Developing A Code of Administrative Law for The Maltese Islands

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1. Introduction

Administrative Law, unfortunately, has not been viewed by the legislator, throughout time, in a coherent systematic manner notwithstanding the various enactments and subsidiary laws that have been added to our statute book since independence. Administrative Law has developed sporadically from the legislative perspective although the case law of our courts and certain specialised tribunals has contributed to its development during time by filling in the various *lacunae* in our statute book. On the other hand, writings on this subject are few and far between and members of the legal profession shun away from delving into a detailed discussion of what appears to be considered as a well forgotten appendage of the law, strictly a reserved domain to those 'anointed' colleagues daring to practise in the field of public administration. To be fair, it is true that during the last forty years administrative law has developed considerably when compared to colonial times; however, there has never been a methodologically sound attempt to profoundly study it from a more holistic perspective. On the contrary, post-colonial experience has tended to address on a segmented and *ad hoc* basis each and every aspect of the administration which was felt to need regulation. Perhaps the time has come for the legislator to carry out a much required stock taking exercise of our law, starting off with Administrative Law, in order to determine how to proceed from here. Hence, this article is an initial contribution in what is intended to spearhead more study and thought amongst the legal profession on the subject of Administrative Law reform hoping that proper and particular attention is given to this realm of the law.

2. Codification

R.W. Lee states, in connection with Roman Law prior to the period of Justinian, that 'various attempts had been made to bring order into the statute law'.[1] In Roman Law, Justinian did achieve such an objective through codification, by establishing a ten person commission with the task of making use of the earlier codes and subsequent legislation, reducing the whole to a systematic form with necessary amendments.[2] The terms of reference of Justinian's Commission which drew up the *Codex Vetus*[3] were to omit all that was obsolete and to make such consolidations, deletions, and alterations as were necessary to remove contradictions.[4]

Although our forefathers have bequeathed to us a system of codified legislation in the form of the five codes,

[1] R.W.Lee, *The Elements of Roman Law*, fourth edition, London, Sweet & Maxwell, 1956, p. 25.
[2] *Ibid.*, p. 26.
[3] For a discussion on the compilation of Justinian, including the *Codex Vetus*, vide J.A.C. Thomas, *Textbook of Roman Law*, Amsterdam, North-Holland Publishing Company, 1976, pp. 54-60.
[4] Barry Nicholas, *An Introduction to Roman Law*, Oxford, Clarendon Press, 1984, p. 39.
[5] For an appreciation of Sir Adriano Dingli's contribution to codification, vide Sir Arturo Mercieca, 'Sir Adriano Dingli sommo statista, legislatore, magistrato', *Melita Historica*, Volume 1, No. 3, 1954, pp. 164-184 and Volume 1, No. 4, pp. 221-260, in particular pp. 227-231.
[6] Chapter 10 of the Laws of Malta.
[7] Chapter 352 of the Laws of Malta.
[8] Chapter 332 of the Laws of Malta.
[9] Chapter 356 of the Laws of Malta.
[10] Chapter 439 of the Laws of Malta.
[11] Chapter 441 of the Laws of Malta.
[12] Chapter 9 of the Laws of Malta.
[13] Ordinance No. VI of 1899 amending the Criminal Code introduced section 133 in the said Code.
[14] Chapter 50 of the Laws of Malta.
[15] Chapter 377 of the Laws of Malta.
[16] Take the case, for instance, of article 4 of the Income Tax Management Act (Chapter 372), article 4 of the Customs and Excise Tax Act (Chapter 395), article 34 of the Banking Act (Chapter 371) and article 25 of the Financial Institutions Act (Chapter 376).

it seems that Sir Adriano Dingli was the last legal draftsman who opted for codification rather than for having singular enactments regulating particular aspects of our daily life.[5] Again, although in reality we still do retain the five nineteenth century codes on our statute book, the Code of Police Laws[6] has been amended extensively in the post-independence era to such an extent that certain parts thereof dealing with, for instance, maritime affairs, development planning, animals, trading licences, public transport, and others have been truncated to other laws such as the Malta Maritime Authority Act,[7] the Malta Transport Authority Act,[8] the Development Planning Act,[9] the Animal Welfare Act,[10] the Trading Licences Act,[11] and so on. Today, the Code of Police Laws consists only in a meagre handful of provisions when compared to the original enactment.

