

ANNUAL REPORT 2021

PARLIAMENTARY OMBUDSMAN MALTA



OMBUDSMAN

for the period

JANUARY - DECEMBER 2021

Presented to the House
of Representatives Malta
pursuant to Section 29 of the
Ombudsman Act, 1995





OMBUDSMAN

OMB/6/9/25

May 2022

The Honourable Dr Angelo Farrugia
President of the House of Representatives
Parliament of Malta
Freedom Square
Valletta



Mr Speaker

In terms of Section 29 of the Ombudsman Act 1995, I am hereby submitting the Annual Report concerning the performance of the Office of the Ombudsman for the period January to December 2021.

The Annual Report includes an oversight of the activities and initiatives taken during that year as well as relevant data regarding the conduct of the investigation of complaints. It also includes reports by the Commissioners for Education, Health and Environment and Planning covering the same period.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Anthony C. Mifsud'.

Anthony C. Mifsud
Parliamentary Ombudsman

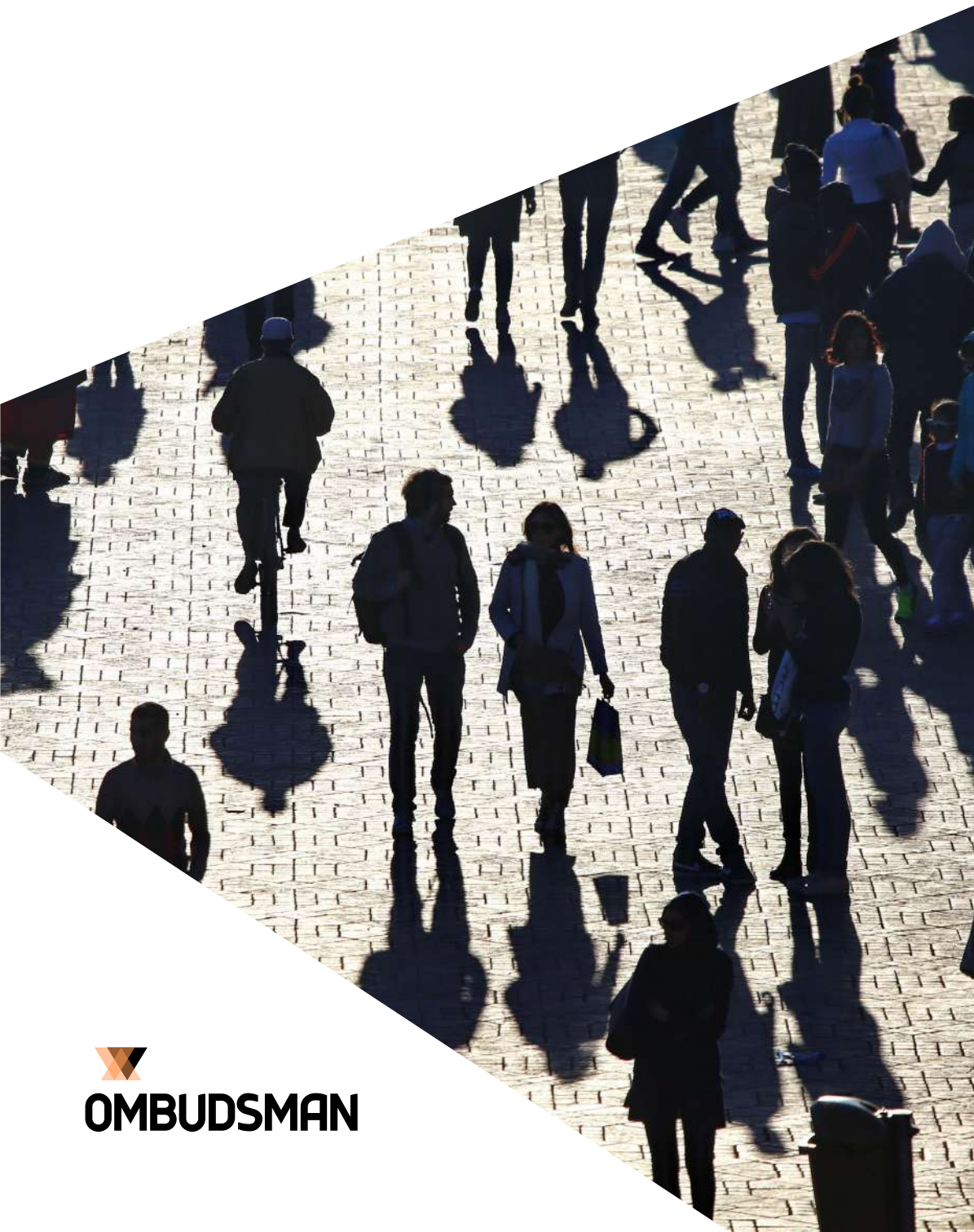
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Parliamentary Ombudsman

ANNUAL REPORT 2021



A YEAR IN TRANSITION AND UNCERTAINTY

2021 has been widely qualified as a year in which the country had to face a number of serious challenges in a time of transition that inevitably generated a sense of insecurity and uncertainty on many fronts. A feeling that can best be described by the graphic narrative of the President of Malta in his Republic Day address to the nation on 13 December. A wide-ranging speech in which he rightly identified the core issues that the country had to face and tackle during the year. Issues that were not only a cause of grave concern to the wellbeing of the population, but also related to matters of good governance and institutional failures that still need to be addressed.

His specific reference to the Office of the Ombudsman deserves particular attention, in so far as it highlighted the failure of the legislative mechanism meant to ensure a smooth and timely appointment of a new Parliamentary Ombudsman when the need arises.

President's opening reflections

In his opening reflections the President understandably focused on the COVID-19 pandemic that during the year wreaked havoc in the everyday lives of citizens and created unprecedented situations to which the country had to adapt and possibly solve as they developed.

The President paid tribute to the professionals and frontliners who through their dedication, hard work and at great personal sacrifice helped see the country through those difficult times. This Office echoes the sentiments of the President. It recognizes that their outstanding services, often beyond the limits of their line of duty, deserve to be better appreciated and remunerated.

Last year's annual report ended on a note of optimism that reflected a situation in which the COVID-19 appeared to have been brought under control and this in line with official statements that the pandemic had been overcome. This was however not to be. Indeed, by the end of the year under review the spread of the virus had not yet been checked and in the President's words "*it would be premature for anyone to make any predictions about the future*".

Living with COVID-19

Like the rest of the country the Office of the Ombudsman had to learn to live with the new reality brought about by the pandemic. While it is true that government departments and authorities were mostly in a position to continue to provide their services to citizens remotely through efficient and effective means of communication now widely in use, it is not correct to maintain that everything was business as usual. Nor can it be said that COVID-19 had not impacted negatively on the performance of the Office of the Ombudsman and on the accessibility aggrieved citizens should have to the services it provides.

Understandably, the Office experienced a decrease in the number of complaints. This could have been due to a variety of factors including that with a general election well in sight, customer care units in government departments, entities and authorities tend to become more sensitive to grievances and do their best to satisfy voters' demands and wishes. Undoubtedly however during the year, one could perceive a growing concern among citizens on the dangers that COVID-19 presented. One could sense that protecting one's health rather than pursuing pretended rights took precedence in people's minds.

Moreover, as in the previous year, the Office strictly adhered to protocols issued by the health authorities laying down measures meant to contain the spread of the virus, including severe limitations on public access to the provision of its services. The Office kept a number of measures in place including operating on a reduced scale with all personnel working from home on a roster basis. This ensured that the essential services offered by the Office remained available at all times, except of course when it followed directives for a complete lock-down.

The Office needed to adapt to this new normality once the indications were that the end of the pandemic was not in sight and that it would remain with us for some time. Communication with complainants, government departments, entities and authorities was and still is being carried out mostly through electronic means. When there was goodwill this proved to be in certain respects prompt, efficient and less time consuming.

On the other hand, one needs to appreciate that during the process of the investigation of complaints, the interviewing of complainants and witnesses necessary to establish the facts of a case is often a determining factor on which its resolution depends. Here the best results can only be achieved through personal contact and face to face discussions.

Often the resolution of complaints hinges on the successful outcome of a mediation process in which investigating officers and the Commissioners strive to convince both complainants and the public authorities involved whether the complaint was justified and if so, how the injustice should be redressed. The informative

phase of the investigative process in which the complainant is made aware of the circumstances that gave rise to his complaint and the reasons why the authorities acted in his regard in the way they did, was often a crucial and determining moment in the Inquiry. It is during that exploratory phase that the parties become aware of objective, factual elements that convince them whether the administrative decision complained of was unreasonable, unjust or simply wrong.

The pandemic that has conditioned the country's life throughout the year, has had some beneficial side effects which would continue to change work practices and social behaviour even after it is declared to have morphed into an endemic disease. These positive changes should not however be allowed to curtail or negatively impact the desired level of human contact and direct personal exchanges that remain the heart and soul of social communication. Within the limitations imposed by the health authorities that one augurs should be watered down to a minimum next year, the Office will continue to foster a healthy dialogue between aggrieved citizens and the public administration, not excluding direct personal contact whenever this was necessary and possible.

All investigations require timely and correct information

The Ombudsman has always maintained that during the investigation of individual complaints as well as those conducted on his own initiative it remains a core role of his Office to create and maintain bridges between the citizen and the public administration. This role can only be effectively exercised through the timely and correct exchange of information on administrative decisions that directly affect aggrieved citizens and the country at large. It is for this reason that the Ombudsman has been highlighting not only the right of the citizen to be informed by the public administration on matters that directly concern him, but also and perhaps more importantly, on the duty of the organs of the State and the public administration generally to provide such information.

Regrettably, there is a growing perception that this duty is not generally adequately recognized by the public administration. Instances of failure to provide such information to which the public is entitled abound at a level which is not acceptable in a modern, democratic society that really values the fundamental right of freedom of expression. It remains the duty of the Office of the Ombudsman to continue to highlight these failings that undermine the right of the citizen to a good public administration.

Two other challenges

In his address, the President of the Republic noted that in the year under review the country had to face another two major challenges.

The assassination of Daphne Caruana Galizia

The first challenge the country had to come to terms with was searching for and serving justice to those involved in the murder of journalist Daphne Caruana Galizia. There was a general desire that the investigative and judicial aspects would lead to finding out who was responsible and ensuring that they get what they deserve.

The President hoped that the strictly legal aspect would be settled. The wounds would however persist. *“The lessons would remain for the country to learn from them. No one was above the law; the rule of law and the protection of human rights had to remain crucial tools for the fair and democratic functioning of the country.”*

During the year the Office of the Ombudsman, as was its duty, closely followed developments. The proceedings of the public Inquiry into the circumstances that surrounded the assassination of the investigative journalist were of particular interest to it in so far as it investigated allegations of systemic failures in the public administration that could have facilitated or contributed to the commission of that heinous event. As evidence unfolded, it became evident that the proceedings were investigating the conduct of the entire public administration including its entities and authorities. It brought to light serious allegations of maladministration, illegalities and abuse of power by many public officers and persons occupying key positions. Many of those who figured in the events leading to the assassination were either occupying positions of trust or were persons directly appointed to such positions and who felt they were not bound by the proper constraints that regulate the behaviour of civil servants.

The Office of the Ombudsman noted that the Board of Inquiry concluded that the assassination was either intrinsically or directly linked to the investigative work of Caruana Galizia which included allegations of administrative irregularities of abuse in major development projects that involved elements of big business. It found a *“culture of impunity not only for senior officials in the public administration including ‘persons of trust’ but also to a restricted circle of politicians, business people and criminals”*. One cannot escape or ignore its clear conclusion that the actions or inactions of these persons in authority blatantly disregarding rules and regulations meant to safeguard the common good, undermined many of the checks and balances that the country needs to have to ensure good governance.

While it is recognised that there is a hard core of dedicated, competent and efficient public officers that do their duty to administer the common good in a proper, just and transparent manner, there have been serious incidents that have gravely tarnished the good name that the public service generally enjoyed. It is now accepted that the perceived breakdown of the rule of law in that period has been in great measure attributed to these failures.

The public service needs to regain the virtues of meritocracy, professionalism, efficiency and loyalty to the government of the day, delivering a service that can ensure continuity in full respect of laws and regulations but able to stand up and attempt to check maladministration and abuse. Public officers that can deliver a service that is in all instances administratively correct and not politically or otherwise convenient. These are the traditional standards that permeated the public service and which the country has had the good fortune to enjoy for decades. They are the standards that can guarantee the exercise of a good public administration to which citizens are entitled.

Much has been lost and in some respects these virtues have been severely dented. Much needs to be done to regain and restore them to the desired level.

The country's second challenge

The other challenge that the President of the Republic highlighted during his address referred to the structures set up by the Constitution to ensure good governance; *“The other challenge concerned the push by both the Venice Commission of the Council of Europe and elements of civil society, for further separation of powers in the administration of our country”*. Undoubtedly in such a reform, those provisions of the Constitution that are meant to ensure that the country is administered by competent public administrators of the highest calibre at the service of the Executive, implementing the policies of the government of the day rather than of the party in power, should be reviewed.

Efforts should be made to discourage and reduce the culture of clientelism, tribalism and cronyism that encourage people to expect and exact favours rather than what they are entitled to. Such a reform should also envisage that similar structures and systems introduced to ensure good governance in the public administration, including the method of recruitment of staff and their employment within the framework envisaged by the Constitution, should also be extended with necessary and appropriate modifications, to public authorities and entities entrusted with the provision of public services and utilities.

It is understood that some efforts at harmonisation in this area have been put in place to achieve a measure of administrative control by government. More however needs to be done to ensure that the high standards of transparency and accountability expected of the public service are extended also to these authorities and entities.

Welcome reforms

In his address the President welcomed the implementation of some of the proposals put forward following significant discussions with the Commission for Constitutional Reform. He signalled the approval of legislation giving new powers to the President of the Republic regarding the appointment of members

of the judiciary as well as regulating the way in which the President himself is elected and if necessary, removed. Other laws in this process of reform included the separation of the functions of the Attorney General and the Advocate of the Republic as well as the way in which officials holding constitutional office, such as the Auditor General and the Ombudsman, are selected so that their appointment would be more representative of parliamentary will and ultimately more secure.

President's concern to ensure continuity

The President focused on the need to strengthen those constitutional authorities and others that had the function to hold the public administration accountable to the people especially by ensuring that there will be no break in the exercise of their functions and the essential service they provide to society. Foremost among these are the Office of the Ombudsman, that of the Office of the Auditor General and of the Commissioner for Standards in Public Life, that have been widely and consistently recognised to be three public institutions that value their autonomy and independence. It is generally acknowledged that in the exercise of their functions they strive to ensure a transparent public administration voicing when necessary their grave concern on instances of maladministration, misuse of public funds and the erosion of ethical standards that undermine good governance.

The President was concerned about areas of instability that could prejudice the efficacy and efficiency he sought to ensure. He recommended that proper procedures are put in place to secure continuity when for any reason the positions of any of the persons heading these institutions become vacant.

He reflected that the remaining difficulties “*concerned the need for the so-called anti deadlock mechanism to unlock situations where the required agreement of two-thirds of parliamentary support on certain appointments was not reached*”. He pointed out that “*one such example was the appointment of a new Ombudsman. The President called on the parties concerned to agree on one person*”.

The appointment of a new Ombudsman

His specific reference to the appointment of a new Ombudsman was motivated by the President's concern that no agreement had been reached between the Prime Minister and the Leader of the Opposition on the appointment of a successor to the present incumbent whose first term of Office lapsed on 16 March 2021. Weeks before Mr Anthony C. Mifsud had informed the Prime Minister that after 50 years of service to the country occupying a number of distinguished posts, he did not wish to be considered for a second term. By the end of the year, a full nine months after, there was still no sign that agreement had been reached or was in sight. Indeed, there were clear indications that with an election due within weeks, agreement on a new Ombudsman could be further delayed for months.

Information in the public domain indicated that failure to reach consensus could be due to lack of proper consultation or acute political confrontation and not to a lack of suitable candidates. Whatever the reason, it was clear that the President was voicing the general feeling that the inordinate delay in the appointment of a new Ombudsman was a cause of grave concern. It was not a sign of political maturity. It was a cause of uncertainty that inevitably, negatively affected the service provided by the Office of the Ombudsman to which citizens were entitled.

It was the first time since the Office was set up in 1995 that the mechanism for the appointment of the Ombudsman had failed. This was regrettable also because the system had since then also worked effectively for the appointment of the Auditor General and his deputy.

More importantly the smooth, seamless working of the system of appointment to date has encouraged the body politic, implementing recommendations of the Venice Commission, to extend this system of choice by cross party consensus to the appointment of other persons occupying key positions in the management of State affairs including the President of the Republic, the Commissioner for Standards in Public Life and others. Binding legislation to this effect is now in place.

Need for anti-deadlock mechanism

It is therefore not surprising that the President voiced grave concern at the prospect of such a positive and welcome development failing because of the absence of a suitable anti-deadlock mechanism that would unlock situations when Members of Parliament fail to approve with the required qualified majority, a resolution signifying their choice of a person to occupy that position. The fact that the law provides that the incumbent “*could remain in office until a successor is chosen*” was clearly not enough since that did not provide a solution for all eventualities. The office could become vacant for various reasons including some that did not depend on the will of the incumbent but on events beyond his/her control.

Failure to reach agreement over a considerable period of time could lead to dangerous situations that imperil the proper functioning of democratic institutions. A vacuum of power that could lead to political instability and unrest. The lack of an inbuilt anti-deadlock mechanism could also give rise to excessive and unwelcome political manoeuvring and lobbying by political forces and others that is certainly not conducive to secure the appointment of the best and most qualified candidates for these sensitive posts.

The Office of the Ombudsman has in recent years, on various occasions signalled the possibility that such situations could arise and had suggested possible remedies by setting up the anti-deadlock mechanism to which the President referred.

Anti-deadlock mechanism in the appointment of Commissioners

The matter had come to the fore during discussions with government on the 2010 amendments of the Ombudsman Act. Those amendments provide for the appointment of Commissioners for Administrative Investigations in specialised areas of the public administration within the Office of the Ombudsman. From the start it was envisaged that there would be a number of such commissioners. In fact after the approval of these amendments, three Commissioners were appointed covering the areas of education, health and environment and planning.

The amendments provide that commissioners, who are designated as Officers of Parliament, are to be appointed by the Ombudsman. He has to appoint as commissioner such person as the Prime Minister and the Leader of the Opposition shall jointly indicate to him in writing as the person to be appointed for the post. The appointment does not require that the appointee enjoys the support of a qualified majority of members of the House of Representatives. The law however requires that initially the designated person should enjoy the trust both of the Prime Minister and of the Leader of the Opposition and the Ombudsman has then to act according to their joint advice.

When discussing the method of appointment of the commissioners, it became evident both to government and to the Ombudsman that considering the number of commissioners that could be appointed, reaching political consensus on the persons best suited for appointment might sometimes prove to be difficult. The legislator therefore wisely provides an in-built anti-deadlock mechanism that ensures that their appointment is effected within a reasonable time.

