A REVIEW OF ACT VIII OF 1981: LEGAL IMPLICATIONS AND REPERCUSSIONS

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A. INTRODUCTION

Section 1 of Act VIII of 1981 says that "This Act may be cited as the Code of Organization and Civil Procedure (Amendment) Act 1981 ...". The authors wish to point out at the outset that any reference to Act VIII is a specific reference to Section 7 of the said Act, since it is this section which, affects most substantially the doctrine of Governmental Accountability as it had evolved up to 1981.

B. HISTORICAL EVOLUTION OF GOVERNMENTAL ACCOUNTABILITY PRIOR TO 1981

Before 1981, the Maltese Parliament had not legislated upon the matter of governmental accountability vis-a-vis violations of the rights of individual citizens. In the absence of any statutory provisions aimed at regulating these matters and in view of the ensuing need for some rules to be followed, the judiciary assumed responsibility and developed not only a number of skeleton rules, but borrowed from foreign systems and imported Continental and British principles of public law in order to supplement its own deficiency.

The introduction of such principles by way of court decisions did not solve the problem; on the contrary, in attempting to better the situation it rendered the issue more complex and uncertain. In fact the result has been a number of conflicting judgements which in their turn, gave rise to the uncertain development of this field of Maltese Administrative Law. This is a result of: a) the fact that unlike the practice prevalent in the U.K., Malta's courts do not adhere to the doctrine of precedent and consequently judicial decisions do not have the force of the law but may prove to have varying degrees merely of persuasive value on later judgements; b) the fact that, in importing foreign doctrines into our system of law, our courts seem to have closed a Nelson's eye as to the applicability or otherwise of such doctrines to our system.

One of the earliest principles of governmental liability introduced by our courts was the doctrine of the dual personality of the State. The doctrine in question drew a distinction between acts "Jure Imperii" and acts "Jure Gestionis". This doctrine provided that in its first capacity the

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State would be acting in terms of its political sovereignty and consequently the jurisdiction of the courts would be excluded as soon as it was ascertained that the state had in fact acted in such capacity. In its second capacity, the State was considered to act "juri gestionis" in the administration of its own patrimony; in this case the State was considered in duty bound to act as a bonus "pater familias" would, and as such enjoyed no privileges over the individual citizen. This is how the doctrine of the dual personality of the State was interpreted in the landmark case *Busuttil vs La Primaudye, 1984.*

It is evident that this notion is not of Maltese origin but had been extracted from the writings of well-known Italian Jurists, among whom Bonasi and Gabba were the most influential. However, it seems that our courts misunderstood the function of this doctrine. The doctrine, as applied in Italy, was procedural in nature. It was aimed at establishing the respective jurisdictions of the ordinary courts and the "Consiglio di Stato". In Malta however, the doctrine was unfortunately applied in a manner which granted substantial advantage to the state vis-a-vis the individual citizen. The judgement which introduced this doctrine into this sphere of Maltese Administrative Law was reaffirmed on appeal; this paved the way for subsequent court decisions to embrace these criteria as a means of avoiding embarassing and difficult situations involving governmental interests.

The applicability of this doctrine of the dual personality of the state was well and truly dented when the civil court, presided by Mr. Justice Pullicino, held, in the case *Camilleri vs Gatt* (1902), that government should be held liable for damages according to the civil law. Here Mr. Justice Pullicino completely ignored the doctrine of the dual personality of the state and decided the case exclusively on private law principles. The court of appeal later confirmed the validity of this judgement in the case *Camilleri vs Micallef* (1947).

Subsequently Mr. Justice Alberto Magri, in the case *Xuereb vs. Micallef* (1953), decided that Government should be held liable for damages on the grounds that section 1074 of the civil code, in establishing liability for damages, does not distinguish between the government and the individual citizen.

