

Access to justice in cases related to spatial planning in Malta

14th Meeting of the Task Force on Access to Justice
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Introduction

Presentation will focus on:

- Different avenues available to challenge decisions of public bodies in relation to spatial planning in terms of urban development, planning and land-use:
 - Environment and Planning Review Tribunal
 - Administrative Review Tribunal
 - Civil Court
 - Examples of local case-law
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EPRT

- The **Environment and Planning Review Tribunal** (EPRT) was set up in 2010 and is regulated by the Environment and Planning Review Tribunal Act (Cap. 551)
 - It has jurisdiction to hear appeals on decisions taken by the Environment and Resources Authority (ERA) and the Planning Authority (PA) – vide articles 11 and 47 of Cap. 551.
 - Proceedings are open to the public
 - Decisions are available online: <http://www.eprt.org.mt/en/home>
 - Appeals possible to the Court of Appeal. Decisions available from: <https://ecourts.gov.mt/onlineservices/Judgements>
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EPRT Case Law

Sliema Local Council vs Planning Authority et (ref 261/16 MS; decided on 03/05/2018)

- Three separate appeals were filed by Local Council, eNGOs and ERA against PA's approval of a development permit for excavation and construction of a large scale development in Sliema consisting of a 38 storey tower, carpark, etc.
 - On 19 January 2017: EPRT gave a preliminary decision confirming standing to bring the case on the basis of article 11 of Cap. 551.
 - On 3 May 2018: EPRT partially upheld the claims of the appellants. EPRT revoked the decision and reverted the application back to the PA, ordered revised studies to be undertaken and the revision of the proposed development in line with relevant policies (Floor Area Ratio policy).
 - EPRT also held that all documents that are mentioned in the case officers report on a planning application, including any document regarding the development that could influence the decision of the Planning Board, should be available to the public.
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EPRT Case Law

Bicycle Advocacy Group et vs Planning Authority et (ref: 44/2019; decided on 12/02/2020):

- Appeal filed by a number of eNGOs on the PA's approval of a development consisting of various road works and widening of roads (central link project);
 - On 8 October 2019: EPRT accepted request to suspend the execution of a permit *pendente lite*.
 - On 7 November 2019: EPRT confirmed the issuance of the PA permit and found no irregularities in the EIA process.
 - On 12 February 2020: Court of Appeal confirmed decision of the EPRT.
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EPRT Case Law

Flimkien ghal Ambjent Ahjar vs Planning Authority et (ref: 149/19; decided on 17/06/2020):

- Appeal filed by eNGO against PA's decision to grant a permit for the development of the Manoel Island area, including construction of multiple residential units.
 - On 17 June 2020: EPRT partially accepted the eNGOs appeal by revoking the EIA report due to conflict of interest of one of the EIA consultants having familial ties to the developer. EPRT ordered the process to be reverted to the pre-EIA report stage, and for the EIA report to be carried out afresh and resubmitted to the relevant authorities.
 - The new EIA report has been submitted to the ERA, upon which the Planning Authority has granted the development permit on 16 September 2021. The EIA is currently being appealed before the EPRT.
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EPRT Case Law

Dr Jevon Vella vs Planning Authority et (ref: 25/2021; decided on 09/12/21):

- On 15 June 2021: EPRT held that there was no legal basis to appeal an application submitted for minor amendments to approved drawings and documents of development permissions from the PA owing to regulation 15(11) of S.L. 552.13: *“There shall be no right of reconsideration or appeal, from a decision on a request for minor amendments. ...”*
 - On 9 December 2021: Court of Appeal confirmed the decision of the EPRT.
 - Both Tribunal and Court of Appeal suggested that, in the interests of transparency, the Minister responsible for planning should consider amending this regulation such that it would allow for the instituting of appeals in such cases.
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EPRT Case Law

Moviment Graffiti et vs Planning Authority et (ref: 24/2021; decided on 09/12/21):

- Appeal instituted to EPRT by eNGO and various individuals against PA's decision to approve the construction of a water polo pitch and club house by the coast in Marsascala, arguing, inter alia, that it was granted in violation of applicable plans and policies.
 - On 26 January 2021: EPRT accepted the plaintiff's preliminary request to suspend the execution of the permit, to avoid irreversible works being carried out in the area, in accordance with article 33 of Cap 551.
 - On 15 June 2021: EPRT confirmed the PA permit and denied the plaintiff's pleas.
 - On 9 December 2021: the Court of Appeal overturned the decision of the EPRT, stating that the permit was not granted in line with the relevant Local Plan and policies and revoked the permit.
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EPRT Case Law

