The *Kamra tal-Periti* Case: A Ground Breaking Judgement for Juridical Interest in Public Law Actions

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In this article, Prof. Tonio Borg examines the saga relating to different interpretations in judicial review cases under Article 469A of the Code of Organization and Civil Procedure, the juridical interest or legal standing requirement and the recent cases decided by the Court of Appeal, particularly *Birdlife*, *Ramblers* and *Kamra tal-Periti*, which extended such interest to include legal standing in favour of non-governmental organisations. The author argues that this opening will lead Maltese jurisprudence to come closer to the notion of "sufficient interest" under English law – a concept which GħSL championed when it put forward a draft Bill in 2023 to reform our law on judicial review.

TAGS: Administrative Law, Public Law, Article 469A, Code of Organization and Civil Procedure, Juridical Interest

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For decades, Maltese courts have stuck to the traditional doctrine of juridical interest or *locus standi* even in public law actions.[1] Whether one is proposing a civil law action for partition of an inheritance, or challenging an exercise of discretion by a public authority, the plaintiff had to prove direct, personal, juridical interest in the matter at hand. This civil law doctrine, essential in private law, was applied lock stock and barrel to public law actions, creating anomalies and bizarre conclusions.[2]

Evidence of this wholesale application of a civil law doctrine to public law is evidenced by the fact that in public law actions, repeated reference was made to civil law judgments. The application of the doctrine created disfigurement of public law actions, the most important being that of excluding non-governmental organisations from challenging decisions of public authorities under administrative law. This meant that only organisations which had a direct personal, interest in a matter under litigation could commence a judicial review action. Since most non-government organisations (NGOs) rarely have a personal, direct interest in the matter which they champion and the issues which they contest, this interpretation of juridical interest in public law, conveniently for the Government, exempted public authorities from court scrutiny; to the point of sometimes creating a situation where no one actually enjoyed legal standing to contest an action performed by the Government or any public authority.

A typical example of this situation occurred in the *Life Network* case.[3] In this case a group of pro-life organisations claimed that allowing the distribution of the morning after pill in the local market by the health authorities amounted to an illegal act since such pill destroyed a fertilised human egg, and, therefore, amounted to abortion, a criminal offence in Malta. The Court did not decide the case on its merits but ruled that Life Network, even though it had been for years campaigning on pro-life issues, did not have the necessary legal standing to file a judicial review case on the matter. Assuming, just for the sake of argument, that Life Network's position was legally correct, one wonders who might be capable of proving legal standing. The only person remaining who could possibly have such interest would be the father who impregnated his wife, partner or girlfriend and discovers, in due time, that his companion is about to take the pill in question!

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[1] *Falzon Sant Manduca v Weale*, Court of Appeal 9 January 1959 Vol XXXXIII.i.1; *Francis Tonna v Vincent Grixtri*, Civil Court (First Hall) 13 March 1992 Vol. LXXVI.iii.592; 1790/2000 *Emilio Persiano v Commissioner of Police*, Civil Court (First Hall) 30 May 2002.

[2] Giovanni Bonello, 'When Civil Law trumps the Constitutional Court' (2019) 29 Id-Dritt 427, 439: "Problems and very real ones arise because the constitutional courts, … unquestioningly assumed that what was good for private law, civil law relationships in the civil courts should automatically and uncritically be transposed to public law relationships in the constitutional courts; these are totally autonomous relations to which totally different dynamics should apply."

[3] 494/17 *Miriam Sciberras noe v Superintendent Public Health et*, Civil Court (First Hall) 27 January 2022.

The statement by the Court in the *Life Network* case was clear:

> *That article (469A) rests on the need for plaintiff to show that he enjoys a personal juridical and actual interest in the action. Apart from this , for purposes of the Maltese legal system, the said article defines the parameters of actions of that kind and therefore there is no lacuna which allows the court in Malta to refer to the application of the principles of English public law, as plaintiffs are submitting that the Courts should do, as to the aspect of their active legitimation of legal standing.* [4]

The question however, remains: where in the law, particularly Article 469A of the Code of Organization and Civil Procedure[5], is there any reference to the need *for* juridical interest, and by what right or authority does the court in a public law action apply a civil law notion? This, as we shall see, was the turning point in later cases which liberalised the notion of legal standing in public law actions. Once a *lacuna* existed, the argument put forward by the plaintiffs that the court should have applied the *lacuna* doctrine and applied English common law and its notion of legal standing, made legal sense.