The law in fact provides that, in default of receipt of a joint communication by the Prime Minister and Leader of the Opposition signifying their agreement on a person to be appointed Commissioner, within three weeks from when the Ombudsman informs them that he intends to appoint such a commissioner or from when a vacancy in the office arises, “*the appointment of the Commissioner shall be made by the Ombudsman acting in accordance with his own deliberate judgement*”.

It is worth recording that this anti-deadlock mechanism has within the last ten years been made use of twice without any problems. It should be noted that it is of the utmost significance that the legislator unanimously deemed fit to impose a time limit on the Prime Minister and the Leader of the Opposition within which they had to reach consensus on the name of the person to be appointed.

Sign of political maturity

Interestingly too the law provides that if they fail to agree, the choice of the commissioner would not be referred to a higher authority but to the Ombudsman

who would designate a person for appointment in his own deliberate judgement. Entrusting the Ombudsman with the ultimate choice was a clear vote of confidence in the Ombudsman institution and the autonomy and independence that his Office enjoyed and manifested. This amendment was indeed a sign of political maturity to be emulated. In principle, one has to aim not only to achieve a greater degree of decentralisation of power but also to distance the appointment of persons to such highly sensitive positions as much as possible from partisan politics. This by putting in place effective checks and balances that are to date lacking.

The Ombudsman has on various occasions voiced his opinion that the anti-deadlock mechanism that needs to be found should not be limited to the appointment of the holder of his office. It should be a procedure applicable to all high positions heading constitutional authorities that now require a qualified majority of two-thirds of the Members of the House of Representatives, except of course for obvious reasons, that of the President himself. He has proposed that when the House of Representatives fails to approve a resolution by the required qualified majority designating a person to be appointed as Ombudsman within a definite term to be stated in the Constitution, that decision should be referred to the President who shall act in his own deliberate judgement.

This proposal has today taken on additional constitutional significance following the recent amendments requiring that the President himself has to be appointed following a resolution that enjoys the qualified majority of two thirds of the Members of Parliament. A constitutional provision that even if indirectly, has bestowed on the Office of the President a measure of popular mandate further distancing his Office from partisan politics.

Such a radical return would also be a step in the direction of the recommendations made by the Venice Commission that the time has come for a review of the President's functions that could include roles that he should carry out independently from government and not on the advice of the Prime Minister. It would enhance the authority of his Office as guardian of the Constitution and of the integrity and independence of Malta's institutions. It would be a further move in favour of the decentralisation of power as well as, perhaps more importantly, a procedure that would guarantee the stability and certainty necessary for the proper functioning of authorities that are now recognised to be vital for good governance.

The Ombudsman had also proposed the setting up of a Council of State that would have as one of its functions the role to advise the President on the choice of the best qualified persons to occupy such high positions. The final decision would remain with the President. However, such a Council could serve as a useful filter to assess the qualities of suitable candidates and would further distance the final choice from purely partisan influence. It is acknowledged that some of these and

other amendments to strengthen the rule of law and ensure good governance require constitutional amendments and new legislation that should be the result of an open, frank and fruitful discussion. A debate that should be held within the forum of the projected constitutional conference and not restricted to piecemeal initiatives taken by political parties. This matter should be treated with urgency but one understands that the proposals envisage long term solutions.

Meanwhile the impasse on the appointment of the Ombudsman's successor that still persisted by the end of the year, requires immediate attention to resolve the unwelcome political impasse. This issue is crucial to ensure continuity in an institution that keeps the Executive accountable, good governance and guarantee the rule of law through a smooth transition of power that reflects an efficient public administration with proper functioning checks and balances put in place.

2021 Rule of Law Report – How it impacted on Performance of Office

Following the publication of the 2021 Report on the Rule of Law of the European Commission to the European Parliament on the situation in Malta there has been some improvement in relations between the Office and the public administration. Some government departments have been adopting a more positive approach when dealing with the Office, responding to queries regarding investigations and the implementation of its recommendations. A lot depends on the personal input of liaison officers and permanent secretaries and their willingness to cooperate in the resolution of complaints and providing adequate redress where necessary. On the other hand, some public authorities and entities have not been so forthcoming. During the year areas of disagreement and unnecessary public contrasts persisted.

The wrong approach that considers the Ombudsman institution as just another government department at the service of the Executive still surfaces in some quarters. There has been little progress regarding the implementation of recommendations made by the Ombudsman and his Commissioners and essentially the situation remains the same as in previous years.

One could sense some improvement in the handling of complaints involving government departments. During the year the Office noted that some have been showing a change of direction when considering its final opinions. Most of the recommendations that involve individual complaints are accepted and implemented. They have been more forthcoming in accepting recommendations even in some cases which were strongly contested. However, there still remain notable exceptions. For example, no progress has been registered in high profile complaints with political implications like selection processes within the police force or the armed forces. Similarly longstanding recommendations by the Commissioner for Health to the Health Ministry on complaints that seek to alleviate hardship to suffering patients or to redress injustice, remain unresolved.

A legalistic approach

Public authorities and entities on the whole are less willing to accept final opinions of the Office and it is not uncommon that they refuse to implement its recommendations. Some are badly advised by lawyers who adopt a legalistic approach, wrongly insisting that in case of disagreement with the Ombudsman the matter should be resolved by a court of law.

An approach that manifests a deplorable lack of appreciation of the fundamentals that characterise the Ombudsman institution as a mediator between the aggrieved citizen and the public administration. An approach that fails to recognise the basic concept that the Ombudsman is empowered to determine complaints not only according to applicable laws and regulations but also on the grounds that the administrative act complained of was unreasonable, unjust, oppressive, improperly discriminatory, based on a mistake of law or fact or simply wrong.

Public administrators need to understand and accept that in a democracy based on the rule of law they had to be held accountable for their actions or inactions to autonomous and independent institutions and ultimately to Parliament. The Ombudsman and his Commissioners are expressly charged with the function to investigate complaints against public maladministration. Public administrators would do well to come to terms with this reality. It is in their own interest and in the interest of the country at large to strengthen the Office of the Ombudsman and similar authorities that are vital to ensure good governance.

Referral to Prime Minister and Parliament ineffective

The law empowers the Ombudsman and his Commissioners to refer their final opinions that have been rejected by the public administration to the Prime Minister for his final consideration. If that referral is unsuccessful, the Ombudsman can forward those complaints and final opinions that in his view so merit, to the House of Representatives for its consideration. In 2021, following the Rule of Law Report, the Office has made greater use of this power in an attempt to secure implementation of its recommendations through a decision at the highest political level. However, as was the case in previous years, this initiative proved unsuccessful.

In fact, during the year no less than 16 reports by the Ombudsman and his Commissioners were sent to the House of Representatives and laid on the Table of the House by the Speaker. There has been absolutely no reaction from Members on either side. After more than 25 years these provisions of the Ombudsman Act remain a dead letter. There has never been the political will to implement them. This is regrettable. It not only shows a lack of respect to the institution and indeed to the very law that the elected representatives of the people unanimously approved, but it also reveals a failure to correctly appreciate the statutory status of the Ombudsman as a Parliamentary institution. It also manifests Parliament's

inability to grasp the reality that through its persistent inaction aggrieved citizens are being deprived of their right to effective access to Parliament that ultimately has the statutory duty implicitly if not explicitly, to consider their complaint referred to them once the public administration and the Prime Minister himself failed to accept the final opinion of the Ombudsman or his Commissioners and implement their recommendations.

It is now clear that unless there is a statutory obligation that requires Select Committees of the House to consider these final opinions, no progress will be made.

A valid and secure point of reference

During the year the Office of the Ombudsman remained a valid and secure point of reference for European and International organisations monitoring the rule of law situation in Malta. At a time when the country was obviously in a period of transition following the resignation of the Prime Minister and the events that led to major changes in the administration, the country remained a focus of attention mostly because of the persisting concern on how rule of law failings and issues of good governance would be tackled by the new government.

The year was marked by initiatives taken by government to implement some of the recommendations of the Venice Commission as well as by the findings of the Inquiry into the assassination of journalist Daphne Caruana Galizia and the recommendations it made on measures to be taken to ensure that institutional structures meant to secure fundamental rights, freedom of expression, protection of journalism and good governance were put in place and strengthened.

2020 Rule of Law Report

Monitoring these developments required feedback from independent and authoritative sources that could give a clear, balanced and objective assessment of developments. The Ombudsman was deemed to be one such institution. The compilers of the 2020 Rule of Law report on behalf of the European Commission met the Ombudsman and sought his opinion on a wide-ranging spectrum of issues relating to good governance. These included the effectiveness of significant reforms of the Maltese justice system unanimously adopted by Parliament, aimed at strengthening judicial independence and the system of separation of powers as well as reforms aimed at strengthening institutional anti-corruption frameworks, law enforcement and prosecution.

Other areas of concern discussed included freedom of expression, media freedom and the safety of journalists, as well as the strengthening of checks and balances to ensure transparency, accountability and the devolution of power.

In preparation for this meeting the Office of the Ombudsman submitted its replies to specific questions asked to cover the performance of the Office of the Ombudsman and the effectiveness of the follow up by the public administration to implement the recommendations made. The effect of COVID-19 on the public administration generally and on the Office of the Ombudsman in particular, the reform process and other matters were also dealt with. The reaction of the Office to the guiding questions put by the European Commission in preparation for this Rule of Law Report might be of interest to readers and is being published as an annex to this annual report.

Commissioner for Human Rights of the Council of Europe

The Commissioner for Human Rights for the Council of Europe also had a meeting with the Parliamentary Ombudsman following the publication of the report of the public Inquiry into the assassination of journalist Daphne Caruana Galizia. This in preparation for her report that focused on media freedom, certain aspects concerning asylum and migration, women's rights and gender equality.

The Commissioner was well aware of the findings and recommendations of the Board of Inquiry. She exchanged views with the Ombudsman and discussed areas of further reforms that were required to strengthen the right of freedom of expression and the role of journalism as the fourth pillar of democracy.

Of particular interest was the right of the public to access information that was of public interest and which was considered to be an integral part and essential prerequisite of the right of the freedom of expression.

That's an area on which the Ombudsman felt strongly. The Commissioner concurred that there was need for significant reform in this area. In fact, the Ombudsman stressed that GRECO's recommendations that the implementation of the Freedom of Information Act 2008 be subject to an independent and thorough analysis and that additional measures be taken so that exceptions to the rule of public disclosure should be interpreted and applied more specifically and narrowly were in line with recommendations made to this effect by him in recent years.

The Commissioner was also very interested in the reaction of the Office of the Ombudsman regarding the deplorable conditions of areas at the Safi Detention Centre, including the blatantly poor sanitary and hygienic conditions and overcrowding in a structure that was more akin to a prison than to a detention centre. Her feelings were shared by the staff of the Ombudsman's Office who had visited the Centre and who had made similar observations in the past.

International relations - contacts and interaction

Travel restrictions, uncertainties and Covid 19 infection spikes inevitably negatively reflected on international activities between ombudsmen institutions and a number of calendar events had to be curtailed. Periodic annual meetings organised by European and British ombudsman institutions had to be cancelled and contact was necessarily reduced to electronic connections and virtual meetings.

Experience has shown that communicating through the various forms and methods of internet provided fast and efficient modes of contact for day-to-day business that were far better than traditional methods. Undoubtedly wider use of these modern means of communication will continue to be made in the future. However, they are a very poor substitute for the physical contact that creates bonding among institutions sharing the same ideals and aspirations. Bonding that generates lasting, personal relations and friendships and that facilitate the exchange of information, ideas and experiences during events held at well-organised meetings in congenial surroundings.

Hopefully when the world reverts to a new normality in a post-pandemic era most of the calendar events that have been suspended and that have been instrumental in furthering the concept of ombudsmanship as an effective tool to secure good governance and ensure the citizen's right to good public administration in Europe and beyond, would be restored.

Association of Mediterranean Ombudsmen

One area in which the Office of the Ombudsman continued to persist in its efforts to strengthen its contribution in the international field was its sustained participation in the Association of Mediterranean Ombudsmen (AOM) of which it was a founder member. The Office continued to rely on virtual meetings and electronic contact to provide its services of Secretary and Treasurer to the organisation. Considering the difficult circumstances, the Office succeeded in its efforts to coordinate the bi-annual conference and general assembly that was held in hybrid form, in coordination with the institution of the Greek Ombudsman with some members attending physically in Nafplion, Greece while others contributed virtually.

Using virtual contact to move forward

The secretariat organised online the Executive Board meeting and the Governing Board meeting of the Association that prepared documents for discussion for its General Assembly. Later on in the year the annual executive board meeting was held to discuss the various points that had arisen during the General Assembly. During the year the secretariat continued to be responsible for maintaining and updating the Association's website and sent out two issues of its Newsletter.

In September the secretariat organised a webinar entitled “*Modern technologies and media in the world of ombudsmen*”. The webinar was held under the patronage of the Office for the Human Rights Defender of Armenia and attracted 29 participants from 20 countries. In December another webinar was held in conjunction with the State Comptroller and Ombudsman of Israel entitled “*Advancing the rights of older people in an age of longevity*”. This virtual conference which brought together delegates from 50 countries around the world, discussed the unique challenges facing ombudsmen institutions across the globe to uphold, advance and secure the rights of the elderly.

The Parliamentary Ombudsman, in his role of Secretary General of the AOM, coordinated other activities through virtual contacts. These included the 11th Rabat Training event in coordination with the institute of the Mediator of the Kingdom of Morocco. Through these activities the secretariat was instrumental with others in keeping the Association of Mediterranean Ombudsmen alive and within limits functioning.

Hope for the New Year

Hopefully the New Year would see us through the uncertainty caused by the restrictions that curtailed the activities of the ombudsmen institutions on many fronts. Once the pandemic is brought definitely under control, uncertainties that in the year under review were compounded by a feeling that the ombudsmen institutions and indeed the country on different fronts were passing through, would be resolved. The country would return to a new normality having gone through a year of prolonged transition. It should be in a position to regain stability and move forward.

Notes from the 2021 Diary

ANNUAL REPORT BY THE
PARLIAMENTARY OMBUDSMAN



NOTES FROM THE OMBUDSMAN'S DIARY



THE PARLIAMENTARY OMBUDSMAN APPOINTS CHIEF JUSTICE EMERITUS VINCENT A. DE GAETANO AS COMMISSIONER FOR EDUCATION

January 13, 2021

The Parliamentary Ombudsman, Anthony C. Mifsud has appointed Chief Justice Emeritus Vincent A. De Gaetano to serve as Commissioner for Education in terms of Article 17A (2) of the Ombudsman Act with effect from the 1 January 2021.

The Commissioners, like the Ombudsman, are autonomous Officers of Parliament and enjoy the same independence and security of tenure. The Commissioners within the Ombudsman's Office work independently of each other but co-ordinate their work with the Office of the Ombudsman.

THE PARLIAMENTARY OMBUDSMAN PRESENTS CASE NOTES 2020 TO PARLIAMENT

March 24, 2021

The Parliamentary Ombudsman, Mr Anthony C. Mifsud, presented the Case Notes 2020 to the President of the House of Representatives, the Hon. Anglu Farrugia.

The presentation of the Case Notes coincides with the end of the term of Mr Anthony C. Mifsud as Parliamentary Ombudsman. In his foreword to this year's edition of the Case Notes the Ombudsman noted that *“These last five years have been a most satisfying experience even though the Office had to face difficult challenging situations ranging from serious political upheavals, major institutional deficiencies and reforms, as well as a worldwide pandemic. We did not fail to make our voice heard when necessary to promote good governance and to secure a good public administration. We continued to perform assiduously our functions above all by executing our primary duty to receive, process and investigate complaints from aggrieved citizens and to recommend adequate redress when appropriate.”*

This latest edition of the Case Notes is further evidence to the quality and diversity of the complaints that were handled by the Ombudsman and the Commissioners.

As in previous years, this bi-lingual publication includes three separate sections reporting complaints investigated by our specialised Commissioners in the areas of Health, Education and Environment and Planning.





RECOMMENDATIONS NOT IMPLEMENTED: THE OMBUDSMAN AND THE COMMISSIONER FOR EDUCATION SEND REPORT TO THE HOUSE OF REPRESENTATIVES

April 5, 2021

In terms of Article 22(4) of the Ombudsman Act, the Ombudsman Mr Anthony C. Mifsud and the Commissioner for Education, Chief Justice Emeritus Vincent A. De Gaetano, have sent to the House of Representatives the Final Opinion on a complaint lodged by three individuals who manage specialised schools.

The education authorities did not implement the recommendations made by the Commissioner for Education (the late Mr Charles Caruana Carabez) in January 2020. The Ombudsman and the Commissioner brought the case to the Prime Minister's attention in August 2020 and again last February. Since no action has been taken, the Ombudsman and the Commissioner sent the report to the House of Representatives for its attention.

The Commissioner had issued his Final Opinion on 6 January 2020. In it he recommended that the complainants were to be placed in Grade 5, assume the title of 'Head of School', that the special schools be given an administrative infrastructure like that of all other schools, and that the complainants' salary be adjusted.

Summary of the Case

The three complainants, who manage specialised schools, claim that their duties are similar in all effects to those of a Head of School, but they are listed as

‘Centre Co-Ordinators’ and are consequently deprived of the pay, allowances and infrastructural support which are the entitlement of Grade 5 Heads of Schools. The population of their schools vary between 500 and 1300 students.

The then Commissioner wrote to the Permanent Secretary at the Ministry for Education (then MEDE) on 30 September 2019, intimating to him that he was not at all happy with the attitude displayed by MEDE in regard to complainants who, he felt, were not being given their due as a result of an unorthodox label given to them (Centre Co-Ordinators rather than Heads of School) and that this, given their responsibilities, working conditions and human resources, constituted discrimination resulting in injustice.

The Commissioner pointed out that Colleges consisted of Schools managed by Heads and directed by a Principal, and that these special schools formed part of Colleges but without being called schools; he pointed out, moreover, that the ‘Centre-Co-Ordinators’ received, like Heads of Schools, their annual bonus after endorsement by the Principal, and that this further substantiated their argument and exacerbated the anomalous condition of the complainants.

IT IS INHUMANE THAT PATIENTS ARE USED AS PAWNS DURING INDUSTRIAL ACTIONS

April 16, 2021

The Commissioner for Health at the Office of the Ombudsman expressed his preoccupation that Unions persist in using patients as pawns to pressure the authorities to accede to their requests. The Commissioner described this approach as inhumane.

This comment was expressed after one Union had issued directives to its members at St Vincent de Paul not to bathe and not to help residents to mobilise.

Another Union had issued directives that limit the number of cancer patients that can be admitted to Sir Anthony Mamo Oncology Clinic.

As a result, patients were admitted to the general wards at Mater Dei Hospital, where the required expertise could have been lacking.

The Commissioner added that in St Vincent de Paul’s case, it was incomprehensible that the elderly residents, many of whom are incontinent, were not being washed for days. That resulted in developing pressure sores for not being mobilised and cause significant inconvenience and loss of dignity.

In this regard, in similar cases, the courts had acceded to a Warrant of Prohibitory Injunction because the directives could have put the patient’s life at risk.