This evolution of Administrative law in Malta created an unhappy state of affairs, since the absence of specific legislation and the non-adherence to the doctrine of precedent by Maltese Courts enabled each judge to decide similar cases involving the government as a party, on conflicting and unrelated criteria. However in 1972, Mr. Justice Caruana Curran, in the case *Lowell vs. Caruana* reasserted a maxim first propounded in the case *Cassar Desain vs. Forbes* (1935) – (a case which, it is submitted, was decided on an erroneous and mistaken conception of an act of state) – which maxim said that British public law is the public law of Malta where the latter has a lacuna. In this context the British system of Judicial review of executive discretion was introduced. This was the last stage of development in this area of administrative law before the enactment of Act VIII of 1981. One must point out however that between 1972 and the enactment of

the said law, all cases relating to governmental accountability were decided on the basis of the British system of judicial review of executive discretion, which had become the established system of governmental accountability at the time, even though nothing could have stopped the courts from reverting to any other system in deciding a case in this field of administrative law. In fact the *Lowell vs. Caruana* decision was followed by two other judgements which affirmed the applicability of the principles of judicial review of executive discretion introduced in 1972. The two cases in question are *Sciberras vs. Housing Secretary* (1973) and *P.M. vs. Sister Luigi Duncan* (1980). In 1981 the legislature intervened for the first time and laid down in statute, rules regulating the courts' jurisdiction.

Before considering the implications of the new law on the matter, one should take a look at the system of judicial review of executive discretion as it functions in the U.K., so as to be in a position to compare our systems with that obtaining in Britain. In this context it would also prove useful to take a look at the continental system of governmental accountability, a system which, although substantially different from its British counterpart, is just as efficient, and which had an influential bearing upon the mechanism employed in Act VIII of 1981.

C. THE BRITISH SYSTEM

The system of Judicial review of Administrative discretion as applied in the U.K. is a highly developed branch of British Public Law. The bare outlines of the subject will be dealt with in this paper in order to furnish the reader with a general background to the matters at issue.

In considering the control of administrative discretion one must primarily consider the meaning of the term "discretion". "Discretion" implies the power to choose between alternative courses of action. However it is important to point out from the outset that such power to choose is not absolute – it is limited by the law. Discretionary powers in the hands of the administration, even when such powers are wide, are today no longer considered to be incompatible with the Rule of Law as understood in the light of the Delhi Declaration of 1959. In fact the said document lays more stress on efficiency in administration rather than on the legality of the acts of the Administration. It is not to be inferred however, that control of administrative acts is not given proper consideration in the said declaration. In fact, clause 4 provides that "a citizen who suffers injury at the hands of the executive shall have an adequate remedy...". What should be emphasised here is that although adequate and complete forms of control against abuse of power by the executive are necessary, emphasis must equally be laid on the need for executive acts to be performed efficiently and effectively in view of the political purpose advanced by the Government in power. For this reason Wade says "What the rule of law demands is not that wide discretionary powers be eliminated, but that the law should be able to control its exercise".

Wide discretionary powers are accepted as necessary and desireable in order to meet the day to day exigencies of today's world. On the other hand, efficient legal safeguards are also accepted as necessary in order to ensure that the administration does not abuse of the powers granted to it by law. Thus it is established at the outset that all powers must be subject to legal control. When a country's legal system is based on the rule of law, any notion of unfettered discretion is unacceptable and, as Prof. Wade says "a contradiction in terms". In the opinion of Prof. Wade the courts are the most suitable organ of government to draw the legal limits of discretionary power in a manner which strikes the most suitable balance between executive efficiency and the legal protection of the citizen.

It is a fact that the courts in the U.K. have exercised their function in the most laudable of manners, especially when one considers the many ways in which parliament attempted, more often than not in vain, to oust their jurisdiction. How far-reaching the courts' control is shall be considered at a later stage.

