JURIDICAL INTEREST IN CONSTITUTIONAL PROCEEDINGS

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In Maltese procedural law, the juridical interest notion is engrained in our legal system, at least in civil law. In our system, to initiate proceedings and open a case before a court of law, plaintiff or applicant must prove juridical interest which is personal in the subject matter of the litigation. He cannot start proceedings in order to obtain an opinion, or for mere personal satisfaction. There must be a tangible benefit to him in consequence of a breached legal right .

In **Emilio Persiano vs. Commissioner of Police**[2] the First Hall of the Civil Court explained the doctrine as follows:

> For several years our Courts have defined the elements constituting the interest of plaintiff in a cause as being three: that is to say , the interest must be juridical, it must be direct and personal, and also actual. By the first element one understands that the interest must at least contain the seed of the existence of a right and the need to safeguard such right from any attempts by others to infringe it; This interest need not be in money or economic in nature (see for instance Court of Appeal, **Falzon Sant Manduca vs. Weale**, decided on 9th January 1959 Kollezz. Vol. XLIII.i.1); apart from these elements, it has been stated that for a person to have interest in opening a case, that interest or better still the motive of the claim has to be concrete and existing vis a vis the person against whom the claim is made(see for instance a judgment of this court (First Hall JSP) delivered on 13th march 1992 in the case **Francis Tonna vs. Vincent Grixti** *(*Kollez Volume I).

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[2] 1790/2000/1 Perisiano vs Commissioner of Police [First Hall, Civil Court] 30 May 2002.

More recently in the case **Aquilina vs. Demicoli**[3] the Court stated that:

> Interest has to be (a) juridical that is to say the claim has to contain at least a hypothesis of the existence of a right which has been infringed; (b) direct and personal in th sense that the interest is related to a contestation about such right or its consequences; personal meaning that it concerns the plaintiff except in the popular action; (c) actual in the sense that it must emanate from an actual state of an infringement of a right, meaning an actual violation of the law which consists in a positive or negative condition against the enjoyment of such right which lawfully belongs or is claimed by the claimant of such right.[4]

The entire point however, is: to what extent do these principles apply to constitutional cases? Constitutional proceedings may be divided into three categories:

(a) cases where an infringement of *human rights* under article 46 of the Constitution is alleged. The article covers the challenging of both laws or decisions by Government or public authorities as infringing article 33 to 45 of the Constitution;

(b) cases where *a law* is challenged as running counter to the Constitution for reasons *other* than human rights, and this under article 116 of the Constitution, the so called *actio popolaris*;

(c) cases where a *decision or measure* by government or a public authority is challenged on grounds *other* than human rights, that is to say, cases which cannot be classified neither under paragraph (a) nor (b).

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[3] 309/2009 Aquilina vs. Demicoli [First Hall, Civil Court] 12 December 2013.

[4] See also 878/2000/1 Edrichton Estates Ltd vs. Munro Phillips and Co Ltd [First Hall, Civil Court] 2 October 2003 and Vol. LXXIV.iii.481 J. Muscat vs. R. Buttigieg et [First Hall, Civil Court] (27 March 1990); see also Vol. LXXXIII.iii.331 Hon E Fenech Adami vs. Dr George Abela et 6 October 1999: 'The accepted definition in our jurisprudence on juridical interest is the one subscribed to by Mortara who holds that juridical interest is *"l `utilita` finale della domanda giudiziale nel tema dell` asserita esistenza o violazione del diritto"*. That although in our system a judgment can be declaratory, an essential requisite is that there is a legal right which forms the basis of the plaintiff`s action and whose judicial acknowledgment is requested. As held in the judgment of the First Hall of the Civil Court on 15th July 1952 (Vole 36.II. 493) in the case *Edgar Baldacchino vs. Rosie Bellizzi* et "an action may be instituted for a mere declaration and there is no need necessarily for a request of condemnation to be included ; but the promoter of the action has to prove a right; *l` azione civile non puo` essere promossa che per far valere un diritto, e da colui a cui il diritto spetti. Mancando` l`uno e l`altro di questi requisiti l` azione e` infondata e inammissibile.'* Again in the judgment in the case of Vol LXXI.ii.429 Alexander Eminyan vs. John Mousu`pro et noe et [Court of Appeal, Civil Superior] 28 February 1997 and in the judgment in the 975/1995/1 Saviour Scerri et vs Saviour Farrugia et [First Hall, Civil Court] 1 October 2002 it was held that: 'Juridical interest has to be real and actual and must emanate from a violation , actual or threatened of a right belonging to plaintiff; and in this sense therefore it must also be personal. There must be established a juridical link between the alleged abusive and unlawful behaviour by the defendant and the damages or at least the alleged prejudice suffered by plaintiff in consequence of such behaviour.'

