

The legal framework of local self-government

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This article by **Prisiah Schembri Fava** was previously submitted as part of PBL1009 last year and is being published with the author's permission. A comprehensive analysis of the legal framework surrounding local self-government is provided, particularly focusing on the principles and regulations that delineate the autonomy and responsibilities of local authorities. The research underscores the significance of these legal structures in facilitating effective governance at the local level.

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1. Introduction

Local self-government plays a pivotal role in the governance and administration of territories, ensuring that communities have a voice in their own affairs and that public services are delivered effectively. In the case of Malta, a small Mediterranean island nation, the legal framework for local self-government is a cornerstone of the country's democratic system. Malta's history is rich and diverse, shaped by various external influences and political developments over the centuries. Today, the country is a unitary parliamentary republic with a decentralised system of local self-government, providing a framework for local authorities to manage their communities' affairs.

The legal framework in Malta reflects the principle of subsidiarity, emphasising that decisions should be made at the lowest appropriate level of government. This approach allows local councils to independently manage local issues, including urban planning, public health, and recreational activities. Local councils are also entrusted with budgetary and financial autonomy, enabling them to make fiscal decisions tailored to their specific community needs.

Malta's approach to local self-government fosters civic participation and grassroots democracy. In the context of grassroots democracy, there is a proclivity to configure political processes in a manner that redistributes the decision-making authority to the organisation's most localised and socially proximate levels.¹ Local council elections are held regularly, allowing residents to choose their representatives and have a direct impact on local policy decisions. Furthermore, the legal framework provides mechanisms for public consultation and participation in decision-making processes, ensuring transparency and accountability in local governance.

2. Historical Background of Local Self-Government

In 1964, Malta's accession to a sovereign state symbolised a transformative juncture in its constitutional trajectory, moving from a colonial enclave to an autonomous entity. This shift, however, should be contextualised within Malta's pre-existing tapestry of self-governance. Throughout the early to mid-twentieth century, amidst a backdrop of

¹ Haroldo Dilla Alfonso and others, *Community Power and Grassroots Democracy: The Transformation of Social Life* (Zed Books 1997).

thirteen constitutional enactments, three emerged as particularly pivotal.

Joseph M Pirota's assertion that the '1921 constitution was part-fulfilment of a quest that had spanned more than a century'² invites a deeper exploration. This constitution vested the Maltese Government with the stewardship of a Legislative Assembly and a Senate, characterised by their respective tenures of three and six years. Such a configuration arguably marked an evolution in the island nation's self-conceptualisation.

Drawing further into the constitutional milieu, Simon C Smith's contention that the 1947 constitution signified the British Government's recognition of its wartime commitments is instructive. The new constitution established a diarchy in which the Maltese Cabinet, led by the Prime Minister, managed local affairs for an elected assembly, while the colonial government, headed by a Governor, retained control over imperial matters like defence, civil aviation, and nationality.³ This constitution not only reinstated the previously suspended responsible government but also instituted a diarchy. Here, the Maltese Cabinet, comprising eight members, including the Prime Minister, oversaw predominantly local matters. In juxtaposition, the colonial government, under gubernatorial oversight, retained purview over areas of imperial significance, such as defence. This demarcation, therefore, can be seen as a nuanced calibration between local aspirations and colonial imperatives.

Meanwhile, Henry Frendo observes that the 1961 constitution facilitated 'a short-lived regional experiment on the island of Gozo.'⁴ This experiment was the one in Victoria, Gozo, overseen by a well-known doctor, underwent an upgrade to a local administration for that island, becoming the 'Gozo Civic Council' established through an official ordinance published in the Government Gazette in 1961. This marked the introduction of a regional aspect to devolution in Malta, based on the elective principle for the first time. Paul Borg Olivier's further exposition, indicating the establishment of the Gozo Civic Committee during this period, extends this narrative.⁵ This committee was tasked with bringing people's complaints to the attention of the central government and exerting maximum pressure on the government to address the concerns of Gozo. The establishment of a statutory local government occurred through the election of a new council by general suffrage on the 4th of June, 1961, marking the evolution of the Gozo Civic Council. Notably, after its cessation in 1973, there was a significant

² Joseph M Pirota, 'The 1921 Self-Government Constitution' in Henry Frendo (ed), *Landmarks in Maltese Constitutional History 1849-1974* (Central Bank of Malta 2012) 33.