The first attempt at liberalising the notion of juridical interest and giving it a particular meaning in public law actions occurred in two judgments which are practically identical, one commenced by Bird Life, and the other by Ramblers Association, decided by the Court of Appeal in its Inferior jurisdiction.[6] In this first set of cases, environmental NGOs complained that Government had granted large tracts of public land at Miżieb, limits of Mellieħa, to be manged and operated by the Federation of Hunters and Trappers (FKNK) in breach of the law. The Government raised the plea that the NGOs did not possess juridical interest. Applying the *Life Network*[7] criteria they clearly had no such interest. The Court, however, while reiterating the need of proving juridical interest for one to be classified as an "aggrieved person," gave the notion a new meaning.

The law allowed an appeal from any decision of the Lands Authority by any "aggrieved person" to the Administrative Review Tribunal (ART) established by the Administrative Justice Act.[8] The Tribunal decided[9] that the NGOs did not enjoy legal standing and could not be considered as an aggrieved person. It ruled that since the right of appeal by an aggrieved person could take place only within a time limit from when the Lands Authority notified such person of

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[4] ibid: "Dak l-artikolu jinbena fuq il-ħtieġa li l-parti attriċi turi li għandha interess personali, ġuridiku u attwali f'dak l-għemil. Minbarra dan, għall-finijiet tal-ordinament ġuridiku Malti, l-imsemmi artikolu jiddefinixxi l-parametri ta' azzjonijiet ta' dik l-għamla u għalhekk ma hemm l-ebda "*lacuna*" li titlob li qorti f'Malta ddur għat-tħaddim ta' prinċipji ta' Dritt Pubbliku Ingliż, kif l-atturi jissottomettu li jmissha tagħmel din il-Qorti f'dak li jirrigwarda l-aspett tal-leġittimazzjoni attiva tagħhom;"

[5] Chapter 12 of the Laws of Malta.

[6] 91/20 *Birdlife Malta, Moviment Graffitti, Din l-Art Ħelwa, Friends of the Earth Malta and Dr Edward Mallia v Lands Authority*, Court of Appeal (Inferior) 9 November 2022; 92/20 *Ramblers Association v Lands Authority*, Court of Appeal (Inferior) 9 November 2022.

[7] *Miriam Sciberras* (n 4)

[8] Chapter 490 of the Laws of Malta.

[9] 91/20 *Birdlife Malta v Lands Authority*, Administrative Review Tribunal 21 January 2022; 92/20 *Ramblers Association v Lands Authority*, Administrative Review Tribunal 21 January 2022.

its decision, it was obvious that the NGOs were not aggrieved persons, otherwise they would have been so notified. It stated:

> *The law states that: "provided further, unless prescribed otherwise by law, an objection done under this sub article to the Administrative Review Tribunal shall be filed within twenty days from when such person receives notification of the decision of the Authority.***"**
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> *From such proviso it clearly results that the intention of the Legislator was that only those persons* ***who are notified by the decision of the Authority*** *in their regard can claim redress before this Tribunal; so much so that the time period to appeal starts running from the day* ***when the person receives the decision by which he is aggrieved.*** *Had the intention of the legislator been that of granting a wider right of appeal, as submitted by the plaintiffs, then the time limit within which an appeal could be presented would have been defined in a different way. In this case plaintiff came to know of the decision not because it received it once it was taken, but through the broadcasting media.*[10]

The Lands Authority Act[11] allowed an appeal from a decision of the ART on a point of law to the Court of Appeal in its Inferior Jurisdiction. The plaintiff NGOs appealed to the Court of Appeal and based their arguments on two points, namely, that according to European Union (EU) Directive 2003/35, an environmental organisation automatically had legal standing in any environmental matter; this had been confirmed in *Ramblers Association v Planning Authority.*[12] This argument had been ignored before the ART and brushed off by the Tribunal which stated, rather bizarrely, that once the ART was deciding that, according to the Lands Authority Act,[13] the plaintiffs NGOs were not to be considered as aggrieved persons, it would abstain from considering such argument which could be presented in other legal fora.

