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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
OF THE COUNCIL OF EUROPE
(VENICE COMMISSION)

MALTA

URGENT OPINION

ON

THE DRAFT AMENDMENT TO THE ADMINISTRATIVE JUSTICE ACT

**Issued on 23 July 2026 pursuant to Article 14a
of the Venice Commission's Revised Rules of Procedure**

on the basis of comments by

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I. Introduction

1. By letter of 12 May 2026, Mr Jonathan Attard, Minister for Justice and Reform of the Construction Sector of Malta requested an urgent opinion of the Venice Commission of the Council of Europe on a draft amendment to the Administrative Justice Act (hereinafter, “the draft amendment”) ([CDL-REF\(2026\)026](#)).

2. On 28 May 2026, the Bureau of the Venice Commission authorised the preparation of the Opinion through the urgent procedure, pursuant to Article 14a of the Commission's Revised Rules of Procedure.

3. Mr Richard Barrett, Mr Iain Cameron, Ms Itziar Gómez Fernández acted as rapporteurs for this opinion.

4. On 24 and 25 June 2026, a delegation of the Commission composed of Mr Richard Barrett and Ms Itziar Gómez Fernández, accompanied by Ms Delphine Freymann, Deputy Secretary, and Mr Salvador Luz from the Secretariat, conducted a country visit to Valletta, Malta. During the visit, the delegation held meetings with Mr. Clifton Grima, the recently appointed Minister for Justice, Research and Innovation, representatives of the parliamentary majority and the opposition and the Parliamentary Ombudsman. Meetings were also organised with professional associations, civil society organisations, academia and international partners. The delegation was informed that the Chief Justice considered it inappropriate for the Chief Justice or other members of the judiciary to participate in discussions on the draft amendment, given that it could subsequently be subject to judicial review in the event of a legal challenge. The Commission is grateful to the Maltese authorities for the excellent organisation of this visit.

5. This urgent opinion was prepared in reliance on the English translation of the draft amendment. The translation may not accurately reflect the original version on all points.

6. This urgent opinion was drafted on the basis of comments by the rapporteurs as well as the results of the meetings held on 24-25 June 2026. In line with paragraph 10 of the Venice Commission's Protocol on the Preparation of Urgent Opinions ([CDL-AD\(2018\)019](#)), the draft Urgent Opinion was transmitted to the authorities of Malta on 17 July 2026 for comments. On 21 July 2026, within the framework of the preparation of this urgent opinion, the Maltese authorities submitted to the Venice Commission a set of proposed amendments designed to respond to the Commission's recommendations ([CDL-REF\(2026\)036](#)). The Urgent Opinion was then issued on 23 July 2026, pursuant to Article 14a of the Venice Commission's Revised Rules of Procedure. It will be submitted to the Venice Commission for endorsement at its 148th Plenary Session (Venice, 9-10 October 2026).

II. Scope of the opinion

7. The present urgent opinion focuses on assessing the amendments proposed to the Administrative Justice Act¹ (hereinafter, the “AJA”), in particular the introduction of new Parts IVA and IVB.² These amendments are intended to cover a number of specialised adjudicative bodies in Malta that operate outside the ordinary court system and are referred to as “administrative tribunals”. More specifically, the opinion examines the proposed provisions governing the appointment, terms of office, and disciplinary and ethical frameworks applicable to the members of these administrative tribunals. This urgent opinion will therefore not examine or assess the existing administrative system as a whole, nor evaluate the existing provisions of the AJA, as that goes beyond its scope. Furthermore, this urgent opinion will not

¹ [Administrative Justice Act](#).

² [CDL-REF\(2026\)026](#).

address the question of the adequacy or sufficiency of the existing system of appeals against decisions of the administrative tribunals, nor will it examine the broader issue of the regulatory and supervisory framework in Malta.

8. During the country visit, certain interlocutors expressed the view that these administrative tribunals should be integrated into a fully-fledged administrative justice system, which would provide a broader and more coherent legal framework. By contrast, other interlocutors considered that the envisaged reform is already sufficient to address the shortcomings posed by the current system of administrative tribunals.

9. The Venice Commission recalls that it had previously expressed reservations about the “surprisingly high number” of specialist tribunals in Malta, on account specifically of the special appointment procedures involving the executive power.³

10. The Venice Commission’s role is not to assess the desirability of a given reform as such. Such a determination falls within the sovereign prerogative and the margin of political discretion enjoyed by the Maltese authorities and people. Moreover, the question of whether the proposed draft legislation is compatible with the Constitution of Malta is a matter that falls within the jurisdiction of the Constitutional Court of Malta. Accordingly, the Commission will confine its assessment to the principal issues arising from the draft amendment, examining them in the light of the relevant European standards and comparative European constitutional practice.

11. The Venice Commission underscores that the fact that the present urgent opinion does not examine certain provisions or aspects of the Maltese system of administrative tribunals should not be interpreted as expressing any view, whether positive or negative, on those provisions or issues.

III. Background

12. Specialised administrative bodies and regulators in the public sphere, but outside the formal courts, have proliferated in all states since the 19th century, as government functions have expanded and have become more complex. The design of these bodies has varied over time resulting in an *ad hoc* accumulation of legal structures. All such bodies must have a legal basis for their public functions.⁴ The need for a specific legal basis is particularly acute when the body has an adjudicatory function exercising administrative justice.

13. Many bodies and regulators have significant administrative decision-making powers but are not considered to be adjudicators. Some might have a combination of administrative roles and adjudicative roles. For the latter purposes they are considered as adjudicative bodies. The characterisation of some bodies and functions as administrative and others as adjudicatory - with the latter often identified as tribunals carrying out a ‘quasi-judicial’ role - is for the national constitutional and legal traditions.

14. Unlike jurisdictions characterised by a distinct *ordre administratif*, Malta does not maintain a separate system of administrative courts. Instead, disputes arising under administrative law fall within the jurisdiction of the ordinary civil courts and are adjudicated as civil cases. In this context, Article 469A of the Code of Organisation and Civil Procedure (hereinafter, “the

³ Venice Commission, [CDL-AD\(2021\)021](#), Malta - Urgent Opinion on the reform of fair trial requirements related to substantial administrative penalties, § 68; [CDL-AD\(2018\)028](#), Malta - Opinion on Constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement, § 80.

⁴ Venice Commission, [CDL-AD\(2025\)002](#), the Updated Rule of Law Checklist, Benchmark II.A.2 on “Law-making procedures”, § 28.

COCP”) confers on the civil courts jurisdiction to exercise judicial review of administrative acts.⁵

15. However, the Maltese Constitution also provides for the existence of other “adjudicative authorities” which do not constitute ordinary courts but which may adjudicate on the rights and obligations of persons, within the limits set by law.⁶ In this regard, Article 39 (2) of the Maltese Constitution proclaims that “any court or other adjudicating authority prescribed by law for the determination of the existence or the extent of civil rights or obligations shall be independent and impartial”.⁷

16. Against this constitutional background, each law establishing a particular regulatory or public authority generally provides for a right of appeal against that authority’s decisions, either to a specialised administrative tribunal established under the same law⁸ or to the Administrative Review Tribunal (hereinafter, “the ART”), established under the AJA.⁹ The decisions of these administrative tribunals are, in turn, in most cases subject to a further appeal before the Court of Appeal, as determined by the applicable legislation, the AJA¹⁰ or the COCP. Depending on the applicable statutory framework, such appeals may be confined to points of law or may extend to both questions of fact and law.

17. In this context, Article 469A of the COCP confers on the civil courts a (residual) first-instance jurisdiction to review administrative acts which do not fall within the jurisdiction of the ART or other specialised administrative tribunals.

18. These specialised administrative tribunals are typically composed of a chairperson and two additional members, although their composition varies according to the respective legal framework. Members are most frequently appointed from outside the judiciary but, in certain cases, the chairperson must be a judge or a magistrate.¹¹ Depending on the applicable legislation, formal requirements relating to professional qualifications - such as experience or expertise in each technical field - and ineligibility criteria vary and may be entirely absent. The term of office of members of administrative tribunals is, in most cases, three years, although certain tribunals provide for a five-year term.¹² Reappointment for a further term is sometimes possible.¹³ Members generally serve on a part-time basis, but in certain cases, the chairperson

⁵ Article 469A of the [Code of Organisation and Civil Procedure](#).

