



ORIGINAL PAPER

Local Self-Government in Malta – Basic Issues

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Abstract:

Historically, the Maltese islands have been totally controlled and administered by a central government, except for two short periods: during the French occupation of Malta when there were efforts to introduce a form of local self-government and between 1960 and 1973 when a civil council was created in Gozo. Modern local government was established in the Republic of Malta in 1993. Since 2019, it has a two-tier structure and the units of territorial division are the region and the municipality. Subsequent self-government reforms increased the powers of local authorities, although the scope of their tasks still does not constitute a very extensive catalogue. A significant problem is also the financial dependence of local self-governments on the central authorities. Nevertheless, the analysis of changes introduced so far through successive amendments and reforms indicates that taking action is changes in the right direction and should be continued.

The aim of the paper is mainly to present the legal grounds and the form of the current Maltese local self-government.

The methods used while writing this paper were the analysis and the comparative methods.

Keywords: *decentralisation, local council, local self-government, Malta, mayor, region.*

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Introduction

Although the Republic of Malta is the smallest country in the European Union, it is very well developed institutionally and politically. It is worth pointing out that although Malta regained its independence only in 1964, it has built its own model of governance based on the solutions typical of Anglo-Saxon countries, which functions efficiently in a multicultural society. Taking into account the opinions expressed above, it is worth considering whether the local self-government that has been functioning in the Republic of Malta only since 1993, can be classified as an institution which, despite its very short term of existence, fits in with the said trend. The aim of the paper is mainly to present the legal grounds and the form of the current Maltese local self-government. The methods used while writing this paper were the analysis and the comparative methods.

The OECD defines decentralisation as ‘the transfer of powers and responsibilities from the central government level to elected authorities at the subnational level (regional governments, municipalities, etc.), having some degree of autonomy. Decentralisation is also about reconfiguring the relationships between the central government and subnational governments towards a more cooperative and strategic role for national/federal governments.’ There are three types of decentralisation: political, administrative and fiscal. There are also various reasons for decentralisation. In some countries, it might be seen as a counter-reaction to previously existing strong centralisation – even authoritarianism. ‘In other countries, decentralisation is a method of reforming the public sector, for example, to improve the efficiency of public services and thus contain the growth of government spending’. Decentralisation is also often expected to result in more accountable and transparent public governance, less corruption and more political participation (OECD: 3).

Legal framework

Local self-government in the Republic of Malta was introduced in 1993. The ground for its functioning was the ‘Act on local councils’ adopted by the Maltese Parliament on 30 June 1993. The consequence of the enactment was the establishment of local councils in 67 communities (with time this number increased to 68). The act was amended in the years 1999, 2000, 2001, 2005, 2009, 2014 and 2019.

The act in question was modelled on ‘the European Charter of Local Self-Government’, which was signed and ratified by the Maltese government in 1993 (European Charter: art. 2; art. 3 sec. 1 and 2; art. 4 sec. 1, 2 and 4; art. 5; art. 7 sec. 1; art. 8 sec. 2, art. 9 sec. 1 and 2; art. 10 sec. 1 and art. 11. From the optional list: Art. 4 sec. 3, 5 and 6; art. 6 sec. 1 and 2; art. 7 sec. 3; art. 8 sec. 1 and 3; art. 9 sec. 7 and 8; art. 10 sec. 2 and 3). In total, Malta undertook to adopt 25 articles of the European Charter of Local Self-Government. Among these articles there was a definition of local government. As a result, Malta has recognized the definition of local government, where local government means ‘the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them.’ (Council of Europe). In the case of Malta, these are local councils.

Local Self-Government in Malta-Basic Issues

Malta also complied with the requirement to regulate the basic competences of the local self-government in domestic law. Initially, it was by way of the above-mentioned act of 30 June 1993 on local councils, but another important step in the consolidation of local self-government in Malta was the introduction of the provisions regulating the said institution to the Constitution of Malta. On 24 April 2001, it was decided that the state would adopt a system of local self-government whereby the territory of Malta would be divided into as many local units as indicated by law. In addition, each unit will be administered by a local council, elected by the residents of that locality, in accordance with applicable law (Constitution of Malta Amendment Act).

Three principles are derived from this regulation:

- Malta must have a local government system.
- Such a system must be based on a council in each locality.
- The members of such councils must be elected by the inhabitants of the locality.

Their development is, in turn, the provisions of the act on local councils (Borg, 2016a: 499).

Each local council is established by a statutory regulation. All members of local councils are elected under the system of proportional representation with one transferable vote, which has been applied in Malta since 1921, and which is applied in general elections and elections to the European Parliament. It is worth emphasizing that the Constitution grants the legislator complete freedom to regulate such issues as the competences and functions of local councils, their financing, the right to collect income, impose taxes or other charges, etc. (Borg, 2016b: 500).