In reviewing administrative action the courts apply the doctrine of "Ultra Vires". "Offending acts are condemned simply for the reason that they are unauthorised". The courts in the U.K. have adopted a system whereby they impute intentions to parliament. Lord Russell's words shed much light on the attitude of the English courts: "Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires". In other words the courts, in controlling administrative action, apply general legal limitations which they consider to be implied in the law. The courts have said (Griffiths LJ) "Parliament can never be taken to have intended to give away any statutory power to a body to act in bad faith or to abuse of such powers. When the court says it will intervene if the particular body acted in bad faith, it is but another way of saying that the power was not being exercised within the scope of the statutory authority given by parliament. Of course, it is often a difficult matter to determine the precise extent of the power given by the statute particularly when it is a discretionary power and it is with this consideration that the courts have been much occupied in the many decisions that have developed our administrative law since the last war."

One notes therefore that the basis of judicial review is the illegality of the act of the executive. A more important point is that the courts are to establish which acts are legal and which acts are illegal not only in terms of the wording of the empowering act but also in terms of general legal limitations. However the limitations must be legal. It might seem at this point that this is logically obvious, however, it is necessary to analyse the term "legal limitation" more closely. These limitations are usually intentions imputed to parliament and are expressed in a variety of ways, as by saying that discretion must be exercised reasonably and in good faith, that there must be no malversation of any kind, or that relevant considerations only must be taken into account. Such limitations are considered to be valid legal limitations in the U.K.; however the courts in the U.K. are careful not to substitute their discretion for that vested in the executive. The

court is only empowered to control the legality of the acts and not to assess whether they have been exercised prudently or imprudently.

In these cases, when the courts review administrative action on grounds other than legal grounds, the courts would be acting beyond the scope of their jurisdiction.

(ii) ENGLISH CASE LAW

A study of English case-law on the matter would inevitably lead to recognition of the fact that discretion is limited by the concept of reasonableness. It has been said that where discretion is used unreasonably then the action is contrary to law (*Roberts vs Hopwood* 1925). On analysis, one may consider Lord Wendury's dictum in the afore-mentioned case as indicative of the attitude of the English courts; in fact the learned judge remarked:

"A person in whom is vested a discretion must exercise his discretion upon reasonable grounds. A discretion does not empower a man to do what he likes because he is intended to do so – he must, in the exercise of his discretion, do not what he likes but what he ought. In other words, he must by the use of his reason, ascertain and follow the course which reason directs. He must act reasonably".

The principle of reasonableness as applied in England is based on the fact that a public authority "possesses powers solely in order that it may use them for the public good"; therefore the unreasonable use of discretion is not considered to be in the public good and needs to be checked.

In the case of *Padfield vs Minister of Agriculture, Fisheries and Food*, the English courts managed to win the battle against clauses which do not directly oust their jurisdiction but which "repose arbitrary power in a named authority" (Sachs J – Wade pg 398). However English courts have also fought against clauses which directly purported to oust their jurisdiction and the most important of these cases is *Anisminic Limited vs Foreign Compensation Commission*. It is very important to consider the implications of this decision and of the decisions that came after it in this context.... The Anisminic judgement involved the interpretation of the words found in the Foreign Compensation Act 1950, namely that a determination of the Commission "shall not be called in question in any court of law". However notwithstanding this clause, a determination of the commission was questioned for five consecutive years, and was eventually quashed by the House of Lords. The House of Lords decided that the ouster clause did not protect a determination which was outside jurisdiction, and that the commission had based its decision on a ground which they had no right to take into account, and to impose another condition not warranted by the order.

This shows clearly the determination of British courts to uphold their policy of resisting attempts by parliament to disarm them by the employment of provisions, which, if literally interpreted, would confer uncontrollable power to subordinate tribunals.