Despite these Industrial Actions, the Ministries concerned did not seem too much bothered because months had passed since the discussions were initiated.

The Commissioner appealed to both Unions to immediately suspend their directives which were affecting the patients and not the administration. On the other hand, the Commissioner appealed the Ministries to take immediate steps to tackle and solve the problems.

FURTHER INDUSTRIAL ACTIONS AFFECTING PATIENTS AND OLD PEOPLE'S HOMES RESIDENTS

April 21, 2021

On the 21 April 2021, the Commissioner for Health in the Office of the Ombudsman issued another statement condemning further industrial action affecting patients and old people's home residents.

On this occasion, the Union went a step further. Patients and residents were not being bathed and helped to mobilise, and there was no changing of nappies. This affected mainly patients and residents who are incontinent.

The Commissioner for Health condemned without reservations such directives which go against the dignity of the human being. The Commissioner described such actions as an attack on the most vulnerable persons.

RECOMMENDATIONS NOT IMPLEMENTED: FINAL OPINION ON THE REGULARISATION PROCESS VIS-À-VIS THE CTB CONCESSIONS SENT TO THE HOUSE OF REPRESENTATIVES

April 29, 2021

In terms of Article 22(4) of the Ombudsman Act, the Ombudsman Mr Anthony C. Mifsud and the Commissioner for Environment and Planning, Perit Alan Saliba, have sent to the House of Representatives the Final Opinion on a complaint regarding the validity of Category B (CTB) Concessions by the Planning Authority.

In the Final Opinion, the Commissioner for Environment and Planning had concluded that the last paragraph of the first part of Circular 1/19 issued by the Planning Authority is found to be unfair, irregular and against the principles of natural justice as any new application is to be vetted on the nature of the proposal description and the relative drawings and any CTB concessions issued on the same site cannot be reassessed under the current planning regime.

The Commissioner recommended that the Planning Authority should withdraw and cancel this part of the Circular to the effect that a new application can be submitted on a site covered by a CTB concession without the need for sanctioning, regularising or removing the illegal works covered by the same CTB concession, as long as no further illegal development has taken place on site.

This case could have been easily resolved by revoking the Planning Authority Circular in question that, put simply, is punishing the owner twice for the same contravention.



Although the Planning Authority agreed with the Commissioner that applicants should not have their applications stalled because of illegalities that were covered by a CTB concession, the Planning Authority failed to implement the recommendation made by the Commissioner for Environment and Planning in May 2019. The Ombudsman and the Commissioner brought this case to the attention of the Prime Minister in January 2020. Since no action has been taken, the Ombudsman and the Commissioner sent this report to the House of Representatives.

RECOMMENDATIONS NOT IMPLEMENTED: FINAL OPINION ON WORKS CARRIED OUT BY THE GOVERNMENT IN COMINO

May 18, 2021

In terms of Article 22(4) of the Ombudsman Act, the Ombudsman Mr Anthony C. Mifsud and the Commissioner for Environment and Planning, Perit Alan Saliba, have sent to the House of Representatives the Final Opinion on works carried out by the Government in Comino.

In his Final Opinion the Commissioner for Environment and Planning concluded that the works conducted between February and March 2021 breached the Development and Planning Act (Chapter 552 of the Laws on Malta).

The Commissioner recommended that the site in question should be returned to the state it was in before the works were carried out and that the PA should impose fines that would be placed in a fund for Comino's environment.



The Planning Authority did not accept the recommendations made by the Commissioner and therefore the Ombudsman and the Commissioner for Environment and Planning brought the case to the Prime Minister's attention. Since no action has been taken, the Ombudsman and the Commissioner sent the report to the House of Representatives.

RECOMMENDATIONS NOT IMPLEMENTED: TWO STATE SCHOOL TEACHERS SUBJECTED TO IMPROPER TREATMENT AT THEIR PLACE OF WORK

June 8, 2021

In terms of Article 22(4) of the Ombudsman Act, the Ombudsman Mr Anthony C. Mifsud and the Commissioner for Education, Chief Justice Emeritus Vincent A. De Gaetano, have sent to the House of Representatives the Final Opinion on a complaint lodged by two teachers who complained that they had been subjected to improper treatment by another member of staff.

The education authorities ignored the recommendations made by the Commissioner for Education (the late Mr Charles Caruana Carabez) in October 2020. The current Commissioner sent reminders in January and February 2021; however, no feedback was forthcoming from the Department for Education.

The Ombudsman and the Commissioner brought the case to the Prime Minister's attention last April. Since no action has been taken, the Ombudsman and the Commissioner sent the report to the House of Representatives for its attention.

Summary of the Case

The complainants – two teachers, assigned to a [*Secondary State School*] – complained that they had been subjected to hostility and persecution by another member of staff within the same subject department, who had moreover (in the months before the complaint) also become the Head of Department (HOD).

The Commissioner found that a "*schism*" had occurred within the English Department of the above-mentioned school, which was "*serious, long-lasting and produced enduring effects and [which could] in no way be treated lightly.*" He criticised both the ineffectiveness of the Senior Management Team (SMT) of the school for their timorous handling of the situation and the lack of common sense shown by the Ministry (then MEDE) in not taking appropriate action to diffuse the situation by posting the new HOD to another school when they had the time to do so.

The Commissioner had recommended that for the current scholastic year (which is about to end), the *status quo* in the Department in question be retained (it was not feasible to change anything in October 2020 when the scholastic year had already commenced), although he did recommend a more careful monitoring of the



situation by the school SMT. The Commissioner also recommended that the HOD in question is posted to another school for the scholastic year 2021/2022 in the best interests of everyone and that the Ministry should ensure that promoted members of staff be posted to other schools (and not retained at the school they served before promotion) in accordance with best practice.

RECOMMENDATIONS NOT IMPLEMENTED: COVID HEALTH PROTOCOL PREVENTED CERTAIN LSES FROM TAKING THE 15 MINUTES BREAK OTHERS WERE ENTITLED TO.

July 5, 2021

In terms of Article 22(4) of the Ombudsman Act, the Ombudsman Mr Anthony C. Mifsud and the Commissioner for Education, Chief Justice Emeritus Vincent A. De Gaetano, have sent to the House of Representatives the Final Opinion on a complaint lodged by an LSE2 who raised an issue of unfair treatment.

Summary of the Case

The complainant claimed that whereas LSEs working on a one-to-one basis and who were required to remain in class during the break (because of the special circumstances created by the Covid-19 pandemic) were compensated (that is, paid extra) for those 15 minutes they would otherwise have been entitled to take away from the students, LSEs like herself (at least in primary schools) who have multiple shared cases and were not allowed out of the class for safety reasons, were

not compensated for the additional fifteen minutes which she (and others in her position) had to work. She considered this an injustice.

From investigations carried out by the Commissioner for Education it transpired that earlier in this academic year an agreement was reached between the MUT and the Ministry for Education to the effect that LSEs assigned to one-to-one students are to be paid for a fifteen minute break per day since the current pandemic measures in schools make it impossible to assign the break to another educator. The agreement was crafted in such a way that the provision relative to the 15 minutes entitlement was directed to LSEs assigned to one-to-one students, since LSEs assigned to shared students could be expected to take the daily break while their students are supervised by other peripatetic educators. However, in a number of cases this expectation had not materialised, and the complainant's situation is a case in point. It was not the case that the complainant has elected not to take the 15 minutes break – in which case she would not be entitled to the 15 minutes break compensation – but that she is prevented from so doing because COVID protocols, enforced in her school, did not allow her to leave the class from the moment she started in the morning until the end of school in the early afternoon. In other words, a situation had unwittingly developed where two sets of LSEs *doing the same work* were being treated differently in terms of pay. The Commissioner concluded that this situation was clearly unjust and recommended that the complainant – and all other LSEs in a relevantly similar situation to the complainant's, that is, who were prevented from taking the 15 minutes break, because of the current COVID health protocol – be compensated in accordance with the MUT agreement



Outcome

The Ministry indicated, for reasons that the Commissioner considers to be unfounded, that it does not intend to implement the recommendation made in his Final Opinion.

The Ombudsman and the Commissioner brought the case to the Prime Minister's attention last May and since no action has been taken, the Ombudsman and the Commissioner sent the report to the House of Representatives for its attention.

THE PARLIAMENTARY OMBUDSMAN PRESENTS THE ANNUAL REPORT 2020 TO THE SPEAKER OF THE HOUSE

July 6, 2021

The Parliamentary Ombudsman, Mr Anthony C. Mifsud, called upon the President of the House of Representatives, the Hon. Dr Angelo Farrugia to present the Office of the Ombudsman's Annual Report for 2020.

The Annual Report describes 2020, the year that marked the twenty-fifth anniversary from the setting up of the Ombudsman institution in Malta, as a year of crisis, challenges and opportunities in which the Office had to live through a global pandemic that disrupted the country's way of life and work ethics.

2020 will surely be marked as the year in which humanity had to face a global pandemic that had and is still having a huge impact on people's lives, communities and their economic wellbeing. Like the rest of the public administration the Office of the Ombudsman had to face the problems and challenges brought about by the pandemic.



As a direct result of the Covid-19 situation the Office experienced a decline in its caseload of incoming complaints when compared to the previous year. It also experienced a similar decline in the number of enquiries received.

Case Load

During 2020, the Office of the Ombudsman received 503 cases (15% decrease from the previous year). 245 cases (27% less from previous year) were investigated by the Parliamentary Ombudsman, 106 cases (2% increase from previous year) were investigated by the Commissioner for Health, 107 cases (27% increase) by the Commissioner for Environment and Planning and the remaining 45 cases (34% decrease) were investigated by the Commissioner for Education. The Office also dealt with 498 enquiries, 7% less than the previous year.

COURTESY CALL BY THE PRESIDENT OF THE BOARD OF GOVERNORS AND THE CEO OF MCAST

August 10, 2021

On Tuesday 10th August 2021, the President of the Board of Governors of the Malta College of Arts, Science and Technology (MCAST), Professor Ian Refalo, and the CEO of the College, Professor James Calleja, paid a courtesy call on the Ombudsman, Mr Anthony C. Mifsud, and on the Commissioner for Education at the Ombudsman's Office, Chief Justice Emeritus Vincent A. De Gaetano. Present at the meeting was also the Head of Investigation at the Ombudsman's Office, Dr Monica Borg Galea. Both sides exchanged views on how to improve the investigative process undertaken by the Ombudsman's Office in regard to complaints lodged against MCAST, and how to enhance the mediation processes which are also offered as part of the services provided by the Ombudsman.





**THE PARLIAMENTARY OMBUDSMAN PRESENTS THE OMBUDSPLAN 2022 TO
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES
September 14, 2021**

In accordance with the provisions of the Ombudsman Act, the Ombudsman, Mr Anthony C. Mifsud, presented the Ombudsplan 2022 to the Speaker of the House of Representatives, the Hon. Anglu Farrugia.

The Ombudsplan 2022 includes an overview of the activities performed by the Office during this year and outlines the main objectives and the work-plan for 2022.

At a later stage, the document will be tabled in Parliament and discussed during a special sitting of the House Business Committee.

**OMBUDSPLAN 2022 TABLED IN PARLIAMENT
October 5, 2021**

The 2022 Ombudsplan was tabled in Parliament by the President of the House of Representatives, the Hon. Anglu Farrugia.

The Ombudsplan 2022 includes the Ombudsman's reflections on the issue of unregulated lobbying in Malta, positions of trust and issues that undermine the trust in the public sector.

RECOMMENDATIONS NOT IMPLEMENTED: PROMOTION FROM ASSOCIATE TO FULL PROFESSOR AND EXTENSION OF APPOINTMENT BEYOND STATUTORY RETIREMENT AGE

October 6, 2021

In terms of Article 22(4) of the Ombudsman Act, the Ombudsman Mr Anthony C. Mifsud and the Commissioner for Education, Chief Justice Emeritus Vincent A. De Gaetano, have sent to the House of Representatives the Final Opinion on a complaint lodged by an academic whose appointment as Associate Professor was not extended beyond the statutory retirement age. At the same time, the complainant was also informed that his pending application for promotion to full Professor could not be proceeded with.

Summary of the Case

The complainant, an academic domiciled in Canada, was an Associate Professor in Journalism in the Department of Media and Communications within the Faculty of Media and Knowledge Sciences of the University of Malta. He applied for promotion to Full Professor, for a sabbatical and also for an extension of his appointment as Associate Professor beyond the statutory retirement age.

His complaints were in substance: (1) that the sabbatical was granted unconditionally and should not have been withdrawn once the extension beyond the retirement age was not granted; and (2) that his application for promotion, which had been pending for 27 months, should have been decided earlier and not terminated upon the non-extension beyond the retirement age.

As to the first complaint — the non-extension of the appointment and the withdrawal of the sabbatical – the Commissioner found that the complaint was not justified.

With regard to the second complaint, the Commissioner found that this was justified both because of the delay as well as for the reason that there was no justification at law for not continuing the examination of the complainant's application for promotion (see para. 19 of the Report). The Commissioner recommended that the University pay to the complainant on an equitable basis and to remedy for the injustice to which he was subjected the difference in salary between Associate Professor and full Professor for a specified period of time. The Commissioner further recommended that the University or, in default, the Ministry of Education through appropriate legislation, should undertake to ensure that similar applications are, other than in special and extraordinary circumstances to be narrowly and clearly defined, always decided not later than 18 months from the date on which the application for promotion is submitted.



Outcome

Since the recommendations were not accepted by the University, the Ombudsman and the Commissioner, after seeking the intervention of the Prime Minister, sent the report to the House of Representatives for its attention.

RECOMMENDATIONS NOT IMPLEMENTED: UNFAIR TREATMENT BY THE PLANNING AUTHORITY IN THE PROCESSING OF A MINOR AMENDMENT

October 7, 2021

In terms of Article 22(4) of the Ombudsman Act, the Ombudsman Mr Anthony C. Mifsud and the Commissioner for Environment and Planning, Perit Alan Saliba, have sent to the House of Representatives the Final Opinion in relation to an allegation of unfair treatment by the Planning Authority in the processing of a minor amendment on a development in Sliema.

Case Summary

The Commissioner for Environment and Planning was asked to investigate a complaint against the Planning Authority for approving a minor amendment on a development without making it available to the public even though it affects third parties.

The Commissioner sustained the allegations of unfair treatment by the Planning Authority in the approval of this minor amendment since the extension in question infringes subsidiary legislation 552.13. The Commissioner concluded that this application should not have been accepted as a minor amendment and should

have been processed through a full application and published, thus allowing for the submission of representations.

The Commissioner recommended that the Planning Authority should process similar minor amendments in strict accordance with law and whenever minor amendments extend beyond the building boundaries the applicants should be referred to seek a full development permission.

As the Planning Authority did not implement the Commissioner's recommendations, the case was referred to the Prime Minister in September 2021. Since no action has been taken, the Ombudsman and the Commissioner sent the report to the attention of the House of Representatives.

RECOMMENDATIONS NOT IMPLEMENTED: FINAL OPINION ON WORKS CARRIED OUT BY INFRASTRUCTURE MALTA ON THE MARSA FOOTBRIDGE SENT TO PARLIAMENT

October 8, 2021

In terms of Article 22(4) of the Ombudsman Act, the Ombudsman, Mr. Anthony C. Mifsud, and the Commissioner for Environment and Planning, Perit Alan Saliba, have sent to the House of Representatives the Final Opinion on works carried out by Infrastructure Malta on the Marsa Footbridge.

In his Final Opinion, the Commissioner noted that according to the Development Planning Act, emergency works concerning public safety carried out by Government are not considered development and are also dispensed from the necessity of a development permit according to Article 70 of the Development Planning Act.





However, according to Article 71 of the same Act, *“Any person, including a department of government or a body corporate established by law, wishing to carry out any development referred to in article 70, shall apply to the Planning Board for such permission, in such manner, on such form and giving such information as the Planning Board may prescribe.”*

Therefore, the Commissioner recommended that every government entity with similar works of a certain size without a permit should request official authorisation to the PA Board, which needs to be decided within days. The Commissioner also recommended that if the PA Board determines that a permit is necessary, it should ensure that the processing of the permit should be fast-tracked since it would be beneficial for public safety.

Outcome

The Planning Authority informed the Commissioner that it did not agree with his interpretation of the Act and therefore was not implementing his recommendations. Thus, the Commissioner referred the Case to the Prime Minister in August 2021. Since no action has been taken, the Ombudsman and the Commissioner sent the report to the attention of the House of Representatives.

OFFICE OF THE OMBUDSMAN AT FRESHERS' WEEK

October 20, 2021

As in previous years, the Office of the Ombudsman, participated in the KSU Freshers' Week at the University of Malta.

The presence of the Office of the Ombudsman on campus was aimed at increasing the institution's visibility with students and academic staff.

During Freshers' Week students had the opportunity to acquaint themselves more with the role and functions of the Ombudsman and of the Commissioner for Education and to enquire about the services offered by the Office of the Ombudsman. Information, publications and other handouts were distributed to the students and academic staff who visited the stand.

The Commissioner for Education, Chief Justice Emeritus Vincent De Gaetano, visited the stand of the Office of the Ombudsman.

DELEGATION FROM THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE MEETS THE OMBUDSMAN

October 28, 2021

The Parliamentary Ombudsman, Mr Anthony C. Mifsud has met the Parliamentary Assembly of the Council of Europe (PACE) who were in Malta carrying out a fact-finding visit ahead of the preparation of the periodic review report on the honouring of membership obligations to the Council of Europe. The mission discussed the reform of democratic institutions and constitutional reform, the rule of law and judicial reform, the fight against corruption, media environment in Malta, the situation of migrants and refugees and the conclusions of the public enquiry into the assassination of Daphne Caruana Galizia.





RECOMMENDATIONS NOT IMPLEMENTED: SELECTION PROCESS FOR THE POST OF ASSISTANT COMMISSIONER WITH THE POLICE CORPS

October 28, 2021

The complaints refer to a selection process held for the post of Assistant Commissioner with the Police Corps.

The complainants had been interviewed by the selection board and were not successful. Complainants petitioned the Public Service Commission, which did not overturn the result of the board. Subsequently, they then complained with the Ombudsman, alleging that the procedures used by the board had been unfair because the board did not take cognisance of their experience, qualifications, and exemplary service during their long years of service in the Police Corps.

The Ombudsman investigated these complaints and found that the process was indeed vitiated. The documents pertaining to this selection were thoroughly reviewed. The Ombudsman found subjective bias in the process, and the whole procedure was weighted against the complainants. The crucial point here was not that the complainants had to be promoted but that they were never given a fair opportunity to compete with other promoted applicants.



Outcome

The Ombudsman declared that the complaints were justified and recommended that the Commissioner of Police issue a fresh call for applications for the post or pay the sum of €15,000 in moral damages.

OWN INITIATIVE INVESTIGATION INTO POSSIBLE SYSTEMIC MALADMINISTRATION WITHIN THE CORRADINO CORRECTIONAL FACILITY

November 11, 2021

On the 4th November 2021, the Office of the Ombudsman initiated an Own Initiative Investigation into possible systemic maladministration within the Corradino Correctional Facility.

