

Report on Case No CEDUC-24-5416*The complaint*

1. The instant complaint was filed with the Office of the Ombudsman on the 1st of November 2024. The complainant, the Hon. Mr Justin Schembri is a member of Parliament and also a teacher in the public service. At the time of the complaint he was – and as far as can be ascertained, still is – Shadow Minister for education.

2. The complaint was lodged by Mr Schembri both in his personal capacity as a teacher in a state school as well as in his capacity as Shadow Minister for education. The complaint is to the effect that Circular DG DES 28/2024 issued under the hand of the Director General for Educational Services on the 25th September 2024 violated the freedom of expression of every educator by prohibiting them from expressing personal opinions on the State education system, and by, in effect, forcing all educators to tow the government's line.

3. The complaint was served upon the Permanent Secretary at the Ministry responsible for education in terms of Article 18(1) of the Ombudsman Act on the 11th November 2024.

4. In his reply of the 5th December 2024 the aforementioned Permanent Secretary raised the preliminary plea that whereas the complainant could file such a complaint with the Office of the Ombudsman in his personal capacity as an educator, he was precluded from doing so in his capacity as Shadow Minister, quoting Article 13(2) of Cap. 385 in support of this plea. This plea is well founded. As a Member of Parliament and as Shadow Minister for education, the



complainant can neither claim that he has a “sufficient personal interest in the subject matter of the complaint” (Art. 17(2)(c) read in conjunction with Art. 13(2) of the Ombudsman Act) nor that he has “been aggrieved” by the impugned circular. No evidence has been adduced by the complainant to even suggest that in his capacity as an M.P and as Shadow Minister to boot he has been restricted in his freedom of expression. Had he so been impeded, that would have been a matter to be dealt with under the privileges of Parliament and of the Members of the House of Representatives according to the procedure established by law. To this limited extent, this preliminary plea is upheld.

5. The same, of course, cannot be said in so far as the complaint was made by Mr Schembri – to use the precise words in the Permanent Secretary’s reply – “bħala individwu u għalliem”. This, as already indicated, is conceded by the respondent entity. Indeed, even if no negative repercussions may have been experienced to date by the complainant, by ‘aggravatio’ in Art. 13(2) of Cap. 385 where rights, particularly fundamental human rights, are in issue, it is not necessary that such a right should have been actually violated, but it is sufficient that such a right is likely to be violated (see, by way of analogy, Article 46(1) of the Constitution and Article 4(1) of Cap. 319).

6. It is important to clarify at the outset exactly what the impugned directive of the 25th September 2024 said (and how it said it) (emphasis by the undersigned):

“Objective

This policy outlines the guidelines and procedures for educators (all grades) regarding their participation and appearances in media, including television, radio, blogs or newspaper articles, when participating as public service employees within schools in Malta and Gozo. The participation and contribution of educators to the public debate are encouraged. Establishing guidelines will ensure that while the debate on



educational matters is healthy, this is done without compromising the system's integrity.

Definition

For the purpose of this policy, 'educators' refers to all educators within the educational system, including teachers, SLT members, Heads of Schools and the Head of College Network (HCN).

Media Appearances

This policy refers to educators participating in media appearances (TV, radio, newspapers, vblog, podcast or online publications) provided that the subject matter is directly related to the national curriculum, pedagogy methods, policies, specific initiatives, or other topics directly linked to the educational system in Malta and Gozo.

Approval Process

Educators wishing to participate in media appearances must seek prior approval from their line manager. The request for approval must be submitted in writing, specifying the nature of the media appearance, topics discussed, and the media house involved. It is the applicant's responsibility to ensure that the request reaches the Director General of the Department of Educational Services (DG DES). Prior approval is in line with the PSMC, which provides specific guidelines regarding the conduct of public officers, including their appearances in the media.

Representation of the Education System

If approval is granted, educators participating in media must adhere to a strict representation policy:

- *Ensure that their comments reflect the policies, guidelines, and objectives of the Ministry for Education, Sport, Youth, Research, and Innovation (MEYR).*
- *Statements perceived as politically-biased or compromising the educational system's neutrality are to be avoided.*



Media Content Guidelines

- *Educators must ensure that the content discussed in media appearances is factual, based on current data, professional, and aligns with educational priorities.*
- *Participation **should not result in the promotion of personal opinions, political ideologies, or any content unrelated to education.***

Conflict of Interest

*Educators must not participate in media appearances that pose **a conflict of interest with their professional duties or could undermine their position as impartial and responsible educators.***

Policy Observation

The Head of School (HoS) and Head of College Network (HCN) should ensure adherence to this policy. Any breaches of the policy are to be referred to the DG DES for review and ensuing action.

Conclusion

Educators have a role in positively representing the educational community in public forums. This policy aims to guide them in contributing to discussions on education while maintaining professional standards and safeguarding the integrity of the educational system.”