D. THE CONTINENTAL SYSTEM

After having considered the problem of governmental accountability and abuse of discretion on the one hand, and the protection of the individual citizen from such abuse on the other hand from the British perspective, one should also consider a system based on a stricter interpretation of the doctrine of the separation of powers; a system therefore, which has a different point of departure from the English one. In such sytems it is not the ordinary courts which have the task of reviewing administrative discretion but specialized administrative courts and tribunals, only marginally less institutionalized than the ordinary courts. The underlying concept behind their existence, however, does not differ. The manner in which such tribunals work in practice may best be examined by a review of the French administrative system.

The French have established a judicial structure which comprises three distinct court systems, namely, Criminal, Civil, and Administrative the latter being centred in the "Conseil d'Etat". This three-layered judicial structure has its roots in French political history. Prior to 1789 all power was centralised in the hands of the king and the royalist state alone expressed the general interest and ensured that it prevailed. Unhappy with the situation, the pioneers of the 1789 revolution sought to establish an isolation rather than a separation of powers as understood in Britain. Indeed by a law of August 1790, it was decreed that "Les fonctiones Judicieres sont distinctes et amoreront separes des fonctiones Amministratifs. Les Juges ne pourront a peine de forfaiture troubler de quelque maniere que ce soit les operations des corps amministratifs, ni citer devant eux les Amministratures en paison des leurs fonctiones".

From the above it soon emerges that the French consider not a system of checks and balances but rather a system of isolation of powers, with the executive not only independent from the judiciary, but where the latter has no jurisdiction over the former in any situation. This hardly means that the French Administration has a free hand in the administration of public policy, because its actions are still reviewable, not by the ordinary courts, but by a specialized body of Administrative tribunals.

Thus, control over the legality or otherwise of administrative actions is exercised by a network of specialized administrative courts and the administrative tribunals under the council of state.

The distinguishable feature of these administrative tribunals is that unlike administrative courts, their decision is not final, but there is a right of appeal to the conseil d'etat. One such tribunal is the CONSEIL GENERAL DE BATIMENTS DE FRANCE, which deals with the control and adjudication of property transactions within public contracts. Another tribunal existent in the French Administrative system, is the TRIBUNAL DE CONFLITS. This tribunal deals with matters of jurisdiction in the sense that it establishes whether jurisdiction on a particular disputed case, should vest in the ordinary or in the administrative courts.

Coming now to the Conseil d'Etat, it may be said that its functions are twofold:

(i) to advise on the constitutionality of proposed legislation,
(ii) to adjudicate on complaints lodged against the administration by individual citizens.

We are here directly concerned with the second function of this council. However, if one had to stop here a moment and attempt to analyse these functions from an English perspective, it becomes evident that such a system is inconceiveable, due to the fact that the same administrative organ here is both advising the executive on proposed legislation and adjudicating in matters where the same administration is concerned. Notwithstanding the fact that prima facie, the system seems to be objectionable by English standards, on a deeper analysis it results that the above mentioned two functions are exercised by two separate and distinct bodies within the Conseil d'Etat and even English text-writers on the subject have recognised this fact.

Originally the council of state was given jurisdiction of first instance over all complaints against the administration; however time proved this system to be inefficient, cumbersome and self-defeating. Indeed one of the reasons behind the existence of the administrative tribunals and the council of state was to speed up the process of administrative justice; much to the contrary however the council was faced with a significant backlog of work. As a result 20 regional tribunals were constituted; these are now the courts of first instance while the Conseil d'Etat serves as an appelate body.

In granting redress to the individual citizen, the council of state may annull the enabling law under which the administrative act was done or annull the act itself without impeaching the parent law itself. The conseil d'etat may declare acts as invalid on the following grounds:

(i) ULTRA VIRES: where the legal powers of administration granted to it by the parent act have been exceeded.
(ii) Correct procedure has not been followed.
(iii) "DETOURNEMENT DE POUVOIR": where administrative powers have been used for purposes for which they were not intended.