The Ombudsman decided to conduct this investigation following a number of reports alleging maladministration in this facility. The Ministry for Home Affairs, National Security and Law Enforcement was informed accordingly on the 5th November 2021.

RECOMMENDATION NOT IMPLEMENTED: LOADING BAY AND RELATIVE WORKS ORDER INFRINGED BOTH THE AUTHORITY FOR TRANSPORT IN MALTA ACT AND THE DEVELOPMENT PLANNING ACT

December 20, 2021

In terms of Article 22(4) of the Ombudsman Act, the Ombudsman, Mr Anthony C. Mifsud, and the Commissioner for Environment and Planning, Perit Alan Saliba, have sent to the House of Representatives the Final Opinion regarding an administrative act by Transport Malta following the implementation of an un/loading bay.



In his Final Opinion, the Commissioner found that Transport Malta authorized an un/loading bay for a development that the Planning Authority approved on condition that any un/loading activity should not be carried out from the street.

The Commissioner recommended that Transport Malta withdraws the authorisation for this un/loading bay and sees to the implementation of its removal to be reverted to a parking bay as it was before. Also, he recommended that Transport Malta only issues authorisations for similar requests after it ascertains that similar conflicting development permit conditions are first overturned by the competing authority.

Outcome

Transport Malta through its legal representatives informed the Commissioner that it did not agree with his conclusions and therefore was not implementing his recommendations. Thus, the Commissioner referred the Case to the Prime Minister in October 2021. Since no action has been taken, the Ombudsman and the Commissioner sent the report to the attention of the House of Representatives.

RECOMMENDATIONS NOT IMPLEMENTED: COMPLAINT ON CAR DAMAGES SUFFERED DUE TO SEA WATER FLOODING AT BIRŻEBBUĠA

December 20, 2021

In terms of Article 22(4) of the Ombudsman Act, the Ombudsman Mr Anthony C. Mifsud and the Commissioner for Environment and Planning, Perit Alan Saliba, have sent to the House of Representatives the Final Opinion in relation to a complaint on car damages suffered due to sea water flooding at Birżebbuġa.



Case Summary

The Commissioner for Environment and Planning was asked to investigate that the area of St George's Bay experienced flooding of sea water for more than a decade due to high tides and that the authorities have not taken any measures and advise alternative routes.

The investigation did delve into whether Transport Malta or any other entity is responsible for the material damages sustained by private parties but only on the issue whether Transport Malta, or any other entity, is responsible to reply to this claim and not acting by simply referring the complainant to another entity.

The Commissioner recommended that Transport Malta should recognise its responsibilities in connection with the claim put forward by the complainant; and that Transport Malta should reply to such claims and not abdicate its responsibilities by simply referring the claimant to another entity.

Outcome

Since Transport Malta did not accept the Commissioner's recommendations, the Case was referred to the Prime Minister in November 2021. Since no action has been taken, the Ombudsman and the Commissioner sent the report to the attention of the House of Representatives.



Performance Review 2021

CASES HANDLED BY THE
OFFICE OF THE OMBUDSMAN



PERFORMANCE REVIEW 2021

CASES HANDLED BY THE OFFICE OF THE OMBUDSMAN

**TABLE 1.1 – CASES HANDLED BY THE OFFICE OF THE OMBUDSMAN
2020 - 2021**

| | 2020 | 2021 |
|---|-------------|-------------|
| | No of cases | No of cases |
| Parliamentary Ombudsman | 245 | 239 |
| Commissioner for Environment and Planning | 107 | 95 |
| Commissioner for Education | 45 | 50 |
| Commissioner for Health | 106 | 143 |
| Total | 503 | 527 |

**DIAGRAM 1.2 – CASES HANDLED BY THE OFFICE OF THE OMBUDSMAN
2021**

During 2021, the Office of the Ombudsman handled 527 cases, an increase of 5% when compared to the 2020 case load. As shown in Table 1.1 and Diagram 1.2, of the 527 cases, 239 were investigated by the Parliamentary Ombudsman, 2.5% less than 2020; 143 by the Commissioner for Health, an increase of 35% from 2020, 95 by the Commissioner for Environment and Planning, 11% less from the previous year and 50 by the Commissioner for Education, an 11% increase from the previous year.

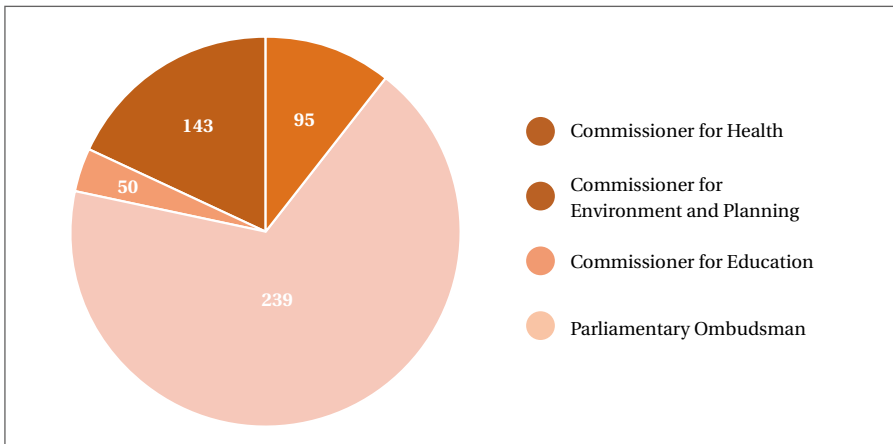


TABLE 1.3 – SUSTAINED CASES CLOSED DURING 2021 INCLUDING OUTCOME

| | No of cases | Sustained – awaiting outcome | Sustained – no recommendation made | Recommendation implemented | Recommendation not implemented | Recommendation Partly implemented |
|---|-------------|------------------------------|------------------------------------|----------------------------|--------------------------------|-----------------------------------|
| Parliamentary Ombudsman | 21 | 10 | 1 | 7 | 3 | - |
| Commissioner for Environment and Planning | 14 | - | 2 | 6 | 6 | - |
| Commissioner for Education | 11 | - | 2 | 5 | 2 | 2 |
| Commissioner for Health | 63 | - | 36 | 21 | 6 | - |
| Total | 109 | 10 | 41 | 39 | 17 | 2 |

Table 1.3 shows that during the year under review from the 21 sustained cases by the Parliamentary Ombudsman, 7 (33%) recommendations were implemented by the Public Administration, 3 (14%) were not implemented. Of the remaining cases 10 (48%) were sustained and the Office of the Ombudsman was waiting for the reaction of the entity and another case was sustained but no recommendation was made.

The Commissioner for Environment and Planning sustained 14 of the cases investigated during 2021, of which 6 (43%) were implemented, 6 (43%) were not implemented and 2 (14%) were sustained but no recommendation was made.

In the case of the Commissioner for Education, from the 11 sustained cases, 5 (45%) of his recommendations were implemented by the Public Administration, 2 (18%) were not implemented, 2 (18%) were sustained but no recommendation was made and another 2 (18%) where the recommendations made by the Commissioner were partly implemented.

The Commissioner for Health had 63 sustained cases, of which the Public Administration implemented 21 (33%), 36 (57%) were sustained but no recommendation was made and the remaining 6 (10%) were not implemented.

In total, from the 109 cases sustained by the Office of the Ombudsman, a total of 39 (36%) cases were implemented, 41 (37%) were sustained but no recommendation was made, 17 (16%) were not implemented, 10 (9%) cases are still awaiting outcome from the public administration and 2 (2%) were partly implemented.

**TABLE 1.4 – COMPLAINTS AND ENQUIRIES RECEIVED
1996-2021**

| Year | Total number Ombudsman's Office | Written complaints | | | | Enquiries |
|------|------------------------------------|-----------------------|--|---|-------------------------|-----------|
| | | Ombudsman | Commissioner for Environment and Planning | University Ombudsman/ Commissioner for Education | Commissioner for Health | |
| 1996 | 1112 | | | | | 849 |
| 1997 | 829 | | | | | 513 |
| 1998 | 735 | | | | | 396 |
| 1999 | 717 | | | | | 351 |
| 2000 | 624 | | | | | 383 |
| 2001 | 698 | | | | | 424 |
| 2002 | 673 | | | | | 352 |
| 2003 | 601 | | | | | 327 |
| 2004 | 660 | | | | | 494 |
| 2005 | 583 | | | | | 333 |
| 2006 | 567 | | | | | 443 |
| 2007 | 660 | | | | | 635 |
| 2008 | 551 | | | | | 469 |
| 2009 | 566 | | | | | 626 |
| 2010 | 482 | | | | | 543 |
| 2011 | 426 | | | | | 504 |
| 2012 | 623 | 443 | 92 | 56 | 32 | 462 |
| 2013 | 493 | 329 | 61 | 38 | 65 | 475 |
| 2014 | 538 | 352 | 49 | 60 | 77 | 581 |
| 2015 | 611 | 405 | 65 | 65 | 76 | 554 |
| 2016 | 557 | 361 | 55 | 59 | 82 | 579 |
| 2017 | 520 | 336 | 62 | 39 | 83 | 484 |
| 2018 | 553 | 313 | 84 | 54 | 102 | 438 |
| 2019 | 592 | 336 | 84 | 68 | 104 | 533 |
| 2020 | 503 | 245 | 107 | 45 | 106 | 498 |
| 2021 | 527 | 239 | 95 | 50 | 143 | 433 |

Total Case Load

Table 1.4 and Diagram 1.5 show the total case load since the setting up of the Office of the Ombudsman in 1995. During 2021, the Office handled 433 enquiries, 13% less when compared to 2020 (498).

DIAGRAM 1.5 – OFFICE OF THE OMBUDSMAN – WORKLOAD

1996-2021

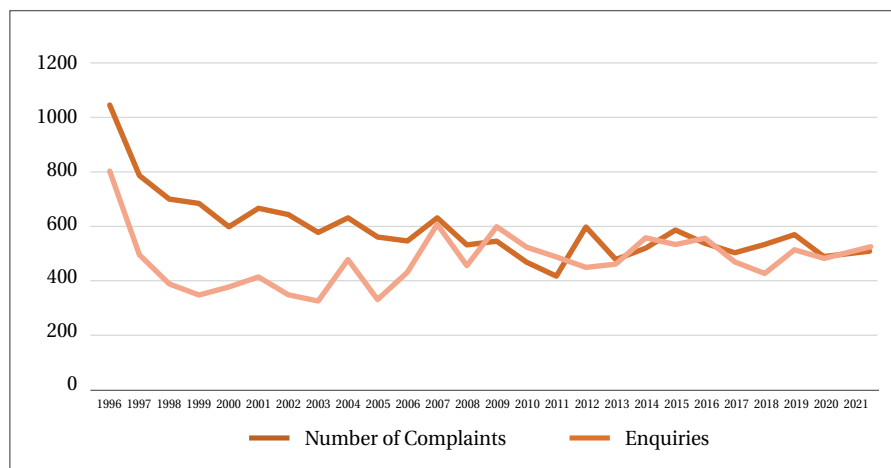


TABLE 1.6 – GENERAL ELECTIONS TREND

1997-2021

| Year | No of Cases |
|-----------|-------------|
| 1997 | 829 |
| 1998 (GE) | 735 |
| 1999 | 717 |
| 2000 | 624 |
| 2001 | 698 |
| 2002 | 673 |
| 2003 (GE) | 601 |
| 2004 | 660 |
| 2005 | 583 |
| 2006 | 567 |
| 2007 | 660 |
| 2008 (GE) | 551 |
| 2009 | 566 |
| 2010 | 482 |
| 2011 | 426 |
| 2012 | 623 |
| 2013 (GE) | 493 |

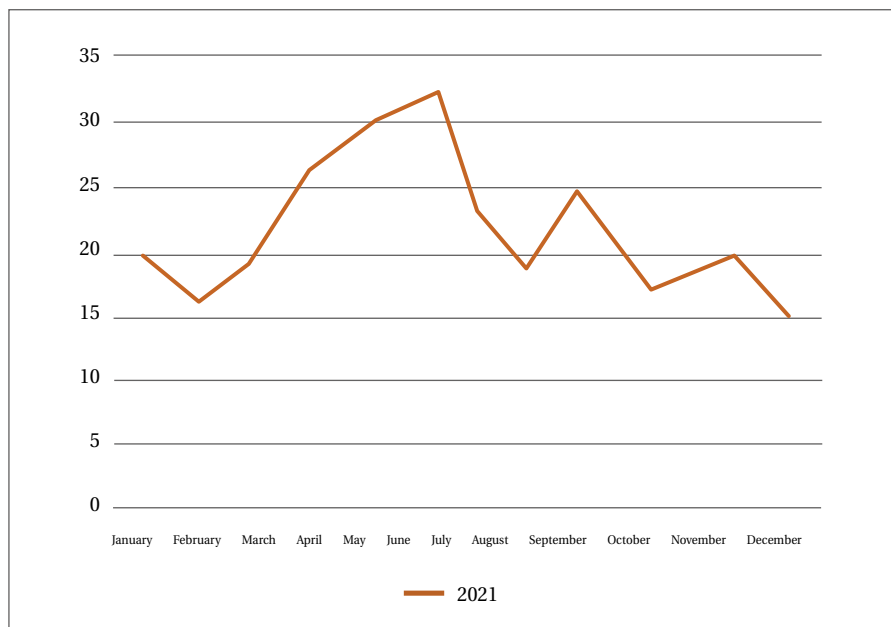
| | |
|------------------|-----|
| 2014 | 538 |
| 2015 | 611 |
| 2016 | 557 |
| 2017 (GE) | 520 |
| 2018 | 553 |
| 2019 | 592 |
| 2020 | 503 |
| 2021 | 527 |

Table 1.6 shows the number of complaints investigated by the Office of the Ombudsman in years prior and after a General Election is held.

Experience has shown that, when an election is approaching, the Office of the Ombudsman experiences a decline in complaints. This trend is then reversed in the year after a general election is held. This phenomenon is attributed to the post-election euphoria, which sees many citizens seeking direct access to the Government to seek redress.

**TABLE 1.7 – COMPLAINTS STATISTICS BY MONTH
2019 - 2021**

| Brought forward from previous years | 2019 | | | 2020 | | | 2021 | | |
|-------------------------------------|------------|------------|---------|------------|------------|---------|------------|------------|---------|
| | Incoming | Closures | In hand | Incoming | Closures | In hand | Incoming | Closures | In hand |
| | | | 183 | | | 167 | | | 168 |
| January | 28 | 30 | 181 | 25 | 20 | 172 | 18 | 16 | 170 |
| February | 30 | 39 | 172 | 13 | 17 | 168 | 16 | 36 | 150 |
| March | 19 | 27 | 164 | 19 | 15 | 172 | 19 | 29 | 140 |
| April | 31 | 30 | 165 | 11 | 23 | 160 | 26 | 22 | 144 |
| May | 33 | 30 | 168 | 17 | 16 | 161 | 30 | 32 | 142 |
| June | 20 | 18 | 170 | 29 | 25 | 165 | 32 | 22 | 152 |
| July | 48 | 32 | 186 | 27 | 13 | 179 | 18 | 19 | 151 |
| August | 22 | 23 | 185 | 20 | 10 | 189 | 13 | 31 | 133 |
| September | 25 | 29 | 181 | 32 | 26 | 195 | 20 | 26 | 127 |
| October | 30 | 29 | 182 | 16 | 21 | 190 | 12 | 10 | 129 |
| November | 23 | 25 | 180 | 20 | 39 | 171 | 20 | 26 | 123 |
| December | 27 | 40 | 167 | 16 | 19 | 168 | 15 | 21 | 117 |
| Total | 336 | 352 | | 245 | 244 | | 239 | 290 | |
| Enquiries | 533 | | | 498 | | | 433 | | |

DIAGRAM 1.8 – COMPLAINTS STATISTICS BY MONTH**2021**

Between January and December 2021 there was an increase of 19% in the number of completed investigations, from 244 in 2020 to 290 in 2021.

At the end of 2021, the pending caseload stood at 117, 30% less from the previous year.

TABLE 1.9 – COMPLAINTS RECEIVED CLASSIFIED BY MINISTRY AND RESPECTIVE DEPARTMENTS**2021**

| Office of the Prime Minister (OPM) | |
|---|-----------------------------|
| Sector | No of Cases received |
| Office of the Prime Minister | 4 |
| People and Standards Division | 4 |
| Public Service Commission | 10 |
| RSSL (Resource Support and Services) | 2 |
| EU Funds and Programmes | 1 |
| Total | 21 |

Ministry within the Office of the Prime Minister

| Sector | No of Cases received |
|--|-----------------------------|
| Department of Industrial and Employment Relations | 1 |
| Total | 1 |

Ministry for Senior Citizens and Active Ageing (MSCA)

| Sector | No of Cases received |
|--|-----------------------------|
| Senior Citizens and Active Ageing | 1 |
| Total | 1 |

Ministry for the National Heritage, The Arts And Local Government (MHAL)

| Sector | No of Cases received |
|---|-----------------------------|
| Local Council | 5 |
| Malta Libraries | 3 |
| Manoel Theatre | 1 |
| National Heritage, The Arts and Local Government | 1 |
| Total | 10 |

Ministry for Transport, Infrastructure and Capital Projects (MTIP)

| Sector | No of Cases received |
|---|-----------------------------|
| Infrastructure Malta Agency | 2 |
| Transport Malta | 4 |
| Transport, Infrastructure And Capital Projects | 2 |
| Total | 8 |

Ministry for Social Justice and Solidarity, the Family and Children's Rights (MSFC)

| Sector | No of Cases received |
|---|-----------------------------|
| Department of Social Security | 10 |
| Foundation for Social Welfare Services | 1 |
| Total | 11 |

Ministry for Social Accommodation (MSA)

| Sector | No of Cases received |
|--------------------------|-----------------------------|
| Housing Authority | 6 |
| Total | 6 |

Ministry for the Economy and Industry (MEI)

| Sector | No of Cases received |
|--------------------------------|-----------------------------|
| Lands Authority | 23 |
| Malta Business Registry | 2 |
| Malta Gaming Authority | 2 |
| Total | 27 |

Ministry for the Environment, Climate Change and Planning (MECP)

| Sector | No of Cases received |
|---------------------------|-----------------------------|
| Planning Authority | 1 |
| Total | 1 |

Ministry for Gozo (MGOZ)

| Sector | No of Cases received |
|-------------------------|-----------------------------|
| Gozo Channel Ltd | 1 |
| Total | 1 |

Ministry for Home Affairs, National Security and Law Enforcement (MHSE)

| Sector | No of Cases received |
|--|-----------------------------|
| Armed Forces of Malta | 1 |
| Correctional Services Agency | 3 |
| Detention Services | 2 |
| Home Affairs, National Security and Law Enforcement | 6 |
| Identity Malta | 16 |
| Identity Malta (Citizenship and Expatriates) | 2 |
| Identity Malta (ID Cards) | 1 |
| Land Registry Agency | 1 |

| | |
|--|-----------|
| Local Enforcement System (LESA) | 7 |
| Police | 12 |
| Total | 51 |

Ministry for Tourism and Consumer Protection (MTCP)

| Sector | No of Cases received |
|--------------------------------------|-----------------------------|
| Institute for Tourism Studies | 1 |
| Malta Tourism Authority | 1 |
| Medicines Authority | 1 |
| Total | 3 |

Ministry for Energy, Enterprise and Sustainable Development (MESD)

| Sector | No of Cases received |
|-----------------------------------|-----------------------------|
| ARMS | 10 |
| Enemalta | 3 |
| Malta Enterprise | 3 |
| Water Services Corporation | 7 |
| Total | 23 |

Ministry for Finance and Employment (MFE)

| Sector | No of Cases received |
|---|-----------------------------|
| Accountancy Board | 1 |
| Air Malta | 7 |
| Central Bank of Malta | 6 |
| Commissioner for Revenue (Capital Transfer Duty) | 2 |
| Commissioner for Revenue (Customs and Exise) | 3 |
| Commissioner for Revenue (Inland Revenue) | 11 |
| Commissioner for Revenue (VAT) | 2 |
| Finance and Employment | 1 |
| Jobsplus | 4 |
| Malta Financial Services Authority | 1 |
| The Treasury | 1 |
| National Employment Authority | 1 |
| Total | 40 |

Ministry for Justice and Governance

| Sector | No of Cases received |
|--------------------------|-----------------------------|
| Courts of Justice | 2 |
| Total | 2 |

Ministry for Justice, Equality and Governance (MJEG)

| Sector | No of Cases received |
|--------------------------|-----------------------------|
| Courts of Justice | 2 |
| Total | 2 |

Ministry for Education (MFED)

| Sector | No of Cases received |
|---|-----------------------------|
| Education Department | 5 |
| Examinations | 1 |
| Foundation for Tomorrow's Schools | 1 |
| Higher Education | 2 |
| National Commission for Further and Higher Education | 1 |
| Total | 10 |

Ministry for Inclusion and Social Wellbeing (MISW)

| Sector | No of Cases received |
|---|-----------------------------|
| Aġenzija Support | 1 |
| Commission for the Rights of Persons with Disability | 2 |
| SportMalta | 1 |
| Total | 4 |

Ministry for Research, Innovation and the Co-ordination of Post Covid-19 Strategy (MRIC)

| Sector | No of Cases received |
|---|-----------------------------|
| Malta Council for Science and Technology | 1 |
| Total | 1 |
| Outside Jurisdiction | 16 |
| Total | 239 |

Table 1.9 shows the complaints received classified by departments and public authorities according to each ministry's portfolio.

