

194. L-Onor. Karol Aquilina u l-Onor. Robert Cutajar, jipproponu:

L-Ewwel Qari ta' Abbozz ta' Ligi msejjaħ "L-Att tal-2023 dwar Stharriġ Ġudizzjarju" sabiex jirrifirma u jikkonsolida d-dispożizzjonijiet tal-ligi dwar stharrig ġudizzjarju ta' atti amministrattivi, leġislattivi u ġudizzjarji u biex jagħmel emendi konsegwenzjali fil-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.

20.11.2023

ABBOZZ TA' LIĠI msejjah

ATT biex jirriforma u jikkonsolida d-disposizzjonijiet tal-liġi dwar sħarriġ ġudizzjarju ta' atti amministrattivi, leġislattivi u ġudizzjarji u biex jagħmel emendi konsegwenzjali fil-Kodiċi ta' Organizzazzjoni u Proċedura Civili.

1. (1) It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2023 dwar Sħarriġ Ġudizzjarju. Titolu fil-qosor

(2) Dan l-Att għandu jidhol fis-seħħ f'dik id-data li l-Ministru responsabbli għall-ġustizzja jista' jstabbilixxi b'avviż fil-Gazzetta, u dati differenti jistgħu jiġu appuntati għal għanijiet differenti jew dispozizzjonijiet differenti ta' dan l-Att.

2. F'dan l-Att sakemm ir-rabta tal-kliem ma tehtiegħ xort'oħra: Tifsir.

"aspettattiva legittima" tfisser wegħda ta' benefiċċju jew vantaġġ legali magħmula permezz ta' kliem, kitba jew agir, lil persuna minn awtorità pubblika li kellha l-awtorità skont il-liġi li tagħmel dik il-wegħda;

"att amministrattiv" tfisser il-hruġ ta' kull ordni, liċenzja, permess, warrant, deċiżjoni jew rifjut għal talba ta' xi persuna li jsir minn awtorità pubblika, iżda ma tinkludix xi haġa li ssir bil-għan ta' organizzazzjoni jew amministrazzjoni interna fl-istess awtorità:

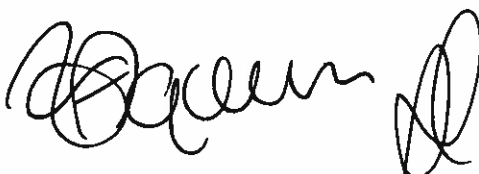
Iżda, hlief f'dawk il-kazijiet fejn il-liġi tistabbilixxi xi perjodu li fih awtorità pubblika tehtieg tagħti deċiżjoni, meta ssirilha talba bil-miktub minn persuna, li tiġi notifikata lill-awtorità u din l-awtorità tibqa' ma tagħtix deċiżjoni dwar it-talba, dak in-nuqqas għandu, wara xahrejn minn dik in-notifika, jikkostitwixxi rifjut għall-finijiet ta' din it-tifsira;

"Att awtoritattiv" tfisser kull Att tal-Parlament li jawtorizza kull awtorità pubblika li toħroġ leġislazzjoni sussidjarja;

"att ġudizzjarju" tfisser pronunzjament minn kull entità, tribunal, awtorità jew organu stabbilit b'liġi li tiddeċiedi kawża miġjuba quddiemha, iżda tinkludi wkoll kull entità li fuq il-bażi tal-konklużjonijiet tagħha awtorità pubblika tibda kull xorta ta' proċedura jew azzjoni, jew fejn l-awtorità pubblika hija bil-liġi marbuta li timxi fuq dik id-deċiżjoni, iżda ma għandha qatt tinkludi pronunzjament magħmul minn qorti mwaqqfa b'liġi.

"att leġislattiv" ifisser kull strument li għandu s-saħħa tal-liġi li johrog minn poter mogħti mill-Parlament lil kull Ministru jew awtorità pubblika u li jehtieg li jitqiegħed fuq il-Mejda tal-Kamra;

"awtorità ġudizzjarja" tfisser kull tribunal imwaqqaf b'liġi li jiddeċiedi tilwimiet miġjuba quddiemu;



"awtorità pubblika" tfisser il-Gvern ta' Malta, magħdudin il-Ministeri, d-dipartimenti tiegħu, awtoritajiet lokali, il-Forzi Armati ta' Malta u kull korp magħqud kostitwit permezz ta' liġi, u tinkludi Bordijiet li jkollhom l-awtorità bil-liġi li johorgu *warrants* għall-eżerċizzju ta' xi sengħa jew professjoni u kull korp kostitwit li jaqdi funzjoni pubblika jew korp li l-funzjonijiet tiegħu huma tali li l-Istat kien jintervjeni kieku dak il-korp ma kienx jeżisti jew ma kienx jipprovdi dak is-servizz;

"Forzi Armati ta' Malta" għandha l-istess tifsira mogħtija lilha fl-Att dwar il-Forzi Armati ta' Malta; Kap. 220.