³ Simon C Smith, 'Dependence and Independence: Malta and the End of Empire' (2008) 1(1) *Journal of Maltese History* 33, 34.

⁴ Henry Frendo, 'Local Government: A Slowly Maturing Process' in J Loughlin, F Hendriks, and A Lidstrom (eds), *The Oxford Handbook of Local and Regional Democracy in Europe* (Oxford University Press 2010) 436.

⁵ Paul Borg Olivier, 'Local Councils in Malta: Some Considerations of the Law from a Comparative Perspective' (LL.D. thesis, University of Malta 1995).

interregnum until the enactment of Act XV in 1993, which instituted local councils despite the absence of a robust historical antecedent.

In synthesising these insights, it becomes evident that the trio of constitutions in question is emblematic of Malta's pursuit of self-governance, prompting an investigation into the term 'self-government'. As it stands, its historical application does not necessarily resonate with contemporary connotations of local self-governance. Such a disjunction underscores the need for a nuanced understanding of Malta's constitutional evolution.

Drawing from the historical backdrop, we notice that there was a diarchy system. Two systems of government coexisted in Malta: the Maltese Government and the British Imperial Government. This system had its roots in colonial governance and did not resemble the contemporary concept of self-government. As stated by Henri Darmanin, the British 'introduced a system whereby every town and village had a local government in the form of a *luogotenenti* in charge of the locality'.⁶ These '*luogotenenti*' played a pivotal role in the organisation and administration of the Maltese Islands. Moreover, they were entrusted with the allocation and distribution of financial resources, a responsibility that extended to independently managing the disbursement of these funds among the local populations.

The legal framework governing local self-government in Malta has undergone significant transformations over the years. In 1964, upon achieving independence as a nation, there was no structured system of local government across the entire country. At that time, local governance was limited to the island of Gozo. As the island of Gozo was absent from cultural and ethnic variations, as observed by Kevin Aquilina and Isabelle Calleja, since the island is small, no need was felt to establish local governance. The one exception was the island of Gozo.⁷

It was not until 1993 that a pivotal piece of legislation, known as the 'Local Councils Act', was introduced. This Act laid the foundation for the establishment of local councils as statutory local government authorities with distinct legal personalities. These councils were granted the capacity to engage in contractual agreements, initiate legal actions, and assume all necessary functions conducive to their mandate as prescribed by the Act. In essence, the Act empowered local councils with the legal authority and functional autonomy essential for local governance.⁸

⁶ Henri Darmanin, 'The European Charter of Local Self-Government: political and legal implications on Maltese legislation' (LL.D. thesis, University of Malta 2009) 34.

⁷ Kevin Aquilina and Isabelle Calleja, 'Local Government in Malta' in AM Moreno (ed), *Local Government in the Member States of the European Union: A Comparative Legal Perspective* (National Institute of Public Administration 2012).

⁸ Local Government Act, Chapter 363 of the Laws of Malta, Article 3(2).

