

Thank you for giving us the opportunity to review the Judicial Review Act drafted by GhSL.

At the outset, we would like to state that this letter does not in any way constitute a legal opinion or legal advice. Nor does it constitute an exhaustive review of the draft Act. Rather, it represents our feedback on your work from our standpoint as an NGO based in Malta.

In principle, we are in favour of expanding the scope of judicial review in Malta. We agree with the proposal to consolidate all provisions of the law relating to judicial review into one legislative act, and with the introduction of the possibility of review of judicial acts. The proposed introduction of the notion of 'sufficient interest' to replace 'interested person' would ostensibly allow NGOs such as ours better legal standing, whilst the widening of grounds on which it is possible to bring an action for judicial review to include acts which 'run counter to legitimate expectation' could provide NGOs with improved chances of bringing such an action successfully. We believe it may be worthwhile to consider further strengthening the position of NGOs in such cases by introducing specific provisions to this effect.

We are of the opinion that the definition of 'judicial act' requires some grammatical clarification, whilst the definition of 'judicial authority' may be amended to reflect the definition of 'judicial act'. Furthermore, the term 'public officer' is defined but not made use of elsewhere in the draft Act.

Feedback from our network of lawyers revealed particular dissatisfaction with a number of elements of the current judicial review process. These include: an excessively restrictive interpretation of 'administrative act'; the fact that proceedings tend to be excessively expensive as well as lengthy, without consideration for the urgency of administrative action; and that the 'alternative remedies' defence is too often successfully employed at the expense of a just outcome. Moreover, it was expressed that damages are often unattainable since unreasonableness is difficult to prove. It is our wish to make these concerns known to you so that they may inform any future proposed amendments to the draft legislation.

We have also had feedback that the fact that the only remedial action which may be taken by the court is to annul the administrative act, combined with the length of proceedings, often renders such remedy redundant. We would like to draw your attention here to the Irish model, which contemplates a number of remedial measures available to the court in cases of judicial review, such as to compel the performance of a duty or to prevent action from being taken.

It is our hope that this feedback has been useful to you, and we remain available for any clarifications.