The Court of Appellate Jurisdiction took a different view than that of the ART.[14] It first ruled that the provision about 20 days for appeal from the date when one is notified of the decision, applied only to when the person aggrieved was the person directly subject to such decision; but did not apply to others including members of civil society like the plaintiffs. It stated that if it were otherwise, it would be the Lands Authority which decides and defines who can contest, challenge and appeal from its own decisions.

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[10] 91/2020/1 *Birdlife Malta, Moviment Graffitti, Din l-Art Ħelwa, Friends of the Earth Malta and Dr Edward Mallia v Lands* Authority, Court of Appeal (Inferior) 14 July 2021: "Iżda wkoll, sakemm ma jkunx preskritt mil-liġi, oġġezzjoni magħmula skont dan is-subartikolu lit-Tribunal ta' Reviżjoni Amministrattiva għandha tiġi ppreżentata fi żmien għoxrin ġurnata minn meta dik il-persuna tirċievi d-deċiżjoni tal-Awtorità."Illi minn dan il-*proviso* joħroġ ċar illi l-intenzjoni tal-Leġislatur kienet illi dawk il-persuni li **jiġu notifikati b'deċiżjoni tal-Awtorità** fil-konfront tagħhom li għandhom dritt jirrikorru għal rimedju quddiem dan it-Tribunal. Tant hu hekk li t-terminu tal-appell jibda għaddej minn **meta l-persuna tirċievi d-deċiżjoni aggravanti.** Li kieku kienet l-intenzjoni tal-Leġislatur illi jagħti dritt ta' appell iktar wiesgħa u kif qiegħda tiprospettah ir-rikorrenti, allura t-termini *entro* liema jista' jsir appell kienu jkunu definiti mod iehor. F'dan il-każ, ir-rikorrenti saret taf bid-deċiżjoni mhux għax irċevietha wara li ttieħdet, imma għaliex semgħet mill-mezzi tax-xandir."

[11] Chapter 563 of the Laws of Malta.

[12] 228/10 *Ramblers Association of Malta v Malta Environment and Planning Authority*, Court of Appeal 27 May 2016.

[13] Chapter 563 of the Laws of Malta.

[14] *Birdlife* (n 11).

It then departed from the traditional civil notion of juridical interest and ruled that:

> *From the records it most clearly results that this action is being proposed by individuals and associations who are active in their work relating to environmental protection and who are objecting to the decision of the respondent in appeal Authority primarily because they claim that a decision was taken by it without observing mandatory procedural rules which the said Authority had to abide by before committing public land in a special conservation zone to be used privately by members of the Federation*[15] *... The interest of appellants is also actual for through their action they are trying to challenge an agreement which is depriving their members the public in general from seeking access to the land in question for a considerable period of time during the year. The interest of appellants is also direct for the consequences of such decision are affecting them in a direct way, and it is also legitimate for appellants are insisting that before reaching such an agreement the Authority had to observe the law and its procedure, particularly the provisions of Chapter 573 of the Laws of Malta and those of the Civil Code which regulate land in public domain. The interest of appellants is also juridical for through such action they are trying to seek a remedy which would be useful and advantageous to them, with the aim that if they succeed in their action, their members and the public in general, regain access to the land in question.*[16]

The *coup de grace* came in the following excerpt which, as shall be seen, was the springboard for other courts to follow suit in this new interpretation of legal standing:

> *The Court considers from the testimony given by representatives of the appellant associations that it clearly results that these have been involved in environmental protection, and some of them who gave their testimony possess expert knowledge in this field. It also took into consideration the fact that, were* ***it not for organisations and associations as appellants who object to decisions which led to agreements of the kind which the Authority respondent in appeal reached with the FKNK, probably no individual or group of individuals would alone have proposed such an action****; and consequently, it is organisations and associations like these who should be acknowledged as having legal standing and have their juridical interest recognized in actions of this kind*[17]

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[15] ibid: "Mill-atti jirriżulta bl-aktar mod ċar li din l-azzjoni ġiet proposta minn individwi u għaqdiet li huma attivi f'ħidma għall-ħarsien ambjentali u li qegħdin joġġezzjonaw għad-deċiżjoni tal-Awtorità appellata primarjament għaliex isostnu li din ittieħdet mingħajr ma ġew osservati proċeduri mandatorji li l-appellata kellha ssegwi qabel tikkommetti art pubblika f'żoni speċjali ta' konservazzjoni, għall-użu privat tal-membri imsieħba fl-FKNK."