Cases regarding human rights violation

The law is unequivocal on this point. Article 46(1) makes it abundantly clear that for a person to institute a case of this kind, such person must prove that the infringement of the fundamental rights was committed in his regard (*dwarha* in the Maltese text, *in relation to him*). Consequently even when the constitutional validity of a law is challenged, there must be this personal juridical interest. A relative or friend of such person cannot institute such action although the Civil Court, First Hall, may appoint, at the instance of any person who alleges a breach of articles 33 to 45 another person in his or her stead.

To give one example, the Foreign Interference Act was enacted in 1982, but was successfully challenged[5] as being against the Constitution only when its provisions were enforced against Massimo Gorla a foreign national who had been invited to address a public meeting in Malta. As soon as he was arrested and arraigned in Court the issue of the constitutional validity of the law was raised. No one could challenge such validity *before* a juridical interest arose. In this case the fact that a person was arraigned under a law, such person could contest that very law as being unconstitutional.

This provision applies also in cases of applications before the European Court of Human Rights (the European Court) of the Council of Europe established in 1950 in virtue of the European Convention on Human Rights (the Convention). The Convention in article 34 makes it clear that an applicant must be himself the *victim* of an infringement of a human right.

However, one should note that the European Court has been much more liberal than the Maltese courts in interpreting such juridical interest, that is to say, that one has to be *a victim*. For instance, in one case[6] it decided that applicant had the right to seek recourse before the European Court to challenge the mere existence of secret measures or of legislation which allowed such measures, without the need of proving that such measures had been applied in his regard. Other decided cases require what is called 'a reasonable likelihood that one becomes a victim'. Consequently when in Ireland an injunction by the Supreme Court prohibiting information to pregnant women about abortion services outside Ireland was challenged, the European Court allowed an association of women of child bearing age to institute an action as victims .[7]

The effect of this juridical interest requirement in Maltese human rights cases has led to a still unsolved controversy – at least academically – about the effect of judgments

[5] Vol LXIX part 1 section 1 p 112 Police vs. Massimo Gorla [Constitutional] 25 October 1985.
[6] *Klass vs. Germany* (A 28(1978) 2 EHRR 214 para 34 PC.
[7] *Open Door and Dublin Well Women vs. Ireland* (A246 (1992) 15 EHRR 44 para 41 pc.

of the Constitutional Court declaring the constitutional invalidity of laws. As stated in **H. Vassallo and Sons Ltd vs. Attorney General**:[8]

> The present day action and that of *Joseph Muscat vs. Prime Minister* decided by this Court on 6th September 2010 were not an *actio popolaris* on the validity of laws under article 116, and therefore applicants had to prove juridical interest. As a result of this, for the court cannot grant anything which is *ultra petita* or *extra petita*- the remedy which it grants is necessarily limited to the interest which forms the basis of the action. The interest of applicant in such cases is to seek remedy in his case and not that the law be declared invalid *erga omnes*; for the plaintiff has no interest in the case of others. Therefore the most that a court can state is that the law is without effect in the particular case before it and not in other cases. In other words in a case which is not one under article 116 of the Constitution , where therefore the applicant has to prove personal interest, a declaration that a law is inconsistent with the Constitution (or by analogy with the Convention) has effect only *inter partes*.[9]

Naturally one may criticize the use of the juridical interest requirement to reach such a conclusion that laws declared as being against human rights provisions have only effect *inter partes*, rather than the requirement of having juridical interest to start a human rights action itself. The probability is that this requirement was originally introduced in order to prevent persons who have no interest in a human rights action from bring forward an action against the Government, rather than to proscribe the effects of a judgment on invalidity of laws to the parties to the cause only.