This last possibility allows the council of state to investigate those administrative acts which apparently respect the letter of the law, but which prove to be contrary to the spirit of law in general. Besides, the council of state may also provide pecuniary redress and although a "restitutio in integrum" cannot be demanded from the state, the latter may be held liable in damages. It should however be made clear that damages should be capable of being estimated in money terms as no compensation is awarded for any moral damages.

The power to review and possibly annull government decisions is not unlimited; however, the French make a clear distinction between "ACTES D'AMMINISTRATION" and "ACTES DE GOUVERNEMENT". The former fall, as we have seen, within the jurisdiction of the council of state, whilst the latter being are beyond the reach of the council and are therefore unchallengeable. Their scope is however, both limited and well-defined. In

conclusion one may also mention other acts that are not reviewable by the conseil d'etat, namely, Acts of state, Judicial acts and legislative acts.

E. ACT VIII OF 1981: INTERPRETATION

The cases *Lowell vs Caruana* (1972), *Sciberras vs Housing Secretary* (1973) and *P.M. vs Sister Luigi Duncan*, seemed to have established a definite adoption of the British system of Judicial review of Administrative discretion; finally therefore, it seemed that a stand had been taken by the courts and that the turbulent evolution of a system of governmental accountability was brought to a halt. In fact all cases regarding governmental accountability after the *Lowell vs Caruana* judgement were decided on the same criteria pronounced in the said judgement.

However in 1981 Parliament thought fit to enact a law in order to establish a set of rules regulating the instances wherein the courts would have the power to review administrative discretion. Thus "prima facie" one may say that by the enactment of this law parliament had, for the first time, statutorily recognised a system of governmental accountability devised in the *Lowell vs Caruana* decision of 1972. However it must here be noted that the emphasis must be laid on the words "prima facie", as on further deliberation it soon emerges that there are substantial differences between the law and the court decision in the case of *Lowell vs Caruana*. This decision, as already observed, introduced into Malta the English system of judicial review of administrative discretion, lock stock and barrel. The courts' jurisdiction extended to all those circumstances in which a British court would take cognisance of a case, including cases of alleged abuse of power on part of the administration and a Maltese court could also annull an adminstrative act on such grounds. The enactment of Act VIII of 1981 seems to have ousted the jurisdiction of the courts on the above mentioned grounds. One cannot therefore say that Act VIII has adopted, in statute form, the same system of judicial review of executive discretion as advocated in the *Lowell vs Caruana* judgement.

If one now comes to the position arrived at through the enactment of the law, it seems that one may take two different approaches:- for convenience's sake these approahces shall be referred to as "Literal" and "Liberal".

At a close inspection of the wording of the law, it would seem that the courts shall have no jurisdiction to enquire into the validity of an act or thing done by a minister, or by any authority established by the constitution, or by a public officer in the exercise of their functions. This is the first rule laid down by the law, which contemplates that in the above mentioned circumstances, the court shall have no jurisdiction, save for the following exceptions:-

(a) where the act is Ultra Vires
(b) where such act is clearly in violation of a written law
(c) where the due form and procedure have not been followed in a material respect and substantial prejudice ensues from such non-observance.

The law also provides us with a revised definition of what is meant by "Ultra Vires". An administrative act is ultra vires if it is clearly and explicitly prohibited or excluded by a written law. On the basis of what has been said, it soon emerges that although apparently Parliament adopted grounds for the annullment of administrative acts parallel to the system as it prevails in the U.K., in actual fact it has not provided for the material ground of abuse of power. If one were to persist with a literal interpretation, it would seem that the general rule is that the court has no jurisdiction to enquire into the validity or otherwise of administrative acts; furthermore the grounds provided are only exceptions to the rule, and appear to be quite restrictive, especially when one considers the meaning given to the term ultra vires. The law is clearly not in harmony with the continental system for two reasons, namely because of inexistence of administrative courts and secondly because institutions such as the Conseil d'Etat for example, are enabled to review administrative acts on the grounds of abuse of power (detournement de pouvoir). Furthermore, by adopting such a literal interpretation one cannot by any stretch of the imagination include the English concepts of unreasonableness and abuse of power as these are general legal principles, which are not found in any written law.