Of course, from the legal drafting point of view it is much more easier and convenient to prepare a single enactment dealing specifically with one particular subject rather than drawing up a Code dealing with all the gamut of law, be it environmental, administrative, public international, sanitary, criminal, civil, commercial, fiscal, etc. On the other hand, codification does have its advantages, foremost amongst which is that it provides more certainty in the law, is easily accessible especially to the citizen who does not have legal training and who is presumed to know the law (this naturally brings to mind the famous adage *ignorantia juris neminem excusat*), avoids duplicity, and at times, multiplicity of provisions regulating the same human conduct and even irons out any possible conflict between various norms. Indeed, codification - to put it in a nutshell - looks at the law in a comprehensive, coherent and readily understandable manner. It also has stylistic aesthetic features which *ad hoc* legislation misses. Like several of my colleagues, I have had experience to come across a wide array of provisions on the statute book which repeat and/or contradict each other simply because the legislative drafter/s did not know his or her law well when introducing the new norm. Take, for instance, the case of official secrecy. It was first regulated in the Criminal Code[12] in 1899[13] through section (now article) 133 thereof, subsequently through the Official Secrets Act[14] and lately through the amendments made by the Professional Secrecy Act[15] to article 257 of the Criminal Code. And, if though this confusion were not enough, various laws now have their own in built official secrets provision![16] This is just a case of over-regulation *par excellence*!

I argue in favour of codification of the law in order to do away with the above pitfalls. Not only so. Whilst in criminal, civil and commercial law, the four codes in question contained up to two to three decades ago practically the bulk of the provisions on the subject which were then supplemented by certain specific acts, in the case of administrative law there is no such whole encompassing code. The same applies to other emerging areas of the law which have, in recent years, become very prolific. Such is, for example, the case of environmental law, fiscal law and public international law. The Interpretation Act, undoubtedly the alpha and omega of Administrative Law, can hardly be qualified as a Code. This apart from the fact that when compared to foreign interpretation acts it leaves much to be desired due to its scarcity of provisions dealing with hermeneutic principles to be adopted in the interpretation of statutes. Hence, the pressing task of introducing order within the law has fallen upon our Courts who have had to develop such principles of construction through case law, even though unfortunately sometimes the result was that of delivered conflicting judgments.[17] In addition, the Interpretation Act does not assist at establishing which extrinsic aids to construction[18] should be adopted and to what extent should they be taken on board. Extrinsic aids could well refer to the *raison d'être* for legislation, its historical context, the parliamentary history and debates, official reports including green and white papers, explanatory memoranda, circulars, textbooks and legal dictionaries, treaties, *travaux preparatoires*, other statutes, foreign case law, acts of international institutions, etc.

3. Principles of Codification

In my view, the principles[19] to be observed when codifying statutes and/or case law are fivefold:

• **Simplicity:** our five codes, as originally promulgated, were drawn up in a very straight forward uncomplicated language. Their diction was meant to be clear, plain,[20] concise and precise. There was no room for interminable provisions or complicated articles divided into various sub-articles, paragraphs, sub-paragraphs and sub-sub-paragraphs and endless provisos and saving clauses. The style was neat and the provisions were written in such a way that the ordinary person, the legally unqualified *bonus paterfamilias* (if I may borrow that expression from Roman Law), could read them and understand them.[21] The codes were surely not as complicated to comprehend as the Social Security Act[22] which probably few people can get to grips with except perhaps for a handful of bureaucrats in the Department of Social Security who earn their living by solely applying its provisions. Indeed, this enactment unashamedly errs in this respect; it needs to be re-written afresh. It is the best example in the Maltese statute book of how not to draft a law. And, unfortunately, it is not the only one! Emulating the drafting style of this enactment is, to say the least, extremely depressing and mind-boggling.[22]