[16] ibid: "L-interess tal-appellanti huwa wieħed attwali, għaliex bl-azzjoni tagħhom dawn qegħdin jippruvaw jattakkaw ftehim li qiegħed iċaħħad lill-membri tagħhom u lill-pubbliku in ġenerali milli jaċċedu għall-meded ta' art inkwistjoni għal żmien konsiderevolment twil tas-sena. L-interess tal-appellanti huwa wkoll dirett, għaliex il-konsegwenzi tiegħu qegħdin jaffettwahom b'mod dirett, u huwa wkoll leġittimu għaliex l-appellanti qegħdin jesiġu li qabel tilħaq ftehim bħal dan, l-Awtorità appellata għandha tosserva l-liġi u l-proċedura, partikolarment id-dispożizzjonijiet tal-Kap. 573 tal-Liġijiet ta' Malta, tal-Kodiċi Ċivili li jirregola art li taqa' fid-demanju pubbliku. L-interess tal-appellanti huwa wkoll wieħed ġuridiku għaliex permezz tiegħu huma qegħdin jittentaw jiksbu rimedju li jkun utili u vantaġġuż għalihom, bil-ħsieb li jekk l-azzjoni tagħhom tirnexxi, il-membri tagħhom u l-pubbliku in ġenerali jerġgħu jiksbu aċċess għall-artijiet inkwistjoni."

[17] ibid: "Il-Qorti tqis li mix-xhieda mogħtija minn rappreżentanti tal-għaqdiet appellanti, jirriżulta bl-aktar mod ċar li dawn ilhom snin involuti f'ħidma favur il-ħarsien tal-ambjent, u wħud mill-membri li xehdu għandhom *expert knowledge* fil-qasam. Qieset ukoll li **jekk ma jkunux organizzazzjonijiet u għaqdiet bħall-appellanti li joġġezzjonaw għal deċiżjonijiet li jwasslu għal ftehim tax-xorta li l-Awtorità appellata laħqet mal-FKNK, aktarx li l-ebda individwu jew grupp ta' individwi waħedhom, ma jaslu jipproponu azzjoni bħal din**, u għalhekk huma għaqdiet u organizzazzjonijiet bħal dawn li għandhom jingħataw għarfien, *locus standi* u rikonoxximent tal-interess ġuridiku li għandu jkollhom f'azzjonijiet ta' din ix-xorta."

The Court gave its own novel interpretation of "legal standing". It did not jettison the requirement but gave it a new meaning. The Court could have easily decided the matter of juridical interest on the basis of EU law which provides that in matters of environment the widest participation by the general public, let alone environmental NGOs, should be permitted. In fact, Maltese planning legislation allows any member of the public to register an objection against a development permit and even to appeal against a decision of the Planning Authority to the Environment and Planning Review Tribunal, without the need of proving personal juridical interest – a factor which was expressly taken into consideration in the *Kamra tal-Periti* case,[18] as shall be seen.

Indeed, in *Ramblers*,[19] the Court of Appeal had allowed an environmental NGO in virtue of EU law to have legal standing to challenge an outside development zone issued by the Planning Authority. The plaintiff had lost the case before the Court of First Instance[20] for the Court ruled that it did not enjoy the required personal interest. It stated:

> *These aims and objectives (of plaintiff) even if redeeming in a general way in their aim cannot be considered as amounting to a right, for purposes of the requirement of juridical interest. For the plaintiff association to be able to proceed with the current litigation, it had as a pre-requisite to prove that it was acting to defend itself against a breach of its own right*[21]

The Court, however, sought another way. It expressly interpreted juridical interest in a public law action to allow specialised associations to institute judicial review, citing the fact that its members would benefit from a rescission of the agreement with FKNK and also "the general public" – certainly a novel way of interpreting juridical interest as detached from strict civil law norms. What is even more impressive and significant therefore, is the fact that the Court of Appeal did not decide the issue on the technical matter that EU law allowed environment organisations automatic juridical interest when contesting environmental decisions. It decided to tackle head on the question of the interpretation of juridical interest in public law actions.