⁶ Article 39 (2) of the [Constitution of Malta](#) provides that that “any court or other adjudicating authority prescribed by law [italics added] for the determination of the existence or the extent of civil rights or obligations shall be independent and impartial”. See also, in this regard, Venice Commission, [CDL-AD\(2018\)014](#), Malta - Opinion on the Draft Equality Act and the Human Rights and Equality Act, § 23.

⁷ Venice Commission, [CDL-AD\(2018\)014](#), Malta - Opinion on the Draft Equality Act and the Human Rights and Equality Act, § 33.

⁸ A comprehensive list of existing administrative tribunals, together with the corresponding constitutive laws, is set out in the First Schedule to the [Administrative Justice Act](#).

⁹ Under Articles 5(1) and 5(2) of the [Administrative Justice Act](#), the ART has jurisdiction over those specific classes of administrative acts that are expressly conferred on it, either by the AJA itself or by any other law. Pursuant to Article 22(1) of the [Administrative Justice Act](#), all decisions of the ART are appealable to the Court of Appeal.

¹⁰ Pursuant to Article 22(2) of the [Administrative Justice Act](#), the Second Schedule to that Act determines whether the Court of Appeal, sitting in its inferior or superior jurisdiction, is competent to review specific categories of administrative acts.

¹¹ For instance, in the case of the Administrative Review Tribunal, the chairperson must be either a sitting, or former, judge or magistrate (Article 8(4) of the [Administrative Justice Act](#)); in the case of the Arbiter and Patents Tribunal, the chairperson must be either a judge or a magistrate (Article 58A(2) of the [Patents and Design Act](#)).

¹² The term of office is, for example, three years for members of the Building and Construction Tribunal, the Financial Services Tribunal, the Information and Data Protection Appeals Tribunal, and the International Protection Appeals Tribunal, and five years for members of the Industrial Tribunal and the Small Claims Tribunal.

¹³ This is the case, for example, for members of the Arbiter and Patents Tribunal, see Article 58A(4) of the [Patents and Design Act](#).

is appointed on a full-time basis.¹⁴ The grounds for removal from office of members may be specified in the relevant law,¹⁵ or be entirely absent.¹⁶

19. Under the AJA, all administrative tribunals must respect the parties' right to a fair hearing, including the principles of natural justice, namely *nemo iudex in causa sua* and *audi et alteram partem*.¹⁷ Furthermore, administrative tribunals must ensure procedural equality between the parties, ensure proceedings are adversarial and provide reasons in each judgment.¹⁸

20. As mentioned above, in previous opinions, the Venice Commission noted that "Malta had a surprisingly high number of specialised tribunals adjudicating in certain areas" and which have "special appointment procedures involving the executive power".¹⁹ In most cases, members of these administrative tribunals are appointed either directly by the relevant sectoral Minister (as is the case with the Financial Services Tribunal²⁰ and the Police Licences Appeals Tribunal²¹), or by the President of Malta acting on the advice of the Prime Minister (as is the case with the Building and Construction Tribunal,²² the Administrative Review Tribunal,²³ the International Protection Appeals Tribunal²⁴ and the Small Claims Tribunal²⁵). In certain cases, these members are appointed directly by the Prime Minister (as is the case with the Consumer Claims Tribunal²⁶ and the Arbiter and Patents Tribunal²⁷).

21. In recent years, the European Commission has reported concern regarding the involvement of the executive in the appointment of members of administrative tribunals.²⁸ In its 2022 Rule of Law Report, the following was stated:²⁹

"Concerns have been expressed in relation to the independence of specialised tribunals, as many of those are appointed through a procedure involving the executive power and do not enjoy the same level of independence as that of the ordinary judiciary. Moreover, decisions of many of those tribunals are subject to judicial review only on points of law but not on points of fact."

22. Most recently, in its 2025 Rule of Law Report, the European Commission stated that:³⁰

"The Government is proposing to remove the involvement of the executive from the appointment of members of the specialised tribunals to address concerns over their independence. As indicated in the 2024 Rule of Law Report, in the context of the [Recovery and Resilience Programme], Malta committed to pursue a review of the framework of specialised tribunals, and to consult the Venice Commission on possible

¹⁴ This is the case, for example, of the chairperson of the International Protection Appeals Tribunals, see Article 5(1) of the [International Protection Act](#).

¹⁵ See, for instance, Article 6 of the [International Protection Act](#).

¹⁶ This is the case, for instance, of the Prison Appeals Tribunal, see Regulation 79 of the [Prisons Regulations \(Subsidiary Legislation 260.03\)](#).

¹⁷ Article 3(2)(a) of the [Administrative Justice Act](#).

¹⁸ Items (c), (e) and (h) of Article 3(2) of the [Administrative Justice Act](#).

¹⁹ Venice Commission, [CDL-AD\(2020\)019](#), Malta - Opinion on ten Acts and bills implementing legislative proposals subject of Opinion CDL-AD(2020)006, § 97, and [CDL-AD\(2018\)028](#), Malta - Constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement bodies, § 80.

²⁰ Article 21(2) of the [Malta Financial Services Authority Act](#).

²¹ Article 4(2) of the [Police Licences Act, Licenses Procedures Regulations](#).

²² Article 36 of the [Building and Construction Authority Act](#).

²³ Article 8(2) of the [Administrative Justice Act](#).

²⁴ Article 5(1) of the [International Protection Act](#).

²⁵ Article 4(2) of the [Small Claims Tribunal Act](#).

²⁶ Article 17(2) of the [Consumer Affairs Act](#).

²⁷ Article 58A(2) of the [Patents and Design Act](#).

²⁸ Please see [2020 Rule of law report](#), [2021 Rule of law report](#), [2022 Rule of law report](#), [2023 Rule of Law Report](#), [2024 Rule of Law Report](#), [2025 Rule of law report](#).

²⁹ [2022 Rule of law report](#), p. 5.

³⁰ [2025 Rule of law report](#), p. 4.

amendments aimed at strengthening their independence. (...) In a judgment of October 2024, the European Court of Human Rights [hereinafter, “the Court”] highlighted shortcomings in the guarantees of independence of one of the Maltese specialised tribunals (i.e. the Immigration Appeals Board). Key findings included the lack of a proper appointment procedure of its members and the absence of selection criteria based on merit. (...) Against this background, concerns about the independence of specialised tribunals have been reiterated by stakeholders”.

IV. The draft amendment

23. In his letter to the Venice Commission, the Minister for Justice and Reform of the Construction Sector recalled that the envisaged reform constituted a key component of the commitments undertaken by the Government of Malta within the framework of the Malta’s Recovery and Resilience Plan (hereinafter, “RRP”), in the context of which the “[p]ublication in the Government Gazette of legal act(s) on the independence of specialised tribunals, taking into account the urgent opinion of the Council of Europe’s Venice Commission published in July 2026” constitutes a milestone.³¹

24. The Minister’s request was accompanied by an assessment of the existing legal framework for administrative tribunals in Malta and the draft amendment to the AJA,³² as well as an explanatory paragraph according to which:

“The Objects and Reasons of this Bill are to strengthen the procedure for the appointment of members of Administrative Tribunals, and to affirm the principles of integrity of that process by providing that appointments to principal administrative tribunals shall be made by the President of Malta acting on the advice of an independent Commission proposed to be established by this Bill, while increasing the guarantees of independence and impartiality in the operation of the said tribunals. The Bill also provides for the grounds for removal from office of chairpersons and members of Administrative Tribunals and for a right of appeal from removal to the Court of Appeal, as well as for a Code of Ethics for persons occupying the said offices.”

25. In brief, the key changes proposed in draft amendment may be summarised as follows:

- a) A Commission for Appointments and Discipline in Administrative Tribunals would be established and entrusted with a dual mandate: on the one hand, to issue calls for applications and advise the President of Malta on the appointment of tribunal members (draft Article 23C); and on the other hand, to exercise disciplinary powers in respect of those members, with its decisions being subject to appeal before the Court of Appeal (draft Article 23I).

