

## Report on Case No CEDUC-23-3897

### *The complaint*

1. The complaint which forms the subject of this report was received at the Ombudsman's Office on the 28<sup>th</sup> July 2023. The complainant is an Associate Professor in the Department of Public Law of the Faculty of Laws of the University of Malta. Notice of the investigation, for the purposes of Article 18(1) of the Ombudsman Act (Cap. 385), was served upon the Rector on the 1<sup>st</sup> of August 2023.

2. On the 24<sup>th</sup> October 2022 the complainant applied for promotion to full Professor. By letter of the 3<sup>rd</sup> March 2023, under the hand of the Rector, the complainant was informed that he did "not satisfy all the criteria as stipulated in article 26.8 of the Collective Agreement", and that therefore he was "not eligible for consideration for promotion to Professor".

3. By letter dated 10<sup>th</sup> March 2023, the complainant requested a reconsideration, drawing the attention of the Promotions Board to that part of Article 26.8.d of the Collective Agreement which states: "Moreover, the applicant's direct contribution to the University, society, culture and the economy at large and the international community will also be taken into consideration, and where extensive evidence may be seen, **at the discretion of the Promotions Board, to partially compensate for other criteria.**" (emphasis by the Commissioner). In this request for reconsideration, the complainant highlighted, *inter alia*, his political career both in Malta and at E.U. level.

4. In a terse letter dated 10<sup>th</sup> July 2023, the Rector informed the complainant as follows: "The Promotions Board considered your letter dated 10 March 2023 requesting reconsideration of your eligibility to apply for promotion. The application was considered to be premature as, at the time of application, you had worked as Senior Lecturer and Associate Professor levels for less than four years instead of the required eight years as stipulated in the Collective Agreement." No further reasons or explanation were given.

### ***Investigation and findings***

5. In substance, the complainant is to the effect that the UOM is acting in breach of the Collective Agreement by failing to apply that part of the said agreement quoted in paragraph 3, above. By applying mechanically and automatically the 8 year criteria, the Promotions Board's two decisions as communicated to the complainant on the 3<sup>rd</sup> March 2023 and on the 10<sup>th</sup> July 2023 would fall foul of paragraphs (a), (c) and (d) of sub-article (1) of Article 22 of the Ombudsman Act, and of sub-article (2) *in fine* for failing to give reasons for the decision.

6. The Commissioner has carefully examined the minutes of the Promotions Board's meetings of the 11<sup>th</sup> January 2023 and 21<sup>st</sup> June 2023, and also spoke to one member of the Promotions Board. From all the evidence at hand, it is quite clear that the practice – probably one of convenience – adopted by the said Board is that the criterion of years in the previous post (8 years for promotion to full Professor, 6 years for promotion to Associate Professor) is the crucial and only determining criterion as to whether a person is eligible for promotion (something which is different from whether a person will eventually be promoted). However a careful and exegetical reading of para. (d) of Article 26.8 of the Collective Agreement shows quite clearly that the “other criteria” for which partial compensation may be found in the applicant's contribution “to the University, society, culture and the economy at large and the international community” includes the criterion of years in one's current post or grade. Any other interpretation simply would not make sense. The criteria for promotion are all those mentioned in paragraph (d) (and, in the case of promotion to Associate Professor, in paragraph (c)), and there is absolutely nothing in the wording of the Collective Agreement which suggests a distinction between the criterion of years in one's current post and the other criteria. The Collective Agreement is law between the parties and *ubi lex voluit, dixit*. Of course, everything is “at the discretion of the Promotions Board”, in the sense that the Board must apply its mind to the facts as brought to its attention by the applicant, and come to a proper decision. But it cannot foreclose the

matter and rely solely on the criterion of years in order to declare the application for promotion as inadmissible.

7. In the instant case, the “compensatory criteria” were specifically brought to the attention of the Promotions Board, if not with the original application certainly with the request for reconsideration, but these were again summarily ignored, with nothing to show either in the Board’s minutes or in the Rector’s letters to the applicant that they had even been considered. Such arbitrariness gives rise to unreasonableness as envisaged in para. (b) of Article 22(1) of the Ombudsman Act, which is compounded by the absence of proper reasons for the decisions (Art. 22(2) *in fine*).

### ***Conclusion and recommendation***

8. For the above reasons, the complaint is sustained since the Promotions Board’s decisions taken at its meeting of the 11<sup>th</sup> January 2023 and 21<sup>st</sup> June 2023 run foul of Article 22(1) and (2) of Cap. 385.

9. Of course, it is not within the competence of the Commissioner to decide whether or not the compensatory criteria are sufficient to render the complainant eligible for promotion – that is something that a properly constituted Promotions Board must decide. The Commissioner, therefore, recommends that the complainant’s application be re-examined by the Promotions Board (which should not include the same persons who deliberated on the 11<sup>th</sup> January and 21<sup>st</sup> June of this year) and that specific consideration should be given to the compensatory criteria being invoked by the applicant (the complainant). Any decision, whether in favour or against, compensation should contain cogent reasons, which are also to be communicated to the complainant.

**Vincent A De Gaetano**  
Commissioner for Education

**24 August 2023**