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A BILL
entitled

AN ACT to establish THE ADMINISTRATIVE TRIBUNAL

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

1.(1) This Act may be cited as "The Administrative Tribunal Act 1993."

(2) This Act shall come into force on the date which the Minister responsible for Justice shall establish by notice in the Government Gazette.

2 "administrative decision" means a decision of an administrative character made, proposed to be made, or required to be made, as the case may be, (whether exercised in virtue of discretionary powers or not) and any act of the administration which is intended to have regulatory effect, and shall include:

(a) making, suspending, revoking or refusing to make an order, award or determination;

(b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission;

(c) issuing suspending, revoking, or refusing to issue a licence, authority or other instrument;

(d) imposing a condition or restriction;

(e) making a declaration, demand or requirement;

(f) retaining, or refusing to deliver up, an article;

(g) doing or refusing to do any other act or thing, and,

(h) failure within three months from the service of a judicial intimation to make any of the decisions abovementioned;

provided that an administrative decision shall not include a decision of the President of the Republic, an Act of Parliament or any other Act passed by the Legislature of Malta, ordinance, proclamation, rule, regulation, bye-law, or other instrument having the force of law of general application.

"Administrative Tribunal" includes any of its chambers, where the context so requires.

"public officer" shall also include (a) any minister and any parliamentary secretary (b) any public authority, body of persons, corporation, committee, and any other public administrative entity, whether exercising administrative or quasi-judicial functions or not, and their officers.

REVIEW OF ADMINISTRATIVE DECISIONS

3 (1). Where any public officer is vested with powers to make an administrative decision, notwithstanding the provisions of any other law, he shall give written reasoned grounds for any such decision, which shall, as of right, be communicated to any interested party, who makes a relative request therefor.

(2). A decision made simply on grounds of public policy or of public interest shall be deemed to be insufficiently based in law and in fact.

(3) Notwithstanding the provisions of any other law, any decision of a public officer exercised in

virtue of any discretionary power shall be subject to review, as laid down in this Act;

(4) The provisions of review laid down in this Act shall not in any way prejudice any other right of action, under any other law, challenging an administrative decision, including the right of appeal to the Court of Appeal in any such special law.

4. (1) A person who is aggrieved by an administrative decision to which this Act applies may apply to the Administrative Tribunal, hereinafter established, for a review in respect of the decision on any one or more of the following grounds:

(a) that a breach of the rules of natural justice occurred in connection with the making of the decision;

(b) that procedures that were required by law to be observed in connection with the making of the decision were not observed;

(c) that the person who purported to make the decision did not have jurisdiction to make the decision;

(d) that the decision was not authorised by the enactment in pursuance of which it was purported to be made;

(e) that the making of the decision was an improper exercise of the power conferred by the enactment in pursuance of which it was purported to be made;

(f) that the decision involved an error of law, whether or not the error appears on the record of the decision;

(g) that the decision was induced or affected by fraud;

- (h) that there was no evidence or other material to justify the making of the decision;
- (i) that the decision was otherwise contrary to law.
- (j) that the decision is proved to be manifestly inconsistent with a previous decision on similar facts or in the same circumstances, and no founded justification is brought forward for such inconsistency.

(2) The reference in paragraph (1) (e) to an improper exercise of a power shall be construed as including a reference to:

- (a) taking an irrelevant consideration into account in the exercise of a power;
- (b) failing to take a relevant consideration into account in the exercise of a power;
- (c) an exercise of a power for a purpose other than a purpose for which the power is conferred;
- (d) an exercise of a discretionary power in bad faith;
- (e) an exercise of a personal discretionary power at the direction or behest of another person;
- (f) An exercise of a discretionary power in accordance with an internal rule or policy, and which has not been rendered public as being of general application, without regard to the merits of the particular case;
- (g) an exercise of a power that is so unreasonable that no reasonable person could have so exercised the power;
- (h) an exercise of a power in such a way that the result of the exercise of the power is uncertain; and
- (i) any other exercise of a power in a way that constitutes abuse of the power.

(3) The ground specified in paragraph (1)(h) shall not be taken to be made out unless:

(a) the person who made the decision was required by law to reach that decision only if a particular matter was established, and there was no evidence or other material (including facts of which he was entitled to take notice) from which he could reasonably be satisfied that the matter was established), or

(b) the person who made the decision based the decision on the existence of a particular fact, and that fact did not exist.

5. A review of an administrative decision may be demanded by any person who shows that he has a juridical interest, or by any person who shows that he is acting in the interests of the community in general or of a specified group.

6. A review may only be demanded once, unless the subsequent request for review is made under paragraph (J) of Subsection (1) of Section 4 of this Act.

SETTING UP OF THE ADMINISTRATIVE TRIBUNAL

7.(1) There is hereby established the Administrative Tribunal, which is charged with the duty of reviewing administrative decisions in accordance with the provisions of this Act.

