

# Administrative Law

# Definition

- Administrative law is the law which regulates the functions and composition of the Executive its relationship with the other organs of the State and the relationship with the private individual.
- Constitutional law deals with the three organs. AL with just one.
- The main function of Administrative Law is to ensure that the Administration governs within the parameters of law. A most important part of the subject is judicial review i.e. how the courts control the Administration and keep it penned within the law.
- To be distinguished from constitutional law (CL) . In CL one asks the question is a law or a government measure in line with the Constitution? In AL we never question the law itself : but we ask ourselves : has the Administration acted according to law. We cannot challenge the law itself but the actions of any public authority under the law.

Administrative Law deals with other matters such as the structure of the Administration(Adm.) , and the legislative and judicial powers of the Adm. , the functions of Local Government , the Attorney General, the State Advocate , the Malta Police Force, the Armed Forces of Malta , the Ombudsman and of the Commissioner for Standards in Public Life; Administrative Tribunals and the Administrative Review Tribunal (ART) but these are examined within the general function of keeping the Government in check.

- SOURCES
- The **Constitution** Chapter X. The regulation of the Public Service . It defines who is a public officer, how they are recruited disciplined and promoted. The establishment of the Public Service Commission (PSC) ,its powers, the judicial review of its actions etc; the Constitution regulates the offices of Prime Minister and Ministers the Attorney General the State Advocate the Ombudsman, the governments' accountability to Parliament, the powers of the President , the office of Permanent Secretaries.
- Ordinary Legislation. The Public Administration Act 2019; Article 469A of the COCP. The Ombudsman Act, The Local Councils Act The Interpretation Act, the Commissioner for Standards
- Subsidiary or Delegated Legislation e.g. PSC Disciplinary Regulations for public officers
- EU Law eg Ramblers case Juridical Interest
- English Common law- the *Lacuna* Doctrine: lacuna in maltese Public Law, Courts MATY apply English common law (not statute)
- Judgments: important shedding light on grounds of review
- Writers and Authors

# Structure of Public Administration

1. The Public or Civil Service – recruitment to public service through Public Service Commission (PSC). Employees in this sector are public officers . Discipline and Promotions: PSC
2. Bodies Corporate established BY law or public corporations e.g. Planning Authority, University of Malta . These public bodies state owned are established by a specific piece of legislation either through an Act of Parliament e.g. Lands Authority or subsidiary legislation e.g. *Zfin Malta*
3. Government companies e.g. Air Malta, Arms Ltd, : these are ordinary commercial companies registered under the Companies Act, where Government bodies have a controlling interest or majority shareholding

# Judicial Review of Administrative Action

- Art 469A Chapter 12 (COCP)
- An administrative act
- A Public authority ( Ministries govt. departments and bodies corporate e.g. local councils
- Grounds of Review
- Excess of Authority
- Procedural *Ultra Vires* and Rules of Natural Justice
- Abuse of Power , bad faith ,improper purpose, unreasonableness ,irrelevant considerations, fraud, abdication of discretion,
- Contrary to Law
- Juridical Interest , Six Months , Other Mode of Contestation, Damages only bad faith and unreasonableness