However while this might make sense as regards executive actions and measures, there are ample reasons to suggest that no such requirement should be required for an action on invalidity of laws. *De lege ferenda*, therefore, one should reconsider whether there should be the need to prove juridical interest when one challenges *a law* as being in violation of fundamental human rights. When Parliament enacts a law, as opposed to a measure by the Executive, any person in Malta who considers such law as being against human rights should be allowed to challenge its constitutional validity. One could introduce a period within which one may, in spite of

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[8] 31/2008/2 H. Vassallo and Sons Ltd vs. Avukat Generali et [Constitutional Court] 8 October 2012.

[9] '*L-azzjoni tal-lum u dik fl-ismijiet Joseph Muscat vs. Prim'Ministru deċiża minn din il-qorti fis-6 ta' Settembru 2010 ma humiex actio popolaris dwar il-validita ta' liġi taħt l-art. 116, u għalhekk huwa meħtieġ li l-attur juri interess persunali. Konsegwenza ta' dan – billi l-qorti ma tistax tagħti extra jew ultra petita – hija illi r-rimedju mogħti għandu jkun arġinat fil-limiti tal-interess. L-interess tal-attur f'kawżi bħal dawn huwa li jingħata rimedju għall-ilment tiegħu u mhux illi l-liġi tiġi mħassra erga omnes għax l-attur ma jkollux interess legali fil-kawżi ta' ħaddieħor. Għalhekk l-iżjed li tista' tgħid il-qorti hu illi l-liġi għandha tkun bla effett fil-każ partikolari li jkollha quddiemha u mhux fil-każijiet kollha. Fi kliem ieħor, f'kawża li ma tkunx kawża taħt l-art. 116 tal-Kostituzzjoni, u fejn għalhekk huwa meħtieġ illi l-attur juri interess persunali, dikjarazzjoni illi liġi hija inkonsistenti mal-Kostituzzjoni (jew, b'analoġija, mal- Konvenzjoni) għandha effett biss inter partes.*' See also Borg T. *A Commentary on the Constitution of Malta* (2016, Kite) 36-39, and Attard D. *The Maltese Legal System* Volume II Constitutional and Human Rights Law Part A (2015, Malta University Press) 14-19.

the fact that one has no juridical interest in the matter, challenge such law. But as the law stands today, it is mandatory to prove juridical interest each and every time that a human rights case is instituted.

Cases where laws are challenged on grounds *other* than human rights

Here the law is also clear in article 116 of the Constitution.[10] There is no need to prove any juridical interest when one challenges *a law* as being unconstitutional on grounds *other* than human rights; therefore an action of this kind is called *actio popolaris* e.g. where an allegation is made that a law was not regularly approved by Parliament according to its procedural norms,[11] or else when it is alleged that a law contravenes the provisions contained in the Chapter regarding the Judiciary,[12] or the guarantees in favour of the public service.[13] Now it is true that it is extremely rare that the proposer of an action under article 116 of the Constitution does not also have juridical interest in the subject matter of the litigation, but technically there is no need to prove juridical interest in such cases.

Moreover, the Court of Appeal has interpreted this article to also cover any challenging of subsidiary legislation on the basis that it was allegedly passed *ultra vires* the provisions of the Act of Parliament authorizing it.[14] Consequently every time that a legal notice is challenged as being *ultra vires*, there is no need to prove juridical interest, nor is there any period of prescription applicable, and any appeal from a judgment of a court of first instance on such matter lies before the Constitutional Court even though no constitutional point is involved.

Challenging of decisions and measures as contravening the Constitution for reasons other than human rights

Since Independence there have been several issues relating to decisions by public authorities, e.g. Government or parastatal bodies or authorities established by the

[10]Article 116: A right of action for a declaration that any law is invalid on any grounds other than inconsistency with the provisions of articles 33 to 45 of this Constitution shall appertain to all persons without distinction and a person bringing such an action shall not be required to show any personal interest in support of his action

[11] 591/1970 Onorevoli Dom Mintoff vs Onor Dottor Giorgo Borg Olivier et [Constitutional Court] 5 November 1970.