The judgements by the Court of Appeal in its Inferior Jurisdiction in *Birdlife* [22] and *Ramblers Association* [23] were undoubtedly the precursors of the most important judgment ever delivered by a

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[18] 210/18 *Kamra tal-Periti, Din l-Art Ħelwa and Flimkien għal Ambjent Aħjar v Planning Authority,* Court of Appeal 10 October 2023.
[19] *Ramblers* (n 10)
[20] 228/10 *Ramblers Association of Malta v Malta Environment and Planning Authority*, Civil Court (First Hall) 6 March 2012.
[21] ibid: "Dawk l-*aims and objectives*, anke jekk fejjieda b'mod ġenerali fl-iskop tagħhom, ma jistgħux jistqiesu bħala *jedd* għall-fini tar-rekwiżit tal-interess. Sabiex setgħet l-assoċjazzjoni attriċi tipproċedi bil-kawża tal-lum, kellha bħala pre-rekwiżit tipprova illi hija kienet qegħda taġixxi sabiex tilqa' kontra ksur ta' *jedd* tagħha."
[22] *Birdlife* (n 8)
[23] *Ramblers* (n 8)

Court of Appeal in its superior jurisdiction. The *Kamra tal-Periti* case [24] paved the way for a novel interpretation of legal standing in judicial review. This time it was the highest Court of Appeal which acknowledged the reasoning in *Birdlife*[25] and *Ramblers Association.*[26] In *Kamra tal-Periti*[27] a request was made by Enemalta to the Planning Authority for the demolition of a building at Marsa known as Sea Malta Building. The Planning Authority acceded to that request without ordering an on-site inspection. The plaintiffs alleged that the legal notice under which the demolition order had been issued, applied only to cases for emergency remedial action and not for demolition. Besides, the building was not in such a state as to justify demolition and in any case was of hight architectural value. Prior to the issuing of the demolition order, the Ombudsman's office had decided that there was no need for such demolition, and had recommended that the demolition order should be suspended until an architect from the Planning Authority inspected the site. The Authority decided to ignore such recommendation and proceeded with the issuing of the demolition order which was executed. The defendants raised the plea that the plaintiff NGOs, namely the Kamra tal-Periti, Din l-Art Ħelwa, and Flimkien għal Ambjent Aħjar[28] did not enjoy legal standing, and that, in any case, once the building had been demolished, the plaintiffs were only requesting a declaration from the Court, with no practical utility for themselves.

The Court of First Instance[29] rejected the plea of lack of juridical interest in a rather novel and creative way. It stated that in planning legislation, namely, the Environment and Planning Review Tribunal Act[30], any person without need of proving juridical interest, could register his opposition to a development permit and eventually appeal against the issuing of a permit to the Environment and Planning Review Tribunal. It was only fair and logical to adopt the same norms and criteria when the plaintiffs challenged an environmental decision before a court of law under Article 469A.[31] The Court of First Instance explained its stance by affirming that as a rule juridical interest is required to start a case before a court of law. However,

> *In the present case, this general rule to which the Planning Authority and Enemalta refer, does not apply. This is so because in matters relating to laws of environmental protection, the legislator seems to have wanted to open the doors for a popular action to anyone who like plaintiffs, cherishes the environment and image of Malta. To prove that this is so,* ***Article 22(1) of the Environment and Planning Review Tribunal Act (Chapter 551 of the Laws of Malta)*** *provides that in proceedings before the Environment and Planning*

[24] *Kamra tal-Periti* (n 19)
[25] *Birdlife* (n 7)
[26] *Ramblers Association* (n 7)
[27] *Kamra tal-Periti* (n 19)
[28] Chamber of Architects, This Sweet Land and Together for a Better Environment.
[29] 260/18 *Kamra tal-Periti et v Planning Authority*, Civil Court (First Hall) 4 November 2022.
[30] Chapter 551 of the Laws of Malta.
[31] Code of Organization and Civil Procedure, Chapter 12 of the Laws of Malta.

> *Review Tribunal any third party "does not need to prove that it has any interest according to the juridical interest doctrine and such doctrine does not apply to such proceedings; However, such person has to submit reasoned motivation based on environmental and planning considerations, justifying such appeal".* [32]

The Court of First Instance used the analogy argument to apply the liberal procedural norms under Chapter 551[33] to judicial review actions under Article 469A[34]:

> *Once this article of law can be found in a framework of actions intended to challenge and review decisions of the Planning Authority, this Court, applying the process of analogy, does not see any reason why this same principle relating to juridical interest should not also apply to judicial review actions regarding decisions of the Planning Authorly under planning law which are not filed before the Environment and Planning Review Tribunal but before other organs, such as this Court*[35]

The defendant authorities appealed against the decision and on the analogy argument, as expected, asserted that one could not "cut and paste" a piece of legislation and transport it to a different law.