³¹ A “review of the independence of specialised tribunals” constitutes a milestone under Malta’s National Recovery and Resilience Plan, as submitted to the European Commission and approved by the Council of the European Union on 28 September 2021, and last amended on 18 November 2025. According to the revised milestone 6.4, “[a] review of the independence of specialised tribunals shall be carried out by the Maltese authorities, which shall include at least (i) an assessment of the guarantees of independence for appointments of members to said specialised tribunals, (ii) an assessment of the guarantees which provide for the tribunals’ decisions to be reviewed by the ordinary courts of appeal, and (iii) measures to address the independence of specialised tribunals. Publication in the Government Gazette of legal act(s) on the independence of specialised tribunals, taking into account the urgent opinion of the Council of Europe’s Venice Commission published in July 2026. The legal act(s) shall enter into force after a reasonable transition period and no later than 31 December 2026. Such entry into force shall be automatic and shall not entail any further legal implementing measures”. See, in this regard, [Annex to the Proposal for a Council Implementing Decision amending the Implementing Decision of 5 October 2021 on the approval of the assessment of the recovery and resilience plan for Malta](#) (13/07/2026), p. 45.

³² [CDL-REF\(2026\)026](#).

- b) The new rules on appointment of members of administrative tribunals would only apply to the administrative tribunals listed in the Fourth Schedule (draft Articles 23C(1) and 23F(1)).
- c) The Commission would be composed of a chairperson, who would be a retired judge or magistrate, and two additional members drawn from serving Permanent Secretaries. All members would be selected by the President of Malta, acting on the prior advice of the Cabinet of Ministers (draft Article 23A(1) and (2)).
- d) Before advising on any appointment, the Commission would be required to verify that candidates possess integrity and a good reputation, adequate competence and experience, the ability to act independently and impartially, and freedom from any actual or apparent conflict of interest (draft Articles 23C(2) and (3)). Formal ineligibility criteria would also be established (draft Article 23(D)(1)).
- e) The members of administrative tribunals would be precluded from the exercise of their profession in cases before the administrative tribunal to which they are appointed (draft Article 23D(3)).
- f) Appointments would generally be for a fixed term of five years, with the possibility of renewal for one additional term, provided the individual successfully reapplies through a new open call (draft Article 23(D)(4)).
- g) The Minister for Justice could issue a Code of Ethics applicable to members of administrative tribunals (draft Article 23(G)(2)). This Code would seemingly be enforceable by the Commission through directives and recommendations addressed to members of administrative tribunals included in the Fourth Schedule (draft Article 23I(4)). A preliminary version of this Code is already included in the Fifth Schedule of the draft amendment.
- h) Removal from office of members of administrative tribunals would take place on the grounds of inability to perform their functions or misbehaviour. Such removal would be effected by the President of Malta acting on the advice of the Commission (draft Article 23(I)(1)).
- i) The Commission would also be empowered to impose disciplinary sanctions, provided these are proportionate and respect the principles of natural justice (draft Article 23(I)(2)).
- j) Both disciplinary measures and removal decisions would be subject to appeal before the Court of Appeal (draft Article 23(I)(3)).
- k) The new rules on appointment of members of administrative tribunals would only apply to new appointments made within four months of the entry into force of the Part IVA of the draft amendment (draft Article 23F(1)).

V. Analysis

A. Preparation of the draft amendment and legislative procedure

26. The draft amendment submitted to the Venice Commission on 12 May 2026 was prepared by the Ministry of Justice and Reform of the Construction Sector before the general elections of 30 May 2026. In those elections, the Labour Party obtained a new parliamentary majority and a new government was formed accordingly. Despite this political continuity, there was a change in the person holding the justice portfolio, as well as in the Ministry's name, structure and functions. Before the country visit of the Venice Commission delegation on 24 and 25 June, the draft amendment had not been published or otherwise made available to the public. On 7 July 2026, the Minister for Justice, Research and Innovation submitted the title of the draft amendment to Parliament for first reading.³³

27. During the country visit, interlocutors from the parliamentary majority stated that that the Parliament had only recently been constituted and that the relevant parliamentary committees

³³ [Parliament of Malta - Administrative Justice \(Amendment\) Bill](#).

had not yet been formed. They further emphasised that formal public consultations are not conducted at the stage when a draft bill is being considered by the Cabinet of Ministers, but rather once the parliamentary procedure has been initiated. The delegation was informed that the forthcoming legislative process would be structured around three readings and a committee stage.³⁴ During the committee stage, each clause of the draft amendment would be examined separately and in detail in proceedings that are open to the public. Civil society and other stakeholders would reportedly be able to also participate in those proceedings.

28 The delegation was also informed by other stakeholders that no consultative process was conducted either prior to or during the preparation of the present draft amendment, and that there had been no public debate on the matter.

29. In its Updated Rule of Law Checklist, the Venice Commission has underlined that the quality of legislation depends largely on the quality of the legislative process, which must be efficient, transparent, accountable, inclusive and democratic. Legislative procedures should allow for targeted and transparent consultations of stakeholders affected by the draft legislation as well as the civil society, think tanks and the general public, when appropriate. Furthermore, the text of the draft legal act needs to be accessible and, when appropriate, accompanied by robust explanatory material and impact assessments.³⁵

30. In addition, the Venice Commission has expressed concerns about the rushed adoption of laws governing key aspects of the legal order without proper consultation with the opposition, experts and civil society. It has further stressed that legislation introducing significant structural changes or addressing matters of major importance for society requires proper scrutiny and a thorough impact assessment.³⁶

31. Notwithstanding the reported possibility of public attendance and participation during the committee stage of the parliamentary procedure, the Venice Commission is of the view that it would have been important for the draft amendment to have been preceded by a broad public debate and a prior consultative process involving the relevant stakeholders, including professional associations and civil society.

32. As already stated in its previous opinions in respect of Malta, the Venice Commission wishes to stress that open, transparent and meaningful public debates are an important element of democratic law-making. It therefore encourages the Maltese authorities to engage in such consultations in the following phases of the reform.

33. Furthermore, bearing in mind the lack of meaningful consultation in the preparation of the draft legislation, the Maltese authorities could consider providing for an independent evaluation, after an appropriate period of time, of how the new arrangements have operated in practice.³⁷

³⁴ See Section VIII of the [Standing Orders of the House of Representatives Order \(Subsidiary Legislation Const.02\)](#). See also, [Parliament of Malta - Legislative Process](#).

³⁵ Venice Commission, [CDL-AD\(2025\)002](#), the Updated Rule of Law Checklist, Benchmark II.A.6 on “Law-making procedures”, § 34; [CDL-AD\(2023\)044](#), Georgia - Opinion on the Law on the Special Investigation Service and on the provisions of the Law on Personal Data Protection concerning the Personal Data Protection Service, §§ 28-30.

³⁶ Venice Commission, [CDL-AD\(2023\)044](#), Georgia - Opinion on the Law on the Special Investigation Service and on the provisions of the Law on Personal Data Protection concerning the Personal Data Protection Service, § 31; [CDL-AD\(2019\)014](#), Romania – Opinion on Emergency Ordinances GEO No. 7 and GEO No. 12 amending the Laws of Justice, §§ 9-11; [CDL-AD\(2018\)021](#), Romania - Opinion on draft amendments to the Criminal Code and the Criminal Procedure Code, § 39; [CDL-AD\(2018\)017](#) Romania - Opinion on draft amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organisation, and Law No. 317/2004 on the Superior Council for Magistracy, §§ 32-34.

³⁷ See also paragraph 85 below, regarding the Code of Ethics (chapter F).

B. Applicable standards

34. The Venice Commission wishes to recall at the outset that the mode of organisation of administrative justice falls within the sovereign right of the national legislature.³⁸ It further notes that, in Europe, there appear to be three main models for the adjudication of administrative law disputes: (i) a separate administrative judiciary; (ii) administrative chambers within the ordinary court system; and (iii) hybrid or specialised tribunals.