• **Certainty:** an unclear norm does not make good law; on the contrary, if defeats the whole purpose of law making. Laws are written to be read and understood by human beings hailing from diverse backgrounds. The more uncertain a law is, the less compliance there will be with its provisions. Indeed, the worst enemy of legislative drafting is leaving loose ends untied as doubt will enter the minds of its subjects and the provision thereby looses all its authority. Doubt is what ridicules the law, making it shed all its temerity and vigour. As Flavio Lopez de Oñate puts it, 'L'esigenza della certezza della norma, cioè della legge, e conseguentemente, attraverso di essa, della certezza del diritto, è stata sempre sentita come ineliminabile per la convivenza sociale ordinata.'[24]

• **Accessibility:** it is useless to write laws which cannot be read or which are irretrievable. Laws cannot be secret. Secrecy and the law do not go together. Unfortunately, with the statute book growing and expanding at a very fast pace, laws need to be organised in such a way as to be readily available to the citizen (to use information technology terminology) at a touch of a button. But publicity – which is an important aspect of the law – does not suffice. The laws have to be easily and readily available to the ordinary man or women. In the words of the European Court of Human Rights, 'the law must be adequately accessible: the citizen must be able to have an indication that is adequate, in the circumstances, of the legal rules applicable to a given case.'[25]

• **Foreseeability:** well written provisions enable the reader to forecast what the result will be if s/he acts in a particular way. Hence, the law abiding citizen can predict that a particular act or omission, if committed, will bring about a forseen result. In this way such a person can pre-determine the result of his/her future actions. In another judgement, the European Court of Human Rights stated that the law must be foreseeable, by which it meant that the law has to be 'formulated with sufficient precision to enable the individual to regulate his conduct,' that is, that 'he must be able … to forsee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail'.[26]

Cont. on page 20

[17] The case law of our Courts on governmental liability is a case in point. Judge Prof. Wallace Gulia states that 'The doctrine of *Governmental Liability in Malta* is still in the process of evolution and is one of the best (or worst?) manifestations of judge made law in Malta.' Judge Prof. Wallace Ph. Gulia, Governmental Liability in Malta, Tal-Qroqq, Malta University Press, 1974, p. 1. On the other hand, our courts have been more successful in the realm of Administrative Law when drawing the distinction between a point of law and a point of fact.

[18] For a study of external aids to interpretation, vide the Law Reform Commission of Hong Kong, *Report on Extrinsic Materials As An Aid To Statutory Interpretation*, Hong Kong, Law Reform Commission of Hong Kong, March 1997.

[19] Sir Harold Kent has listed the following principles of legislative drafting: legal effectiveness, procedural legitimacy, timeliness, certainty, comprehensibility, acceptability, brevity, debatability and legal compatibility. Vide Michael Zander, third edition, *The Law-Making Process*, London, Weidenfeld and Nicolson, 1989, pp. 16-17.

[20] Plain language is advocated in legislative drafting by, *inter alia*, the New Zealand Law Commission. Vide New Zealand Law Commission, Report No 35, *Legislation Manual: Structure and Style*, Wellington, New Zealand Law Commission, May 1996.

[21] For instance, the terms of reference of the Ad Hoc Committee of the Permanent Law Reform Commission entrusted with proposing amendments to the Code of Organization and Civil Procedure, Chapter 12 of the Laws of Malta, embodied this view: 'The exercise of updating the laws of civil procedure has therefore not been perceived as an attempt to do away with the fundamental characteristics of those laws. It is rather an endeavour to bring the laws in line with the high level of human rights protection enjoyed in our society, to simplify civil proced-ures and render them more understandable to the citizen…' Ministry of Justice, *Justice Within A Reasonable Time: Proposed Amendments to the Code of Organization and Civil Procedure (Cap. 12)*, Valletta, Department of Information, Nov 1993, p. 7.