The Court of Appeal[36] begged to differ. It ruled not only that the analogy argument was correct and acceptable but went one step further. Quoting the *Birdlife* and *Ramblers* judgments, decided by the Court of Appeal in its Inferior Jurisdiction[37], it ruled that if NGOs are not recognised as having legal standing on such matters, one could create a situation where no one would be able to challenge the legality of a decision of a public authority. It stated:

> *It is true that Article 22 of Chapter 551 applies specifically to proceedings before the Environment and Planning Review Tribunal; however, as the court of first instance reasonably argued, indeed, it does not make any sense that the norms relating to juridical interest in an action of judicial review of decisions of the Planning Authority relating to planning law be applied differently according to which judicial organ is seized of the complaint.* [38]

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[32] *Kamra tal-Periti* (n 29): "Fil-każ tal-lum iżda ma tgħoddx din ir-regola ġenerali li qegħdin jagħmlu referenza għaliha l-Awtorità tal-Ippjanar u l-Enemalta plc. Dan hu hekk għaliex fil-qasam tal-liġijiet li jħarsu l-ambjent u l-ippjanar, il-leġislatur donnu ried jiftaħ il-bibien għal azzjoni popolari għal kull min bħall-atturi għandu għal qalbu l-ambjent u d-dehra ta' Malta. Kemm hu hekk, **l-artikolu 22(1) tal-Att dwar it-Tribunal ta' Reviżjoni tal-Ambjent u l-Ippjanar (Kap 551 tal-Liġijiet)** jgħid li fi proċeduri quddiem it-Tribunal ta' Reviżjoni tal-Ambjent u l-Ippjanar, terza persuna, "*m'għandhiex għalfejn iġġib prova li hi għandha xi interess skont id-duttrina ta' interess ġuridiku, u tali duttrina m'għandhiex tapplika għal proċeduri bħal dawn, iżda tali persuna għandha tissottometti motivazzjonijiet raġunati bbażati fuq konsiderazzjonijiet ambjentali u, jew tal-ippjanar biex tiġġustifika l-appell tagħha".*

[33] The Environment and Planning Review Tribunal Act.

[34] Code of Organization and Civil Procedure (n 31)

[35] *Kamra tal-Periti* (n 29): "Ladarba dan l-artikolu tal-liġi jinsab f'qafas ta' azzjonijiet li huma maħsuba biex jikkontestaw u jirrevedu deċiżjonijiet tal-Awtorità tal-Ippjanar, din ilqorti bit-tħaddim tal-proċess tal-analoġija ma tarax għalfejn dan l-istess prinċipju dwar l-interess ġuridiku m'għandux jgħodd ukoll f'azzjonijiet ta' stħarriġ ġudizzjarju ta' deċiżjonijiet meħuda mill-Awtorità tal-Ippjanar taħt il-liġi tal-ippjanar li ma jitressqux quddiem it-Tribunal ta' Reviżjoni dwar l-Ambjent u l-Ippjanar, iżda, li jitressqu .quddiem organi ġudizzjarji oħra bħalma hi din il-qorti"

[36] *Kamra tal-Periti* (n 19)

[37] *Birdlife* (n 7)*; Ramblers Association* (n 7)

[38] *Kamra tal-Periti* (n 19); "Huwa veru li l-Artikolu 22 tal-Kap 551 japplika speċifikatament għal proċeduri quddiem it-Tribunal ta' Reviżjoni tal-Ambjent u l-Ippjanar, iżda kif anke rraġunat l-Ewwel Qorti stess, tassew ma jagħmilx sens li r-regoli tal-interess ġuridiku f'azzjoni ta' sħarriġ ġudizzjarju ta' deċiżjonijiet tal-Awtorità tal-Ippjanar li għandhom x'jaqsmu mal-liġi tal-ippjanar għandhom jitħaddmu b'mod differenti skont quddiem liema organu ġudizzjarju jitressaq l-ilment."