"interess suffiċjenti" jinkludi mhux biss interess personali fil-proċeduri iżda wkoll kull interess rappreżentattiv, jiġifieri fejn l-attur jirrapreżenta grupp soċjali jew l-interess pubbliku;

"Ombudsman" għandu jkollha l-istess tifsira mogħtija lilha fl-Att dwar l-Ombudsman; Kap. 385.

"stharrig" tfisser reviżjoni ta' att fuq punt ta' liġi nklużi raġunijiet għal stharrig kif imnizzel f'dan l-Att u ma jinkludux punti ta' fatt;

"uffiċjal pubbliku" għandha l-istess tifsira mogħtija lilha bl-artikolu 124 tal-Kostituzzjoni ta' Malta;

3. Mingħajr preġudizzju għad-disposizzjonijiet tal-artikoli 5 u 7 ta' dan l-Att, kull persuna tista' titlob b'azzjoni quddiem il-Prim'Awla tal-Qorti Ċivili stharrig ta' att amministrattiv, legiſlattiv jew ġudizzjarju sabiex jiġi annullat dak l-att; f'każ ta' stharrig ta' atti amministrattivi jew ġudizzjarji dik il-persuna għandha ttipprova biss interess suffiċjenti biex tibda l-azzjoni li ma jkunx neċessarjament interess ġuridku; f'każ ta' stharrig ta' atti legiſlattivi, dak l-interess ma hux meħtieġ u kull persuna anke mingħajr dak l-interess, tista' tistitwixxi l-azzjoni: Azzjoni għal stharrig

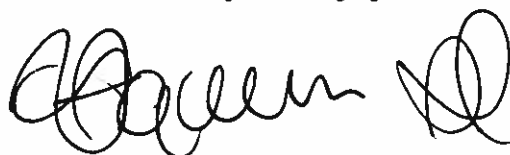
Iżda l-qorti li quddiemha l-proċeduri jigu istitwiti ma tistax tissostitwixxi d-diskrezzjoni tagħha għal dik tal-awtorità kompetenti konċernata.

4. (1) Fil-każ ta' stharrig ta' atti amministrattivi u ġudizzjarji, ir-raġunijiet għal stharrig ikunu xi waħda jew aktar minn dawn li ġejjin: Raġunijiet għal stharrig ġudizzjarju ta' atti amministrattivi u ġudizzjarji.

(a) meta l-att jitwettaq minn awtorità pubblika jew ġudizzjarja li ma tkunx awtorizzata li twettaq dak l-att;

(b) meta l-awtorità pubblika jew ġudizzjarja tkun naqset milli tosserva l-prinċipji tal-ġustizzja naturali jew htigijiet proċedurali mandatorji fit-twertiq tal-att jew fid-deliberazzjoni qabel dwar dak l-att;

(c) meta l-att jikkostitwixxi xi abbuż ta' setgħa tal-awtorità pubblika jew ġudizzjarja billi dan isir b'*mala fede*, jew għal għanijiet mhux xierqa, jew huwa irragjonevoli, jew jissejjes fuq konsiderazzjonijiet mhux rilevanti, jew jinjora



konsiderazzjonijiet rilevanti, jew l-att imur kontra l-aspettativa legittima;

(d) meta l-att ikun imur mod ieħor kontra l-ligi.

(2) Att legiſlattiv jista' jigi miſtharreġ meta jkun sar *ultra vires* l-Att awtoritattiv jew ſtrument ieħor li għandu forza ta' ligi li jawtorizzah, jew ikun f'kunflitt ma' xi Att tal-Parlament, jew ma sarx b'konformità ma' htiġijiet proċedurali mandatorji stabbiliti b'ligi, jew meta jikkostitwixxi eżerċizzju irraġjonevoli jew mhux xieraq meta wieħed iqis l-iskop tal-Att li jawtorizza dak l-att.