35. At the European level, the right to an independent and impartial tribunal is primarily guaranteed by Article 6 § 1 of the European Convention on Human Rights and by Article 47 of the European Union Charter of Fundamental Rights, which grant everyone the right to a fair trial by an independent and impartial tribunal established by law.³⁹

36. The Venice Commission further recalls that, for the purposes of Article 6 § 1 of the Convention, the concept of a “tribunal” has an autonomous meaning. Therefore, “a tribunal need not be a court of law integrated with the standard judicial machinery [reference omitted], since a tribunal, within the meaning of Article 6 § 1, is characterised in the substantive sense of the term by its judicial function, that is to say, the determining of matters within its competence on the basis of rules of law and after proceedings conducted in a prescribed manner. It must also satisfy a series of requirements – independence, in particular of the executive, impartiality and guarantees afforded by its procedure – several of which appear in the text of Article 6 § 1 itself [reference omitted]”.⁴⁰

37. Moreover, the Court also considers as falling within the scope of Article 6 § 1 of the Convention proceedings which, in domestic law, come under the sphere of public law, but whose outcome is decisive for private rights and obligations, or which have direct and significant repercussions on an individual’s private pecuniary or non-pecuniary rights.⁴¹

38. In its Updated Rule of Law Checklist, the Venice Commission has stated that the right to a fair hearing under all international instruments and domestic constitutions requires that a case be heard by an independent and impartial tribunal. It has also emphasised that judges cannot uphold the Rule of Law if domestic law deprives them of adequate guarantees on matters directly touching upon their independence and impartiality.⁴²

39. Against this background, judges must be independent and impartial in their decision-making and capable of acting without any restriction, improper influence, pressure, threat or interference, direct or indirect, from any authority. Judicial independence implies freedom from both external and internal pressures. Judges must not be subject to political influence or

³⁸ Venice Commission, [CDL-AD\(2019\)004](#), Hungary - Opinion on the law on administrative courts and the law on the entry into force of the law on administrative courts and certain transitional rules, §§ 29, 111.

³⁹ Venice Commission, [CDL-AD\(2010\)004](#), Report on the Independence of the Judicial System – Part I: The Independence of Judges, § 13.

⁴⁰ See, for example, ECtHR, [Olujić v. Croatia](#), no. 22330/05, 5 February 2009, § 37.

⁴¹ ECtHR, [Denisov v. Ukraine](#) [GC], no. 76639/11, 25 September 2018, § 51; [Bilgen v. Turkey](#), no. 1571/07, 9 March 2021, § 65. Domestic proceedings which fall under public law, may, *inter alia*, have to do with permission to sell land (*Ringeisen v. Austria*, 1971, § 94), running a private clinic (*König v. Germany*, 1978, §§ 94-95), building permission (see, *inter alia*, *Sporrong and Lönnroth v. Sweden*, 1982, § 79), the establishment of a right of ownership, including in relation to a place of worship (*Lupeni Greek Catholic Parish and Others v. Romania* [GC], 2016, §§ 71-73), administrative permission in connection with requirements for carrying on an occupation (*Bentham v. the Netherlands*, 1985, § 36), a licence for serving alcoholic beverages (*Tre Traktörer Aktiebolag v. Sweden*, 1989, § 43), or a dispute concerning the payment of compensation for a work-related illness or accident (*Chaudet v. France*, 2009, § 30).

⁴² Venice Commission, [CDL-AD\(2025\)002](#), the Updated Rule of Law Checklist, Benchmark F.1 – Access to justice, Independence and impartiality of the judiciary, §§ 101-102.

manipulation, in particular by the executive, nor to directives or undue pressure from fellow judges.⁴³

40. In its judgment of *J.B. and Others v. Malta*, the Court found that the Immigration Appeals Board – one of Malta’s administrative tribunals – performed functions of a judicial nature but did not satisfy the requirement of independence. In particular, the Court noted the absence of a clear, transparent and merit-based appointment procedure for its members, as well as the lack of any mechanism to challenge appointments. The Court further held that the principle of irremovability could not compensate for these shortcomings, given the members’ short three-year terms of office, the possibility of reappointment, and the Minister’s power to dismiss members without adequate safeguards against the arbitrary exercise of that power.⁴⁴ Against this background, the Court called on the Government to introduce legislation ensuring that the Immigration Appeals Board complies with the requirements of independence and impartiality, having regard to the manner of appointment of its members, the duration of their terms of office, the existence of safeguards against external pressure, and the need for the body to present an appearance of independence.⁴⁵

41. Importantly, in that same judgment, the Court also held that the Convention requirements of independence and impartiality applicable to the appointment of judges also apply to the appointment of adjudicators who, while not holding the status of judges, perform comparable functions.⁴⁶

42. There is a degree of diversity in the methods for appointing judges in domestic legal orders. Recent Rule of Law developments have demonstrated that legal and political culture is not immutable and can change rapidly over time.⁴⁷ Whatever model is adopted, the appointment of judges should be a merit-based process. International standards increasingly favour the depoliticisation of judicial appointments to the greatest extent possible. Political considerations should not prevail over the objective merits of a candidate.⁴⁸ Notwithstanding, within the body responsible for the appointment of judges, a balance has to be struck between judicial members and non-judicial members, in order to avoid the negative effects of judicial corporativism.⁴⁹

43. Since *Campbell and Fell v. the United Kingdom*, the Court has consistently held that, in order to establish whether a tribunal can be considered as independent, a holistic assessment must be undertaken, and regard must be had to the manner of appointment of its members, to their term of office, the existence of guarantees against outside pressure and the question

⁴³ Venice Commission, [CDL-AD\(2025\)002](#), the Updated Rule of Law Checklist, Benchmark F.1 – Access to justice, Independence and impartiality of the judiciary, § 103; [CDL-AD\(2024\)006](#), Lebanon - Opinion on the draft law on the Administrative Judiciary, § 27; [CDL-AD\(2017\)002](#), Republic of Moldova - Amicus Curiae Brief for the Constitutional Court on the Criminal liability of judges, §§ 14-15; [CDL-AD\(2010\)004](#), Report on the Independence of the Judicial System – Part I: The Independence of Judges, § 56; Committee of Ministers Recommendation [CM/Rec\(2010\)12](#), § 22.

⁴⁴ ECtHR, *J.B. and Others v. Malta*, no. 1766/23, 22 October 2024, §§ 149-155.

⁴⁵ ECtHR, *J.B. and Others v. Malta*, no. 1766/23, 22 October 2024, § 167.

⁴⁶ ECtHR, *J.B. and Others v. Malta*, no. 1766/23, 22 October 2024, § 150.

⁴⁷ Venice Commission, [CDL-AD\(2025\)002](#), the Updated Rule of Law Checklist, § 19. Compare, [CDL-AD\(2023\)029](#), The Netherlands - Joint opinion of the Venice Commission and Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the legal safeguards of the independence of the judiciary from the executive power, § 10.

⁴⁸ Venice Commission, [CDL-AD\(2024\)006](#), Lebanon - Opinion on the draft law on the Administrative Judiciary, § 47.

⁴⁹ Venice Commission, [CDL-AD\(2025\)021](#), Chile - Opinion on the draft Constitutional amendments in respect of the judiciary, § 36; Republic of Moldova, [CDL-AD\(2018\)003](#), Opinion on the Law on amending and supplementing the Constitution (Judiciary), § 56. See also, [CDL-AD\(2010\)004](#), Report on the Independence of the Judicial System Part I: The Independence of Judges, §§32, 82.

whether the body presents an appearance of independence.⁵⁰ The Court has further held that, where a given tribunal does not itself meet the requirements of independence under Article 6 § 1 of the Convention, it is essential that its decisions be subject to subsequent review by a judicial body with full jurisdiction which itself satisfies the guarantees of Article 6 § 1.⁵¹

C. The Commission for Appointments and Discipline

1. Composition

44. In its Updated Rule of Law Checklist, the Venice Commission underscored that, when it comes to the manner of appointment and dismissal of judges, it is necessary to have a holistic view and to take into account the composition, mandate, and the method of appointment of members of a Judicial Council or equivalent body with responsibility for such matters. The independence of a Judicial Council, or of an equivalent body, must be guaranteed, as has been specified in recent jurisprudence of both the ECtHR and CJEU.⁵² Furthermore, the composition of such a body should be designed so as to prevent both politicisation and judicial corporatism.⁵³

45. Under draft Article 23A, the Commission for Appointments and Discipline (hereinafter, “the CAD”) is composed of “a chairperson being a retired judge or magistrate, and two members being Permanent Secretaries in office”. Both the chairperson and the members are appointed by the President of Malta acting on the advice of the Cabinet of Ministers.