[22] Chapter 318 of the Laws of Malta.

[22] For a discussion on intelligibility of legislation, vide David R. Miers and Alan C. Page, *Legislation*, second edition, London, Sweet & Maxwell, 1990, pp. 192-203.

[24] Flavio Lopez de Oñate, La certezza del diritto, Milan, Giuffrè Editore, 1968, p. 47.

[25] *Silver and Others v. U.K.*, Publications of the European Court of Human Rights, 25 March 1983, Series A, Volume 61, 1983, paragraph 87.

[26] Sunday Times v. U.K., Publications of the European Court of Human Rights, 26 April 1979, Series A, Volume 30, 1979, paragraph 49.

• **Generality:** the Code cannot contemplate each and every imaginable situation which needs regulation. On the contrary, it has to set out the general rules which have to be followed by one and all. If the law were to cater for the specificity of each single act or omission of humankind than the law would end up being incessantly complex. As Flavio Lopez De Oñate states, 'La generalità è dunque il carattere per il quale la norma giuridica si riferisce non ad una sola persona, o ad un solo rapporto, ma ad un gruppo di persone e di rapporti considerati astrattamente, cioè non riguardo alla loro individualità'.[27]

These five principles of codification can be summarised as follows: 'simplicity' means that a norm has to be easily understandable by ordinary persons, including those without any legal background; 'certainty' is to be understood in the sense that whoever reads the law knows exactly what it is all about; 'accessibility' implies that the law has to be organised in such a way as to be user friendly when being retrieved; 'forseeability' signifies that one can anticipate what will be the consequences of a given future act or omission; 'generality' necessitates that the law establishes the principles but does not delve deep into each and every nuance which human conduct may produce in the application of such principles.

4. Contents of an Administrative Code

As with the case of the five codes, the Code of Administrative Law should be divided into a number of Titles or Parts and each title or part, in turn, may be divided into sub-titles or sub-parts and subsequently into paragraphs.

4.1 Of General Provisions

When drafting a Code of Administrative Law, the following ingredients could well be considered. First there should be a part dealing with general provisions providing for the citation and entry into force of the Code as well as setting out its general interpretation provision. This interpretation provision will address those words and expressions used in more than one part of the Code whilst those words and expressions which are specific to certain parts of the Code can be included in an interpretation provision at the beginning of the respective Part.

As the Code ought to take on board the current Interpretation Act, the words and expressions used in this part should apply not only to the construction of the Code's provisions but even to the Constitution of Malta and other enactments. The Constitution makes this point quite clear when it provides in article 124(14) that:

'Where Parliament has by law provided for the interpretation of Acts of Parliament, the provisions of any such law, even if expressed to apply to laws passed after the commencement thereof, shall apply for the purposes of interpreting this Constitution, and otherwise in relation thereto, as they apply for the purpose of interpreting and otherwise in relation to Acts of Parliament as if this Constitution were an Act of Parliament passed after the commencement of any such law as aforesaid…'

Hence certain key words in our Constitution, which tend to be ambiguous, should be defined in such a Code. Such would be the case, for instance, of the words 'neutrality' and 'non-alignment' in article 1(3) or 'emolument' in article 124(1).

4.2 Of Law Making

A second part of the proposed Code of Administrative Law could well deal with law making. This part could be sub-divided into four titles. Title I ought to include the Statute Law Revision Act, in terms of which the Law Commission is established and the Laws of Malta are revised from time to time by the said Commission. In Title II, it would be useful to revisit the Existing Laws (Reprinting) Act,[28] to establish whether such enactment is still relevant in our day and age of information technology and prompt means of communication. Title III should also re-establish, on a legislative (and not administrative) basis, the now defunct Permanent Law Reform Commission which acted as a think tank in advising the Government of the day on the much needed changes to, and updating of, our laws such as the Civil Code, the Code of Organization and Civil Procedure, and proposing new legislation such as the Condominium Act, etc.[29] It is amiss that this Commission has not been appointed in the new millennium and its void is even felt more today with the rapid development of the law. Title IV ought to deal with the declaration of nullity of laws by the courts. An important provision in this respect is article 242 of the Code of Organization and Civil Procedure which needs to be elaborated further. Although this provision was inspired by the Constitution of Italy, the relative procedure which ought to be adopted by Parliament following a declaration by a court of law nullifying a provision of the law still needs to be devised.

