

LECTURES IN
ADMINISTRATIVE LAW
II

Robert Musumeci

Biography



Dr Robert Musumeci obtained a PhD in Law from the University of Malta with his dissertation entitled '*Judicial Interpretation of Maltese development planning law. Eliciting the added value*' after having been previously selected by the same University for the prize of Best Doctor of Laws Thesis Award in 2016 for his work entitled '*The Development Planning Act 2016 – A critical Appraisal*'. Prior to being admitted to the Maltese Bar, Dr Musumeci had graduated as a *perit* in 1997 and then moved on to also obtain a Masters Degree in Conservation Technology in Masonry Buildings in 2004. He is a former chairperson of the Building Industry Consultative Council (BICC) and was later appointed as a government consultant in the reform which led to Malta Environment and Planning Authority's demerger, the establishment of the Lands Authority, the introduction of a regulatory framework for Estate Agents, the drafting of the constitutional amendments pertaining to the Gender Balance in Parliament Reform and the setting up of the Building Construction Authority. Dr Musumeci is a senior lecturer in planning law and administrative law at the University of Malta. He also authored the book '*Selected Principles of Maltese Planning Law*' (Kite Publications, 2021). Dr Musumeci is the first to hold warrants to practice both as a lawyer and a *perit* in Malta.

The Constitutional Underpins in Administrative Law

In constitutional parlance, the term 'government' is synonymous with the term 'the executive'. This equivalence is grounded in constitutional law, which forms an integral part of legal education from its inception. In Malta, our **Constitution** was adopted on September 21, 1964, and it holds supremacy over all other Maltese laws. The **Constitution** establishes distinct pillars for the legislative, executive, and judicial branches within the state, with an unelected President of Malta overseeing their administration. As we delve deeper into administrative law, the significance of these concepts becomes increasingly apparent, warranting further elucidation.

The legislative branch comprises the Maltese Parliament, which consists of directly elected members (MPs) chosen through free and democratic elections held every five years. Parliament's primary responsibility is to enact laws that align with the elected MPs' vision of desirable social, economic, educational, and cultural objectives. Once legislation is enacted, either directly by Parliament or through delegated powers, it becomes binding on all parties involved, including the executive, judiciary, and legislative bodies themselves. Additionally, Parliament is accountable for providing the executive and judiciary with the requisite resources to fulfil their functions effectively and with integrity. The duration of a legislature comes to an end when the Prime Minister initiates its dissolution, which cannot exceed five (5) years from the date of its first sitting. Upon dissolution, all matters pending before the House of Representatives, including motions proposing the enactment of bills, automatically lapse, as do the selected and standing committees.

Conversely, the executive branch is represented by the Maltese Prime Minister and the Cabinet, who also serve as part of the legislative branch, as stipulated

by **Articles 79¹** and **80²** of the **Maltese Constitution**. As previously emphasized, administrative law centres on the executive branch and the public administration it oversees. The executive branch is accountable to Parliament, with ministers required to respond to parliamentary inquiries and appear before committees such as the Public Accounts Committee to undergo scrutiny regarding their actions and those of their subordinates.

Although the legislative and executive branches are intended to be distinct, their separation is not absolute. In fact, as prescribed by the aforementioned **Articles 79** and **80** of the **Maltese Constitution**, Cabinet members are required to concurrently serve in Parliament. This requirement is reflected in separate oaths of allegiance taken by the Prime Minister and ministers for both bodies. Thus, the Maltese Prime Minister and the appointed Cabinet, falling within the executive branch, are also involved in the legislative function.

Furthermore, while Parliament primarily holds the responsibility for enacting legislation, it is possible to delegate legislative powers to the executive branch. Ministers, in their capacity as officers of the Executive, may be authorized by Parliament to promulgate laws under specific circumstances outlined in Acts of Parliament. Legislation passed through delegated powers granted by Acts of Parliament is known as Secondary or Subsidiary Legislation, contrasting with Primary Legislation enacted directly by Parliament.

¹ "(1) There shall be a Cabinet for Malta which shall consist of the Prime Minister and such number of other Ministers as maybe appointed in accordance with article 80 of this Constitution.

(2) The Cabinet shall have the general direction and control of the Government of Malta and shall be collectively responsible therefor to Parliament."

² "Wherever there shall be occasion for the appointment of a Prime Minister, the President shall appoint as Prime Minister the member of the House of Representatives who, in his judgment, is best able to command the support of a majority of the members of that House and shall, acting in accordance with the advice of the Prime Minister, appoint the other Ministers from among the members of the House of Representatives:

Provided that if occasion arises for making an appointment to the office of Prime Minister or any other Minister while Parliament is dissolved, a person who was a member of the House of Representatives immediately before the dissolution may be appointed as Prime Minister or any other Minister as if, in each case, such person were still a member of the House of Representatives, but any person so appointed shall vacate office at the beginning of the next session of Parliament if he is not then a member thereof."

Lastly, we have the judiciary, composed of magistrates and judges, whose primary role is to adjudicate disputes between parties in accordance with the law. The judiciary operates independently from both the legislative and executive branches. Magistrates and judges enjoy security of tenure until retirement age and receive salaries directly from the consolidated fund, safeguarded against reductions. Removal of judges and magistrates can only occur through due process, involving prima facie evidence of severe misconduct, with legislative involvement no longer necessary. It is vital for the judiciary to maintain independence and operate free from interference, ensuring impartiality and dispensing its duties without bias or favouritism. This does not imply that judges can base decisions on personal whims; rather, it underscores their obligation to interpret the law in accordance with its fundamental principles and underlying assumptions.

Additionally, it is noteworthy that while the judiciary primarily resolves disputes between individuals and public authorities, there are quasi-judicial bodies within the executive branch established by law to also adjudicate disputes involving individuals who feel wronged by public authorities. For example, the Environment and Planning Review Tribunal, established by **Chapter 551** of the **Laws of Malta**, is one such quasi-judicial body entrusted with hearing and deciding appeals from individuals who feel aggrieved by a decision of the Planning Authority. These tribunals, among others, exercise quasi-judicial discretion while belonging to the executive branch, as they ascertain facts, hold hearings, assess evidence, and deliver verdicts. However, it is important to underline that all their decisions can be legally challenged before the judiciary.

Finally, our **Constitution** also establishes a significant aspect by outlining a set of Fundamental Rights and Freedoms in **Articles 32 to 45**. Furthermore, in August 1987, the Maltese Parliament incorporated the **European Convention of Human Rights**, which it had ratified back in 1967, through an Act of Parliament known as

Chapter 319 - The European Convention Act.

Consequently, public authorities are legally obligated to respect, protect, and fulfil these human rights in all their actions, refraining from committing human rights abuses while taking preventive measures against future violations. This means that the government may not deny permits for activists, journalists, and human rights defenders to hold protests, as it would infringe upon the right to freedom of expression. Similarly, the government may not seize private property without proper legal justification or compensation, as it would constitute a violation of the right to private property. When the government acts in violation of these rights, the judiciary serves as an essential recourse for individuals who feel aggrieved. In this context, the emphasis on a fair and completely independent judiciary, devoid of ties to the legislative or executive branches, becomes even more paramount.



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