Moviment Graffitti vs Planning Authority et (ref: 38/2021; decided on 16/03/22):

- Appeal instituted by eNGO contesting the PA's decision to approve an application on a relocation of a fuel pump and the construction of ancillary services in Burmarrad.
 - On 30 September 2021: EPRT held that the NGO did not have a right to appeal the decision as it had not made written submissions when the permit application was pending and therefore did not satisfy the criteria for standing under article 11(1)(e) of Cap 551.
 - On 16 March 2022: the Court of Appeal overturned the decision of the Tribunal and held that the NGO did have standing to bring the case since the development was subject to an EIA. The Court held that the proviso to article 11(1)(e) of Cap 551 is clear in that it allows any person to appeal decisions related to developments that are subject to EIAs, without the need for such persons to have made prior submissions.
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ART and Civil Court

- Appeals can be made to the **Administrative Review Tribunal** (ART) in accordance with the Administrative Justice Act (Cap. 490), which allows for appeals against administrative acts of public administration, in accordance with Cap 490 or any other law.
 - The ART is an independent and impartial tribunal with the power of decision-making, and which decisions are binding upon the parties.
 - **Judicial review** of administrative acts is also possible through article 469A of the Code of Organization and Civil Procedure (Cap. 12) on specific grounds.
 - Appeals may be made to the Court of Appeal.
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Civil Court Case Law

Marsascala Local Council et vs. MEPA (ref: 336/2007; decided on 29/11/12):

- Request for judicial review of decision of MEPA, approving a full development permit, filed using article 469A of Cap 12.
 - On 29 November 2012: First Court upheld the plea of defendants in that article 469A(4) was applicable: *“the provisions of this article shall not apply where the mode of contestation or of obtaining redress, with respect to any particular administrative act before a court or tribunal is provided for in any other law”*
 - The Court held that this should not be interpreted too restrictively – the exclusion of jurisdiction on this basis is justified only if the Court is satisfied that, in practice, a person had a truly effective and adequate remedy available to him and he unreasonably did not utilize such available procedures.
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ART Case Law

Ramblers association vs. the Lands Authority (ref: 92/2020/1; decided on 14/07/21) & BirdLife Malta etc vs the Lands Authority (ref: 91/2020/1; decided on 14/07/21):

- Appeals instituted by eNGOs in front of ART, contesting the legality of a guardianship deed for the management and operation of a portion of land in Malta, concluded by the Lands Authority and an NGO (FKNK - Federation for Hunting & Conservation).
 - On 21 January 2021: ART decided that the NGOs were not “aggrieved parties” and thus did not have standing to bring the appeal.
 - On 14 July 2021: Court of Appeal revoked the decision of the Tribunal, stating that the NGO was indeed an ‘aggrieved party’ and therefore had *locus standi* due to their role in protecting the environment and in ensuring that the rights of the public are not prejudiced.
 - On the merits, on 25 January 2022, the ART upheld the agreement between the defendant and FKNK, finding no irregularities or illegalities in the process.
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Civil Court Case Law

Flimkien Ghal Ambjent Ahjar et vs MEPA et (ref: 935/16; decided on 22/07/16):

- Case instituted by eNGO and various residents, requesting a warrant of prohibitory injunction to prevent the authorities from carrying out a public hearing and taking any decision on an application for a proposed development until all the necessary studies were carried out and the documentation made available to the public.
 - On 22 June 2016, court preliminarily accepted this request on a provisional basis pending the hearing of the case.
 - However on 22 July 2016, the court reversed this provisional ruling and did not grant the warrant as it was decided that the necessary requisites were not met.
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Civil Court Case Law

The Ramblers Association vs MEPA et (ref: 228/10/1; decided on 27/05/18):

- Case instituted by an eNGO against the issuing of a number of permits for works to be carried out in a property owned by defendants (private individuals) in an area in Malta of ecological and archaeological value (Bahrija).
 - On 6 March 2012: Civil Court held that the NGO does not have legal interest to bring the case.
 - However this was reversed by the Court of Appeal on 27 May 2018, wherein standing was granted to the eNGO.
 - The decision went back to the First Court which upheld one of the pleas of the plaintiff, declaring that a second permit obtained by the defendants did not extend the validity of the first permit. However it held that insufficient proof was brought with regards to claims that illegal works were carried out on site.
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Thank you 😊

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