4.3 Of Statutory Construction

Part III of the proposed Administrative Code could address Statutory Construction. This Part should incorporate the Interpretation Act,[30] but it would have to be updated to today's exigencies. In particular, the Interpretation Act needs to address the general principles of statutory interpretation[31] and the application of these principles to diverse genres of legislation (such as criminal, fiscal, constitutional, etc.), the internal aids to construction, the external aids to interpretation, presumptions, retroactive application of the law, and so on and so forth.[32]

4.4 Of Citizens' Remedies against the Administration

Part IV of the proposed Administrative Code could deal with citizens' remedies against the administration. As Administrative Law has a proximate linkage to the public service and to other bodies corporate established by law, the European Union Ombusdman's *The European Code of Good Administrative Behaviour*[33] ought to be incorporated into Maltese Law thereby being made directly applicable to the public service and to such bodies. The Code should set out the right of citizens to a good administration, namely that the public administration should act lawfully, respect the principles of equality of treatment, proportionality, impartiality, independence, objectivity, absence of abuse of power, fairness, courtesy, etc.

Once at it, the Ombudsman Act,[34] that provision in the Education Act Article 30(15)(16) of the Education Act,[35] establishing the University Ombudsman and that provision in the Development Planning Act Article 17C of the Development Planning Act,[36] establishing the Audit Officer could also be included in this part dealing essentially with maladministration and remedies thereto. In this Part the Administrative Code will ascertain itself that these three Ombudsmen are applying the same criteria to the complaints they receive and that there is no possibility for the citizen to go Ombudsman shopping, even though this, as a matter of reality does not take place in so far as the Ombudsman and the University Ombudsman are concerned as there is an administrative (but not legally codified) arrangement between the two to the effect that the Ombudsman will not deal with complaints on the University as these should be addressed to and dealt with by the University Ombudsman.

4.5 Of Data Protection

The next four parts of the Code could provide the citizen with further remedies against the administration. Such would be the case with data protection, freedom of information and access to government held information, judicial review of administrative action and review of the decisions taken or untaken by the public administration and other public bodies through the establishment of specialized administrative tribunals.

The proposed Administrative Code should deal with the protection of an individual's privacy with regard to data protection. The public service and various bodies corporate are amongst those organizations in Malta possessing sensitive data on the individual. Hence the Data Protection Act[37] should form an integral part of this Code.

[27] Flavio Lopez De Oñate, *Compendio Di Filosofia Del Diritto*, Milan, Dott. A. Giuffrè - Editore, 1955, pp. 163-170 at p. 164.
[28] Chapter 185 of the Laws of Malta.
[29] I must, at this juncture, take the opportunity to express my sincere appreciation for the hard work performed by Chief Justice Emeritus Professor Hugh Harding and Judge Dr. Riccardo Farrugia who both served as Chairmen of this Commission as well as Professor Joseph M. Ganado, Professor Ian Refalo, Professor David J. Attard and Professor Andrew Muscat, who all served as Members of this Commission, for having regaled us with their knowledge and learned advice on law reform through the Commission's publications and reports to Government.
[30] Chapter 249 of the Laws of Malta.
[31] Vide, for instance, Vincent Crabbe, Understanding Statutes, London, Cavendish Publishing Limited, 1994, pp. 67-80.
[32] Dr. John Bell and Sir George Engle discuss these elements in Statutory Interpretation, London, Butterworths, 1987.
[33] For the text of the Code vide http://www.euro-ombudsman.eu.int/code/pdf/en/code_en.pdf.
[34] Chapter 385 of the Laws of Malta.
[35] Chapter 327 of the Laws of Malta.
[36] Chapter 356 of the Laws of Malta.
[37] Chapter 440 of the Laws of Malta.