Local government units

Until 2019, Malta's local self-government was single-tier, with a commune as a basic unit. Since 2019, local government has had a two-tier structure. The territorial division units are the region and the commune^[2]. Both have legal personality, and their independence is subject to judicial protection (Legizlazzjoni: art.4). Local government operates in accordance with the law and within the limits permitted by law. The financial independence of the units is limited as most of the funds come from the central budget. They are also unable to levy taxes or collect fees. Supervision over local government is exercised by the minister competent for local government and the Local Government Division 2020, established in 2017, and in financial issues – by the General Auditor, who may appoint local auditors (Legizlazzjoni: art.35-38).

Currently, the number of communes in the Republic of Malta is 68 (Maciejuk, 2013: 88). The smallest of them has an area of 0.2 km² (Senglea), and the largest 26.6 km² (Rabat). They are also characterized by large, diversified numbers of inhabitants: the smallest is inhabited by 243 people (Mdina) and the largest one is inhabited by 29,097 people (St. Paul's Bay). Each commune has a local council, which is appointed through elections. In order to support the

² In Malta, six non-administrative districts have also been established, as they were created for statistical purposes only.

Barbara Węglarz

activities of the councils, the councils may establish permanent or ad hoc committees. The cooperation between councils of these units is also regulated by law. The law also requires them to organize joint meetings no less than once a month. The meetings are open to residents (Legiżlazzjoni: art. 37-38).

Apart from carrying out the tasks entrusted to local councils by the government, the powers of the local councils include:

- ensuring order and security in the commune;
- undertaking activities in respect of road infrastructure;
- consulting changes in respect of road traffic, street names, renovation of roadside buildings;
- promoting initiatives regarding social policy and providing support to residents in that respect;
- consulting and giving opinions on matters carried out by other authorities, as long as they relate to a given local community;
- managing local libraries;
- establishment and maintenance of playgrounds for children and public gardens, as well as sports, cultural and recreational centres;
- supporting other state authorities in carrying out the tasks, primarily related to care and educational centres, kindergartens and providing services: educational, rehabilitation, health and supporting seniors;
- supporting residents and handling information policy, in particular regarding citizens' rights, consumer rights, transport and communication, tourism, taxes, social security, public health;
- protection of local identity by undertaking initiatives and implementing programs aimed at protecting local traditions, cultural heritage and folklore;
- supporting local artists, musicians and athletes;
- environmental protection;
- activities promoting business (Legiżlazzjoni: art. 20-23).

As indicated in the above list, the tasks carried out by local councils are not extensive. Basically, they are limited to tasks in the field of road infrastructure, providing basic social services to local residents, organizing activities and performing administrative tasks, as well as caring for sport, culture and tradition. It is actually only a small part of municipal public affairs.

The functions excluded from the competence of local councils mainly relate to the use and administration of parks, gardens, monuments, airports, harbours, industrial plants and other establishments or attractions. The above-mentioned government is currently administered by the government, which obtains high income on this account. There are numerous opinions saying that these powers could be gradually transferred to local governments in order to increase the funds at local governments' disposal and thus affect their independence from central authorities. The same applies to other services and functions that are currently performed by the government, such as the issuing of building permits and urban planning. Compared to local governments in other member states, the Maltese self-government lacks such functions as, for example, the administration and operation of sewage and drainage systems, and the operation and management of waste disposal facilities (Local democracy 2017: 14).

In 1993, three regions were also established: Gozo Region, Malta Majjistral, Malta Xlokk. Due to the reform carried out in 2009, two of them were

Local Self-Government in Malta-Basic Issues

divided, as a result of which there are five regions in the Republic of Malta to this day: Central Region, Gozo Region, Northern Region, South Eastern Region, Southern Region.

According to the amendment to the act on local councils, i.e. Act No. XVI of 2009 - Local Councils (Amendment) Act, any changes within the regions and a change in their number should be made by the minister responsible for local self-government after consulting the Association of Local Councils and should consider the geographical aspect, the number of inhabitants and the number of councils local in each region (Parliament of Malta). The minister's powers also include commissioning regions to perform tasks or granting regional authorities additional competences – here also consultations with the Association are required.