The following analysis focuses on the top five ministries by the number of complaints received. In all, the top five ministries attracted 114 complaints or 48% of the total amount of grievances lodged:

Ministry for Home Affairs, National Security and Law Enforcement (MHSE)

The Ministry for Home Affairs, National Security and Law Enforcement (MHSE) and the departments under its portfolio attracted the largest number of complaints received. In all, it attracted 51 complaints or 21% of the Parliamentary Ombudsman's caseload.

Ministry for Finance and Employment (MFE)

The ministry which attracted the second number of the complaints was the Ministry for Finance and Employment (MFE). The Office of the Ombudsman received 40 (17%) complaints from aggrieved citizens against the MFE.

Ministry for the Economy and Industry (MEI)

The Ministry for the Economy and Industry attracted 27 complaints, 11% of the caseload handled by the Parliamentary Ombudsman in 2021 which makes it the third ministry which attracted the most complaints.

Ministry for Energy, Enterprise and Sustainable Development (MESD)

The Ministry for Energy, Enterprise and Sustainable Development (MESD) attracted the fourth largest number of complaints. From the 23 (10%) complaints received 10 (43%) were related to billing issues against ARMS Ltd.

Office of the Prime Minister

In 2021 21 cases (9%) were against a department or authority which falls under the Office of the Prime Minister.

TABLE 1.10 – COMPLAINT GROUNDS 2021

| Grounds of Complaints | 2021 | |
|---|-------------|-----|
| Contrary to law and policies or rigid application of legislation, regulations and policies | 21 | 9% |
| Improper discrimination | 21 | 9% |
| Failure to provide information or to provide a reply | 14 | 6% |
| Undue delay/failure to act/waiting lists | 42 | 17% |
| Unfair treatment/lack of equity | 85 | 36% |
| Unfair selection process/promotion/grading | 28 | 11% |

| | | |
|---|------------|-------------|
| Improper attitude of staff or management | 2 | 1% |
| Personal matters/staff issues/student issues | 19 | 8% |
| Review of Commissioner's decision | 3 | 1% |
| Other | 4 | 2% |
| Total | 239 | 100% |

DIAGRAM 1.11 – CATEGORIES OF COMPLAINTS RECEIVED (BY TYPE OF ALLEGED FAILURE)

2021

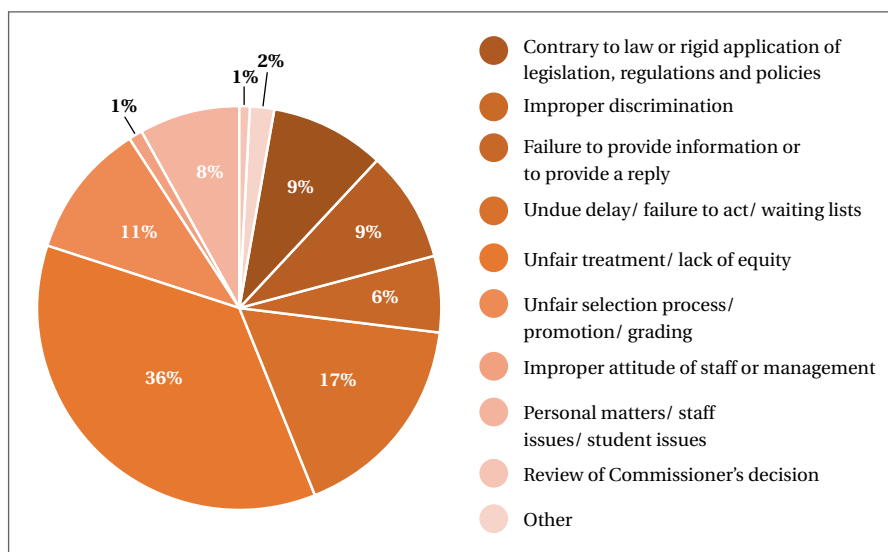


Table 1.10 and Diagram 1.11 show a detailed analysis of the complaints by the type of alleged maladministration. The most common complaints received from aggrieved citizens during 2021 were related to Unfair treatment/lack of equity which amounted to 36% of the complaints (85), followed by complaints alleging Undue delay/failure to act/waiting lists that attracted 17% (42) of the complaints.

**TABLE 1.12 – COMPLAINTS BY LOCALITY
2019-2021**

| Locality | 2019 | 2020 | 2021 |
|------------|------|------|------|
| Attard | 13 | 9 | 9 |
| Balzan | 3 | 6 | 1 |
| Birgu | 1 | 3 | - |
| Birkirkara | 24 | 11 | 10 |
| Birżebbuġa | 9 | 6 | 4 |
| Bormla | 1 | 1 | - |

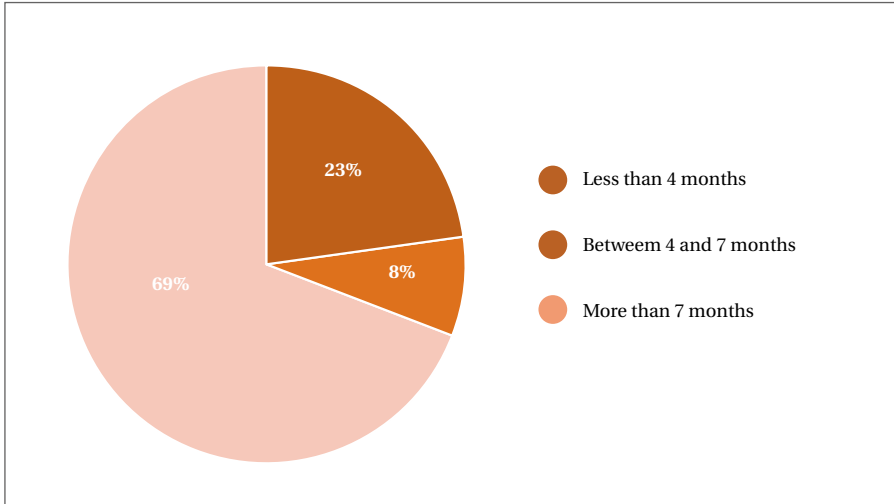
| | | | |
|--------------------------|----|----|----|
| Dingli | 4 | 1 | 2 |
| Fgura | 3 | 6 | 2 |
| Floriana | - | 2 | - |
| Gharghur | 1 | - | 2 |
| Ghaxaq | 4 | - | - |
| Gudja | - | 1 | 1 |
| Gżira | - | 5 | 1 |
| Hamrun | 10 | 1 | 1 |
| Iklin | 1 | - | 1 |
| Isla | 1 | - | 2 |
| Kalkara | 2 | - | - |
| Kirkop | 2 | 1 | 5 |
| Lija | 3 | 1 | 1 |
| Luqa | - | 4 | 3 |
| Madliena | - | - | 1 |
| Manikata | - | - | - |
| Marsa | 2 | 1 | 2 |
| Marsaskala | 15 | 10 | 11 |
| Marsaxlokk | 1 | - | 5 |
| Mdina | - | 1 | - |
| Mellieha | 5 | 5 | 5 |
| Mġarr | 2 | 1 | 2 |
| Mosta | 14 | 14 | 12 |
| Mqabba | - | 2 | 2 |
| Msida | 3 | 2 | 6 |
| Mtarfa | 1 | 2 | 2 |
| Naxxar | 10 | 4 | 9 |
| Paola | 7 | 4 | 3 |
| Pembroke | 7 | 1 | 1 |
| Pietà | 4 | 3 | 8 |
| Qormi | 5 | 5 | 2 |
| Qrendi | 2 | 1 | - |
| Rabat | 6 | 2 | 1 |
| Safi | 1 | - | 2 |
| San Ġiljan | 5 | 6 | 2 |
| San Ġwann | 15 | 8 | 10 |
| San Pawl il-Baħar | 17 | 8 | 8 |
| Santa Luċija | 3 | 2 | 5 |
| Santa Venera | 6 | 2 | 3 |
| Siggiewi | 3 | 4 | 5 |
| Sliema | 15 | 10 | 5 |

| | | | |
|------------------|------------|------------|------------|
| Swieqi | 8 | 8 | 6 |
| Ta' Xbiex | - | 1 | 4 |
| Tarxien | 7 | 1 | 4 |
| Valletta | 5 | 7 | 1 |
| Xghajra | - | - | 1 |
| Żabbar | 8 | 9 | 4 |
| Żebbuġ | 4 | 3 | 6 |
| Żejtun | 9 | 5 | 9 |
| Żurrieq | 6 | 4 | 3 |
| Gozo | 19 | 15 | 18 |
| Other | 18 | 24 | 13 |
| Overseas | 21 | 12 | 13 |
| Total | 336 | 245 | 239 |

TABLE 1.13 – AGE PROFILE OF OPEN CASELOAD AT END 2021

| Age | Cases in hand |
|-------------------------------|----------------------|
| Less than 2 months | 18 |
| Between 2 and 3 months | 2 |
| Between 3 and 4 months | 7 |
| Between 4 and 5 months | 1 |
| Between 5 and 6 months | 5 |
| Between 6 and 7 months | 3 |
| Between 7 and 8 months | 2 |
| Between 8 and 9 months | 1 |
| Over 9 months | 78 |
| Total Open files | 117 |

Table 1.13 and Diagram 1.14 show the number of cases still under investigation that stood at 117 at the end of 2021.

DIAGRAM 1.14 – PERCENTAGE OF OPEN COMPLAINTS BY AGE (AT END 2021)**TABLE 1.15 – OUTCOMES OF FINALISED COMPLAINTS (2021)**

| Outcomes | 2021 |
|---|-------------|
| Sustained cases | 21 |
| Cases not sustained | 61 |
| Resolved by informal action | 29 |
| Investigation discontinued (not undertaken, given advice/assistance, withdrawn, etc) | 89 |
| Outside Jurisdiction | 20 |
| Declined (time-barred, trivial, etc.) | 70 |
| Total | 290 |

DIAGRAM 1.16 – OUTCOMES OF FINALISED COMPLAINTS 2021

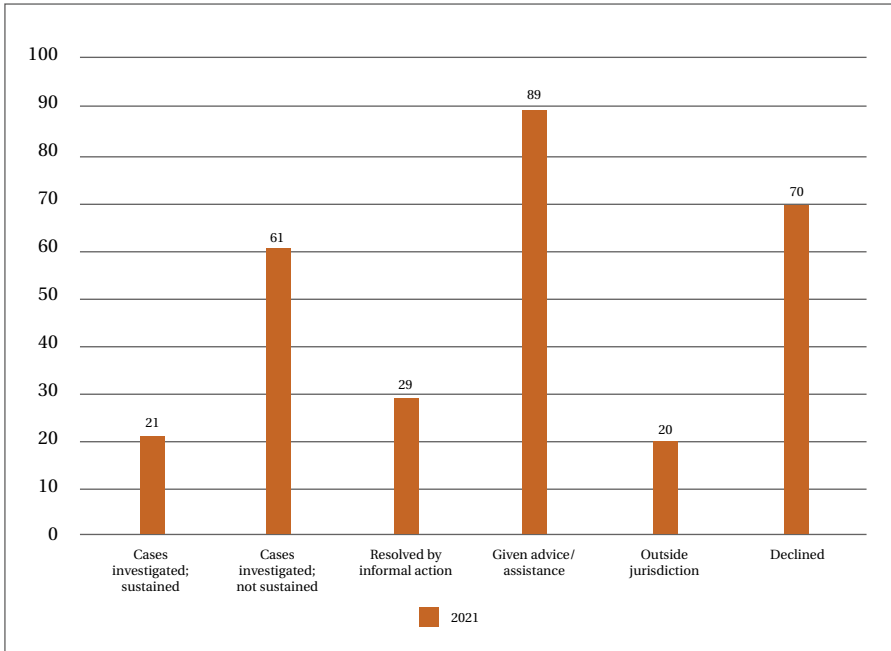


Table 1.15 and Diagram 1.16 show the outcome of the finalised complaints. In 2021, 21 (7%) of the finalised complaints were sustained by the Ombudsman with a satisfactory result for the complainant.

Also, 89 (31%) cases were finalised by giving advice or assistance and without the need to conduct a formal investigation. There were also 29 (10%) cases that were also resolved by informal action while there were 20 (7%) cases that were outside the Ombudsman's jurisdiction.

TABLE 1.17 – TYPE OF MALADMINISTRATION IN JUSTIFIED COMPLAINTS (2021)

| Grounds of Complaints | 2021 |
|--|------|
| Contrary to law and policies or rigid application of legislation, regulations and policies | 4 |
| Improper discrimination | 4 |
| Failure to provide information or to provide a reply | 4 |
| Undue delay/failure to act/waiting lists | 14 |

| | |
|---|-----------|
| Unfair treatment/lack of equity | 17 |
| Unfair selection process/promotion/grading | 5 |
| Personal matters/staff issues/student issues | 2 |
| Total | 50 |

Table 1.17 illustrates the type of maladministration of justified complaints. Of the 50 justified complaints, 34% concerned allegations related to unfair treatment/lack of equity. The second most common type of complaints were those concerning undue delay or failure to act/waiting lists (28%).

Commissioner for Education

ANNUAL REPORT 2021



COMMISSIONER FOR EDUCATION

ANNUAL REPORT 2021

The year 2021 was characterised by a slight increase in the number of new complaints received falling within the jurisdiction of the Commissioner for Education – a total of 50 cases when compared to 45 for 2020.

As in previous years, the majority of these complaints were directed against the ‘Education Authorities’, which includes for statistical purposes not only matters relating to teachers in government service and to primary and secondary schools falling under the direct control of the Department of Education, but also the Institute for Education and the Foundation for Tomorrow’s Schools. Predictably, the bulk of complaints against the Education Authorities came from staff (mainly academic staff), 14, with only 4 from students and 1 complaint from parents (parents of children attending a specialised school).

The least problematic of the education providers was, as in previous years, the Institute of Tourism Studies, where the senior management of this institute also continued to show a proactive predisposition to try and resolve issues in an amicable way by availing themselves of the mediation platform provided by the Ombudsman’s Office. Regrettably, the same cannot be said of the University of Malta and the Malta College of Arts, Science and Technology (MCAST). The latter in particular continued to show a marked propensity to be parsimonious with the relevant facts required by the Commissioner in the investigation of some cases. The University of Malta on its part is often late in providing all the required information, including information as to whether and how it intends to implement recommendations made in final opinions delivered by the Commissioner. This is probably due to the fact that the majority of complaints against the University originate from members of staff (academic and non-academic) and the required information has to be channelled through one office which appears to be either overworked or understaffed (or both).

Delays in obtaining the required information was also experienced with the Education Authorities. In 2021 the Ministry’s Ombudsman Liaison Officer was changed three times. The Commissioner is pleased to report that the current Liaison Officer, appointed in January 2022, takes a pro-active approach to pending investigations and is of great help in expediting cases by chasing after the required

information or by indicating to the Commissioner the person or persons most likely to be of assistance. This has brought about an important and welcome shift in the Ministry's approach to pending cases, by doing away with the arcane method that all correspondence with the Commissioner must go through the Permanent Secretary.

In 2021 only 22% of 50 complaints were sustained (that is, declared to be well founded in whole or in part), with 26% not sustained and the remainder either resolved before a final opinion was preferred, or discontinued for a variety of reasons or not investigated in the first place.

Overall, the main ground of complaint in 2021 was that of unfair treatment by, or lack of equity at the hands of, the particular respondent education provider (in 44% of cases), with unfair selection process, promotion or grading (18%) and illegal decisions or decisions resulting from the rigid application of legislation, regulations and policies (12%) as runners up.

In 2021 a total of 4 reports (that is, Final Opinions) were sent to the House of Representatives by the Commissioner for Education after failure by the respondent education provider to comply in whole or in part within a reasonable time with the recommendations made by the Commissioner. Two of these four cases had been concluded by the current Commissioner's predecessor, Mr Charles Caruana Carabez, prior to his demise in 2020.