46. The Venice Commission notes at the outset that the number of envisaged members is rather limited. It further notes that the Cabinet of Ministers would be directly involved in the appointment of members of the CAD, with what appears to be full discretion in the submission of proposals to the President of Malta.

47. During the country visit, the delegation was informed that Permanent Secretaries are senior civil servants responsible for the supervision of specific government departments. According to certain interlocutors, although formally part of the civil service, Permanent Secretaries allegedly operate, in practice, in a manner similar to senior political appointees, serving at the pleasure of the Minister and being subject to dismissal at ministerial discretion. The delegation was further informed that following changes of government, Permanent Secretaries are often reassigned. The Venice Commission delegation was told by the Ministry of Justice that Permanent Secretaries are senior civil servants who are not accountable to the relevant Minister, but rather to the Principal Permanent Secretary, who serves as head of the civil service in Malta. According to such officials, Permanent Secretaries were considered suitable for the composition of the CAD due to their institutional continuity, human resources expertise, and technical knowledge. The delegation was further informed that, in a small country such as Malta, the pool of available technical expertise is necessarily limited, which

⁵⁰ ECtHR, [Ramos Nunes de Carvalho e Sá v. Portugal](#) [GC], nos. 55391/13, 57728/13 and 74041/13, 6 November 2018, § 144; [Findlay v. the United Kingdom](#), no. 22107/93, 25 February 1997, § 73; [Campbell and Fell v. the United Kingdom](#), no. 7819/77; [7878/77](#), 28 June 1984, § 78. More recently, in [Guðmundur Andri Ástráðsson v. Iceland](#), [GC], No. 26374/18, 1 December 2020, §§ 231-234, the Court noted that, “in order to establish whether a court can be “independent” within the meaning of Article 6 § 1, regard must be had, inter alia, to the manner of appointments of its members (see, for instance, [Ramos Nunes de Carvalho e Sá](#), cited above, § 144) which (...) pertains to the domain of the establishment of a “tribunal”. Accordingly, while they each serve specific purposes as distinct fair trial guarantees, the Court discerns a common thread running through the institutional requirements of Article 6 § 1, in that they are guided by the aim of upholding the fundamental principles of the rule of law and separation of powers”.

⁵¹ ECtHR, [Albert and Le Compte v. Belgium](#), no. 7299/75; 7496/76, 10 February 1983, § 29; [Ramos Nunes de Carvalho e Sá v. Portugal](#) [GC], nos. 55391/13, 57728/13 and 74041/13, 6 November 2018, § 132.

⁵² Venice Commission, [CDL-AD\(2025\)002](#), the Updated Rule of Law Checklist, Benchmark F.1 – Access to justice, Independence and impartiality of the judiciary, § 105.

⁵³ Venice Commission, [CDL-AD\(2025\)002](#), the Updated Rule of Law Checklist, Benchmark F.1 – Access to justice, Independence and impartiality of the judiciary, § 108.

makes the inclusion of Permanent Secretaries both relevant and, in the view of the authorities, necessary.

48. In the Venice Commission's view, a certain institutional link with the executive may be justified in light of the nature of the mandate of administrative tribunals. Such a link, however, should not be predominant, as the decisive requirement remains the overall independence and impartiality of these adjudicatory bodies, including the appearance thereof.

49. In this context, the Venice Commission notes that while Permanent Secretaries are formally part of the civil service and not political appointees, it appears that their position is embedded within a hierarchical chain leading to the Principal Permanent Secretary, who in turn acts under instructions from the Prime Minister.⁵⁴ This gives rise, at the very least, to an appearance that such officeholders would operate within a framework that is not fully insulated from executive influence. In a previous opinion, the Venice Commission has also noted that the Prime Minister may retain some influence in the appointment of Permanent Secretaries, notwithstanding the fact that the appointment decision is ultimately made by the Public Service Commission.⁵⁵

50. The Commission observes that draft Article 23A(1) introduces a recusal rule whereby a Permanent Secretary who is a member of the Commission may not participate in its work where the appointment procedure under consideration concerns the selection of members of an administrative tribunal falling under the responsibility of the Ministry to which that Permanent Secretary is assigned. Yet, this rule could be insufficient if it is understood as being limited to appointment procedures and as not extending to disciplinary proceedings or removal, which are not specifically mentioned in this provision. Moreover, it does not cover situations involving Permanent Secretaries other than the one directly responsible for the relevant Ministry, who may nevertheless have previously served within, or otherwise have links to, the Ministry concerned.

51. Against this background, the Venice Commission considers that the inclusion of a majority of Permanent Secretaries within its composition, in combination with the direct involvement of the Cabinet of Ministers in the appointment of members of the CAD, gives rise to concerns in light of the stated objective of the envisaged reform, namely that of strengthening the independence and impartiality of administrative tribunals – both in substance and in appearance.

52. The Venice Commission considers that a range of institutional options could be considered by the Maltese authorities with regard to the composition of the CAD, in order to strike an appropriate balance between the need for expertise in administrative law matters and day-to-day administrative practice, and the requirement of sufficient distance from the executive. In view of the very limited number of members foreseen by the amendments, an option could be to expand the composition to more than three members while keeping an odd number. This would have the benefit of reducing the risk that Permanent Secretaries would dominate decision-making. Additional members without links to the executive could be included. In this regard, consideration could be given, for example, to taking inspiration from the *ex officio* category of members - composed of independent figures- within in the Judicial Appointments

⁵⁴ See Articles 92(3) and 92(5) of the [Constitution of Malta](#) and Article 14(3) of the [Public Administration Act](#). It is further observed that the Principal Permanent Secretary is appointed by the President of Malta on the advice of the Cabinet of Ministers and after consultation with the Public Service Commission. Furthermore, although Permanent Secretaries are formally appointed and may be removed by the President acting on the advice of the Public Service Commission, the latter is required to take into account the prior recommendation of the Principal Permanent Secretary. Taken together, these elements suggest a model in which Permanent Secretaries retain formal civil service status but operate within a structure that is not fully insulated from executive influence.

⁵⁵ Venice Commission [CDL-AD\(2020\)006](#), Malta - Opinion on proposed legislative changes, §§ 70-72.

Committee.⁵⁶ This would mean that the composition of the CAD might be - partly at least - established *ex officio*, without the need for intervention by the Cabinet of Ministers for such members.

53. Alternatively, if the authorities would decide to retain the participation of Permanent Secretaries, their number could be decreased from two to one. Another option is that they could participate in the CAD, but without being given a vote. There are also alternative solutions for ensuring that the CAD has sufficient technical or sector-specific expertise for the assessment of candidates. For example, one could instead co-opt external experts to the CAD. The Commission recalls that it is for the Maltese authorities to determine the most appropriate way forward, ensuring an appropriate balance between independence, impartiality and effectiveness.

54. Lastly, the Venice Commission recommends that the decision-making procedure within the CAD be clarified, either in the legislation itself or through regulations to be adopted by the Commission.

2. Human and financial resources

55. Under the draft amendment, the CAD would be supported by a secretary responsible for its administrative functions. This secretary would be appointed by the Minister for Justice and would have no decision-making power or voting rights.⁵⁷ Furthermore, the draft provides for the establishment of a dedicated office within the Ministry for Justice to provide administrative support to the CAD and to advise the Government on matters relating to the work of administrative tribunals.⁵⁸ The draft amendment contains no details regarding the financial independence or budgetary arrangements of the CAD. During the country mission, officials from the Ministry of Justice informed the delegation that a separate budget and dedicated staff would not be appropriate for the CAD, given its limited workload and the fact that it would not even have full-time staff.

56. Although the secretary would have no formal decision-making power in appointment, disciplinary and removal decisions adopted by the CAD, the Venice Commission notes that this officeholder would be responsible for the CAD's administrative functions, which would entail access to files and other organisational and logistical information. Seen in conjunction with the administrative support to be provided by an office embedded within the Ministry of Justice, and the apparent absence of own financial resources, the Venice Commission considers that this arrangement is susceptible to give rise, at the very least, to an appearance of dependence on the Ministry of Justice and to a risk of indirect ministerial control over the CAD.