3. The Evolution of Local Self-Government

A The transformation from local councils to local government was a significant milestone in the development of the Maltese political landscape. This transformative process was marked by the enactment of the Local Councils Act 1993, a notable development that set the stage for a more structured and empowered system of local governance. The Local Councils Act, enacted as ordinary legislation, was a foundational document that sought to establish a comprehensive legal framework governing local councils. This framework defined the distinct roles, responsibilities, and powers of these local entities. Notably, the Act endowed local councils with the authority to make bye-laws and autonomously take decisions pertaining to their respective localities.⁹ This legal framework was a crucial step in granting local councils the ability to act as self-governing bodies, enabling them to address the unique needs and issues of their communities more effectively. As a result, it marked a significant advancement in the decentralisation of governance. In the case of Malta, this decentralisation is exemplified by the distinction between Malta and Gozo, two distinct regions within the Maltese state. As stated by Henri Darmanin, the decentralisation of power is a governance principle that involves the transfer of decision-making authority from a centralised government entity to local councils or authorities, which are elected by and accountable to the residents of a specific town or village.¹⁰

This approach emphasises the localisation of decision-making processes, allowing communities to have a more direct say in matters that primarily concern their immediate environment and well-being. Before the constitutional amendment of 2001, Malta's local governance system comprised sixty-eight local councils, twelve of which were situated in Gozo. This system closely resembled European models, aligning with Malta's status as a member of both the Council of Europe and the European Union (EU). Malta started negotiations to join the EU in the 1990s, and these negotiations influenced various aspects of the country's legal and institutional framework as it worked to align its policies with EU standards and requirements. However, the constitutional amendment in 2001 would not have been influenced by the EU directly, as Malta was not yet a member at that time. The Council of Europe, boasting forty-six member states, played a crucial role in establishing a framework for local self-government. It introduced the European Charter of Local Self-Government, which significantly influenced the legal framework in Malta.

⁹ Act XII of 1995, Commissioners for Justice (Amendment) Act, Article 16.

¹⁰ Darmanin (n 6).

4. How the European Charter of Local Self-Government influenced the Legal Framework in Malta

Charlene Vella noted that the 'European Charter of Local Self-Government can be described as an institute whose main purpose is to advocate vital principles of democracy and safeguard the fundamental rights of the individual'.¹¹ However, the concept of local self-government is not just about the distribution of powers but also about the establishment of entities with distinct legal personalities. Indeed, under the Local Government Act, local councils are statutory entities with a distinct legal personality. This legal personality distinguishes the council as an institution from the individual persons making it up, including the mayor, deputy mayors, and councillors.

In the framework of local council governance, there is a well-defined sequence of responsibilities and actions. To begin with, councillors are obliged to attend all scheduled meetings of their respective councils. Within the purview of these deliberations, substantive discourse pertains to the incumbent responsibilities of councillors, specifically addressing matters such as the meticulous upkeep and maintenance of children's playgrounds, as well as the custodial oversight of cleanliness maintenance initiatives. If they encounter obstacles that hinder their attendance, it is crucial for them to promptly communicate these difficulties to the executive secretary. Therefore, the secretary's role is one of considerable import, necessitating the day-to-day administration of council affairs, in addition to the fulfilment of other duties delineated within the legislative framework. It is worth noting that, even though the secretary holds a prominent position within the council, Natalino Attard pointed out that councils have the flexibility to engage technocrats on a contractual basis.¹² The technocrat's function is centred on formulating viable resolutions for technological issues and associated applications within a given context. This requirement underscores the vital role of councillors in consistently participating in the decision-making processes and activities of the council.

Another essential role to recognise is that of the Minister, who 'can intervene and declare a council seat vacant'¹³ such as when the councillor declares that he is absent due to a defensible reason, or even when the council is still operational. This authority indicates the Minister's role in overseeing and regulating the composition of the council, ensuring its

¹¹ Charlene Vella, 'Local Government Act and European Charter of Local Self-Government: An Analysis of Financial Autonomy' (LL.B. dissertation, University of Malta 2021) 3.

¹² Natalino Attard, 'The Role of Local Authorities within the Framework of the European Union Institutions' (Magister Juris in European & Comparative Law thesis, University of Malta 1995) 90.