**TABLE 2.1 - COMPLAINT INTAKE BY INSTITUTION
(2019 - 2021)**

| Institutions | 2019 | 2020 | 2021 |
|-------------------------------------|-------------|-------------|-------------|
| University of Malta | 25 | 18 | 19 |
| MCAST | 7 | 8 | 10 |
| Institute of Tourism Studies | 4 | 1 | 1 |
| Education Authorities | 32 | 18 | 20 |
| Total | 68 | 45 | 50 |

TABLE 2.2 - COMPLAINTS BY INSTITUTION CLASSIFIED BY COMPLAINT TYPE 2019 - 2021

| | University of Malta | | | MCAST | | | Institute of Tourism Studies | | | Education Authorities | | | Total | | |
|---|---------------------|------|------|-------|------|------|------------------------------|------|------|-----------------------|------|------|-------|------|------|
| | 2019 | 2020 | 2021 | 2019 | 2020 | 2021 | 2019 | 2020 | 2021 | 2019 | 2020 | 2021 | 2019 | 2020 | 2021 |
| Staff | 8 | 3 | 11 | 4 | 7 | 5 | 3 | 1 | 1 | 17 | 8 | 14 | 32 | 19 | 31 |
| Students | 17 | 15 | 8 | 3 | 1 | 5 | 1 | - | - | 14 | 8 | 4 | 35 | 24 | 17 |
| Others | - | - | - | - | - | - | - | - | - | - | 2 | 1 | - | 2 | 1 |
| Total complaints by students, staff & others | 25 | 18 | 19 | 7 | 8 | 10 | 4 | 1 | 1 | 31 | 18 | 19 | 67 | 45 | 49 |
| Own initiative cases | - | - | - | - | - | - | - | - | - | 1 | - | 1 | 1 | - | 1 |
| Total | 25 | 18 | 19 | 7 | 8 | 10 | 4 | 1 | 1 | 32 | 18 | 20 | 68 | 45 | 50 |

TABLE 2.3 - OUTCOMES OF FINALISED COMPLAINTS 2021

| Outcomes | 2021 | |
|--|-------------|-------------|
| Sustained cases | 11 | 22% |
| Cases not sustained | 13 | 26% |
| Resolved | 8 | 16% |
| Investigation discontinued (not undertaken, given advice/assistance, withdrawn, etc) | 13 | 26% |
| Declined (time-barred, trivial, etc.) | 5 | 10% |
| Total | 50 | 100% |

TABLE 2.4 - COMPLAINT GROUNDS 2021

| Category | 2021 | |
|--|-------------|-------------|
| Contrary to law and policies or rigid application of legislation, regulations and policies | 6 | 12% |
| Improper discrimination | 4 | 8% |
| Lack of transparency or accountability | 1 | 2% |
| Failure to provide information or to provide a reply | 2 | 4% |
| Undue delay/failure to act/waiting lists | 1 | 2% |
| Unfair treatment/lack of equity | 22 | 44% |
| Unfair selection process/promotion/grading | 9 | 18% |
| Issues of quality of life/special needs | 1 | 2% |
| Improper attitude of staff or management | 1 | 2% |
| Other | 3 | 6% |
| Total | 50 | 100% |

Commissioner for Environment and Planning

ANNUAL REPORT 2021



OMBUDSMAN

COMMISSIONER FOR ENVIRONMENT AND PLANNING

COMMISSIONER FOR ENVIRONMENT AND PLANNING

ANNUAL REPORT 2021

MAIN ISSUES TACKLED DURING THE TERM IN OFFICE

The following is a snapshot of some of the main issues tackled by the Commissioner for Environment and Planning in the five-year term in Office. Whilst one must acknowledge that there were some actions by State entities on certain issues, in some instances there was no reaction at all.

“Environment advances should, at least, be at par with the economic development.”

Commissioner’s Opinion on the State of the Environment Report 2018

It is amply obvious that the planning system is not taking Malta where we want it to be. Enforcement action as timely as decision-taking should be the order of the day if we want to find the right balance between environment and development. Illegalties have to be acted upon and not used as a pretext to justify a development. Furthermore, inconsistencies in reporting and decision-making by the Planning Executive and Planning Boards - even if these tasks are carried out by different officers of the same authority - only lead to raise certain doubts and to discriminatory situations. Having a multitude of planning policies that can easily be circumvented through commitments or relaxation policies - leading to absurd contradicting decisions such as hotels in residential areas and vice-versa or the loss of our architectural heritage - leads one to consider an upheaval of development strategies to one mainly based on legal site commitments rather than the multitude and sometimes ambiguous plans and policies.

One should also discuss whether it is time to move the appeals tribunal out of the ditch and away from the Planning Authority since the current situation where doubts are raised on the members of the tribunals is not very comforting. After all, appeals on decisions taken by other authorities, such as the Lands Department and Transport Malta, are already being viewed by the Administrative Review Tribunal at the Law Courts.

“The rural and marine environment, located in outside development zones, should primarily be protected rather than planned for development.”

Commissioner’s Opinion on the State of the Environment Report 2018

Whilst there seems to be a shift in the way development decisions are taken on Outside Development Zones, one can still note various developments that are compromising the countryside. In November 2021 alone, 15 ODZ applications were approved by the Planning Authority following the tacit objection by the Environment and Resources Authority, 9 of which were even overturned by the Case Officer. In October 2021, there were 21 similarly approved ODZ applications, 10 of which were overturned by the Case Officer. These permits approved structures imposing on the countryside such as agricultural stores and swimming pools. One can calculate what the accumulative amount of permits that are ‘ignoring’ the appropriate authority is. The call for more ERA say on ODZ applications holds now more than ever. It is true that this might not immediately improve the situation, however, one can at least direct any incongruencies with the appropriate authority. An electrical fault in the car has to be tackled by an auto-electrician and it is useless to direct it to the mechanic and then complain about it.

The Environment and Resources Authority can exert pressure by not issuing nature permits (when these are required) even though the Planning Authority would have issued a development permit. ERA is not obliged to issue the nature permit on a development, particularly when it would have objected to the same development in the first place, so much so that a standard condition in development permissions impose on the applicant to obtain any other necessary permission required from another authority.

“The distance from the party-wall during excavations prescribed in the law by our forefathers should become the norm rather than the exception since what applied when excavations were done manually and near low buildings should apply even more when excavations are carried out using heavy machinery and adjacent to multi-storey buildings.”

Commissioner’s Annual Report 2020

Notwithstanding the consistent decisions by the Law Courts and the spate of serious building collapses that occurred, developers - sometimes also with the consent of neighbours - are still being allowed to take certain risks when it comes to extensive excavations close to the foundations of buildings.

“The Building Regulations Office (today the Building and Construction Authority) should compile its own register as established by law without considering any other registers compiled by any other body except for those registers that are authorized according to law.”

Commissioner's Final Opinion dated 3 September 2019

The licensing and registration of building contractors is moving too slow when compared to the speed in which the construction industry is progressing. In September 2021 the recently established Building Construction Authority issued a call for information¹ and one can only hope that this process is concluded during 2022.

“Local roads are already dangerous being used by motorbikes, cars and heavy vehicles alike and hence the introduction of cycle lanes and pedestrian areas should be prioritised.”

Commissioner's Opinion on the State of the Environment Report 2018

Whilst one can note a shift from designs only for vehicles to projects providing for pedestrians and cyclists, more infrastructure is required before people are urged to commute on foot or by bicycle. Completing uninterrupted safe corridors - including unobstructed pavements - and incentivizing people to work from home are just two main examples.

“This year a lot of awareness was raised regarding barred accesses to countryside walks either through the blocking of opening in rubble walls or else through the mushrooming of no entry signs. The latter can easily be tackled if the authorities regulate the procedure for putting in place similar signs - especially if these face public footpaths and when there maybe criminal consequences - simply by imposing the requirement to have similar signs officially approved.”

Commissioner's Annual Report 2020

One questions enforcement action on illegal developments. Whilst one must distinguish between certain illegal developments as it is detrimental for the environment from a waste perspective to demolish an illegal structure and then allow it to be built again following a planning process, direct action on minor developments in ODZ such as gates that do not offer such a challenge should not be suspended for the whole length of the planning process, very similar to cases involving other developments where action is immediately taken such as on billboards and signs.

¹ Newspaper 'L-Orizzont' dated 25 September 2021.

“Paperless bureaucratic procedures adopted in particular by Government entities (as already in place at the Planning Authority), paperless commercials rather than door-to-door junk mail and incentives to reduce plastic bottles through household filtration systems are some examples of how incentives could be put in place to reduce waste at source.”

Commissioner’s Opinion on the State of the Environment Report 2018

Whilst one notes the introduction of paperless processes in other entities as well such as the Lands Authority², nothing appears to have been done to tackle door-to-door commercials. Advances in waste treatment are lauded, but waste reduction at source should be enhanced. It was reported that the average household gets 400 junk mail leaflets a year³. This translates into hundreds of tons of rather useless waste. There also seems to be an impasse regarding plastic bottles waste. Yet, the subsidy on household filtration system should be upgraded to one providing this household equipment totally for free if we seriously want to reduce plastics whilst also drastically reducing the associated unnecessary load handling and deliveries.

“There is no need for recommendations so that everyone follows the law as this should always be the order of the day, particularly when it comes to Government entities that should set an example for citizens, nonetheless the importance of establishing a one-stop shop is being repeated so that the citizen is adequately informed and so that fines imposed against Government entities do not simply translate into an internal transaction.”

Commissioner’s Final Opinion dated 29 November 2021

Concessions allowing emergency works without a permit should distinguish between emergency works that are instigated due to a human fault (such as lack of maintenance) and emergency works that result due to natural occurrences. That is, one cannot stay in abeyance for years and then decide on action in the last minute through the provisions of the law and then call them emergency works. If danger is evident a permit may be issued, but neglect has to be acted-upon and penalised as otherwise we won’t move forward in this respect.

² Government Gazette dated 27 August 2021.

³ Newspaper ‘The Sunday Times of Malta’ dated 16 January 2022.

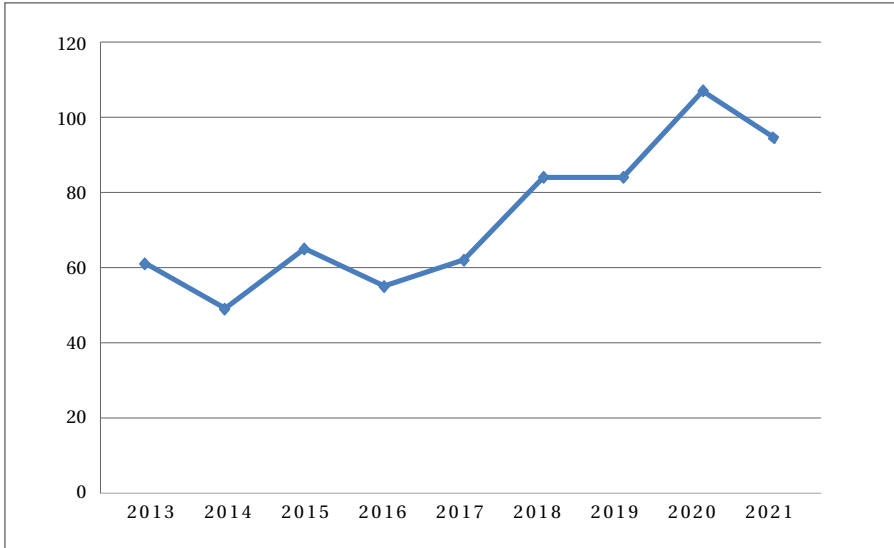
CHART 3.1: NEW CASES 2013-2021

Chart 3.1 shows the number of new cases since the establishment of the Commissioner for Environment and Planning. This year there was a slight dip when compared to the previous year, but when one considers that in 2020 the number of cases increased substantially on the previous year, one can easily say that, on a general level, the trend is up.

TABLE 3.2: NUMBER OF CASES

| | 2021 | 2020 |
|-----------------------------------|------------|------------|
| Pending cases from previous years | 29 | 30 |
| New requests for investigation | 95 | 107 |
| Total | 124 | 137 |

Pending cases from previous years remain relatively low as a lot of effort is put into closing cases within the shortest period of time. A very small number of investigations stall either because the relative entity has to compile a certain amount of data or else because the relative action to resolve the case during the investigation takes time. During these five years in Office, there was generally an improvement in both the quality and the timely submission of replies. One understands that certain cases call for thorough research and various internal communications within the entity itself. Nevertheless, in the absence of a reply, some cases still proceed for a final opinion, unless a justified request for an extension of time is received from the relative entity.

During this year the Commissioner opened eight own-initiative investigations, most of them following publications in the media or anonymous communications. Four cases related to lack of action from the relative authority and the other four cases concerned the proper application, or rather lack of proper application of administrative procedures. There are instances, rather on the increase, where complainants prefer to go to the media for an instant reaction rather than report the case to the relative entity for the appropriate investigation and any eventual action. This Office has always made it a point to keep the details of the complainant private, unless the investigation warrants otherwise.

TABLE 3.3: CLOSED CASES

| | 2021 | 2020 |
|-----------------------------------|-----------|------------|
| Pending cases from previous years | 23 | 23 |
| New requests for investigation | 75 | 85 |
| Total | 98 | 108 |

Similar to 2020, 79% of the new cases received this year were concluded during the same year. It is generally accepted that certain complicated cases would require a period between a month and two months for the relative authority to compile a decent researched reply, whereas following closed investigations, cases are only closed definitely following a reply to the recommendations from the relative entity within the established one-month period afforded by law.

TABLE 3.4: GOVERNMENT ENTITIES SUBJECT TO COMPLAINTS

| | 2021 | 2020 |
|--|------|------|
| ARMS Ltd | 1 | - |
| Building Construction Agency | 3 | 4 |
| Building Regulation Board | 1 | - |
| Enemalta | 1 | 1 |
| Environment and Planning Review Tribunal | - | 1 |
| Environment and Resources Authority | 7 | 3 |
| Housing Authority | 1 | 1 |
| Infrastructure Malta | 19 | 9 |

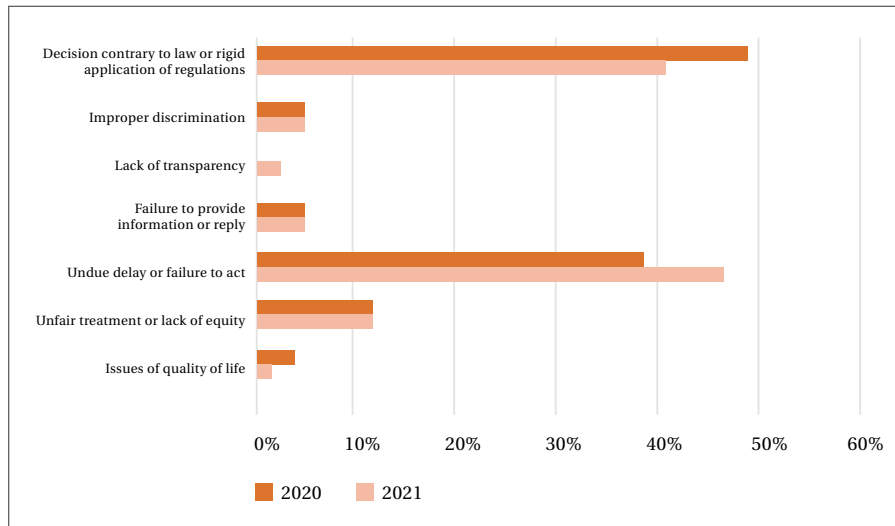
| | | |
|---|-----------|------------|
| Lands Authority | 7 | 7 |
| Local Council | 4 | 8 |
| Local Enforcement Systems Agency | 1 | - |
| Local Government | 1 | - |
| Ministry for Environment, Climate Change and Planning | 1 | - |
| Ministry for Transport, Infrastructure and Capital Projects | - | 1 |
| Mount Carmel Hospital | - | 1 |
| Occupational Health and Safety Authority | - | 1 |
| ORNIS Committee | 1 | - |
| Planning Authority | 41 | 61 |
| Police | - | 1 |
| Transport Malta | 4 | 6 |
| Water Services Corporation | 2 | 2 |
| Total | 95 | 107 |

As usual the Planning Authority holds the highest case load, but this year this decreased to 43% from 57% last year, with the change absorbed primarily by Infrastructure Malta (IM) that saw its case load increase to 20% from 8% last year. This is mainly due to various changes in procedures adopted by the PA - some of which through interventions by this Office - and various complaints, particularly related to road levels, against IM. Nevertheless, the majority of cases involving IM are closed without the need for a final opinion as they are satisfactorily resolved by the same agency during the course of the investigation.

TABLE 3.5: CASELOAD BY NATURE OF COMPLAINT

| | 2021 | | 2020 | |
|--|------|-----|------|-----|
| Decision contrary to law or rigid application of regulations | 39 | 41% | 52 | 48% |
| Improper discrimination | 4 | 4% | 4 | 4% |
| Lack of transparency | 2 | 2% | 0 | 0% |
| Failure to provide information or reply | 4 | 4% | 4 | 4% |

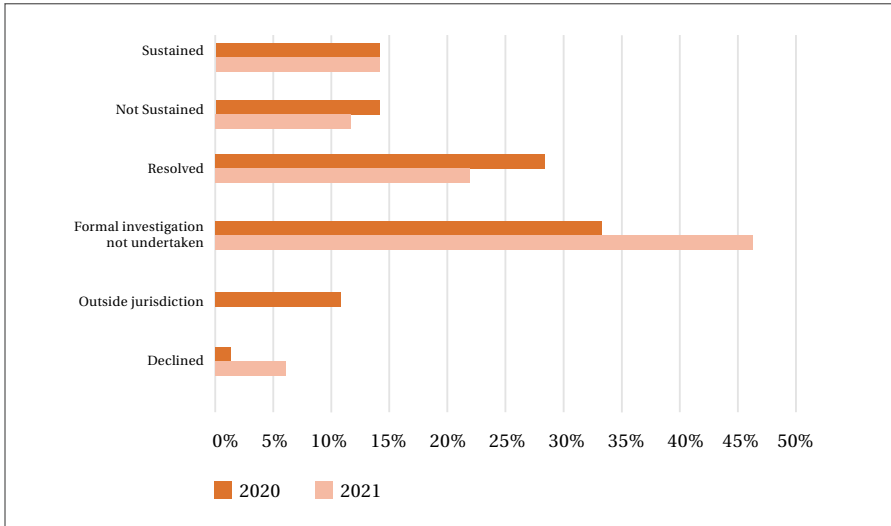
| | | | | |
|------------------------------------|-----------|-------------|------------|-------------|
| Undue delay or failure to act | 34 | 36% | 31 | 29% |
| Unfair treatment or lack of equity | 11 | 12% | 13 | 12% |
| Issues of quality of life | 1 | 1% | 3 | 3% |
| Total | 95 | 100% | 107 | 100% |



Decision contrary to law or rigid application of regulations, and undue delay or failure to act remain predominant when it comes to the nature of the complaints received by this Office, covering almost 80% of all complaints.

TABLE 6: OUTCOME FOLLOWING CLOSURE OF CASES

| | 2021 | | 2020 | |
|-------------------------------------|-----------|-------------|------------|-------------|
| | Count | Percentage | Count | Percentage |
| Sustained | 14 | 14% | 15 | 14% |
| Not sustained | 12 | 12% | 15 | 14% |
| Resolved | 21 | 22% | 30 | 28% |
| Formal investigation not undertaken | 45 | 46% | 35 | 32% |
| Outside jurisdiction | 0 | 0% | 12 | 11% |
| Declined | 6 | 6% | 1 | 1% |
| Total | 98 | 100% | 108 | 100% |



This year there were 14 sustained cases (compared to 15 last year) of which the Commissioner's recommendations were not implemented in 6 cases (compared to 3 last year). These cases were duly referred to the House of Representatives, albeit without any outcome. Complainants won't go to institutions such as the Ombudsman if there is no final outcome to their query. Whilst one expects a positive reply to recommendations, particularly to recommendations related to action against illegal works carried out by some public entities - such as the trenching works at Comino, the footbridge at Marsa and the un/loading bay at Swieqi - one notes that the same recommendations appear to have driven the message home and resulted in less similar reoccurrences. Meanwhile, this Office is looking forward for the first discussion of this annual report during a dedicated parliamentary sitting as enshrined more than a year ago in the Ombudsman Act.