57. Notwithstanding, in view of the central role envisaged for the CAD in the appointment of members of administrative tribunals, the Venice Commission recommends that the Maltese authorities explore alternative arrangements for its human and financial resources. One possibility could be to allow the CAD to share administrative staff and resources with the Commission for the Administration of Justice.⁵⁹ However, any shared secretariat arrangement should ensure that the staff assigned to the CAD have sufficient working time, resources and functional autonomy to support the CAD effectively, and are not subject to instructions from the Ministry of Justice in relation to the CAD's work. Alternatively, the CAD could be enabled to establish its own secretariat and be provided with the necessary financial resources to carry

⁵⁶ According to Article 96A(1) of the [Constitution of Malta](#), the Judicial Appointments Committee is composed by the Chief Justice, two judges, one magistrate, the Auditor General, the Commissioner for Administrative Investigations (Ombudsman) and the President of the Chamber of Advocates.

⁵⁷ Draft Article 23A(5), [CDL-REF\(2026\)026](#).

⁵⁸ Draft Article 23H, [CDL-REF\(2026\)026](#).

⁵⁹ Article 101A ff of the [Constitution of Malta](#).

out its functions. It is, however, for the Maltese authorities to determine the most appropriate option ensuring that the CAD operates effectively, while avoiding any appearance of dependence on the Ministry of Justice.

D. The appointment procedure

1. Scope of the reform

58. The Commission notes that, as currently drafted, draft Article 23(C) appears to apply only to the administrative tribunals whose members are appointed by the respective Minister. In the view of the Venice Commission, it is unclear whether the provision also extends to the administrative tribunals whose members are appointed by the President of Malta acting on the advice of the Prime Minister.

59. In addition, the Venice Commission notes that the new appointment mechanism would not apply to all the administrative tribunals included in the First Schedule of the AJA, but only to the tribunals included in the Fourth Schedule to the draft amendment, which was left blank at the time the Venice Commission was requested to prepare the present opinion.⁶⁰ However, during the country visit, the Venice Commission delegation was informed by the Ministry of Justice that 13 administrative tribunals are intended to be included in the Fourth Schedule.⁶¹ Taking this additional information into account, the Venice Commission observes in particular that the ART, an administrative tribunal competent to adjudicate on several areas of administrative law, including tax matters, and identified by several interlocutors as highly active and relevant, is not included in that list.

60. The Venice Commission notes with regret that no clear criteria have been provided to justify the fact that the reform does not extend to all the administrative tribunals included in the First Schedule to the AJA. The reasons which led the authorities to include or exclude certain tribunals from the draft Fourth Schedule are likewise unclear. In the Commission's view, such a limited application of the reform would mean that the majority of existing administrative tribunals in Malta would not be covered by the new appointment regime.⁶²

61. Lastly, the Venice Commission observes that the draft amendment contains a very broad clause empowering the Prime Minister, by regulations, to amend the Fourth Schedule, or the legislation listed therein, in order to extend the application of the provisions on appointment, discipline and removal to additional administrative tribunals.⁶³ During the country visit, the delegation was informed that such clauses form part of the British common law tradition, and that it is not uncommon for primary legislation to be amended, in certain limited circumstances, by regulations adopted by the executive.

62. The Venice Commission considers that a more generalised application of the reform would constitute an important step towards strengthening the independence and impartiality of all administrative tribunals in Malta. It therefore encourages the authorities to consider a possible expansion of the scope of the reform. At a minimum, the Commission recommends the

⁶⁰ Draft Article 23F(1), [CDL-REF\(2026\)026](#).

⁶¹ According to a note received from the Ministry of Justice on 26 June 2026, the current intention of the Government is to include the following 13 administrative tribunals in the Fourth Schedule: the Environment and Planning Review Tribunal, the Consumer Claims Tribunal, the Commercial Sanctions Tribunal, the Industrial Tribunal, the Information and Data Protection Appeals Tribunal, the Patents Tribunal, the Police Licences Appeals Tribunal, the Prison Appeals Tribunal, the Building and Construction Tribunal, the International Protection Appeals Tribunal, the Inheritance Partition Tribunal, the Small Claims Tribunal and the Financial Services Tribunal.

⁶² It is observed that the First Schedule to the [Administrative Justice Act](#) enumerates more than 40 administrative tribunals.

⁶³ Draft Article 23E, [CDL-REF\(2026\)026](#). See also, in this regard, Venice Commission, [CDL-AD\(2025\)002](#), The Updated Rule of Law Checklist, Benchmark II.A.5 -Law-making powers of the executive.

establishment of clear and objective criteria for determining which tribunals should fall within its scope.

2. Overview of the changes

63. The Venice Commission recalls that under the system currently in place in Malta, appointments of members of administrative tribunals are made by the President of Malta on the advice of the Prime Minister or directly by the sectoral minister, without any structured assessment process, uniform eligibility criteria, or a requirement for a public call for applications.

64. The Commission notes that with the establishment of the CAD, the draft amendment aims to introduce a uniform appointment procedure for members of the administrative tribunals, albeit only for those to be listed in the Fourth Schedule. While the President of Malta formally retains the power of appointment, this power would be exercised on the basis of the prior advice of the CAD,⁶⁴ which would formulate its advice following a public call for applications.⁶⁵ Furthermore, before advising on any appointment, the CAD would be required to verify that candidates possess integrity and a good reputation, adequate competence and experience, the ability to act independently and impartially, and freedom from any actual or apparent conflict of interest.⁶⁶ The CAD would also be required to ensure that candidates do not fall within any of the established grounds of ineligibility.⁶⁷

65. In addition, tribunal members would be barred from practising their profession before the tribunal to which they are appointed.⁶⁸ Appointments would generally be made for a fixed term of five years, with the possibility of renewal for only one additional term, provided the individual successfully reapplies through a new open call.⁶⁹ During the country visit, the majority of stakeholders expressed the view that the possibility of a single reappointment following a new competitive procedure is beneficial, as allowing a single mandate would reduce the pool of qualified candidates, particularly in a small jurisdiction such as Malta. The Commission considers it important to keep this limitation to one additional term in the draft amendment in case the Maltese authorities decide to maintain the possibility of a renewal.

66. The Commission further notes that draft Article 23D(2) would ensure the financial security for members of administrative tribunals, as their remuneration would constitute a direct charge on the Consolidated Fund (i.e., the central government account), would not be mediated by a ministry, and would not “during the time the chairperson of member remains in office, be altered to his advantage”.

67. In view of the above, the Venice Commission considers that these changes constitute a positive first step in introducing increased transparency, uniformity and objectivity in the appointment process of members administrative tribunals, as well as standardised terms of office. These are clear improvements in the applicable legal regime. Nevertheless, certain shortcomings remain, which will be addressed below.

⁶⁴ Draft Article 23C(1), [CDL-REF\(2026\)026](#).

⁶⁵ Draft Article 23C(2), [CDL-REF\(2026\)026](#).

⁶⁶ Draft Article 23C(3), [CDL-REF\(2026\)026](#).

⁶⁷ Under draft Article 23D(1), [CDL-REF\(2026\)026](#), individuals who are members of the House of Representatives or local councils, undischarged bankrupts, or persons convicted of specified criminal offences under the Criminal Code would be ineligible for appointment.

⁶⁸ Draft Article 23D(3), [CDL-REF\(2026\)026](#).

⁶⁹ Draft Article 23D(4), [CDL-REF\(2026\)026](#).

3. Selection and appointment procedure

68. While the introduction of a public call for candidates, together with enumerated selection criteria,⁷⁰ constitute a positive step, the Venice Commission considers some of these criteria could be further elaborated or made more concrete, in particular the requirement of “adequate competence and experience in the relevant field”.

69. In the Venice Commission’s opinion, the draft amendments should emphasise that the new appointment process is merit-based, allows for an interview stage, where appropriate, and requires that the final decision be reasoned. Rules on the assessment methodology, interview procedures, and publication of results could be set out - either directly in the amendment or through internal rules to be swiftly adopted by the CAD, following its establishment – in order to limit the CAD’s discretion and enhance the transparency of the selection process. In addition, candidates should be provided with a remedy to challenge the outcome of the appointment procedure.