Although initially, the purpose of introducing the regions was not to create another level of local self-government, but to improve the performance of entrusted tasks by the local councils and relieve them by allowing the councils to delegate the tasks that councils are unable or unwilling to carry out on their own to regions, their position was strengthened by successive reforms of the local government. The amendment that had the greatest impact on the increase in the importance and of the powers delegated to regions is undoubtedly the amendment introduced in 2019. First of all, it became the basis for recognizing the regions as the next level of local government. The regions have not taken over tasks from local governments, but received funds for the implementation of the existing ones, which still rely heavily on supporting the activities of local councils in a given region. The act also includes tasks, the implementation of which belongs only to regional councils, including education or cooperation with the construction sector. The name has also been changed from “regional committee” to “regional council” (Local Government and community: Regional council). By 2022, it is also planned to create a sixth region and transfer other tasks to regional councils (Mallia 2019).

Another institution set up to support the functioning and performance of tasks by local councils is The Local Councils Association, which was established in 1994. It represents all local councils to protect and promote their common interests. It also represents councils, their rights and interests in Malta, abroad and in international associations of local authorities. The objectives of the Association also include the protection and the promotion of the common interests of local councils, as well as providing consultancy services, carrying out training sessions at its own initiative and in cooperation with the councils. The association is a body with legal personality. However, it cannot take loans on its own or conclude trade agreements, unless the minister responsible for finance agrees. The association has an Executive Committee of nine members. They are elected for a two-year term from among local councillors. Their activities are supported by the Secretary General (The Local Government and community: The local councils association).

Local government bodies

Active and passive voting rights to the local council are granted to citizens who are 16 years of age at the latest one day before the elections [³]. Five to 15

³ Citizens of European Union member states and Great Britain are also entitled to vote.

Barbara Węglarz

people sit on the councils and are elected for a five-year term^[4]. In the event of failure to submit a candidate, the minister responsible for local self-government shall appoint a management committee.

The number of councillors in individual communes depends on the number of inhabitants and amounts to:

- ☐ 5 – in communes up to 4,999 inhabitants;
- ☐ 7 – in communes from 5,000 to 9,999 inhabitants;
- ☐ 9 – in communes from 10,000 to 14,999 inhabitants;
- ☐ 11 – in communes from 15,000 to 19,999 inhabitants;
- ☐ 15 – in communes from 20,000 inhabitants.

In the event of a vacancy in the council, supplementary elections shall be held no later than on the thirtieth day from the occurrence of this event. Elections are not held if the scheduled council elections are to be held within three months of the vacancy. Pursuant to the Act, the council may be dissolved, in the event of repeated violations of financial discipline and if the council acts contrary to applicable laws. In lieu of the dissolved council, the minister competent for local self-government shall appoint a management committee chaired by the president or a member of the Association. The Committee carries out the tasks of the council until its new members are elected by early elections. They are not carried out if there are less than six months to the end of the term of office (Legizlazzjoni: art. 16-18).

There are two executive bodies in the municipalities: the mayor and the executive secretary. The first of them, the mayor, heads the local council. The mayor is a person who: is 18 years old or older, obtained the largest number of valid votes and is a member of the party which obtained over 50% of the seats in the council. If no party has taken more than 50% of the seats in the council, the mayor is elected by councillors from among themselves. In turn, where two people get the same number of votes, the mayor becomes the one who has a longer term in the local council. If it is not possible to select a winner on this basis as well, the age criterion is taken into account and an elderly person becomes the head of the council. Apart from the statutory end of the term of office, the mayor's mandate expires in the case when a vote of no confidence is casted by the council. The mayor's primary tasks include leading the local council and supervising its work as well as representing it outside^[5].

The executive secretary is a public official appointed by the council with the consent of the minister responsible for local government. Its basic powers include managing the finances of a given unit. In addition, he has the power to issue notices, prepare the agenda in consultation with the mayor, participate in all meetings of the council. The secretary draws up and signs minutes of commune council meetings and committee meetings, submits detailed annual administrative reports to the mayor, submits the forecasts of the council's income and expenditure

⁴ Elections are held on the same day as the elections to the European Parliament or general elections. Therefore, the term of office of the council may be respectively extended or shortened by four months.

⁵ At least 1/3 of the statutory composition of the council submits a written motion (including justification) for a vote of no confidence. The motion is put to a vote between the 5th and 10th day from the date of its submission and is effective if an absolute majority of the statutory composition of the local council supports it.

Local Self-Government in Malta-Basic Issues

for the next financial year to the council. It also takes care of procurement, executes lawful council decisions, and suspends any actions or initiatives planned by the council that violate the law, national or local policies or rules, or any actions and initiatives that have not been approved by the council's decision. It also carries out administrative duties that may be specified and commissioned by the mayor (Legizlazzjoni: art. 18-20).