In view of the foregoing, it would seem that by tending to oust the jurisdiction of the courts in cases of abuse of power, this act has brought about a situation where the state enjoys substantial privilege vis-a-vis the private individual, a privilege that was not condoned in the *Lowell vs Caruana* decision.

Again, from a literal and strict interpretation of the law, one may say that in this law Parliament has manifested its intention in a very clear and explicit manner, such that a court which abides by the doctrine of the supremacy of Parliament has no other alternative but to respect Parliament's intention as manifested in the law. This would mean that the court would have to accept the fact that its jurisdiction is limited by Act VIII of 1981. However, this is a very strict and literal approach and the same doctrine of the supremacy of parliament affords us with a counter-argument to be dealt with at a later stage.

A "liberal" interpretation involves, in the opinion of the authors, a consideration of two aspects, namely:

(i) The unconstitutionality of the Law.
(ii) The inherent right of the courts to review administrative decision in the light of general legal principles.

(i) *Unconstitutionality of the Law*

The Maltese Constitution, in subsection 2 of section 40 affords to each individual citizen the right to a fair hearing, the fundamental components of which are mentioned in the said section. S 40(2) was formulated on the basis of Art. 6 of the European Convention on Human Rights, which also states that every citizen is entitled to a fair hearing. The point at issue here is whether this provision of the constitution contemplates only the case of a person who is already being duly prosecuted in court, or whether the section

40(2) incorporates the right to initiate proceedings in court. No Maltese court has as yet clarified this point, and there is no Maltese jurisprudence on the matter. However, the European Commission on Human Rights has pronounced itself very clearly on this issue in the *Knethcel Case* (better known as the *Golder* case) wherein it was held that Article 6 of the Convention does in fact contemplate a right to initiate proceedings in court. Furthermore in the *Ringaisen Case*, the European Commission of Human Rights decided that if Administrative acts impinge upon the rights of the individual, then such acts should fall within the purview of the courts. Thus, it seems that the right to a fair hearing under the European Convention of Human Rights may have some operational value in the administrative law field.

Access to the courts is a fundamental element of a fair hearing, a right that the Maltese constitution preserves in section 40(2); on the other hand, it appears that Act VIII of 1981, by ousting the jurisdiction of the courts is denying the individual his right to a fair hearing; hence this law may have tinges and shadows of unconstitutionality. Notwithstanding the possibility of such an interpretation, the probability of the Maltese courts annulling the relevant sections of the 1981 Act seems quite remote. Notwithstanding the existence of sound legal arguments as outlined above, such arguments are based on decisions of the European Commission of Human Rights, and although such decisions may have a certain degree of influence on decisions of our Courts, our Country may nevertheless adopt a very different attitude. Moreover, the isolated decisions of the Commission mentioned above should not alone lead us to any definite conclusions, since the principles therein reiterated have still to be concretely established and affirmed. Again, although it has been established in the *Ringaisen case* that the right to a fair hearing is to some extent also operative in the administrative law field, the precise limits of such operation have still to be drawn.

(ii) *Inherent right of the court to review administrative decisions*

Another approach stems from the alleged right of the courts to review acts of the administration based on discretion granted to it by acts of Parliament. If one were to analyse the very object of the existence of the Courts, it would transpire that one of their basic functions is to interpret laws as enacted by Parliament. By considering the written law as a means which Parliament uses to express its intention, the courts apply such law directly to the particular case before them, keeping in mind the general principles of law which guide them in the determination of the issues involved. The courts, when circumstances so demand, also impute intentions to Parliament in their interpretation of the law. This in order to clarify and elaborate upon certain aspects of the law, which parliament did not explain. In this way the courts do not merely look at the wording of the law but appropriately delve into the intention behind such law. According to clause I of the New Delhi Declaration of 1959: "His (the judge) duty is to interpret the law and the fundamental principles and assumptions that underlie it". Therefore when a court is to interpret a law, it does not confine itself to the wording of the law alone, but also considers other general legal