70. The Commission additionally notes that the draft amendment lacks clarity regarding the outcome of the selection process, as it does not specify whether, at the conclusion of the procedure, the CAD will recommend a set of candidates, or a single candidate, to the President. The Venice Commission considers in this regard that it would be preferable to recommend a single candidate, rather than a shortlist, to the President.

71. Lastly, it would also be important to clarify the precise meaning of the expression “acting on the advice of the Commission” contained in draft Article 23C(1). During the country visit, certain interlocutors stated that, in Maltese constitutional practice, this expression implies that the decision-maker - in this case, the President of Malta - has no discretion and may not depart from the advice given. Other interlocutors took the view that it allows the President a degree of discretion in relation to the appointment of the candidate(s) being proposed by the recommending body. The Venice Commission therefore recommends that the draft amendment expressly clarify whether the President is bound by the CAD’s advice.

E. The disciplinary procedure and removal from office

1. Overview

72. The Venice Commission recalls that disciplinary proceedings against judges based on the rule of law should correspond to certain basic principles, which include the following: the liability should follow a violation of a duty expressly defined by law; there should be fair trial with full hearing of the parties and representation of the judge; the law should define the scale of sanctions; the imposition of the sanction should be subject to the principle of proportionality; there should be a right to appeal to a higher judicial authority.⁷¹

73. Under the draft amendment, the CAD would have discretion to impose disciplinary sanctions on members of administrative tribunals, which must be proportionate and applied in accordance with the principles of natural justice.⁷² Furthermore, removal from office may occur on the grounds of inability to perform the required functions or misbehaviour. Such removal would be effected by the President acting on the advice of the CAD.⁷³ Both disciplinary and removal decisions would be subject to appeal before the Court of Appeal.⁷⁴

⁷⁰ Draft Articles 23C(2) and 23C(3), [CDL-REF\(2026\)026](#).

⁷¹ Venice Commission, [CDL-AD\(2016\)009](#) Final Opinion on the revised draft constitutional amendments on the Judiciary (15 January 2016) of Albania, § 34.

⁷² Draft Article 23I(2), [CDL-REF\(2026\)026](#).

⁷³ Draft Article 23I(1), [CDL-REF\(2026\)026](#).

⁷⁴ Draft Article 23I(3), [CDL-REF\(2026\)026](#).

74. The Venice Commission notes at the outset that the draft amendments appear to establish uniform rules governing both disciplinary procedures and removal from office of members of administrative tribunals, thereby seemingly replacing a dispersed and fragmented set of provisions and, in some instances, filling lacunae in existing legal frameworks. What is more, both disciplinary and removal decisions would be subject to appeal to the Court of Appeal, which would undoubtedly strengthen the safeguards available to members subject to such decisions. The Commission finds that these changes constitute a positive first step towards strengthening the security of tenure of members of administrative tribunals and enhancing their accountability, while also providing for a judicial remedy against disciplinary and removal decisions. Nevertheless, certain shortcomings remain, which will be addressed below.

2. Removal from office

75. The Commission observes that under the draft amendment, chairpersons and member of administrative tribunals may be removed from office on the grounds of “inability to perform the duties of the office” or “misbehaviour”.⁷⁵ While the first ground is specified as incapacity arising from bodily or mental infirmity or any other cause, the term “misbehaviour”, as a ground for removal from office, remains undefined. The Commission considers that this term is overly broad in the context of such a serious sanction and would benefit from further clarification and specification. Furthermore, the procedural stages for removing a member from office, as well as the applicable procedural guarantees, should be further elaborated and clarified, either in the law or in internal rules to be swiftly adopted by the CAD, following its establishment.

76. Draft Article 23I(1) employs the expression “notwithstanding what is provided in any other law”. During the country visit, the delegation was informed that this wording is intended to ensure that the removal procedure established by the draft amendment applies irrespective of any conflicting removal provisions contained in sector-specific legislation. Consequently, draft Article 23I(1) would apply to any person appointed as chairperson or member of an administrative tribunal, regardless of whether the relevant tribunal is listed in the Fourth Schedule. The Venice Commission welcomes this harmonisation of the procedures and grounds applicable to removal decisions of members of administrative tribunals.

3. The disciplinary procedure

77. The Venice Commission firstly notes that it is unclear whether the disciplinary procedure established by the draft amendment is intended to apply to all administrative tribunals or only to those listed in the Fourth Schedule, as draft Article 23I(2) does not contain the “notwithstanding” clause referred to in the preceding paragraph. The Commission therefore encourages the Maltese authorities to clarify this aspect in the legislation.

78. The Venice Commission further recommends that certain aspects underpinning the disciplinary procedure be clarified or further elaborated. Firstly, it would be important to ensure, - either in legislation or in internal rules to be swiftly approved by the CAD, following its establishment - that the investigative function is clearly separated from the decision-making function. In practice, this would imply that the member of the CAD responsible for investigating an alleged breach of disciplinary duties should not participate in the decision on the imposition of the disciplinary sanction, which should instead be taken by the remaining members of the CAD. Secondly, the Venice Commission finds that the brief reference to a “process that respects the principles of natural justice”⁷⁶ does not sufficiently concretise the procedural stages or the applicable procedural guarantees for members of administrative tribunals subject to disciplinary procedures. In this respect, these elements should be further elaborated and clarified in the law or in internal rules to be adopted by the CAD.

⁷⁵ Draft Article 23I(1), [CDL-REF\(2026\)026](#).

⁷⁶ Draft Article 23I(2), [CDL-REF\(2026\)026](#).

79. Lastly, irrespective of which administrative tribunals will fall within the scope of the envisaged disciplinary procedure, the Commission recommends including a transitional provision similar to that provided for the new appointment regime,⁷⁷ specifying the temporal scope of application of the new disciplinary regime.

4. The case of sitting judges and magistrates as chairpersons

80. During the country visit, the delegation was informed that certain administrative tribunals are chaired by sitting judges and magistrates. It was further explained that, within the Maltese legal order, the assignment of judges and magistrates is within the authority of the Chief Justice.⁷⁸ In this regard, where appointments to administrative tribunals are to be made and the chairperson is a sitting judge or magistrate, the concurrence of the Chief Justice is required.

81 The Commission was informed that sitting judges and magistrates fall under the constitutionally competent body entrusted with enforcing disciplinary standards in respect of judges, namely the Committee for Judges and Magistrates.⁷⁹ The Commission thus recommends to clarify which administrative tribunals are intended to fall within the scope of the present reform (see paragraph 77 above) and provide for specific provisions regarding tribunals where sitting judges and magistrates serve as chairpersons.

F. The Code of Ethics

82. Under the draft amendment, the Minister for Justice may, by regulations, adopt a Code of Ethics regulating the ethics and discipline of chairpersons and members of administrative tribunals. This Code of Ethics is intended to be included in the Fifth Schedule to the revised AJA and would be enforced by the CAD.⁸⁰ The draft Code of Ethics currently included in the draft amendment establishes rules on professional competence and diligence, integrity and dignity in office, impartiality and non-discrimination, the proper exercise of adjudicative functions, and the avoidance of conflicts of interest through mandatory recusal in specified circumstances.⁸¹

⁷⁷ Draft Article 23F(1), [CDL-REF\(2026\)026](#).

⁷⁸ Under Article 101A(13) of the [Constitution of Malta](#), the powers of the President of Malta concerning both the subrogation and the assignment of duties of judges and magistrates “shall be exercised on the recommendation of the Chief Justice”. According to Article 11(1) of the [Code of Organisation and Civil Procedure](#), the “President of Malta shall assign to each of the judges his duties by assigning to him the court or the chamber of the court or section in which he is to sit ordinarily, and may transfer a judge from one court or chamber or section of a court to another”. Moreover, under Article 11(4) of the same Code, “[w]hensoever any judge is challenged or otherwise lawfully impeded, the Chief Justice shall assign another judge to take cognizance of the case”. Lastly, under Article 11(9), “[w]here any dispute arises as to whether a case or other judicial act is to be assigned to one judge or to another judge sitting in the same court or in the same chamber or section of a court (...), the matter shall be referred to the Chief Justice who shall, *in camera*, determine the judge or chamber or section to which the case or judicial act shall be assigned”.

