

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled and by the authority of the same as follows:

Short Title

1. The short title of this Act is the Judicial Review Act, 2023.

Interpretation

2. In this Act unless the context otherwise indicates:

“administrative act” means the issuing by a public authority of any order, licence, permit, warrant decision or refusal to any demand of a claimant, but does not include any measure intended for internal organisation or administration within the said authority:

Provided that saving those cases where the law prescribes a period within which a public authority is required to make a decision, the absence of a decision of a public authority following a claimant’s written demand served upon it, shall, after two months from such service, constitute a refusal for the purposes of this definition.

“Armed Forces of Malta” as the same meaning as that assigned to it by the Malta Armed Forces Act (Cap 220)

“judicial decision” means a pronouncement by any entity, tribunal authority or organ established by law which definitely decides disputes brought before it; but shall also include any entity on whose findings a public authority commences any kind of proceedings or action or where a public authority is bound by law to follow such decision.

“judicial authority” means any tribunal established by law that adjudicates disputes pending before it;

“delegated legislation” means: an instrument having the force of law which emanates from a power granted by Parliament to any Minister or public authority and which requires to be laid on the table of the House of Representatives;

“parent Act” means: any Act of Parliament authorising any public authority to make delegated legislation;

“public authority” means the Government of Malta, including its Ministries and departments, local authorities, the Armed Forces of Malta and any body corporate

established by law and includes Boards which are empowered in terms of law to issue warrants for the exercise of any trade or profession, and any body corporate which performs a public function and any non-statutory body which the State would have to intervene if the body did not exist or did not provide its services.

“public officer” has the same meaning as that assigned to it by article 124 of the Constitution of Malta;

“review” means a revision of any act on limited grounds of review as laid down in this Act and shall not include any points of fact, or points of law not included in such grounds of review.

Action for Review

3. Without prejudice to the provisions of articles 5 and 7 of this Act, any person may request through an action before the First Hall of the Civil Court, a review of any administrative, legislative or judicial act requesting that such act be annulled ; in the case of review of administrative and judicial acts such person needs only to prove sufficient interest in instituting the action not necessarily juridical ; in cases of review of a legislative act, no such interest is required and any person without any such interest may institute such action:

Provided that the court before whom such proceedings are instituted may not substitute its discretion for that of the competent authority concerned

Grounds of Review

4. (1) In the case of review of administrative and judicial acts, the grounds of review shall be the following:
 - (a) when the act emanates from a public or judicial authority that is not authorised to perform it;
 - (b) when a public or judicial authority has failed to observe the principles of natural justice or mandatory procedure requirements in performing the act or in prior deliberation thereon;
 - (c) when the act constitutes an abuse of the authority’s power in that it is done for improper purposes or on the basis of irrelevant considerations;
 - (d) when the act is otherwise contrary to law;

- (2) In the case of review of legislative acts, such acts may be reviewed if the act was performed *ultra vires* the Act or other instrument having the force of law authorising it, or is in conflict with any Act of Parliament or

was not in conformity with the mandatory procedural requirements established by law, or constitutes an unreasonable or improper exercise of power when one considers the purpose of the parent Act.

Judicial Review of a decision of the Attorney General

5. (1) Where the Attorney General takes a decision:

(a) not to prosecute in accordance with the powers conferred upon him by any law; or

(b) not to allow the inspection or the issuing of copies of a procès-verbal or of any depositions or documents filed therewith in terms of the proviso to article 518 of the Criminal Code, the Civil Court First Hall, giving due account to the constitutional independence of the Attorney General, may enquire into the validity of the said decision and declare such decision null, invalid or without effect and consequently send back the matter to the Attorney General for review in accordance with the judgment of the court only in the case of a finding that the decision is not properly directed on legal considerations or is unreasonable in that it is not open to a reasonable prosecutor

(2) An action for judicial review of a decision of the Attorney General as provided in paragraph (a) of sub-article (1) may be filed by any person who proves sufficient interest not necessarily juridical , and an action in terms of paragraph (b) of sub-article (1) shall be filed by such person within two months from when such person becomes aware or could have become aware of the decision, whichever is the earlier:

Provided that where the law provides for a procedure whereby the Attorney General may be requested to conduct an internal review of the decision, the said period of two months shall commence to run as from the date when the injured party is informed of the results of the said review

Provided further that for the purposes of this article, the Auditor General, the Commissioner for Standards in Public Life, the Permanent Commission Against

Corruption and the Ombudsman shall always be entitled to make any claim under this article.

(3) Judicial review cannot be made where an agreement has been reached with the competent authorities of another country that the courts of that country shall exercise jurisdiction over the crime.

Time within which action must be instituted

6 (1) Any action for the review of an administrative or judicial act has to be instituted within a period of forfeiture of one year from when the act occurred or when the person instituting the action came to know of the act whichever is the earlier.

Provided that if the person instituting such action has referred the act being challenged to the Ombudsman or to mediation such period shall be suspended until the Ombudsman or the mediator disposes of the matter in accordance with the Ombudsman Act and the Mediation Act.

(2) No forfeiture period shall apply for the institution of an action to review a legislative act.

Other mode of Contestation

7. The provisions of this Act regarding review of administrative and judicial acts shall not apply where the mode of contestation or of obtaining redress, with respect to any particular administrative act before a court or tribunal is provided for in any other law.

Damages

8. In any action brought under this Act, it shall be lawful for the plaintiff to include in the demands a request for the payment of damages based on the alleged responsibility of the authority in tort or quasi tort, arising out of the act performed. The said damages shall not be awarded by the court where notwithstanding the annulment of the act the authority did not act in bad faith or unreasonably or where the thing requested by the plaintiff could have lawfully and reasonably been refused under any other power.

Repeal

9. Subject to the provisions of article 7 of this Act, articles 469A and 469 B of the Code of Organization and Civil Procedure are hereby being repealed.

Transitory Provisions

10. Any proceedings for review pending before a court of law under article 469A of Chapter 12 of the Laws of Malta or any other review proceedings, or in any proceedings for redress before a court or tribunal requesting review of such act, shall remain in force , and shall be governed by the law as in force prior to the coming into force of this Act, unless plaintiff declares his intention in a note filed before the court presiding over such action, that he intends to have his action governed by the provisions of this Act .