[12] Mr Justice A. Depasquale vs. Prime Minister [Constitutional Court] 4 September 2000.

[13] Dr. L. Vassallo et vs. Prime Minister [Constitutional Court] 27 February 1978, and Profs V. Griffiths et vs. Prime Minister [Constitutional Court] 31 July 1978.

[14] 1080/2005/1 Borg Carmelo et vs. Il-Ministru Responsabbli mill-Gustizzja u l-Intern et [Constitutional Court] 15 May 2006 and 74/2010 Bartolo Louis et vs. L-Onorevoli Prim Ministru et [First Hall, Civil Court] 30 October 2012.

Constitution, which were contested in Court, not because they allegedly infringed fundamental human rights, but some other provision of the Constitution.

For example, since the early seventies, decisions by the Broadcasting Authority have been challenged as regards allocation of television airtime,[15] unfair prohibitions against political candidates, [16] or impartiality in public broadcasting. [17] Similarly, contestations have occurred regarding decisions by the Electoral Commission both on an individual or party basis,[18] and of the Public Service Commission regarding the recruitment process in the public service allegedly in breach of the Constitution.[19]

The difficulties in these cases for the purpose of this study is that most of these proceedings were instituted by persons who had a juridical interest anyway in the case proposed by them, and therefore the entire question of juridical interest was never raised as an issue, so one must focus on those cases where such interest was not clear or was contested .

The case where this issue was most clearly raised and decided was that of two requests for the issuing of a prohibitory injunction, that is to say, **Darryl Grima pro et noe vs. Prime Minister et**[20]and **Fr. Dionysius Mintoff pro et nomine vs. Prime Minister et**.[21] In both cases applicants alleged that a visit to Malta in June 1988 by U.K. Royal Navy ships would *inter alia* infringe the constitutional provisions regarding Malta`s neutrality.[22] Government pleaded in the proceedings relating to both warrants that applicants did not have a juridical interest in the case and consequently the issue arose whether in constitutional proceedings unrelated to human rights, and not covered by article 116 *(actio popolaris)*, one needed to prove juridical interest .

In the **Darryl Grima** case applicant tried to argue that in serious matters such as the country`s neutrality, any member of society could institute proceedings relating to them, and that article 1 of the Constitution had been enacted to be justiciable.

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[15] Dom Mintoff noe vs. Mr Justice Anthony Montanaro Gauci noe [Court of Appeal] 22 May 1971.
[16] 2850/1996/1 Bundy John et vs. Awtorita' tax-Xandir [Court of Appeal, Civil Superior] 31 May 2002.
[17] Dr E Fenech Adami noe vs. Dr G. Montanaro Gauci noe [Court of Appeal, Civil Superior] 21 April 1978.
[18] LXXXII.i.225 Ansell Farrugia Migneco vs. Kummisarju Eletorali [Constitutional Court] 22 September 1998; 525/2013/1 Azzopardi Frederick vs. Il-Kummissjoni Elettorali [Constitutional Court] 13 March 2013 and 526/2013/1 Buttigieg Claudette vs. Il-Kummissjoni Elettorali [Constitutional Court] 13 March 2013.
[19] Anthony Callus vs. Antonio Paris noe [QK] 7 July 1966.
[20] LXXII.i.41 Darryl Francis Grima pro et noe vs l-Onorevoli Prim Ministru et noe [Constitutional Court] 21 July 1988.
[21] [First Hall, Civil Court] 24 June 1988 (Mr Justice V. Borg Costanzi).
[22] Article 1 (3)(d) 'except as aforesaid, no foreign military personnel will be allowed on Maltese territory, other than military personnel performing, or assisting in the performance of, civil works or activities, and other than a reasonable number of military technical personnel assisting in the defence of the Republic of Malta.'