5. (1) Meta l-Avukat Ġenerali jieħu deċiżjoni:

(a) li ma ssirx prosekuzzjoni skont is-setgħat mogħtija lilu minn xi ligi; jew

(b) li ma jurix jew ma jagħtix kopja ta' proċess verbali skont il-proviso tal-artikolu 518 tal-Kodiċi Kriminali,

Stharriġ ġudizzjarju ta' deċiżjonijiet tal-Avukat Ġenerali.

Kap. 9.

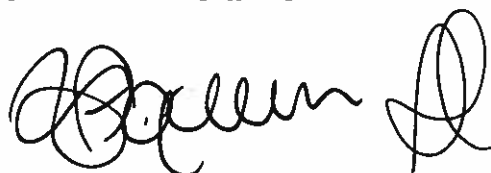
il-qrati ta' ġustizzja ta' kompetenza ċivili għandhom ġuriżdiżżjoni biex filwaqt li jagħtu konsiderazzjoni xierqa lill-indipendenza kostituzzjonali tal-Avukat Ġenerali, jistharrġu l-validità ta' dik id-deċiżjoni u biex jiddikjaraw dik id-deċiżjoni nulla, invalida jew mingħajr effett u biex konsegwentement jibagħtu lura l-każ lill-Avukat Ġenerali biex jirrevedi dik id-deċiżjoni b'mod konformi mad-deċiżjoni tal-qorti biss f'każ ta' sejbien li dik id-deċiżjoni ma tkunx imsejsa kif jixraq fuq konsiderazzjonijiet ta' ligi jew li dik id-deċiżjoni tkun irraġjonevoli in kwantu li ebda prosekutur raġjonevoli ma kellu jaſal għaliha.

(2) Kawża għall-istharrriġ ġudizzjarju ta' deċiżjoni tal-Avukat Ġenerali kif provdut fil-paragrafu (a) tas-subartikolu (1) tista' ssir minn kull persuna li jipprova interess suffiċjenti li mhux bilfors ikun ġuridiku, u kawża skont il-paragrafu (b) tas-subartikolu (1) għandha ssir mill-persuna li tagħmel it-talba fi żmien sentejn minn meta dik il-persuna ssir taf jew setgħet issir taf bid-deċiżjoni, skont liema żmien tiġi l-ewwel:

Iżda fejn il-ligi tkun tipprovdi għal proċedura li biha l-Avukat Ġenerali jkun jista' jintalab biex iwettaq reviżjoni tad-deċiżjoni, l-imsemmi żmien ta' sentejn jibda jgħaddi mid-data li fiha il-persuna li titlob ir-reviżjoni tkun ġiet informata bir-riżultat ta' dik ir-reviżjoni:

Iżda wkoll għall-finijiet ta' dan l-artikolu, l-Awditur Ġenerali, il-Kummissarju għall-Istandards fil-Hajja Pubblika, il-Kummissjoni Permanenti Kontra l-Korrużżjoni u l-Ombudsman għandu jkollhom l-fakultà li jagħmlu kull talba u li jeżerċitaw kull azzjoni li skont dan l-artikolu tiſpetta lill-persuna li jkollha interess suffiċjenti, fejn huma jkunu rrapportaw att ta' korrużżjoni kif imfiſser fl-Att dwar il-Kummissjoni Permanenti Kontra l-Korrużżjoni lill-Avukat Ġenerali.

(3) Ma jistax isir stharrriġ ġudizzjarju fejn ikun intlaħaq ftehim mal-awtoritajiet kompetenti ta' pajjiż ieħor li l-qrati ta' dak il-pajjiż għandhom jeżerċitaw ġuriżdiżżjoni dwar id-delitt.



6. (1) Kull azzjoni għal sħarriġ ta' att amministrattiv jew ġudizzjarju taqa' bil-preskrizzjoni ta' sentejn li jibdedw jgħaddu minn meta jkun seħħ l-att jew il-persuna li tistitwixxi l-kawża saret taf bl-att, skont liema jiġi l-ewwel:

Zmien li fih l-azzjoni għal sħarriġ ta' att amministrattiv jew ġudizzjarju trid tiġi istitwita.

Izda jekk il-persuna li tistitwixxi l-azzjoni tkun irreferiet il-każ li jkun qed jiġi kkontestat lill-Kummissarju għal Investigazzjonijiet Amministrattivi (Ombudsman), dak il-perjodu għandu jibqa' sospiż sakemm dak il-Kummissarju jiddeċiedi l-każ skont l-Att dwar l-Ombudsman.