CONCLUSION

On a general note, this Office also saw for the introduction of the Maltese language in the publication of site notices by the Planning Authority following a case being brought up by a concerned citizen and is also seeing for the imposition of the introduction of the energy performance rating on commercials for the sale/letting of properties as required by the European Directive.

One should not miss to laud favourable environmental measures such as those addressing old and vacant properties, the waste strategy implementation and those related with renewable energy and public transport. This year also saw the introduction of further public participation and transparency measures in the Environment and Resources Authority decision-making process. One only hopes for the implementation of other measures such as the promised urban greening projects within various localities around Malta and Gozo.

Commissioner for Health

ANNUAL REPORT 2021



COMMISSIONER FOR HEALTH

ANNUAL REPORT 2021

INTRODUCTION

In 2021 the Commissioner for Health received 143 complaints, an almost 35% increase over the previous year. Part of this increase was due to complaints concerning the Covid-19 regulations.

The complaints were 104 from the public and 39 from the staff employed in the various units of the Ministry for Health.

The Commissioner for Health concluded 159 investigations, from which a total of 103 cases were from the year 2021 and 56 from previous years' caseload (2016 to 2020).

The Commissioner is pleased with the attention given to the complaints he is investigating; however, there is still room for improvement.

TABLE 4.1 - COMPLAINTS RECEIVED

Jan – Dec 2021

| Complaints Received | 2020 | 2021 |
|-------------------------------------|------------|------------|
| From the public | 56 | 104 |
| From employees in the Health Sector | 50 | 39 |
| Total | 106 | 143 |

Table 4.2 shows that from 143 complaints received by the Commissioner for Health, 121 were against the Ministry for Health, 9 against the Ministry for Senior Citizens and Active Aging, and 4 against the Public Service Commission. The rest of the cases were spread over several entities, as shown in the table.

TABLE 4.2 - COMPLAINTS RECEIVED

Jan – Dec 2021

| Against | No. of complaints |
|---|-------------------|
| Ministry for Health | 121 |
| Ministry for Senior Citizens and Active Aging | 9 |

| | |
|-------------------------------------|------------|
| Public Service Commission | 4 |
| People and Standards Division (OPM) | 2 |
| Law Courts | 1 |
| Medicines Authority | 1 |
| Malta Psychology Profession Board | 3 |
| WasteServ Malta | 2 |
| Total | 143 |

TABLE 4.3 - OUTCOME OF CASES RECEIVED IN THE YEAR 2021**Jan – Dec 2021**

| Outcome | No. of complaints |
|-------------------------------------|--------------------------|
| Sustained | 36 |
| Not sustained | 50 |
| Resolved by informal action | 9 |
| Investigation discontinued | 8 |
| Pending at Ministries / Departments | 35 |
| Pending at Commissioner for Health | 5 |
| Total | 143 |

Table 4.3 illustrates the outcome of the complaints received in 2021. From the 143 complaints received, 36 cases were sustained, 50 cases were not sustained, and 9 were resolved by informal action. It is worth noting that 24% of the 2021 caseloads are pending a reply from the Ministries or departments.

Table 4.4 - Pending at Ministry/Entity**Jan – Dec 2021**

| Department/Ministry | 2021 | As at 16/05/2022 |
|--|-------------|-------------------------|
| Ministry for Health | 26 | 19 |
| Ministry for Senior Citizens and Active Ageing | 2 | - |
| Public Service Commission | 1 | - |
| People and Standards Division (OPM) | 1 | - |
| Malta Psychology Profession Board | 3 | 2 |
| Wasteserv | 1 | 1 |
| Law Courts | 1 | 1 |
| Total | 35 | 23 |

Table 4.4 shows that the Ministry for Health tops the list of pending feedback with 26 of the total pending cases.

Table 4.5 shows the age profile of pending cases. By the end of the year, under review of the 40 pending cases, 9 cases had been pending for over 6 months.

TABLE 4.5 - AGE PROFILE**Jan to Dec 2021**

| Age | Pending cases |
|--------------------|---------------|
| Less than 3 months | 18 |
| Over 3 months | 13 |
| Over 6 months | 9 |
| Total | 40 |

TABLE 4.6 - CLOSED CASES FROM PREVIOUS CASELOADS**Jan – Dec 2021**

| | No. of complaints |
|-------------------------------------|-------------------|
| Closed Cases from the 2016 Caseload | 1 |
| Closed Cases from the 2017 Caseload | 1 |
| Closed Cases from the 2018 Caseload | 4 |
| Closed Cases from the 2019 Caseload | 18 |
| Closed Cases from the 2020 Caseload | 32 |
| Total | 56 |

Table 4.6 illustrates the number of cases closed from previous years' cases during 2021. From the 56 cases closed by the Commissioner, 50 (89%) emanated from the 2019 and 2020 caseload.

TABLE 4.7 - TOTAL NUMBER OF PENDING COMPLAINTS (2015 – 2020)

| Department / Ministry / Sector | No. of complaints | No. of complaints as at 16/05/2022 |
|--------------------------------|-------------------|------------------------------------|
| Ministry for Health | 39 | 35 |
| Medicines Authority | 2 | 2 |
| Total | 41 | 37 |

As shown in Table 4.7 at the end of the year under review, the Commissioner for Health had 41 pending cases of which 39 were against the Ministry for Health.

TABLE 4.8 - RECOMMENDATIONS NOT IMPLEMENTED**Up to Dec 2021**

| Department / Ministry / Sector | No. of complaints |
|--------------------------------|-------------------|
| Ministry for Health | 16 |
| Prime Minister | 10 |
| Parliament | 2 |
| Total | 28 |

Table 4.8 shows the status of the recommendations made by the Commissioner, which the administration did not implement. Of the 28 cases which were not implemented, 16 cases are still pending implementation at the Ministry for Health, 10 were sent to the Prime Minister (including the 2 which were sent to Parliament) following non implementation by the Ministry for Health, and 2 were sent to Parliament in terms of Article 22(4) of the Ombudsman Act.

FROM PREVIOUS ANNUAL REPORTS

Protocols

The issue of Medicine Protocols has been brought up for the past eight years with no progress or action whatsoever.

As had been *ad nauseam* stated, the Department of Health has still not taken the necessary steps to amend the Protocols which control the issue of certain medicines. This is even though they breach the Social Security Act and are also discriminatory.

Exceptional Medicinal Treatment Committee

The issue of branded medicines has also persisted since 2016. The Exceptional Medicinal Treatment Committee persists in bypassing its terms of reference, which put the patient as the subject.

As stated in previous Annual Reports, no progress can be achieved unless and until the Exceptional Medicinal Treatment Committee (EMTC) sticks to its Terms of Reference and considers every case on its own merits. On the contrary, the Committee has moved the goalposts and considers the medicinal for primary discussion.

Privatisation of Health Services

In the Annual Report of 2019 and 2020, the Commissioner for Health lamented that the contracts signed between Government and the Ministry for Health regarding Vitals/Steward Healthcare have still not been available to his Office. Another year has passed, and the agreement has not yet reached this Office.

The availability of the Vitals and Steward Healthcare contracts is now more relevant, considering the press statement issued by Steward Health Care.

PRELIMINARY INVESTIGATIONS

In 2021 the Commissioner for Health undertook the following preliminary investigations:

1. Out of stock of Uncemented Hip Implants;
2. Non-functioning of Specialists Accreditation Committee (Dentistry);
3. Industrial Action at Sir Anthony Mamo Oncology Clinic (SAMOC);
4. Inclusion of internationally approved medicines for Multiple Sclerosis;
5. General Medical and Geriatric Care for patients at Mount Carmel Hospital;

6. Regulations concerning Covid-19; and
7. The not in use Cyclotron accelerator.

Progress has been made, and issues were addressed in the following investigations:

- i. Out of stock of Uncemented Hip Implants;
- ii. Non-functioning of Specialists Accreditation Committee (Dentistry);
- iii. General Medical and Geriatric Care for patients at Mount Carmel Hospital; and
- iv. Regulations concerning Covid-19;

However, the internationally approved treatment for Macular Degeneration is still not being made available. The Commissioner for Health has reported on this matter for the last six years.

OWN INITIATIVE INVESTIGATIONS

In January 2015, the Commissioner for Health concluded an own-initiative investigation about patients suffering from hearing problems and recommended that a new service be made available by introducing hearing tests on babies very soon after birth.

Last year the pilot study was initiated. The Commissioner is pleased to report that this service is now available at Mater Dei Hospital and the Gozo General Hospital.

Another own initiative investigation concerning the Neonatal and Paediatric Intensive Care Unit (NICU) was concluded in May 2019 and implemented two of the most important recommendations made in 2021. Other recommendations, however, are still pending.

GOVERNANCE ACTION

The Principal Permanent Secretary has published a reply to the Ombudsman's Annual Report for 2020 and stated:

- a. *the public administration invariably adopts and takes on such recommendations provided their implementation is possible.*

Regarding this particular comment, the Commissioner for Health raised the question of who decides whether implementing his recommendations is “possible” or not?

- b. *the Office of the Ombudsman “ought to have in place standard operating procedure (SOPs) to which set timeframes for each stage of investigation and their conclusion.”*

The Commissioner for Health continuously sets time frames for respective departments and entities in his correspondence and reports; however, one would need to understand why the Public Administration has 41 cases pending since 2015?

The Commissioner for Health had only 3 cases about which he had to give a decision.

c. *“In a substantial number of cases – Permanent Secretaries and Liaison Officers are not even informed when the Ombudsman or one of the Commissioners close the case.”*

The Commissioner for Health informs the Department at the end of each month of the cases closed.

d. *“the Ombudsman is given reasons by the Ministry/entity concerned why a recommendation cannot be implemented.”*

In the case of recommendations made by the Commissioner for Health, the statement is not correct because his office is still waiting for an answer on the 16 recommendations he had sent to the Ministry for Health.

Also, the Commissioner for Health would appreciate the help of the Principal Permanent Secretary for his office to get a reply to the 10 cases referred to the Prime Minister and received no reaction.

SECTORAL AGREEMENTS

The Commissioner for Health had cases where Sectoral Agreements were discriminatory against certain employees.

However, even where the Department concerned admits and is prepared to make amendments, unless the Unions involved also agree, no amendments could be made. The matter will be considered when a new agreement is discussed, usually after five years.

The employees discover the discrimination after the Agreement is signed. This happens when there is a lack of adequate consultation between the Unions and the class of employees concerned.

For fairness's sake, this needs to be seen, especially by the Industrial Relations Unit of the People and Standards Division of the Office of the Prime Minister, which conducts the bargaining during the discussions.

SERVICES OF OPTOMETRIST

For quite some time, optometrist examinations in Health Centres are not being done because there is no one to do such tests.

The Commissioner has made suggestions to employ an Optometrist. However, the problem persists to date, and, meanwhile, patients have to wait.

REGISTRAR FOR THE COUNCIL FOR PROFESSIONS COMPLEMENTARY TO MEDICINE (CPCM)

The CPCM has not met for quite a long time because the Department of Health could not find a suitable person to be the Registrar.

THE CYCLOTRON

A cyclotron is a machine used to produce isotopes used in the imaging of patients with a PET (Positron Emission Tomography) scanner. The main cohort of patients are oncology patients though the radiopharmaceuticals produced are also used in infectious diseases, neurology, and cardiology. The most commonly used radiopharmaceutical is ¹⁸F-FDG (fluorodeoxyglucose) in oncology patients.

Strangely enough, the cyclotron was purchased by Malta Enterprise some four years ago and is still packed and collecting dust at the Life Sciences Park. The Department of Health is not keen to take over this machine from Malta Enterprise even though it is spending quite a large amount of money to procure the FDG from Rome and Turkey.

It is not the first time that patients were told not to attend for their scan as the FDG was not being shipped out of the production facility (for a number of reasons). Due to the very short half-life of the product, it has to be used on the day of production and cannot be stored or shipped on a later flight. The service was also severely impacted during the recent pandemic due to the closure of airports, which was followed by a severe curtailing of flights once the airports re-opened.

CONCLUSION

The Commissioner for Health would like to highlight the following concerns and would appreciate that the public administration takes action:

1. The number of pending cases, especially those up to the year ending 2020;
2. The number of recommendations that were not implemented and those which are still under consideration;

3. The long-standing issues of the Protocols and the Exceptional Medicinal Treatment Committee;
4. The long-standing industrial action at SAMOC.

These issues have been pending for a long time, and action is long overdue to the detriment of the patients.

Annex I

EUROPEAN COMMISSION RULE OF LAW REPORT
FEEDBACK BY THE OFFICE OF THE OMBUDSMAN



EUROPEAN COMMISSION RULE OF LAW REPORT

FEEDBACK BY THE OFFICE OF THE OMBUDSMAN

- 1. Would you consider the resources of the Ombudsman (human, financial, technical) as sufficient to enable it to perform its activities and mission effectively? Could you please elaborate on any challenges in terms of its independence? Are there challenges concerning the legal framework relating to the functioning of the institution of the Ombudsman? Have you been consulted as regards the recent reforms concerning your Office? Could you elaborate on these reforms?**

I consider that the House of Representatives provides adequate resources to enable my Office to perform its functions. The Ombudsman Act 1995 provides that the Ombudsman must present an annual Ombudsplan setting out the financial requirements for the following year and requesting Parliament to approve this budgetary commitment. The Ombudsplan is discussed in the House Business Committee in which the Ombudsman and its Commissioners participate.

The Ombudsplan has always been approved as submitted and my Office makes every effort to contain expenses within the approved budget. While the Ombudsman endeavours to act within the parameters on existing financial regulations, there is no oversight or control on how the Ombudsman administers the approved budget, though it expressly provides that the accounts of his Office shall be audited by the Auditor General and that the Financial Administration and Audit Act shall apply. Acting within budgetary constraints the Ombudsman had all the power to provide for the human resources required by his Office including if necessary any technical expertise. I consider that the resources put at its disposal by Parliament are adequate and the Office has never experienced any problems in this respect with any administration.

The Ombudsman and his Commissioners are recognised as Officers of Parliament and the Ombudsman Act guarantees the institution full independence and autonomy from the public administration which is not considered to be subject to direction or control or any other person or authority. The Office of the Ombudsman is very jealous of its autonomy and independence that has been further enhanced by the constitutional amendments following the recommendations made by the Venice Commission. In this regard I refer you to my comments in the introductory

chapter to my Annual Report 2019 entitled “A year in turmoil” Pages 9-29 (link provided hereunder).

<https://www.ombudsman.org.mt/wp-content/uploads/2020/06/Annual-Report-2019-Office-of-the-Ombudsman.pdf>

That document provides more useful information that further illustrates the answers given by me to your queries. Those comments detail the validity of the legal framework relating the functioning of the Institution that is basically very sound and progressive. There is always room for improvement. The recent amendments to the Constitution on which my Office has unfortunately not been consulted, while undoubtedly an improvement in so far as they strengthened the autonomy and independence of the Office through constitutional guarantees, could have been improved had proper consultation taken place.

In my last annual report I had reiterated proposals made by the Office to further strengthen the Institution. Among other points I highlighted:

- i. Extending to the Ombudsman and his Commissioners the same constitutional guarantees presently enjoyed by the Auditor General and his deputy;
- ii. To further strengthen the functions of the Office as a Parliamentary institution, the Office has recommended that in the ongoing debate on proposals to reform the Constitution one should consider enhancing the status of the Office of the Ombudsman as a leader in a proactive network at the service of Parliament to ensure and secure openness, transparency and accountability of the Executive when implementing legislation and regulations approved by it;
- iii. The setting up of a Council of State modelled on the one set up in smaller modern European countries like Belgium, the Netherlands and particularly Luxembourg, in which the Ombudsman would participate and that would have the function to offer advice that concern the correct conduct of public affairs.

2. How do you ensure the follow up to your recommendations? Which practices have you put in place? Are your recommendations regularly followed up by relevant institutions?

A good percentage of the recommendations made by the Ombudsman and his Commissioners to redress injustice or to rectify administrative malpractice are implemented. The Office maintains good relations with government departments and public authorities utilising a system of liaison officers within them and through whom progress can be monitored. Having concluded their investigation and made their recommendations where appropriate, the Ombudsman and Commissioners through the services of their investigating officers often follow cases to ensure as far as possible that recommendations are implemented. This requires discussions with government departments and public authorities and could be a very laborious

task especially when the resolution of a complaint could impact similar cases or involve considerable financial outlay.

Unfortunately, my Office's recommendations are not always followed. If the desired response is not forthcoming after consulting the Ministry or public authority concerned, my Office writes to the Office of the Prime Minister seeking its intervention. If no reaction is received within a reasonable time I submit my Final Opinion to Parliament providing the necessary information. In this respect I note that the Venice Commission had accepted our submission that Parliament through its Select Committees should be bound to consider these public opinions and decide on whether recommendations made should be implemented. Regrettably the government did not accept this recommendation and limited consideration of Parliament through a discussion of the Ombudsman's annual report.

Recently, even the President of Malta echoed such recommendation. In October 2020 in a speech during the commemoration of the 25th Anniversary since the establishment of the Ombudsman institution in Malta the President of Malta said that although he is convinced that individual Members of Parliament take well into account the content of the Ombudsman's annual report, it would be better if the House of Representatives debates the Ombudsman's reflections and recommendations more regularly.

3. Has the COVID-19 impacted the work of the administration and how in your view? Has there been an increased reporting of misconduct of the administration?

COVID -19 undoubtedly impacted negatively on the work of the administration even though many services continued to be accessible through a well-developed online network in most areas. Essential services continued to be provided by all departments and entities though certain sectors like education and health were the most impacted due to the extreme pressure as a result of the pandemic.

Since COVID-19 emerged we had staff working remotely from home on certain days on a roster basis. The main tangible drawback as a direct result of Covid-19 was the need to restrict direct contact with the public as much as possible. The Office insisted that complaints should be filed online and complainants have become very wary of direct contact with our customer service. Moreover, contact with public authorities and government departments in the investigation of complaints had to be restricted to telephone, electronic exchanges and online meetings and personal exchanges have been reduced to a minimum. We had not noticed any increase in the reporting of misconduct of the administration and there has been a noticeable if understandable decrease in the number of complaints lodged with the Office of the Ombudsman although cases falling within the remit of the Commissioner for

Environment and Planning noticeably increased. The Commissioner for Health also had an increase in his caseload when compared with the previous year.

4. Have you experienced reticence in sharing requested information/documents from the administration?

There have been occasions where the Office encountered reluctance in the sharing of information and documents ranging from outright refusal to provide information to reticence and inordinate delay that hinder the progress of investigations. I have given some details on such occurrences in my last annual report and the Venice Commission has recommended that steps be taken to ensure that this does not happen. It even suggested constitutional guarantees to strengthen the powers of the Office in this area but that recommendation has not as yet been implemented.