The Court of Appeal, however, went one step further. It did not rest solely on the analogy argument but stated that:

> *Besides, as argued by plaintiffs respondent in appeal,* ***even if one were not to apply such analogy****, they still possess the required legal standing to promote this action, in spite of the fact that such interest is different from the traditional one required in the area of civil law.* [39]

Indeed, this is the first time that a distinction between juridical interest in civil law and public law was expressly and unequivocally recognised, and clearly spelt out, by a court of appellate jurisdiction. The Court went on to cite excerpts from the *Birdlife* and *Ramblers* cases[40] to decide that, were it not for organisations and associations who operate in the field of environmental protection no one would challenge decisions of public authorities and therefore such NGOs deserved to be recognised as having legal standing.

A second issue related to juridical interest, raised by the defendant authorities, was that once the building had been demolished, then even if such juridical interest existed prior to demolition, once the material object of the cause was no longer in existence, such juridical interest came to an end. Perhaps this part of the judgment is as innovative as the first, though the Court of Appeal practically sanctioned word for word the decision of the First Hall of the Civil Court. The Court of First Instance had made it clear that such demolition did not extinguish the juridical interest of the plaintiffs:

> *..the government authorities cannot so easily release themselves from court scrutiny; otherwise every administrative authority, which does not intend to abide by the law and/or decides to abuse of its powers, would do everything in its power so that the administrative act granted to it by law be executed as soon as possible so that it would avoid the consequence of being summoned before a court of law to be held accountable for its actions. It is obvious that the principle of good governance would not be duly observed if such behaviour were possible.*[41]

It then passed on to present another argument, namely that of providing, in virtue of the judgment, a method of establishing the parameters of lawful action in the future, even for the benefit of public authorities. It stated:

> *The Court adds that it is always right that judicial review be allowed even if the situation cannot be reverted to what it was before the administrative act was executed; for in such a way one would discover when an illegality had occurred. And if such illegality is*

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[39] ibid: "In oltre, kif anke jargumentaw l-atturi appellati, anke kieku ma kellhiex tiġi applikata tali analoġija, huma xorta jippossjedu l-interess ġuridiku meħtieġ biex jippromwovu azzjoni bħal din, minkejja li huwa interess ġuridiku differenti minn dak tradizzjonali meħtieġ fil-kamp ċivili."

[40] *Birdlife* (n 7)*; Ramblers Association* (n 7)

[41] *Kamra tal-Periti* (n 30): "L-awtoritajiet governattivi ma jistgħux jinħelsu daqshekk ħafif mill-iskrutinju tal-qorti. Inkella kull awtorità amministrattiva, li ma tkunx trid timxi mal-liġi u/jew li tkun trid tabbuża mis-setgħat tagħha, tagħmel minn kollox biex tiżgura li l-għemil amministrattiv mogħti minnha jiġi mwettaq malajr kemm jista' jkun, ħalli b'hekk taħrab mill-konsegwenza li tinġieb quddiem qorti biex twieġeb għal għemilha. Huwa ovvju, li l-prinċipji tal-governanza tajba ma jkunux jistgħu jitħarsu kif suppost, jekk jitħalla li jsir hekk;"

> *uncovered, one hopes that such unlawful conduct does not occur again in the future and that the persons responsible for such behaviour carry the political and administrative responsibility of their actions, and if necessary be subjected to disciplinary or criminal proceedings if that is the case.*[42]

The Court of Appeal accepted and endorsed all the arguments submitted by the Court of First Instance and ruled that such juridical interest subsisted in spite of the building having been demolished.

Post *Kamra tal-Periti* Jurisprudence

It remains to be seen whether this positive liberal attitude detaching legal standing in public law from the strict norms of civil law will be followed. Certainly, when it comes to individuals who have tried to evade the judicial interest doctrine on litigation other than environmental issues, the courts have been more conservative. Consequently in *Pierina Zammit*[43], a competitor of a pharmacy operator at Ħal Qormi was deemed not to possess juridical interest to file a case challenging an administrative act by a public authority regarding the relocation of a pharmacy of his competitor in the same locality, even though the plaintiffs had been allowed to intervene in *statu et terminis* in another litigation involving the same matter. In the latter case, the interest to intervene was not as stringent as the classical juridical interest needed to file a judicial action. Consequently, while the Court of Appeal has been more liberal in acknowledging legal standing to NGOs, particularly those operating in the environmental sector, it has not showed the same liberality in cases filed by individuals regarding commercial competition. Indeed, in its recent case law the Maltese Courts have cautiously veered towards the "sufficient interest" criterion under English common and statute law, whereby in situations where either no one possesses legal standing, or else plaintiff proposes a public interest action pursuing a legitimate and proper cause, the action is allowed to proceed. This criterion, therefore, can be considered as a cross between an *actio popularis* where no juridical interest needs to be shown, and the full, juridical, personal, actual interest imported from Maltese civil law and made applicable to judicial review actions under Maltese administrative law. In the United Kingdom this middle-of-the-road criterion has allowed a maverick noble Scotsman to challenge the validity of the appointment of certain persons