(2) The Administrative Tribunal shall be made up of a number of chambers not being less than five, each of which shall be composed of a Chairperson and two members, to be chosen by ballot, as hereinafter provided, from a panel of fifty members.

8. The President of the Republic shall, on the advice of the President of the Constitutional Court, appoint the Chairpersons, from persons who have held judicial office, whether as judges or magistrates, or from persons who, according to the Constitution, would be eligible for such office.

9. The President of the Republic shall appoint fifty members, as to twenty five to be nominated on the advice of the Prime Minister and the remaining twenty five shall be appointed on the advice of the Leader of the Opposition, and in both such cases, the advice shall be forwarded not later than one month from the date that the President notifies his intention to make the appointments ;

provided, however, that where the President does not receive such advice, or receives an incomplete list, he shall of his own motion appoint the remaining members to sit.

10. The members shall be persons with at least twelve years experience in the public administration, in business, trade-unions, public corporations, or the professions, and shall hold office for a period of five years from the date of appointment, and may be appointed again to serve for further terms of five years, unless an objection for such renewal is made by either the President of the Constitutional Court, the Prime Minister, or the Leader of the Opposition.

11. The Chairpersons shall also hold office for five years, and may be reappointed for further terms of five years, unless objection for reappointment is made by the Prime Minister or by the Leader of the Opposition.

12. Chairpersons and members may be removed from office by the President of the Republic on the joint advice of the President of the Constitutional Court, the Prime Minister and the Leader of the Opposition.

13. Chairpersons shall vacate their office on assuming any office of emolument with the government or with any body corporate in which the government has a controlling interest, or in which the government has the power to appoint a director or representative, for which post a fee or other honorarium may be due, and the chairpersons and members may be challenged in the same manner and for the same reasons as judges or magistrates in the ordinary courts.

14. (1) There shall be a Secretary of the Administrative Tribunal, who shall be a public officer, chosen by the President of the Constitutional Court.

(2) The Secretary shall have the duty, in addition to the ordinary supervision of the administrative work of the Administrative Tribunal, to draw by ballot the two members from the total of fifty, on each occasion, who shall be assigned to hear and determine an application for review.

(3) In the same manner, the Secretary shall choose by ballot the chairperson for each particular case, and having thus chosen the chamber, shall proceed to assign by ballot each new application to the chambers.

(4) It shall be the duty of the Secretary to hold the ballots, mentioned in this Section, in public, that is to say on any working day in that part of the Registry of the Superior Courts to which the public has admittance, and in the presence of two witnesses

from the general public, who shall sign with him the relative result.

HEARINGS BEFORE THE CHAMBERS

15.(1) The Administrative Tribunal shall have the same powers and duties as the Civil Court First Hall.

(2) It shall have the right to summon and examine witnesses on oath.

(3) In the taking of evidence, the Chairperson is authorised to administer the oath or the solemn declaration, and electromagnetic means may be used.

(4) The Code of Organisation and Civil Procedure shall apply, where this Act does not otherwise provide.

16. The Administrative Tribunal shall hold its sittings in public and shall only hold sittings in camera if there is the concurrence of all the parties; in all cases, however, it shall publish its decisions, by reading out in public the conclusive part of the decision. The grounds for reaching the decision shall be deposited not later than fifteen days with the Secretariat, and shall be available to all interested parties, and copies thereof may be taken against the payment of the relative fee.

17. The Administrative Tribunal shall regulate its own procedure regarding the collection of evidence and proof.

18. Notwithstanding the provisions of the Code of Organisation and Civil Procedure (Cap 12), the Administrative Tribunal shall have power to order any government department or other authority subject of

its jurisdiction to produce copies of documents relevant to a case pending before it; and where there arises the question about the authenticity of such copies, then the question shall be settled by the examination of the original document in camera by the chamber seized of the case.

19. The Registry of the Superior Courts in Malta, or the Registry of the Courts of Magistrates in Gozo, as the case may be, shall be the Registry of the Administrative Tribunal and therein shall be deposited the records of the Administrative Tribunal.

20. The decisions of the Administrative Tribunal shall be taken by a majority of votes.

21. (1) The procedure shall be by application, sent by registered post and addressed to the Secretary. The application shall contain (a) a specific reference to the administrative decision (b) a brief summary of the facts in issue (c) the grounds on which the review is being requested (d) the remedy that the applicant deems applicable to his case;

provided that no nullity shall ensue from the non-observance of any such formality, if the nature of the complaint and the remedy sought appear clear, or can be clarified during the hearing before the Administrative Tribunal.

(2) The application shall be filed in duplicate, and a copy thereof, bearing the date on which the Administrative Tribunal will first take cognizance of the application, shall be served on the other party, at applicant's expense.