The regional councils are appointed for the period specified in the regulation issued by the Association. This issue may also be regulated by the ordinance of the minister competent for local self-government. In turn, each region has a regional council consisting of the president of the region, deputy president, executive secretary and ten to 14 members. The last one body is appointed by the regional council. The secretary is the executive, administrative and financial head of the council.

Each regional council is chaired by a chairman who is chosen from among all councillors of the localities forming that region. In turn, the regional deputy chairman shall be appointed from among the members of the regional council appointed by the local councils. The executive body is the president of the region. A person who lives in one of the communities in the region or a councillor in a local council which forms part of that region can apply for the position. If a person who is a councillor in a local council becomes the president, they shall resign from being a councillor.

Finances

The main source of income for Maltese local councils is the financial allocation given by the central government. It is the responsibility of the minister in charge of finance. The central government allocates an annual financial allocation to the local councils through its budget. The financial allocation covers four main areas:

- landscaping and maintenance of parks and gardens – total area of parks, gardens, soft areas and verges of a particular local council are compared to total same areas of all local councils;
- roads maintenance and infrastructure – street sweeping and weed cutting of urban roads (a percentage for each of the four separate categories of roads is used, and a proportion of the total length of urban roads for each category is compared to those of all local council); cleaning of non-urban roads (total length of non-urban roads in a particular local council in proportion to the total length of roads); maintenance of roads, road resurfacing, road signs, bus shelters, markings and street lamps;
- waste management – the denominator used is the number of properties in a local council compared to sum of properties in all local councils;
- administration – a proportion of the number of councillors in a local council compared to all local councils.

Every local council is expected to prepare a three-year financial plan, updated annually, to provide the framework for the annual budgets. They are allowed to raise extra funds and if the local council is supposed to finance any project through a loan repayable in more than eight years, then the proposal shall be put to the residents in a referendum (Local Councils Amendment Act) .

Other income comes from: the Local Enforcement System (a system of enforcement by local wardens); EU programs and funds; Public Private Partnership; local schemes; the Urban Improvement Fund (falls under the responsibility of the Malta Environment and Planning Authority and caters for the enhancement of urban areas such as landscaping, traffic management and embellishment work). Other minor sources of income include contributions, donations, bank interest, income from tender documents and permits. Local councils may also raise finance through other means, including the investment and borrowing of money, but it requires the written authorization of the minister responsible for local government, with the consensus of the minister responsible for finance. In case local communities prove that the financial allocation provided to them by the government is not sufficient, special funds can also be made available to them.

Summary

Historically, the Maltese islands have been totally controlled and administered by a central government, except for two short periods: during the French occupation of Malta when there were efforts to introduce a form of local self-government and between 1960 and 1973 when a civil council was created in Gozo.

As for the reasons for the establishment of the currently existing local self-government in the Republic of Malta, the most common opinion is that its establishment in 1993 was directly related to the willingness to participate in European Union funds intended for local government units. In the case of Malta, we are dealing with an interesting and positive phenomenon in terms of the end result. Decentralization and delegation of further powers to local authorities is, in the case of Malta, a kind of 'side effect' of activities whose real purpose was financial issues (obtaining EU funds), and not what usually constitutes the basis for decentralization of the state, i.e., moving the decision-making centre closer to the inhabitants.

However, not everyone is satisfied with these changes. Among the most common postulates is the delegation of additional tasks to local units, such as administering airports, ports, industrial plants, parks, gardens, monuments or issuing construction permits. The main argument in favour of such a solution is the reference to the shape of local self-government in other European countries. These postulates are not fully justified due to the fact that Malta is a very small country (area: 316 km², number of inhabitants: 514,000). Moreover, it would be worth considering what tasks would be performed by the central government if these tasks were delegated to local self-government. However, it would be worth considering other solutions.

First of all, financial decentralization of both communities and regions is necessary. Local self-government units should be able to levy local fees and taxes. It would also be worth considering transferring the decision-making and control powers of the executive secretary to the mayor and the council, as this would give them a real impact on making decisions with regard to communities. It should also be remembered to increase the independence and assign additional tasks to a new local self-government unit – the region, which currently has a representative function and supports the communes in fulfilling their tasks.

Local Self-Government in Malta-Basic Issues

Considering the short existence of Maltese self-government and the specificity of this country, it can be concluded that subsequent amendments and reforms are changes in the right direction and it is hoped that they will be continued and deepened.

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Barbara Węglarz

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Article Info

Received: July 01 2022

Accepted: August 05 2022

How to cite this article:

Węglarz, B. (2022). Local Self-Government in Malta-Basic Issues (2022). *Revista de Științe Politice. Revue des Sciences Politiques*, no. 75, pp. 145 – 154.