4.6 Of Access to Government Held Information

Novel provisions being proposed for codification are those concerning access to government held information. Although much is said and written about the transparency of government, Malta still lags behind in so far as access to government held information is concerned. Our state is one of those very few western European states which does not have a Freedom of Information law on its statute book. The time is ripe for Malta to update its law accordingly to bring it in line with the rest of Western Europe. Furthermore, another aspect of access to government held information concerns the law on the national archives in terms of which the citizen can freely obtain information on files which are no longer in use by the administration of the day. This part can therefore also codify the National Archives Act.[38]

4.7 Of Judicial Review of Administrative Action

Another part of the proposed Administrative Code should deal with judicial review of administrative action. This implies that article 469A of the Code of Organization and Civil Procedure should be incorporated into the Administrative Code. If Parliament decides to retain the current provision, then the case law which our Courts have developed on this provision since 1995 needs to be codified as well.

4.8 Of Administrative Tribunals

A new area of Administrative Law which has rapidly evolved during the last twenty or so years concerns administrative tribunals. The more public offices and public corporations are established, the more administrative tribunals (usually in the form of appeals boards) are created to review the workings of these officers/corporations. Indeed, this legislation has undoubtedly led to a plethora of appeals boards and other reviewing bodies, usually allowing for a further right of appeal from their decisions to the Court of Appeal sitting in its inferior jurisdiction. With the establishment of a new administrative tribunal (I am totally at a loss as to the number of these tribunals), a new structure - which is draining the country's coffers and unwarrantedly increasing recurrent expenditure - has to be put in place by providing a Secretariat, office space where sittings can be held, disbursements paid to cover honoraria for board chairmen and members as well as salaries for the staff of these boards which might include a Secretary, his or her staff (clerks, messengers, security guards, etc.), the Board's financial controller or accountant, auditor, etc. Security of tenure and by whom such security of tenure is to be enjoyed, especially if the administrative tribunal is one which determines 'civil rights and obligations' need also to be addressed. Other issues concern whether these tribunals should have their own budget and the role, if any, played by third parties before such boards.

The Employment Commission is established by the Constitution but the constitutional provisions are supplemented by the Employment Commission Act.[39] This enactment could well be incorporated into this part of the Administrative Code.

4.9 Of Delegation of Powers

Subsequent parts of the Code of Administrative Law should deal with the executive, that is, with Ministers' powers, the public service, public corporations, and their respective codes of ethics.

In 1988, a law was enacted by Parliament concerning the delegation of Ministers' powers. It is known as the Ministers (Delegation of Functions) Act.[40] When originally enacted the practice was to delegate to a Parliamentary Secretary a number of tasks which s/he should perform on behalf of a Minister. Subsequently, Parliamentary Secretaries were assigned to Ministries without being tasked with responsibility for any specific portfolio falling within that Ministry. Whilst one understands that like all things new there has to be a learning curve and a trial period within which one can fine tune the procedure to be followed in that particular case, the time is now ripe to review this law in the light of past experience in order to establish whether Parliamentary Secretaries should be entrusted with specific responsibilities, whether they should be more akin to a Junior Minister who is there to assist his or her Minister in all the duties falling within his or her ministerial portfolio or whether the law should be flexible enough to provide for both such contingencies or for some other concoction still to be devised.

4.10 Of the Public Service

A substantial part of the Administrative Code should address the public service. But to date there is no law in Malta regulating the public service as is the position overseas. It is high time that such law should be enacted. More than a year ago, a White Paper was published on the subject but no bill has as yet been published.[41]

4.11 Of Public Corporations

Other aspects which could well be dealt with in the proposed Administrative Code are public corporations. A model law on the setting up of public corporations is desirable to regulate the method of appointment and removal of the board of directors, their duration of office, qualifications for appointment, honorarium, uniform set of rules in terms of which their decisions may be reviewed and by which authority (Ministerial, Judicial or Quasi-Judicial), whether their sittings should be held in public and whether access should be given to their documentation, time period within which to arrive at a decision and the duty to give reasons, imposition of administrative sanctions, etc. All these matters could well be defined through general provisions made applicable to all or to designated public corporations.