Consequently, any citizen had an interest to act when an executive act infringed the said Constitution. Indeed, according to applicant any citizen had the *duty* as well as the right to act. The Court disagreed and held the position proposed by respondents that applicants needed to prove interest which had to be personal, actual, and direct.

In the abovementioned case of **Fr Dionysius Mintoff vs. Prime Minister**, applicants in trying to avoid the issue of juridical interest, tried to argue that Government's decision of allowing the said ships to enter Malta was taken in virtue of a law or government prerogative which constituted an unwritten law, and therefore could be challenged under article 116 and the *actio popolaris* which applies only to laws. The Court rejected this argument and therefore considered whether when one takes action in Court for a declaration that a government decision infringes the Constitution on grounds other than human rights, one needed to prove juridical interest. The Court replied in the affirmative: 'Since the action proposed is not one which contests the validity of a law as defined in article 124(1) of the Constitution of Malta, for applicant to succeed in his action he must show that he has juridical interest.' The reasoning of the Court therefore was based on a *contrariu senso* interpretation. Article 116 provides the only case when there is no need to prove juridical interest. Any case falling *outside* the orbit of article 116 always requires the proof of juridical interest.

These two decrees regarding the issuing of warrant of prohibitory injunction created for the first time in constitutional cases *other* than human rights cases, the requirement of juridical interest. This procedural obstacle is in most cases so insurmountable that one can safely say that because of such hurdle, several constitutional provisions, in spite of their forming part of the supreme law of the land, end up not being enforceable. Taking as an example the aforementioned UK ships' visit: who could have instituted the action? Certainly not Government, which had invited them to our shores, nor the captain commander of the Fleet who accepted the invitation. It was declared that applicants did not have a juridical interest in the matter though they could have had an environmental or ideological one. One can continue citing more examples. If juridical interest is going to be requested each time a government measure infringes some article of the Constitution – which is not contained in Chapter IV – procedural hurdles will be created which will be difficult to overcome, and as a consequence, in my view, the very supremacy of the Constitution will be undermined.

One can cite several other constitutional norms such as the one that Ministers may only be appointed to office if they are members of the House of Representatives. If one is to apply the proof of juridical interest as a requirement, who can have such juridical interest to challenge an irregular appointment of a Minister from outside Parliament in breach of the Constitution? Surely not the Prime Minister or the appointed minister himself! The same applies to several provisions such as those

relating to the neutrality of Malta, and the regularity of election of members to the House of Representatives. Is it really possible that these constitutional rules can only be applied and enforced in a court of law , following action by a proposer who has a juridical interest, who in most cases is nowhere to be found?

This rigid line of reasoning regarding juridical interest seems to have been followed in two relatively recent cases decided by the Constitutional Court in **Claudette Buttigieg vs. Electoral Commission** and **Frederick Azzopardi vs. Electoral Commission**.[23] In these two cases, two Opposition members of Parliament alleged that, owing to an error committed by the Electoral Commission in the counting of votes, they were not elected as 'original' candidates, but were co-opted to the House in virtue of additional parliamentary seats assigned to the party in Opposition in virtue of an electoral corrective mechanism . Such mechanism is triggered off whenever the gap in the number of parliamentary seats between the two political parties in Parliament does not reflect the difference between the two in the number of votes obtained by each party. In this case the mechanism was applied in favour of the Opposition party.

The Constitutional Court held that since the two MPs had been elected through co-option, they did not have a juridical interest in the case to contest the validity of their election to Parliament, that is to say whether they should have been elected as 'original' members of the House or else through the co-option system of additional seats. The Court held that:

> Although it is a public interest matter that the election of members of Parliament is valid, the present action however is not an *actio popolaris*, and the law requires the initiative of the interested candidate to promote the action in question. The plea (regarding juridical interest) deserves to be upheld for the following reason; from the evidence tendered by the Commission it results that the electoral result created a situation where, in virtue of article 52(1) of the Constitution of Malta ('the Constitution') the party to which plaintiff belongs is going to be assigned four additional seats and plaintiff is the first in line amongst the four candidates of her party who will be assigned one of these additional seats . The prejudice which plaintiff could have suffered owing to the error in the counting of votes , is that she be not elected. However, in any case plaintiff is going to be declared elected in virtue of article 52(1) of the Constitution and therefore will suffer no prejudice. It is true that plaintiff complains that she has an interest to be elected as an *original* Member of Parliament from her electoral division rather than as an *additional* member. This, however, does not constitute a juridical interest for according to law, the additional seats have the same value and privileges as the original ones. [24]

[23] (n 18).