⁷⁹ Article 101B of the [Constitution of Malta](#).

⁸⁰ Draft Article 23G(2), [CDL-REF\(2026\)026](#).

⁸¹ Fifth Schedule, [CDL-REF\(2026\)026](#). Under Article 6 of the draft Code of Ethics, adjudicators of administrative tribunals shall abstain from carrying out their functions in circumstances where (i) they have personal prejudice against any party or have a personal dispute with that party's advocate; (ii) they have personal knowledge of facts in issue before them; (iii) they were involved as advocates in the matter in issue before them; (iv) they or any of their trustees have an economic interest in the subject-matter of the case or have any economic interest in any entity that is a party to the case; (v) they know that their spouse, parents or children, or any member of their family residing in the same household, has an economic interest in the subject-matter of the controversy; (vi) a person related to them or to their spouse up to the third degree, or the spouse of such person, is a party to the proceedings or is an officer, director or trustee of a party to the proceedings, or the adjudicator knows that such person is likely to be a material witness in the proceedings, or the adjudicator knows that such person has an interest greater than a de minimis interest that could be substantially affected by the proceedings.

83. During the country visit, the delegation was informed that ministerial adoption of the Code of Ethics means that both its initial adoption and any subsequent amendments depend solely on the discretion of the Minister. While the delegation was further told that such a legislative mechanism is not unusual in the context of the Maltese legal order, it was also noted that the Code of Ethics currently applicable to the judiciary was adopted through a participatory process, which gathered input from the relevant stakeholders.

84. In this context, the Venice Commission has previously recommended that magistrates and their professional associations be involved in the development and updating of ethical guidelines for judges and has emphasised the importance of ensuring a comprehensive and inclusive approach to their elaboration.⁸²

85. The Venice Commission therefore recommends that the Code of Ethics be prepared following a consultation process involving the members of the administrative tribunals, and other relevant stakeholders.

86. Furthermore, the Commission notes that under draft Article 23I(4), the CAD would be competent to enforce the Code of Ethics only in relation to administrative tribunals listed in the Fourth Schedule. This would imply that several administrative tribunals would benefit from reduced guarantees of impartiality. Against this background, the Venice Commission recommends extending the applicability of the Code of Ethics to all administrative tribunals.

87. Lastly, although the draft Code of Ethics strengthens the framework on conflicts of interest, it does not fully address situations in which members of administrative tribunals who are practising lawyers regularly represent parties before other administrative tribunals and act for or against public authorities or regulated entities. Moreover, it is inappropriate for a tribunal member to sit in a particular case where one of the litigants is a person whom the member has previously represented, currently represents, or regularly represents, as an advocate, as this may give rise to perceptions of partiality or conflict of interest. The conflict-of-interest framework contained in the Code of Ethics should therefore be broadened to cover such situations, while ensuring that tribunals are composed with sufficient flexibility to continue functioning effectively where recusals become necessary.

VI. Conclusion

88. On 12 May 2026, Mr Jonathan Attard, Minister for Justice and Reform of the Construction Sector of Malta requested an urgent opinion of the Venice Commission of the Council of Europe on a draft amendment to the Administrative Justice Act ([CDL-REF\(2026\)026](#)).

89. In his letter, the Minister stated that the envisaged reform constituted a key component of the commitments undertaken by the Government of Malta within the framework of the Malta's Recovery and Resilience Plan.

90. The draft amendment aims to strengthen the independence, impartiality and integrity of Malta's specialised administrative tribunals by establishing a dedicated Commission for Appointments and Discipline, harmonising the rules governing the appointment, disciplining and removal of members of administrative tribunals, and introducing a Code of Ethics with clear conflict-of-interest rules.

⁸² Venice Commission, [CDL-AD\(2024\)004](#), Bulgaria - Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on The Code of Ethical Conduct for Judges, § 53; CDL-AD(2022)022, Bulgaria - Opinion on the draft amendments to the Judicial System Act concerning the Inspectorate to the Supreme Judicial Council, § 34.

91. This urgent opinion focuses on the amendments proposed to the Administrative Justice Act, in particular the introduction of new Parts IVA and IVB, which set out provisions governing the appointment, terms of office, and the disciplinary and ethical frameworks applicable to the members of administrative tribunals. It is not within the scope of the urgent opinion to review the existing administrative system as a whole, nor to assess the desirability of the envisaged reform, as such a determination falls within the sovereign prerogative and the margin of political discretion enjoyed by the Maltese authorities.

92. The Venice Commission recalls that open, transparent and meaningful public debates are an important element of democratic law-making and encourages the Maltese authorities to engage in such consultations in the following phases of the reform.

93. The Venice Commission welcomes that the Maltese government have embarked on a process of reform of the administrative tribunals system that goes in the right direction. The changes envisaged in the appointment of members of administrative tribunals constitute a positive step towards a more transparent, merit-based and objective appointment system, underpinned by the introduction of public calls for applications and more uniform selection and eligibility criteria. The reform also introduces more standardised terms of office, clearer conflict-of-interest rules, and generalised grounds for removal, as well as a right of appeal to the Court of Appeal against disciplinary and removal decisions. In the view of the Commission, these aspects strengthen safeguards for the security of tenure of members of administrative tribunals and enhance their accountability, while ensuring recourse to judicial remedy.

94. The Venice Commission nevertheless notes that certain shortcomings persist and should be addressed. In this context, the Commission makes the following key recommendations:

1. The authorities should ensure, at a minimum, that clear and objective criteria are established for determining which administrative tribunals are to be included in Fourth Schedule to the revised Administrative Justice Act and thereby brought within the scope of the envisaged reform.
2. The composition of the Commission for Appointments and Discipline should be increased and revised in order to reduce the appearance of overall influence of the executive. In particular, if maintained, the number or role of Permanent Secretaries should be reduced. The decision-making procedure of the Commission should also be specified.
3. Alternative arrangements for the human and financial resources of the Commission for Appointments and Discipline should be considered, ensuring that it is endowed with the necessary autonomy to discharge its functions effectively, while avoiding any appearance of dependence on the Ministry of Justice.
4. The draft amendment should emphasise that the new appointment process is merit-based, allows for an interview stage, where appropriate, and requires that the final decision be reasoned. In addition, rules on the assessment methodology, interview procedures, and publication of results should be specified. The recommendation of a single candidate, rather than a shortlist, is preferable. The draft amendment should further clarify whether the President is bound by the CAD's advice.
5. In the context of the procedure for removal from office, the term "misbehaviour" should be further specified, and the applicable procedural stages and guarantees should be further elaborated.
6. In the context of the disciplinary procedure, it should be clarified which administrative tribunals fall within the scope of the reform. In addition, the procedure should ensure a clear separation between investigative and decision-making functions, and further detail should be provided regarding the applicable procedural stages and safeguards.
7. The Code of Ethics should be prepared following a participatory consultation process with the relevant stakeholders and its applicability should be extended to all

administrative tribunals. Furthermore, broader conflict-of-interest rules should be included therein.

95. The Venice Commission considers that a more generalised application of the reform would constitute an important step towards strengthening the independence and impartiality of all administrative tribunals in Malta. It therefore encourages the Maltese authorities to consider a possible expansion of the scope of the envisaged reform. Furthermore, in the longer term, the Commission encourages the Maltese authorities to engage in a broader reform of administrative justice in Malta.

96. On 21 July 2026, within the framework of the preparation of this urgent opinion, the Maltese authorities provided a set of proposed amendments designed to respond to the Commission's above recommendations. The Commission welcomes the readiness of the Maltese authorities to take account of its recommendations. On a preliminary assessment, the proposed amendments appear to address several important concerns raised in the draft urgent opinion and represent a significant step in the right direction, in particular as regards the composition and operational autonomy of the CAD and the introduction of a competitive merit-based appointment procedure. As the Maltese authorities recognise, further analysis of the administrative justice system will be required, especially as regards the objective criteria for determining the scope of the reform, the relationship between the relevant Schedules, the lack of a definition of "misbehaviour" and the extent to which the disciplinary and ethical regimes will apply to all administrative tribunals concerned, and that analysis should review how these current reforms operate in practice.

97. The Venice Commission remains at the disposal of the Maltese authorities for further assistance in this matter.