4.12 Of Ethical Conduct and Behaviour

A further part of the Code of Administrative Law could deal with a Code of Ethics for Ministers, Parliamentary Secretaries, Members of Parliament, the Judiciary, members of various professions, public officers, members of board of directors of public corporations and public owned companies together with the employees of these corporations and companies. There are a number of professions whose Code of Ethics is prescribed by subsidiary legislation.[42] The same should apply to the above offices.

4.13 Of Financial Management

An important function vested in the public service relates to financial management. Various laws on the subject are found on the statute book which could easily be consolidated into one Part. Such is the case of the Auditor General and the National Audit Office Act,[43] the Internal Audit and Financial Investigations Act,[44] and the Financial Administration and Audit Act.[45]

4.14 Of Public Inquiries

Another aspect of Administrative Law concerns public inquiries appointed under the Inquiries Act.[46] Even this enactment needs to be looked at afresh in order to establish whether members of the judiciary should be appointed as members of a board of inquiry, to set out the procedure before these boards such as the right to be represented by an advocate or legal procurator or the opportunity to rebut discrediting findings of misconduct, and other matters concerning funding, findings of civil or criminal liability, when judicial review of their findings should be permissible, provision of secretarial assistance, etc.

4.15 Of Professional Status

There are too much laws on the Statute Book dealing with the licencing of various professions such as those of advocates, notaries public, legal procurators, medical doctors, pharmacists, health care professionals, teachers, accountants, architects and civil engineers, engineers, social workers, psychologists, etc. There is also another law on the Mutual Recognition of Qualifications Act.[47] All these laws could easily be consolidated into one part by aggregating the common provisions to all these professions in one part and the specific provisions to each profession in another part. In this way repetition is done away with.

Cont. on page 24

[38] Chapter 339 of the Laws of Malta.
[39] Chapter 267 of the Laws of Malta.
[40] Chapter 324 of the Laws of Malta.
[41] Office of the Permanent Secretary, Office of the Prime Minister, *A Public Service for the 21st Century: White Paper on a Public Service Act*, Valletta, October 2003.
[42] Such is, for instance, the case of dentists, medical doctors and teachers under the Ethics of the Dental Profession Regulations, 1971, Ethics of the Medical Profession Regulations, 1971 and the Teachers (Code of Behaviour) Regulations, 1988 respectively.
[43] Chapter 396 of the Laws of Malta.
[44] Chapter 461 of the Laws of Malta.
[45] Chapter 174 of the Laws of Malta.
[46] Chapter 273 of the Laws of Malta.
[47] Chapter 451 of the Laws of Malta.

[48] Chapter 79 of the Laws of Malta.
[49] Chapter 245 of the Laws of Malta.
[50] Chapter 252 of the Laws of Malta.
[51] John H. Farrar and Anthony M. Dugdale, *Introduction To Legal Method*, London, Sweet & Maxwell, 1990, third edition, pp. 193-194.

4.16 Of Non-Governmental Organizations

The proposed Code of Administrative Law should contain a Part regulating non-governmental organizations especially in the light of the fact that these organizations receive hefty sums of money from the public coffer and hence a system of financial accountability backed up by legal provisions in so far as the disbursement of such capital assets by NGOs is required.

4.17 Of Oaths and Affirmations

Oaths and affirmations are regulated by the Commissioners for Oaths Ordinance[48] and the Affirmations Act.[49] The Statute Book needs to be cleaned by having both these laws incorporated into one due to the fact that they refer to one and the same thing, that is, to how oaths and affirmations should be administered to be in conformity with the law.

4.18 Of National Holidays and Public Holidays

The National Holidays and Public Holidays Act,[50] could also be included in the proposed Administrative Code hoping also that on codification one (and not five) national holidays are agreed to.