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[42] ibid: Il-qorti żżid tgħid ukoll li huwa dejjem tajjeb Ii jitħalla li jkun hemm stħarriġ ġudizzjarju, anke jekk is-sitwazzjoni ma tkunx tista' titreġġa' lura għal dik li kienet qabel it-teħid tal-għemil amministrattiv, għaliex b'dan il-mod ikun jista' jinkixef jekk saritx illegalità. U jekk tinkixef l-illegalità, wieħed jittama li dik l-illegalità ma terġax tiġi mwettqa fil-futur u li l-persuni responsabbli minn dak l-għemil illegali jerfgħu r-responsabbilità politika u amministrattiva tagħhom u jekk meħtieġ anke li jiġu soġġetti għal proċeduri dixxiplinari jew kriminali jekk ikun il-każ;

[43] 958/17 *Pierina Zammit et v Superintendent Public Health et*, Court of Appeal 15 November 2023: "The commercial interest of plaintiffs to reduce competition in the locality from where they operate does not amount to the juridical intertest required by law and jurisprudence."

of German descent to the Privy Council during World War One;[44] the Editor of the London Sunday Times to challenge the validity of the signing by the United Kingdom of the Maastricht Treaty;[45] and the green peace organisation to challenge the administrative decision allowing the discharge of nuclear waste in the United Kingdom.[46] Though not all of these actions were successful on the merits, they were not barred by lack of legal standing.

Conclusion

Now that courts have severely dented the strict juridical interest doctrine in Article 469A cases, one can predict that it will only be a matter of time until this liberal attitude will be extended to cover legal standing in human rights cases, moreso since the current conservative construction of legal standing is already in stark contrast with the more liberal attitude taken by the European Court of Human Rights (ECtHR) towards the notion of "victim" mentioned in Article 34 of the European Convention of Human Rights.[47] Be that as it may, one can say that an opening has been made for NGOs to contest and challenge actions by public authorities where previously all doors were closed for such action. This is a positive step but more needs to be done. There should never be a situation where, owing to strict application of the legal standing principle, a situation arises where practically no one has juridical interest to challenge an arbitrary or unlawful decision of the public administration. If that scenario were to exist in any particular case, then possibly there could arise an issue under Article 39 of the Constitution and Article 6 of the European Convention on Human Rights, since blocking access to a court of law can raise fair hearing issues.[48]

The future will hold pleasant surprises or disappointing trends. For the sake of proper scrutiny by civil society of the ever-increasing power of public authorities, one hopes that it will be the former which prevails.

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[44] *R v Speyer and Cassel ex p Makgill* (1916) 1 KB 595 (DC).
[45] *R v Secretary of State for Foreign and Commonwealth Affairs, ex p Rees-Mogg* (30 July 1993) (1994) QB 552.
[46] *R v Inspectorate of Pollution and another, ex parte Greenpeace Ltd (No 2)* [1994] 4 All ER 329.
[47] *Klass vs. Germany* App no. 5029/71 (ECtHR, 6 September 1978) para 34*; Open Door and Dublin Well Women vs. Ireland* App no 14234/88; 14235/88 (ECtHR, 29 October 1992) para 41.
[48] Lord Woolf, Jeffrey Jowell and Andrew Le Sueur, *De Smith's Judicial Review* (7th edn, Sweet & Maxwell 2013), 66: "To deprive a person of access to the courts because of legal standing can raise issues of constitutional significance. At its heart is the question whether it can ever be right, as a matter of principle, for a person, with an otherwise meritorious challenge to the validity of a public authority's action, to be turned away by the court on the ground that his rights and interests are not sufficiently affected by the impugned decision. See also *Golder v United Kingdom* App no 4451/70 (ECtHR, 21 February 1975), where the ECtHR ruled that access to a court was a fundamental principle sanctioned by Article 6 of the European Convention on Human Rights.



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