requires the public body to be impartial and to be seen to be so.

Example 5

- The Planning Authority Chairman asks an employee to quit his job without giving him any reasons but at the same time, assuring him than no police action shall be taken against him.

Comment on Example 5

- ❑ Failing to tell the individual what the case was against them, or taking into account evidence or factors which s/he was not aware of.....

Example 6

- The Permanent Secretary appoints a board to conduct an internal inquiry over misbehaviour allegations of one of the Department's employees. The employee receives a letter to appear before the board and give his own version of events. Nevertheless, the employee was warned that he won't be able to bring witnesses since an urgent decision needed to be taken.

Comment on Example 7

- ❑ Failing to allow the individual to put their case forward....
- ❑ Failing to give the individual the facilities for putting their case forward properly
- ❑ Refusing to hear evidence which might have led to a different decision

Example 8

- John's planning application was scheduled to be decided on the 6th December 2017. On that day, John has a medical appointment. He sends a letter to the Board, requesting a deferral, explaining his unfortunate situation. Nevertheless, the Board refuses John's request due to the fact that Christmas recess was approaching and it wanted to make sure that there is no case backlog for the new year.

Comment on Example 8

- Holding a hearing in the absence of the individual when they had a good reason for not being able to attend ...

Comment on Example 9

- The Planning Authority schedules application PA1234/17 for hearing on the 12th April 2019. The Chairman asks his secretary not to notify applicant and/or his architect as applicant is a notorious trouble maker.

Comment on Example 9

- Failing to notify the individual of the time and place of the hearing that would lead to the decision being taken

Example 10

- As a sign of protest, an environmental NGO submitted an outline planning application entitled 'to demolish Castille'. The idea was to raise awareness in favour of cultural heritage. The Planning Commission dismissed the application outrightly, giving no reasons for its decision as it should be obvious to all and sundry that similar applications shouldn't even be submitted in the first place.

Comment on Example 10

- Fairness demands that the public body give reasons for their decision

Example 11

- The Planning Authority issues a sanctioning permit where applicant had constructed the bedroom ten centimetres less than what was approved in permit. **From a technical point of view, a variation of 10 cm is considered to be minor infringement.** According to current laws, the Authority may fine offenders up to Eur 50,000. In this case, the Authority issued a fine of Eur 40,000 after acknowledging that this same applicant had committed several other breaches in the past.

Note on Example 11

- A decision may be squashed if it is so demonstrably unreasonable as to constitute 'irrationality' or 'perversity' on the part of the decision maker;
- The benchmark decision - 1948, in the *Wednesbury* case: "*If a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere... but to prove a case of that kind would require something overwhelming...*"
- YET, this threshold is extremely difficult to meet, which is why the *Wednesbury* ground is usually argued alongside other grounds, rather than on its own;
- However, the threshold will be a lower one, that of proportionality, when 'Constitutional' breaches are involved.