5. Procedure to be followed in Codification

In preparing a Code of Administrative Law (and similar Codes on different subjects), the Government should set up a Commission to determine which laws currently in force ought to form part of the proposed Code. The Commission should then study the provisions of Administrative Law with a critical eye, recommending the required amendments thereto after having carried out a consultation process with the main actors involved (the Attorney General's Office, the public service, public corporations, constitutional commissions, professional organizations such as the Chambers of Advocates and Legal Procurators, the members of the public, etc). The Commission will also have to identify those areas of Administrative Law which require more in depth regulation such as access to Government held information, the public service, statutory construction, etc.

After the Commission would have fnalised its task it should publish a Report which should consist of two parts: Part A detailing the law as it currently obtains and Part B setting out the amendments necessitated to the law either because the law is silent on a particular matter or makes conflicting provisions, or because of case law which has taken a fresh approach to Administrative Law or which might have produced conflicting interpretations, or because of developments in society which require that the law be updated to modern day needs or in order to take on board suggestions made by members of the public which are considered pertinent to Administrative Law.

The National Commission for the Codification of Administrative Law, as this Commission could be called, should be composed of a Chairperson who could well be a retired President of Malta or a retired Chief Justice or a retired Judge. Serving members of the judiciary should not be members of this Commission due to a conflict of interest they might have in this respect and to continue to respect the independence of the judiciary as the judiciary should not act nor be seen to be acting as Government advisors. This does not, of course, mean that the judiciary should not be consulted by the National Commission when drafting its recommendations.

The National Commission's members should include a representative of the Attorney General's Office, the Chamber of Advocates, the Faculty of Laws of the University of Malta, the Government, the Opposition and a retired Chief Justice or a retired Judge. The representatives of the Government and Opposition should ideally be members of the House of Representatives Committee on the Adoption of Bills. It should be empowered to establish sub-committees, if need be with composition outside its own membership or with dual membership, that is, with a Chairperson appointed from within the membership of the Commission and sub-committee members appointed from outside.

As this is a very time consuming and delicate exercise, the National Commission should be given a period of two years within which to complete its objective. By the sixth month of its operation, the Commission should publish an Interim Report on Administrative Law detailing current Administrative Law and within the next one year it should publish various sectoral reports on diverse areas identified for codification. The Final Report would then collate the previous reports and propose the text of a draft Code of Administrative Law. Once published the draft Code would be the subject of a one day seminar to be organised by the Commission and the relative findings transmitted to Cabinet, to the Attorney General, to the Committee for the Consideration of Bills of the House of Representatives and to the Minister responsible for justice so that the latter may obtain Cabinet approval thereon and move the first reading of a bill proposing the enactment of a Code of Administrative Law in the House of Representatives. Any changes made to the Commission's proposals should be published by Government Notice in the Government Gazette in order to ensure transparency and accountability and they should also be motivated.

6. Conclusion

John H. Farrar and Anthony M. Dugdale maintain that the main argument traditionally used, and frequently adopted by the Law Commissions to justify codification, 'is the great bulk or unwieldiness of the present law. It is argued that a code would produce in its place systematic, compact and accessible law. The law would be more accessible to the public…' The same authors opine that 'Case law produces gaps, uncertainties and irrational distinctions which a code would remove. Also it has been argued that the common law has not in recent times been able to adapt itself quickly enough to changing conditions.'[51]

I have written this article in order to foster debate on a topic which is perhaps not given the particular attention it deserves by our legislator. The format of the proposed Code of Administrative Law as outlined above is not cast in stone but a suggestion of this author. Indeed, there are other aspects which can be addressed in such a code such as governmental liability, government property, local government, legislation regulating e-government and information technology, the rules of natural justice, broadcasting, compulsory purchase, etc. My fellow colleagues, especially those advocates who practice Administrative Law, may have a lot to say on the subject and thereby contribute in embracing the idea of formulating an Administrative Code as well as making further or diverse suggestions as to its contents.

This article gives the position of the law as at 1st October, 2004. ■