(3) The date of hearing shall be so fixed by the Administrative Tribunal that not less than fifteen

days shall intervene between the filing of the application and the first hearing of the matter, provided that not less than twelve days shall elapse between the date of serving of the application and the date fixed for the hearing of the application; and the date of hearing shall be endorsed on the duplicate application by the Secretary of the Administrative Tribunal under instructions from the Chairperson.

22. The parties may appear before the Administrative Tribunal in person or may appear or be assisted by a member of a professional body.

23. The provisions of Title X of Book Third of the Code of Organisation and Civil Procedure relating to free legal aid shall apply to private parties to proceedings before the Administrative Tribunal, where applicable.

24. No registration fees shall be levied, but the Administrative Tribunal may condemn either party to pay costs to the other party.

25.(1) The Administrative Tribunal in its judgment shall have power, where it does not reject the application, to :

- (a) declare the decision null and void and remit the case back to the defendant authority;
- (b) declare the right of the applicant to his original request with an order to the defendant to comply accordingly within a specified time limit;
- (c) declare that the applicant may have suffered damages, but in such case the Administrative Tribunal shall remit the case before the Court of Appeal for the determination of such an issue as to the

questions of responsibility and the quantum of such damages;

(d) apply any other remedy, which in the circumstances, is equitable and just, or expedient, in the particular circumstances of the case, and not being one of the remedies mentioned in the preceding paragraphs of this Section.

(2) Besides the operative conclusion and the remedy to be applied, the Administrative Tribunal shall include in the judgment the reasons on which the decision is based.

26. There shall always remain competent to the applicant the precautionary remedies envisaged in Sections 873 to 875 of the Code of Organisation and Civil Procedure, and all the other remedies under the Constitution and under Act XIV of 1987;

provided, however, that instead of the filing of the application as provided in this Act shall be deemed to satisfy the requirements of Section 843 of the Code of Organisation and Civil Procedure.

QUESTIONS OF LEGALITY BEFORE THE COURT OF APPEAL.

27.(1) Any party to the proceedings before the Administrative Tribunal may, by application to be filed within one month from the delivery of the judgment, request the Court of Appeal to quash the judgment on any one of the following grounds, which shall be specifically stated in the application:-

- (a) for lack of jurisdiction of the Administrative Tribunal;
- (b) for violation or wrong application of the law;
- (c) for nullity of the judgment or of the procedures

leading thereto, which nullity must be substantial and not merely formal, and which cannot be corrected ex officio by the Court of Appeal;

(d) where the reasons on which the decision was based are lacking, insufficient or contradictory;

(e) where there are conflicting decisions of different chambers or of the same chamber of the Administrative Tribunal on questions of the same nature, or which are substantially the same, and there has not been any modification of the relative legislation in the relevant period, and the definition of the conflict of interpretation or application of the law becomes necessary.

(2) In the case mentioned in paragraph (e) of subsection (1) of this Section, any of the parties and the Secretary of the Administrative Tribunal ex officio may request by application to refer the question to the Court of Appeal, and in any such case the application shall be served on all the other parties in the other cases with which the conflict has arisen, who shall be parties to the appeal, and the Court of Appeal shall, in defining the reference decide finally by a single judgment applicable to all cases under examination;

provided that the judgment shall not affect any other case which has become a res judicata after a previous decision by the Court of Appeal.

GENERAL PROVISIONS

28. (1) All expenses required to put into operation the provisions of this Act, including the expenses of the Administrative Tribunal or of any person

appointed by or under this Act, shall be a charge on and be paid out of the Consolidated Fund.

(2) The Minister responsible for Justice may by order establish the remuneration payable to Chairpersons and members of the Administrative Tribunal and a schedule of fees payable to members of professional bodies assisting an applicant before the Administrative Tribunal.

29. Subsections (2), (3), (4), (5) and (6) of Section 742 of the Code of Organization and Civil Procedure shall be repealed, and the following new subsections (2) ^{and (3)} shall be inserted immediately after subsection (1) thereof:

"(2) Notwithstanding any other law, the Administrative Tribunal shall have the exclusive jurisdiction to consider and decide all cases regarding the validity of any act or other thing done by the government or by any person holding a public office in the exercise of public functions, within the limits and subject to the provisions of the Administrative Tribunal Act.

(3) Where any plea is raised before any Court or the question is raised ex officio by the Court itself that the Administrative Tribunal is competent, then in any such case, if the plea is founded, the Court shall transmit the records to the Administrative Tribunal to proceed further on the records already acquired before the Court.

30. The rights established by virtue of this Act shall apply to administrative decisions made as from the 1st March, 1993.

Object & Reasons

To create an Administrative Tribunal to review Administrative decisions, at the request of the private citizen.