5. Have you used the possibility of reporting cases of corruption to the Attorney General and to ask for a judicial review of the Attorney General's decision not to prosecute?

We had not yet had occasion to report cases of corruption to the Attorney General and to ask for a judicial review of the Attorney General's decision not to prosecute. This is a very recent amendment to the Ombudsman Act and is a welcome departure from previous practice. It is noted that in Malta there is a Permanent Commission Against Corruption that is independent and autonomous from government. Complaints in this area would as a rule be addressed to this commission, though it is perfectly possible for this Office to encounter allegations of corrupt practice in the course of investigating complaints.

6. What are your views on the rules/practices of the Government as regards the use of impact assessment and stakeholders' consultation in the preparation of legislative reforms?

I am not aware that there are rules and practices that government is to follow in the use of impact assessment and stakeholders' consultation in the preparation of its legislative reforms. This is an area that needs to be addressed if the desired goal of full democratic participation is to be achieved. Though White Papers and Policy Documents are often issued as a means of public consultation, their effectiveness is doubtful. On the other hand, consultation with stakeholders directly involved in proposed legislation or reform is generally lacking. The failure of government to consult with this Office on legislation that directly concerns it is a case in point. It is difficult to reconcile this lack of proper, prior consultation with a constitutional authority directly interested in the proposed legislation with the widely flaunted principles of open government and public participation to which we should all subscribe.

7. Could you elaborate on the challenges for civil society organisation to operate effectively in Malta?

The emergence of an organised civil society to promote the rule of law and good governance is a very recent development. It is a welcome development that needs to be nurtured and supported. We have not yet reached a point where the public administration recognises it as a positive, proactive player in the development of the democratic process rather than considering it as an inevitable, necessary evil. One should strive to achieve this end. As a matter of fact even though it is in its infancy and with very limited resources, civil society has been operating effectively in this area and has produced significant results.

Annex II

REPORT AND FINANCIAL STATEMENTS



REPORT AND FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 DECEMBER 2021

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STATEMENT OF RESPONSIBILITIES OF THE OFFICE OF THE OMBUDSMAN

The function of the Office of the Ombudsman is to investigate any action taken in the exercise of administrative functions by or on behalf of the Government, or other authority, body or person to whom the Ombudsman Act 1995 applies. The Ombudsman may conduct any such investigation on his initiative or on the written complaint of any person having an interest and who claims to have been aggrieved.

The Office of the Ombudsman is responsible for ensuring that:

- a. proper accounting records are kept of all transactions entered into by the Office, and of its assets and liabilities;
- b. adequate controls and procedures are in place for safeguarding the assets of the Office, and the prevention and detection of fraud and other irregularities.

The Office is responsible to prepare accounts for each financial year which give a true and fair view of the state of affairs as at the end of the financial year and of the income and expenditure for that period.

In preparing the accounts, the Office is responsible to ensure that:

- Appropriate accounting policies are selected and applied consistently;
- Any judgments and estimates made are reasonable and prudent;
- International Financial Reporting Standards are followed;
- The financial statements are prepared on the going concern basis unless this is considered inappropriate.



Paul Borg
Director General



Gordon Fitz
Finance Manager

REPORT OF THE AUDITOR GENERAL

To the Office of the Ombudsman

REPORT ON THE FINANCIAL STATEMENTS

We have audited the accompanying financial statements of the Office of the Ombudsman set out on pages 100 to 111, which comprise the statement of financial position as at 31 December 2021, the statement of comprehensive income, statement of changes in equity and statement of cash flows for the year then ended, and a summary of significant accounting policies and other explanatory information.

THE OFFICE OF THE OMBUDSMAN'S RESPONSIBILITY FOR THE FINANCIAL STATEMENTS

The Office of the Ombudsman is responsible for the preparation of financial statements that give a true and fair view in accordance with International Financial Reporting Standards as adopted by the European Union, and for such internal control as the Office of the Ombudsman determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

AUDITORS' RESPONSIBILITY

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with International Standards on Auditing. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on our judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, we consider internal control relevant to the preparation of financial statements of the Office that give a true and fair view in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the internal control of the Office. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Office of the Ombudsman, as well as evaluating the overall presentation of the financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

OPINION

In our opinion, the financial statements give a true and fair view of the financial position of the Office of the Ombudsman as at 31 December 2021, and of its financial performance and cash flows for the year then ended in accordance with International Financial Reporting Standards as adopted by the European Union, and comply with the Office of the Ombudsman Act, 1995.



Auditor General

9th May 2022


STATEMENT OF COMPREHENSIVE INCOME

| | Schedule | 2021 € | 2020 € |
|---|----------|--------------------|--------------------|
| Income | | | |
| Government grant | | 1,352,000 | 1,340,000 |
| Non-operating income (note 3) | | 107 | 109 |
| | | <u>1,352,107</u> | <u>1,340,109</u> |
| Expenditure | | | |
| Personal Emoluments (note 4i) | | (1,156,678) | (1,102,023) |
| Administrative and other expenses | 1 | (241,650) | (233,175) |
| | | <u>(1,398,328)</u> | <u>(1,325,198)</u> |
| (Deficit) / Surplus for the year | | <u>(46,221)</u> | <u>14,911</u> |

STATEMENT OF FINANCIAL POSITION

| | | 2021 | 2020 |
|-------------------------------------|-------|-----------------------|----------------|
| | Notes | € | € |
| Assets | | | |
| Non-current assets | | | |
| Property, Plant and Equipment | 5 | 505,269 | <u>591,772</u> |
| Current assets | | | |
| Receivables | 6 | 33,825 | 33,776 |
| Cash and cash equivalents | 7 | <u>377,516</u> | <u>335,089</u> |
| | | 411,341 | 368,865 |
| Total assets | | 916,610 | 960,637 |
| Equity and Liabilities | | | |
| Accumulated surplus | | 912,040 | 958,261 |
| Payables | 8 | 4,570 | 2,376 |
| Total Equity and Liabilities | | <u>916,610</u> | <u>960,637</u> |

The financial statements on pages 5 to 16 were approved by the Office of the Ombudsman on 3rd February 2022 and were signed on its behalf by:


Paul Borg
 Director General


Gordon Fitz
 Finance Officer

STATEMENT OF CHANGES IN EQUITY

| | Accumulated Fund Total |
|---|-----------------------------------|
| | € |
| At 1 January 2020 | 943,350 |
| <i>Statement of Comprehensive income</i> | |
| Surplus for the year | 14,911 |
| At 31 December 2020 | 958,261 |
| <i>Statement of Comprehensive income</i> | |
| (Deficit) for the year | (page 5) (46,221) |
| At 31 December 2021 | 912,040 |

STATEMENT OF CASH FLOWS

| | Notes | 2021 € | 2020 € |
|--|-------|-----------------------|-----------------------|
| Cash flows from Operating activities | | | |
| (Deficit) / Surplus for the year | | (46,221) | 14,911 |
| Depreciation | | 98,741 | 100,740 |
| Disposal of tangible fixed assets | | 12,079 | 13,370 |
| Non-operating income | | (107) | (109) |
| | | <u>64,492</u> | <u>128,912</u> |
| Operating surplus before working capital changes | | 64,492 | 128,912 |
| (Increase) / Decrease in receivables | | (48) | 13,011 |
| Increase / (Decrease) in payables | | 2,194 | (787) |
| Net cash generated from operating activities | | <u>66,638</u> | <u>141,135</u> |
| Cash flows from Investing activities | | | |
| Payments to acquire tangible fixed assets | | (24,318) | (103,204) |
| Non-operating income | | 107 | 109 |
| Net cash used in investing activities | | <u>(24,211)</u> | <u>(103,095)</u> |
| Net increase in cash and cash equivalents | | 42,427 | 38,040 |
| Cash and cash equivalents at beginning of year | | <u>335,089</u> | <u>297,049</u> |
| Cash and cash equivalents at end of year | 7 | <u>377,516</u> | <u>335,089</u> |

NOTES TO THE FINANCIAL STATEMENTS

1. Legal Status

In 1995, the Maltese Parliament enacted the Ombudsman Act and established the organization and functions of the Office of the Ombudsman. The main objective of the Office of the Ombudsman is to investigate complaints by the public against any action taken in the exercise of administrative functions by or on behalf of the Government or other authority, body or person to whom the Ombudsman Act 1995 applies. The Office of the Ombudsman is situated at 11, St Paul's Street, Valletta.

These financial statements were approved for issue by the Finance Manager and Director General on the 3rd February 2022.

2. Summary of significant accounting policies

The principal accounting policies applied in the preparation of these financial statements are set out below. These policies have been consistently applied to all the years presented, unless otherwise stated.

BASIS OF PREPARATION

The financial statements have been prepared in accordance with International Financial Reporting Standards (IFRS) and their interpretations adopted by the International Accounting Standards Board (IASB). The financial statements have been prepared under the historical cost convention.

The preparation of financial statements in conformity with IFRS requires the use of certain critical accounting estimates. Estimates and judgements are continually evaluated and based on historic experience and other factors including expectations for future events that are believed to be reasonable under the circumstances.

In the opinion of the Finance Manager and the Director General, the accounting estimates and judgements made in the course of preparing these financial statements are not difficult, subject or complex to a degree which would warrant their description as critical in terms of requirements of IAS 1. The principal accounting policies are set out below:

MATERIALITY AND AGGREGATION

Similar transactions, but which are material in nature are separately disclosed. On the other hand, items of dissimilar nature or function are only aggregated and included under the same heading, when these are immaterial.

PROPERTY, PLANT AND EQUIPMENT (PPE)

Property, plant and equipment are stated at historical cost less accumulated depreciation and impairment losses. The cost of an item of property, plant and equipment is recognized as an asset if it is probable that future economic benefits associated with the item will flow to the group and the cost of the item can be measured reliably.

Subsequent costs are included in the asset's carrying amount or recognized as a separate asset, as appropriate, only when it is probable that future economic benefits associated with the item will flow to the group and the cost of the item can be measured reliably. The carrying amount of the replaced part is derecognized. All other repairs and maintenance are charged to the income statement during the financial period in which they are incurred.

Depreciation commences when the depreciable amounts are available for use and is charged to the statement of comprehensive income so as to write off the cost,

less any estimated residual value, over their estimated lives, using the straight-line method, on the following bases.

| | % |
|-----------------------|----|
| Property improvements | 7 |
| Office equipment | 20 |
| Computer equipment | 25 |
| Computer software | 25 |
| Furniture & fittings | 10 |
| Motor vehicles | 20 |
| Air conditioners | 17 |

An asset's carrying amount is written down immediately to its recoverable amount if the asset's carrying amount is greater than its estimated recoverable amount. The carrying amount of an item of PPE is de-recognised on disposal or when no future economic benefits are expected from its use or disposal. The gain or loss arising from derecognition of an item of PPE are included in the profit and loss account when the item is de-recognised.

RECEIVABLES

Receivables are stated at their net realizable values after writing off any known bad debts and providing for any debts considered doubtful.

CASH AND CASH EQUIVALENTS

Cash and cash equivalents are carried in the Statement of Financial Position at face value. For the purposes of the cash flow statement, cash and cash equivalents comprise cash in hand and deposits held at call with banks.

PAYABLES

Payables are carried at cost which is the fair value of the consideration to be paid in the future for goods and services received, whether or not billed to the Office.

REVENUE RECOGNITION

Revenue from government grants is recognised at fair value upon receipt. Other income consists of bank interest receivable.

FOREIGN CURRENCIES

Items included in the financial statements are measured using the currency of the primary economic environment in which the Office operates. These financial statements are presented in €, which is the Council's functional and presentation currency.

Transactions denominated in foreign currencies are translated into € at the rates of exchange in operation on the dates of transactions. Monetary assets and liabilities expressed in foreign currencies are translated into € at the rates of exchange prevailing at the date of the Statement of Financial Position.

CRITICAL ACCOUNTING ESTIMATES AND JUDGEMENTS

Estimates and judgements are continually evaluated and based on historical experience and other factors including expectations of future events that are believed to be reasonable under the circumstances. In the opinion of the Finance Officer, the accounting estimates and judgements made in the preparation of the Financial Statements are not difficult, subjective or complex, to a degree that would warrant their description as critical in terms of the requirements of IAS 1 – ‘Presentation of Financial Statements’.

CAPITAL MANAGEMENT

The Office’s capital consists of its net assets, including working capital, represented by its retained funds. The Office’s management objectives are to ensure:

- that the Office’s ability to continue as a going concern is still valid and
- that the Office maintains a positive working capital ratio.

To achieve the above, the Office carries out a quarterly review of the working capital ratio (‘Financial Situation Indicator’). This ratio was positive at the reporting date and has not changed significantly from the previous year. The Office also uses budgets and business plans to set its strategy to optimize its use of available funds and implements its commitments.

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

| 3 Non-operating income | 2021 | 2020 |
|------------------------------------|-------------------------|------------------|
| | € | € |
| Bank interest receivable | <u>107</u> | <u>109</u> |
| | <u>107</u> | <u>109</u> |
| | | |
| 4i Personal Emoluments | | |
| Wages and salaries | 1,114,871 | 1,061,366 |
| Social security costs | 41,807 | 40,657 |
| | <u>1,156,678</u> | <u>1,102,023</u> |
| | | |
| ii Average No. of Employees | 24 | 24 |

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

5i. Property, Plant and Equipment

| | Improvements to property | Office Equipment | Computer equipment | Computer software | Motor vehicles | Furniture and fittings | Aircondition | Total |
|-----------------------|-----------------------------|---------------------|-----------------------|----------------------|-------------------|---------------------------|--------------|-----------|
| | € | € | € | € | € | € | € | € |
| Cost | | | | | | | | |
| At 1 January 2021 | 864,580 | 36,644 | 35,952 | 53,999 | 134,500 | 120,872 | 81,919 | 1,328,466 |
| Additions | - | 2,135 | 6,622 | 13,039 | - | 2,522 | - | 24,318 |
| Disposals | (20,000) | (1,251) | (2,143) | (36,400) | (21,500) | (761) | (1,444) | (83,499) |
| At 31 December 2021 | 844,580 | 37,528 | 40,431 | 30,638 | 113,000 | 122,633 | 80,475 | 1,269,285 |
| Depreciation | | | | | | | | |
| At 1 January 2021 | 391,449 | 31,341 | 26,596 | 42,826 | 70,356 | 92,208 | 81,919 | 736,695 |
| Charge for the year | 55,409 | 2,913 | 5,342 | 7,178 | 19,719 | 8,180 | - | 98,741 |
| Release on disposals | (8,000) | (1,251) | (2,143) | (36,400) | (21,500) | (682) | (1,444) | (71,420) |
| At 31 December 2021 | 438,858 | 33,003 | 29,795 | 13,604 | 68,575 | 99,706 | 80,475 | 764,016 |
| Net book value | | | | | | | | |
| At 31 December 2021 | 405,722 | 4,525 | 10,636 | 17,034 | 44,425 | 22,927 | - | 505,269 |

5i. Property, Plant and Equipment

| | Improvements to property | Office Equipment | Computer equipment | Computer software | Motor vehicles | Furniture and fittings | Aircondition | Total |
|-----------------------|-----------------------------|---------------------|-----------------------|----------------------|-------------------|---------------------------|--------------|----------------|
| | € | € | € | € | € | € | € | € |
| Cost | | | | | | | | |
| At 1 January 2021 | 884,580 | 34,593 | 30,126 | 43,771 | 60,457 | 121,120 | 81,919 | 1,256,566 |
| Additions | - | 2,611 | 10,350 | 14,509 | 74,043 | 1,691 | - | 103,204 |
| Disposals | (20,000) | (560) | (4,524) | (4,281) | - | (1,938) | - | (31,303) |
| At 31 December 2021 | 864,580 | 36,644 | 35,952 | 53,999 | 134,500 | 120,872 | 81,919 | 1,328,466 |
| Depreciation | | | | | | | | |
| At 1 January 2021 | 341,374 | 28,367 | 27,026 | 43,189 | 50,637 | 86,179 | 77,116 | 653,888 |
| Charge for the year | 56,742 | 3,497 | 4,094 | 3,918 | 8,180 | - | - | 98,741 |
| Release on disposals | (6,667) | (523) | (4,524) | (4,281) | - | (1,938) | - | (17,933) |
| At 31 December 2021 | 391,449 | 31,341 | 26,596 | 42,826 | 70,356 | 92,208 | 81,919 | 736,695 |
| Net book value | | | | | | | | |
| At 31 December 2021 | 473,131 | 5,303 | 9,356 | 11,173 | 64,144 | 28,665 | - | 591,772 |

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

| 6 Receivables | 2021 | 2020 |
|----------------------|---------------|---------------|
| | € | € |
| Stocks (stationery) | 10,409 | 10,677 |
| Trade receivables | 2,679 | 2,499 |
| Prepayments | 20,737 | 20,600 |
| | <u>33,825</u> | <u>33,776</u> |

7 Cash and Cash Equivalents

Cash and cash equivalents consist of cash in hand and balances in bank. Cash and cash equivalents included in the cash flow statement comprise the following balance sheet amounts:

| | 2021 | 2020 |
|--------------|-----------------------|----------------|
| | € | € |
| Cash at bank | 377,266 | 334,629 |
| Cash in hand | 250 | 460 |
| | <u>377,516</u> | <u>335,089</u> |

| 8 Payables | 2021 | 2020 |
|-------------------|---------------------|--------------|
| | € | € |
| Trade payables | 451 | - |
| Accruals | 4,119 | 2,376 |
| | <u>4,570</u> | <u>2,376</u> |

Financial assets include receivables and cash held at bank and in hand. Financial liabilities include payables.

9 Fair values

At 31 December 2021 the fair values of assets and liabilities were not materially different from their carrying amounts.

SCHEDULE 1**Administrative and other expenses**

| | 2021 | 2020 |
|----------------------------|----------------|-------------|
| | € | € |
| Utilities | 16,762 | 16,090 |
| Materials and supplies | 8,041 | 8,461 |
| Repair and upkeep expenses | 6,245 | 8,056 |
| Rent | 6,720 | 6,833 |
| International membership | 2,100 | 2,100 |
| Office services | 7,628 | 5,759 |
| Transport costs | 11,195 | 11,450 |
| Traveling costs | 559 | 1,068 |
| Information Services | 3,583 | 8,580 |
| Outreach | 2,881 | - |
| Contractual Services | 63,120 | 43,653 |
| Professional Services | 20,940 | 12,198 |
| Training expenses | 1,275 | 3,933 |
| Hospitality | 499 | 604 |
| Incidental expenses | 282 | 304 |
| Depreciation | 98,741 | 100,740 |
| (Profit) on Disposals | (8,921) | (6,654) |
| | 241,650 | 223,175 |



OMBUDSMAN

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Office opens to the public as follows:

October – May 08:30am – 12:00pm

01:30pm – 03:00pm

June – September 08:30am – 12:30pm

Website: www.ombudsman.org.mt

Facebook: Ombudsman Malta