¹³ Fiona Tanti, 'Local Government in Malta – An Extended Arm of the Central Government, a Mirror Image of the Central Government or a New System of Public Administration?' (Diploma in Public Administration thesis, University of Malta 2008) 29.

effectiveness and compliance with legal standards. The Minister is intricately involved in various functions related to the administration of local councils. These functions are primarily coordinated through the Director of Local Government, who acts as a pivotal intermediary in transmitting information and facilitating coordination between the Minister and the local councils.

Notably, another member is the President who, despite being a high-ranking official, lacks the unilateral power to dissolve a local council at their own discretion. Instead, 'the President of Malta acting on the advice of the Prime Minister, is empowered to, dissolve a Council.'¹⁴ This consultative approach ensures that such significant actions are taken with careful consideration and alignment with the broader administrative framework.

Meanwhile, as the political head of the council, the mayor assumes a pivotal role within the local council structure. In this capacity, the mayor plays a crucial role in guiding the council's actions and decisions. This aligns with Fiona Tanti's suggestion that the mayor is responsible for functions delegated by the legislative act and can also exercise specific functions on behalf of the state, provided there is an agreement with a particular government organisation or authority.¹⁵ This underscores the political nature of local councils and their involvement in the governance of their respective localities.

5. The Financial Autonomy of the Legal Framework of Local Self-Government

On the other hand, financial autonomy is essential for the legal framework of local self-government. In Malta, local councils have certain financial autonomy to manage their affairs. Local councils are responsible for managing and budgeting their finances to provide services and meet the needs of their respective communities. Moreover, 'a Council shall prepare and discuss a three-year plan on council operation, projects and finances so as to provide a framework for the Council's annual budgets'.¹⁶ The financial autonomy of local self-government has many revenue sources, such as local taxes. These local taxes provide a significant portion of the local councils' revenue. Also, although local councils have achieved financial autonomy, they still receive grants from the central government to support their operations.

Local self-governments still face many challenges. For instance, smaller local councils may have limited revenue-generating potential compared to larger urban areas. This can result in resource disparities, affecting the ability to provide equal services to all residents. Maintaining fiscal sustainability,

¹⁴Aquilina and Calleja (n 7) 451.

¹⁵Tanti (n 13) 30.

¹⁶ Act XV of 1993, Local Councils Act 1993, Article 59.

which means that the government should be able to maintain a balance between its revenue and expenditures over an extended period, ensuring that it can continue to provide essential public services without accumulating unsustainable levels of debt, while providing essential services can also be a challenge faced by some local councils. They must balance their budgets while addressing the diverse needs of their communities, such as ensuring public safety which involves managing crime and traffic safety. Another need is maintaining positive public relations and managing communications effectively. Unfortunately, however, some local councils may lack the administrative capacity to effectively manage their finances and implement sound financial practices such as stated by Charlene Vella that 'the main factor that still holds Local Councils back from establishing their full potential is the lack of financial autonomy.'¹⁷ However, the financial autonomy of local self-government in Malta has come a long way, with local councils gaining more independence in managing their finances. This autonomy is essential for ensuring that local authorities can provide quality public services tailored to their communities' unique needs. However, challenges related to resource disparities, fiscal sustainability, administrative capacity, and dependence on central government grants persist.

As Malta's local self-government system continues to evolve, addressing these challenges and enhancing financial autonomy will be vital for the effective governance of local communities. To address challenges, considering financial empowerment strategies, such as exploring innovative taxation methods and local business partnerships. Additionally, prioritising infrastructure development, and investing in essential projects to stimulate local economies and ensure long-term revenue generation.

6. Conclusion

Overall, local self-government in Malta has evolved significantly throughout its history, reflecting the nation's pursuit of self-governance and its commitment to decentralisation. The historical backdrop demonstrates a transition from the diarchy system, which had colonial roots and did not resemble the contemporary concept of self-government, to the establishment of local councils as statutory entities with distinct legal personalities in 1993. This marked a pivotal moment in the development of Malta's political landscape, granting local councils the authority to make bye-laws and autonomously address the unique needs of their communities.

¹⁷ Vella (n 11) 2.



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