principles which, although unwritten, are of fundamental importance. Now, if one were to apply the foregoing argument to Act VIII of 1981, it would seem that the courts cannot decide on a simple literal interpretation of the wording of the law, but must interpret it in the light of the general principles of law relevant to the content of this law, and decide the case accordingly.

In so doing the court would consider what parliament had in mind when it enacts laws. In view of the above considerations, the courts may say that, Parliament, in enacting the legislation, never intended to empower the administration to make unreasonable use of its powers. The principle that every administration should act reasonably is a general legal principle, which cannot be derogated from; and even if a written law runs counter to this principle, the courts, having by time attained a certain mentality would still reassert the basic and fundamental principles of law which, if abrogated, would certainly result in the deterioration of the Rule of Law.

The power of judicial review is to be considered as an inherent right of the Courts, not because such a right has been so granted by any law, but because in a liberal democracy the doctrine of the supremacy of parliament requires the existence of a body to check the administration in its utilization of powers conferred upon it by Parliament. Thus the courts can be looked at as the guardians of the supremacy of parliament. The courts have the duty to check the executive whenever it makes improper use of any of its powers, and have to see that it utilizes its discretion reasonably. The judiciary has been entrusted with the difficult task of keeping the administration within the limits of the law; this in order to render the Rule of Law meaningful and effective. In fact one can say that the power of judicial review has been conferred upon the courts in order to enable them carry out this important tsk. As the Hon. P.N. Bhagwati, judge of the supreme court of India said, at the International Bar Association Conference of New Delhi – October 1982, "The judiciary stands between the citizen and the state as a bulwark against access and misuse or abuse of power by the executive and also transgressions of its constitutional limitations by the legislature". It therefore seems that in the very existence of the judiciary rests its function to act as a buffer between state and individual, a very significant task in all modern democracies. To be able to fulfill this task, the judiciary must necessarily be endowed with the effective weapon of judicial review, in its most complete form.

Thus by applying general legal principles, (and simultaneously fulfilling the role of protector of the doctrine of the supremacy of parliament), as well as by fulfilling its functions as a buffer between state and individual, the judiciary may adopt the attitude that notwithstanding Act VIII of 1981 it is still possible to review administrative discretion on grounds not mentioned in the act. Such was the attitude taken by the English courts in the case of *Anisminic vs Foreign Compensation Commission.*

If one were to consider the case and analyse the attitude taken by the House of Lords on that occasion, it would become evident that in adopting the same attitude towards Act VIII of 1981, our courts may still decide a case by avoiding the content of the act. A literal interpretation of Act VIII,

would in effect disarm the courts of a very effective weapon necessary for the fulfillment of their functions. However, if Maltese courts take the same determined attitude in interpreting this law as the House of Lords took in deciding the Anisminic case, it seems that Act VIII would not hinder the courts in their functions.

One must keep in mind that, as Wade put it, "Judicial control is a constitutional fundamental which even the sovereign parliament cannot abolish, at least without some special and exceptional form of words." Although Wade is here referring to the U.K., the same would apply to our system, because judicial control is a fundamental legal principle without which the Rule of Law cannot survive.

F. CONCLUSION

A positive aspect of Act VIII of 1981 is definitely the fact that the legislature has finally assumed its responsability to legislate on the matter. The unsteady evolution of this sphere of Maltese Administration Law, can finally come to a halt. In this light Act VIII can be seen as a stepping stone towards a new era of development of a system of Governmental Accountability through legislation. However, although certain improvements have been attempted, we are still very far from having achieved a completely satisfactory system of Government Accountability.