[24] *Għalkemm hemm interess pubbliku li l-elezzjoni tal-membri tal-Parlament issir validament, madankollu l-azzjoni tallum ma hijiex actio popularis u l-liġi teħtieġ l-inizjattiva tal-kandidat interessat*

The canon of construction based exclusively on *contrariu senso* was scrupulously applied. What does not fall within the ambit and orbit of article 116 always requires juridical interest.

In my view, this interpretation is too restrictive, and can have the effect of weakening the supremacy of our Constitution. Nor does it appear that this was always the view of the Maltese Courts. In fact, in one case in 1953, prior to Independence, that of **Hon Profs. R. Galea vs. Hon Mabel Strickland**,[25] the question arose whether a member of the Legislative Assembly under the 1947 McMichael Constitution, had been disqualified from office after a company of hers had entered into a contract of supply with the Government of Malta. It does not appear that juridical interest was requested of plaintiff. In that case plaintiff, namely Professor Robert Galea, Leader of the Constitutional Party, had politically quarrelled with the Honourable Mabel Strickland, a member of the Legislative Assembly and a member of his Party who, however, owing to such political disagreement within the party, had declared herself an independent member in the Assembly.[26] He instituted with success a case for the Court to declare that the seat occupied by Miss Strickland in the Assembly had become vacated owing to her disqualification. He certainly had *political* interest to do so but not a juridical one, for he was already a member of the Assembly and therefore did not benefit in any way by her disqualification. The Court decided that Miss Strickland had been disqualified and, although no plea had been submitted regarding lack of juridical interest, the Court did not raise such issue *ex officio* even though it was fully entitled to do so, had it wanted to impose a requirement of such a nature on the proposer of the action.

The question which spontaneously arises is the following: is it possible that today an applicant in constitutional cases is in a more disadvantaged position that he was in similar situations prior to Independence? It would certainly be humiliating if the answer is in the affirmative.

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biex iressaq l-azzjoni.. L-eċċezzjoni jixraq illi tintlaqa' għal din ir-raġuni: mix-xiehda tal-Kummissjoni irriżulta illi r-riżultat tal-elezzjoni ġenerali ħoloq sitwazzjoni fejn, bis-saħħa tal-art.52(1) tal-Kostituzzjoni ta' Malta ["il-Kostituzzjoni"], il-partit li għalih tappartjeni l-attriċi sejjer jingħata erba' siġġijiet "addizzjonali" u l-attriċi hija fost l-ewwel erba' kandidati tal-partit tagħha li jmisshom dawn is-siġġijiet addizzjonali.Il-preġudizzju li setgħet iġġarrab l-attriċi minħabba l-iżball fil-għadd tal-voti huwa li ma tiġix eletta. F'kull każ, iżda, l-attriċi sejra tiġi eletta bis-saħħa tal-art. 52(1) tal- Kostituzzjoni u għalhekk ma hija sejra ġġarrab ebda preġudizzju. Tassew illi l-attriċi tilmenta illi għandha interess illi tiġi eletta bħala deputat "oriġinali" mid-distrett tagħha u mhux bħala deputat "addizzjonali". Dan iżda ma huwiex interess ġuridiku għax taħt il-liġi s-siġġijiet "addizzjonali" għandhom l-istess siwi u privileġġi bħal dawk "oriġinali".

[25] XXXVIIa.i.22 Onorevoli Prof. Robert V. Galea, O.b.e., A. & C. E., Ll.d. (Honoris Causa, Bristol), D.sc., M.l.a. Vs Onorevoli Mabel E. Strickland, O.b.e., M.l.a. (Court of Appeal, Civil Superior) 26 January 1953.

[26] In fact in October 1953 Mabel Strickland formed the Progressive Constitutional Party (PCP) which continued contesting all general elections until 1971.

