

Juridical interest: a turning point

Judicial access reclaimed: NGOs and the broadening of juridical interest

Opinion

Comment

Court

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The way the Maltese courts have interpreted juridical interest has been restrictive and conservative. Photo: Matthew Mirabelli

A significant stumbling block in keeping a public authority in check under Maltese law has been the often misused and abused doctrine of juridical interest or legal standing. Only those who have legal standing, namely an actual, personal and juridical interest, can challenge the validity of a decision of a public authority.

The way the Maltese courts have interpreted this “interest” has been restrictive and conservative to the point that, even in human rights cases, it has adopted such a narrow suffocating approach – less liberal than that applied by the European Court of Human Rights.

Considering that, ultimately, there lies an appeal from judgments of our courts to the Strasbourg court, this attitude by our local courts does not make sense. The time will come when the European Court censures this domestic judicial stand.

To illustrate the way the doctrine of juridical interest has blocked access to cases challenging the public administration’s deeds or misdemeanours, one need only refer to a few cases; it is significant to note that this doctrine mainly affects non-governmental organisations that usually do not have direct, personal interest in the subjects of their campaigns.

Life Network, a group of pro-life organisations, challenged the validity of the health authorities which allowed the placing on the market of the morning-after pill. This NGO did not lose the case on the merits but on the ground that, as an NGO, it did not have any

personal actual interest in the matter. The same applied to those NGOs, which, in 1988, had objected to the visit of Royal Navy ships to Malta.

Only last year, a civic-minded person who challenged the constitutional validity of the new method of appointment and selection of members of the judiciary had her case thrown out on the basis that she had not applied to be appointed such a member, and, therefore, had no actual, personal interest in the case.

The first judgment which sought to detach itself from this restrictive approach was the one delivered in the ramblers' case. There, the Court of

Appeal, in its inferior jurisdiction, reversed a decision of the Administrative Review Tribunal, which had denied the association the right to challenge in court the granting by title of lease, without the issuing of any tender, tracts of land at Mizieb to the hunters' association.

The court ruled that the fact that the members of the NGO could no longer ramble through the Mizieb area owing to the concession, which was being challenged, amounted to sufficient juridical interest even though there was no personal interest by ramblers in the case. Without jettisoning the doctrine, the court gave it a new meaning.

However, the real breakthrough occurred in the 2023 case instituted by a group of NGOs against the Planning Authority. The latter had authorised the demolition of the Sea Malta building at Marsa. The Chamber of Architects, Din l-Art Ħelwa and Flimkien għal Ambjent Aħjar, which did not have any actual personal interest in the case, challenged the validity of such an order. Two pleas were raised by the public authorities, namely that the Chamber did not enjoy legal standing for its interest was not actual, personal and juridical and, secondly, that, once the demolition had taken place, there was certainly no more juridical interest, if it ever existed in the first place.

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Both the court of first instance and the Court of Appeal, this time in its superior jurisdiction, rejected these pleas and ruled in favour of plaintiffs having legal standing to proceed with the case. The lower court remarked that, before the Environment and Planning Review Tribunal, when one challenges a decision of the Planning Authority, such

appeal, under planning law, can be made by any person, even if one does not have personal interest in the case.

The court, in a rare example of creative thinking, ruled that, by analogy, it would apply the same liberal attitude to anyone contesting in court any decision of a public authority.

What is even more interesting is that the Court of Appeal, in confirming this judgment, stated that it agreed with the lower court not only by means of the analogy method of interpretation but also for an additional reason.

In public law actions, the juridical interest required is different from the strict form applied in civil law. Quoting with approval from the judgment in the rambler's case, it stated that certain NGOs, including the plaintiff NGOs, had been involved in the protection of the environment for years. If such organisations were not allowed to object to a matter relating to planning, no individual or group of individuals would propose any legal action. Consequently, such organisations had to be recognised as having legal standing.

It added that the fact that the Sea Malta building had been razed to the ground with the approval of the Planning Authority did not in any way exclude such juridical interest by the NGOs. They had every right to obtain a court declaration that what had been done by the Planning Authority was unlawful. If it were not so, public authorities would rush to commit irregular demolitions in the hope of getting away with it before someone challenged their action in a court of law.

Indeed, such judgments delivered after demolition would also set the scene for future actions in that public authorities would be forewarned as to what was legally acceptable or not.

This groundbreaking judgment has been ignored and not given the necessary publicity considering its far-reaching consequences.

If this current trend is continued, and there is no reason to suspect otherwise, the aforementioned three NGOs have paved the way for other NGOs to be allowed to challenge decisions of public authorities; for they do have an interest – even if not personal – to ensure that government and public authorities act within the parameters of the law.

Hopefully, other chambers such as that of advocates, engineers and other professional organisations, will not shy away from contesting decisions of the public administration

when these can be challenged under Maltese law.



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