THE RESIDUAL POWERS OF THE FIRST HALL, CIVIL COURT IN MALTA

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IN recent years the residual powers of the First Hall of the Civil Court have been highlighted by s. 47 of the Constitution of the Republic of Malta, which provides that redress in respect of the enforcement of the protective provisions contained in the Constitution is to be sought from that Court and furthermore that when any question arises before any court, other than the Constitutional Court and the First Hall, Civil Court, as to the contravention of any of the aforesaid protective provisions, the court, before whom the question arises, is to refer the question to the Civil Court, First Hall, unless in its opinion the raising of the question is merely frivolous or vexatious and its findings, subject to appeal to the Constitutional Court, are binding on any court which has so referred the matter.

The Civil Court, First Hall, in Malta, however, is not only vested with the powers which are conferred on it as is the case of the other Courts of Law in Malta. In practice it also has jurisdiction to decide where jurisdiction lies and to declare whether any particular body has acted in terms of its jurisdiction and in accordance with the provisions of the law. *Mutatis mutandis* this corresponds to the jurisdiction of the Queen's Bench Division in the U.K. to review decisions of inferior bodies to see whether they have acted within their jurisdiction. Recently the Civil Court, First Hall, clearly asserted that:

"M'hemmx dubju, kif sewwa jirrileva l-attur, li, f'każi simili, il-Qorti tagħna kostantement asserew il-jedd li jissindikaw jekk provvediment ikunx jemana mill-awtorità kompetenti u fid-debita forma." (Perici vs Busuttil noe u Buttigieg vs Busuttil, noe 22/3/1976).

This comes very close to a declaration that a decision of an inferior body may be 'bad on the face'. The power of the Queen's Bench Division in the U.K. to review decisions which were 'bad on the face' was trenchantly reaffirmed in Rex v. Northumberland

Compensation Appeal Tribunal, ex parte Shaw (1951) 1 K.B. 711) and has been consistently reiterated ever since by U.K. Courts.

A typical Maltese case which applied a similar solution, without however going into a general discussion of the problem, but which in the event certainly affirms the First Hall's power to review the findings of the inferior body, is that of *Joseph Cutajar v. Port Workers' Board* (Anthony Farrugia et noe) (24/10/1974). In that case the Civil Court declared that the Port Workers' Board had acted not only against the law, but also manifestly *ultra vires* and hence the Civil Court declared the findings of the Port Workers' Board as null and consequently revocable by itself. It is interesting to observe that the Court did not merely declare the findings null. Instead of referring the matter for the further consideration of the Port Workers' Board, the Civil Court, after finding the nullity, itself revoked the decision.

The interesting implications of the decision of an inferior jurisdiction being 'bad on the face' are manifestly important in Administrative Law, as power to review the decision of an inferior jurisdiction in practice amounts to a right of appeal where the Legislature might have failed to provide any, or where it has provided a limited right of appeal. On the other hand, it is now clear that the Legislature itself could bite into this right of review of the Civil Court, in the same way as it has bitten into the principles of the Rules of Natural Justice where decisions by administrative bodies are concerned. Where a limited right of appeal is conferred by the Legislature, it may be argued that the grounds of appeal specifically conferred by the Legislature may not be widened out by the appellate Court, *sponte sua*. As the argument went in the Police vs Leslie Freedman case (Court of Criminal Appeal, 17/3/1977). Since s. 425 of the Criminal Code had specified the cases in which the Attorney General could appeal against the decisions of the Courts of first instance, that Court should not extend the Attorney General's right of appeal on the ground that the decision of the Court of first instance was 'bad on its face'. At the same time it is to be remembered that a right of *review* although tantamount to, is not a right of, *appeal*; so that that Court could have first dealt with the matter as a question of *review* (not of appeal), and if it found the decision bad on the face, it could have declared the nullity. Having done so, that Court could then have dealt with the matter in the same way as it deals with judgments of a court of first instance which are found to be null in view of deficiencies of procedures in terms of s. 440 of the Criminal Code.

In the relevant cases of course, the right procedure would be that of seeking a declaration of nullity from the Civil Court and thereafter a reconsideration of the case by the inferior jurisdiction itself if one is not thereafter time barred. (In the appropriate case, the risk that an action may be on the way to being time barred could amount to a proper plea of urgent treatment by the Civil Court.)