Kap. 385.

(2) Ebda perjodu ta' dekadenza jew preskrizzjoni ma japplika għal min jistitwixxi azzjoni għal sħarriġ ta' att legiſlattiv.

7. Id-dispożizzjonijiet ta' dan l-Att dwar sħarriġ ta' atti amministrattivi u ġudizzjarji m'għandhomx japplikaw meta l-mod ta' kontestazzjoni jew ta' ksib ta' rimedju iehor dwar dawk l-atti partikolari quddiem Qorti jew tribunal, jiġu provduti dwarhom f'xi liġi oħra.

Modi oħra ta' kontestazzjoni jew ksib ta' rimedju.

8. F'azzjoni li ssir bis-saħħa ta' dan l-Att dwar atti amministrattivi u ġudizzjarji, l-attur ikun jista' jinkludi fit-talbiet tiegħu talba għall-ħlas ta' danni li tkun imsejsa fuq ir-responsabbiltà allegata tal-awtorità pubblika jew ġudizzjarja li tkun għamlet delitt jew kwazi-delitt li johorgu mill-att mwettaq minnhom. Dawn id-danni ma għandhomx jingħataw mill-qorti meta minkejja annullamnet tal-att, l-awtorità pubblika jew ġudizzjarja ma tkunx aġixxiet in *mala fede* jew b'mod mhux raġjonevoli, jew meta l-azzjoni mitluba mill-attur setgħet legalment u raġjonevolment giet miċhuda taħt kull setgħa oħra.

Danni.

9. (1) Mingħajr preġudizju għall-artikolu 7 ta' dan l-Att, l-artikoli 469A u 469B tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili qed jiġu mħassra salv kull haġa li validament saret taħt dawk l-artikoli qabel ma daħal fis-seħħ dan l-Att u kwalunkwe referenza fi kwalunkwe liġi għal dawk l-artikoli għandhom jinftiehm bħala referenza għal dan l-Att.

Thassir, riżervi u dispożizzjoni tranżitorji.

Kap. 12.

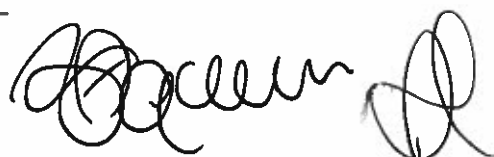
10. Kull proċeduri għal sħarriġ pendenti quddiem qorti jew tribunal imwaqqfa b'liġi taħt l-artikolu 469A jew l-artikolu 469B tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, jew kull proċeduri oħra ta' sħarriġ, jew f'kull proċeduri għal rimedju quddiem qorti jew tribunal fejn jkun qed jiġi mitlub sħarriġ ta' att amministrattiv, legiſlattiv jew ġudizzjarju, jibqgħu fis-seħħ u jiġu regolati mil-liġi kif tkun minnufih qabel ma jidhol fis-seħħ dan l-Att, sakemm l-attur ma jiddikjarax l-intenzjoni tiegħu b'nota pprezentata quddiem il-qorti jew tribunal li tkun qed tippresjedi l-azzjoni, li l-intenzjoni tiegħu hija li l-azzjoni tiegħu tiġi regolata bid-dispożizzjonijiet ta' dan l-Att.

Dispożizzjoni transitorja.

Kap. 12.

Għanijiet u Raġunijiet

L-Għanijiet u Raġunijiet ta' dan l-Abbozz ta' Liġi huma sabiex jirrifirma u jikkonsolida d-dispożizzjonijiet tal-liġi dwar sħarriġ ġudizzjarju ta' atti amministrattivi, legiſlattivi u ġudizzjarji u biex jagħmel emendi konsegwenzjali fil-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.



**A BILL
entitled**

AN ACT to reform and consolidate the provisions of law regarding judicial review of administrative, legislative and judicial acts and to make consequential amendments to the Code of Organization and Civil Procedure, Cap. 12.

1. (1) The short title of this Act is the Judicial Review Act of 2023. Short title.

(2) This Act shall come into force on such date which the Minister responsible for justice may establish by notice in the Gazette, and different dates may be so established for different purposes or different provisions of this Act.