The basic argument today, as has been seen in the few cases where this point was raised, is that by applying the norms of interpretation of *contrariu sensu* that which does not fall under article 116 necessarily requires a juridical interest. However, the fact that the Constitution expressly states that whenever a law is challenged on grounds other than human rights one need not prove juridical interest, does not mean that if one impugns an administrative measure one has to prove such interest. The Constitution is silent on this point. And why, one may ask, is this argument raised only in relation to article 116 and not as well in relation to , say, article 46? Let me explain myself better.

Article 46(1) in Chapter IV provides that when a case is one regarding a breach of a human right, one has to always prove juridical interest. One can therefore argue *a contrariu senso* that any challenging of a law or administrative measure on grounds other than the provisions of Chapter IV, one need not prove juridical interest. By interpreting restrictively article 116 in *a contrariu sensu* manner, the Court is adopting too positivist a stance. Applying this thinking and reasoning , one can argue that article 6 of the Constitution proclaims the supremacy of the Constitution only in relation to laws,[27] and article 46(1) covers any matter whether law or an administrative measure. So if one were to interpret article 6 *a contrariu sensu,* one can come to the conclusion, strange and bizarre though it may be, that apart from human rights, if an administrative measure infringes the Constitution, apart from Chapter IV, it is not the Constitution which prevails for only *laws* are referred to in article 6 of the Constitution.

A quick glance at the Constitution makes one reflect on how many constitutional norms may be rendered futile if one were to strictly apply the requirement of juridical interest for government decisions which are in breach of the Constitution – apart from Chapter IV. One may include all the provisions relating to the neutrality of Malta, the qualifications and disqualifications of persons to be elected as members of the House of Representatives, as well as the appointment of Ministers, Parliamentary Secretaries, the Attorney General and Permanent Secretaries. Similarly if the Executive infringed the Constitution in the matter of the appointment of judges and magistrates, the only persons who would be able to contest the validity of their appointment would be the parties who would eventually appear before them in court proceedings, and no other person. The same applies to the appointment of members of the Electoral Commission, the Public Service Commission, and the Commission for the Administration of Justice, the Employment Commission, and the Broadcasting Authority. If there is any irregularity in their composition or appointment of their members, in breach of the Constitution, and if one were to apply the requirement of juridical interest, then only

[27] Article 6 'Subject to the provisions of sub-articles (7) and (9) of article 47 and of article 66 of this Constitution, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.'

those who are parties to cases before these institutions established by the Constitution would be able to challenge the regularity of their composition.

At least the Courts should draw a distinction between juridical interest in *civil proceedings*, whence this notion was imported, and proceedings in the *public law sphere*, and if one were to continue applying the juridical interest doctrine to all constitutional cases other than those under article 116, they should interpret this notion in a more liberal way than in civil cases.

Therefore the time is ripe for one to reconsider the entire issue of juridical interest in constitutional cases. Without any need of constitutional amendment, the Constitutional Court is in a position to grant more protection to the individual and safeguard the supremacy of the Constitution by not continuing to insist on the need for juridical interest when an administrative or executive decision or that of a public authority is challenged as infringing the Constitution, other than human rights. I hold this view with greater conviction after considering that in those cases where juridical interest was requested, such as those relating to the 1988 visits by UK military vessels or the regularity of election of members to Parliament, the Courts ended up by applying a continental principle of civil law to the field of public law. In the private law sphere, it makes sense that no one should be allowed to institute actions on property, leases, wills and inheritances unless one proves juridical interest which is direct and juridical. It also makes sense that as a rule in cases relating to alleged violations of human rights, the more so in cases of executive decisions, only a victim of such infringement may institute action. But in matters *not* related to human rights, whenever juridical interest is requested, one is creating a category of constitutional rules which remain valid only on paper, but cannot be effectively enforced.

This was certainly not the intention of the legislator who drafted a written constitution to be supreme so that any person who is in breach of it faces a legal sanction, and not only a political or moral one. It now remains to be seen whether affirming the supremacy of the Constitution is considered as a higher value that insisting on procedural formalities.