2. In this Act, unless the context otherwise requires: Definitions.

"administrative act" means the issuing by a public authority of any order, licence, permit, warrant, decision, or a refusal to any demand of a claimant, but does not include any measure intended for the internal organization 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" has the same meaning assigned to it by the Malta Armed Forces Act; Cap. 220.

"judicial act" means a pronouncement by any entity, tribunal, authority, or organ established by law which decides disputes brought before it, but also includes 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 and shall never include pronouncements by a court of law;

"judicial authority" means any tribunal established by law which decides disputes brought before it;

"legislative act" means any 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;

"legitimate expectation" means a promise of a lawful benefit or advantage made through words, writing, or behaviour to a person by a public authority which had the power by law to make such promise;

"Ombudsman" has the same meaning assigned to it by the Ombudsman Act; Cap. 385.



"parent Act" means any Act of Parliament authorising any Public Authority to make delegated legislation;

"public authority" means the Government, including its Ministries and departments, local authorities, the Armed Forces of Malta, and any body corporate established by law, including 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, or one whose functions are such that the State would have to intervene if such body corporate did not exist or did not provide its services;

"public officer" has the same meaning assigned to it by article 124 of the Constitution of Malta;

"review" means a revision of any act on points of law, including the grounds of review as laid down in this Act, and shall not include any points of fact;

"sufficient interest" shall not only include personal interest in the proceedings but any representative interest, that is to say where the plaintiff represents a social group or the public interest.

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 an administrative, legislative or judicial act requesting that such act be annulled; in the case of review of administrative and judicial acts, such person shall only need to prove sufficient interest in instituting the action, and not necessarily a juridical interest; in cases of review of legislative acts, no such interest is required and any person without any such interest may institute such action:

Action for review.

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

4. (1) In the case of review of administrative and judicial acts, the grounds of review shall be any one or more of the following:

Reasons for judicial review of administrative and judicial acts.

- (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 procedural requirements in performing the act, or in prior deliberation thereon;
- (c) when the act constitutes an abuse of the public or judicial authority's power in that it is done in bad faith, or for improper purposes, or is unreasonable, or done on the basis of irrelevant considerations; or when it ignores relevant considerations or when it runs counter to a legitimate expectation;
- (d) when the act is otherwise contrary to law.



(2) A legislative act may be reviewed when it was performed *ultra vires* the parent 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 when it constitutes an unreasonable, or improper exercise of power in consideration of the purpose of the parent Act.

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,

Judicial review of a decision of the Attorney General.

Cap. 9.

the courts of justice of civil jurisdiction, 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 a juridical interest, and an action in terms of paragraph (b) of sub-article (1) shall be filed by such person within two years 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 years shall commence to run as from the date when the person requesting such revision 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 be entitled to make any claim and to exercise any action according to this article and which pertains to any person having sufficient interest, when they shall have reported any corrupt practice as defined in the Permanent Commission Against Corruption Act to the Attorney General.

(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.

6. (1) Any action for the review of an administrative or judicial act shall be barred by the lapse of a prescriptive period of two years from when the act

Term for instituting an action for judicial review of

occurred, or when the person instituting the action came to know of the act, administrative or judicial act, whichever is the earlier:

Provided that if the person instituting such action has referred the act being challenged to the Commissioner for Administrative Investigations (Ombudsman), such period shall be suspended until such Commissioner disposes of the matter in accordance with the Ombudsman Act. Cap. 385.

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

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 before a court or tribunal is provided for in any other law. Other mode of contestation or obtaining of redress.

8. In any action brought under this Act regarding administrative or judicial acts, 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 public or judicial authority in tort or quasi-tort, arising out of the acts performed. The said damages shall not be awarded by the court where, notwithstanding the annulment of the acts, the authorities 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. Damages.

9. Without prejudice to the provisions of article 7 of this Act, articles 469A and 469B of the Code of Organization and Civil Procedure are hereby being repealed saving anything validly done under the said before the coming into force of this Act and any references in any law to the said articles shall be construed as references to this Act. Repeal, saving and transitory provision. Cap. 12.

10. Any proceedings for review pending before a court or tribunal established by law under article 469A or article 469B of the Code of Organization and Civil Procedure, 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. Transitory provision. Cap. 12.

Objects and Reasons

The objects and reasons of this Bill are to reform and consolidate the provisions of the law regarding judicial review of the administrative, legislative and judicial acts and to make consequential amendments to the Code of Organization and Civil Procedure.