7. In substance, the respondent entity claimed that Directive DG DES 28/2024 merely re-iterated the position at law as far as public officers are concerned in connection with comments made publicly and in particular to the media. For this purpose, the Permanent Secretary MEYR in his reply of the 5th December 2024 cites (a) paras 7.1.14 to 7.1.15.2 of the former Estacode; (b) circular DES/DQSE/04/2008 of the 18th April 2008; (c) paras 7.2.4.2 and 7.2.4.3 of the PSMC of March 2011; (d) paras 7.2.4.2 and 7.2.4.3 of the PSMC of June 2013; and (e) Directive 5 of the 24th February 2011 issued by the then Principal Permanent Secretary.



Moreover, in said reply the Permanent Secretary waxes lyrical about the circular's emphasis on the "educators' contribution to the public debate" and their "positively representing the educational community in public forums".

8. Having carefully examined all the documents mentioned in the foregoing paragraph, the undersigned cannot agree with the proposition that Directive DG DES 28/2024 is merely a re-statement of what already existed prior to the 25th September 2024. The Directive issued by the Director General Educational Services targets all teachers irrespective of grade (i.e. scale) in the public service. As can be seen by the parts reproduced in bold in para. 6, above, the directive also has an element of doublespeak: while ostensibly harping upon the need for a healthy debate on educational matters, it at the same time requires total conformity with official policy by requiring, inter alia, that "*comments [must] reflect the policies, guidelines, and objectives of the Ministry for Education, Sport, Youth, Research and Innovation (MEYR)*"; and that "*participation [in media debates] should not result in the promotion of personal opinions*" – which is the very opposite of what para. 5.2 of Directive 5 provides: "*Public officers in scales 6 and lower are allowed to engage in public comment in a personal capacity. Moreover they are allowed to do so only as long as they ensure that their comments are being put forward solely as a matter of personal opinion*". Moreover, the impugned directive put, as it were, all teachers irrespective of grade 'on notice' by requiring prior approval "*from their line manager*" but ultimately from the Director General Educational Services. The subliminal meaning of all this does not escape the undersigned – the chilling effect on educators is palpable.

9. It is not clear why the Director General Educational Services thought it necessary to issue the impugned Directive. No credible explanation was forthcoming on this score from the Permanent Secretary. What *is* clear is that the said Directive is *not* a consolidation or re-statement of what already existed



before it was published. When one considers that what is greatly lacking in our educational system is critical thinking, it beggars belief that anyone in the educational establishment should require that educators' comments must "*reflect the policies, guidelines and objectives*" of the Ministry responsible for education.

10. Educators in the public service do not, by virtue of their public service, lose their right to freedom of expression particularly on matters touching upon their particular area of work. While it is generally accepted in democratic societies governed by the rule of law that certain restrictions may be imposed on public officers occupying certain managerial position – positions which require a special duty of loyalty to the executive branch of government – these restrictions cannot be of a blanket nature extending to everyone.

11. It is significant that on the 4th of March 2025, the Permanent Secretary at MEYR issued Circular PS 08/2025, which, while not expressly revoking or withdrawing Directive DG DES 28/2024, attempted a retrenchment on the matter. The circular of the 4th March 2025 states verbatim:

“Reference is made to Circular number DES/DQSE/04/2008 (Annex 1) and Circular number DES/28/2024 (Annex 2), both of which address the responsibilities of public officers in dealing with the media.

To ensure clarity and simplicity in the procedures, all public officers within this Ministry are reminded that it is their responsibility to familiarise themselves with the content and to adhere with the established procedures outlined in the following directive and central policies:

- Directive 5 – Political Participation and Communications with the Media*
- Public Service Management Code*
- Policy on the use of social media in the Public Service*



As a way forward, only this circular will serve as the reference for all public officers within this Ministry regarding communication with the media.”

So basically, the Permanent Secretary has effected a *renvoi* back to the PPS’s Directive 5 and to the milder DES/DQSE/04/20008. This latter circular is practically irrelevant for the matter under examination, as it refers to official communications by Directorates and Colleges with the media.

12. That leaves Directive 5. Here the situation is far from clear. According to the current sectoral agreement, Deputy Heads of School can fall either in Scale 5 or in Scale 6. All teachers, however, beginning with senior teachers and going down to LSEs technically fall within the ambit of para. 5.2 of said Directive 5 (partly quoted in para. 8, above). This paragraph 5.2, however, ends with the following sentence: *“But public officers are to refrain from commenting on matters that pertain to their ministry and in particular their area of work, even if in a personal capacity”*.


13. This in effect casts a blanket prohibition on all teachers and educators, whatever their scale in the public service, from commenting on anything that has to do with teaching and education, including the education of the children entrusted to their care. This blanket restriction is clearly in violation of teachers’ and educators’ right to freedom of expression since such a limitation cannot, by any stretch of the imagination, be considered to be reasonably necessary – in other words, required by a pressing social need – in a modern democratic society.

14. For all the above reasons, the complaint, in so far as it is being made by Mr Schembri in his personal capacity “*bħala individwu u għalliem*” is well-founded in terms of Article 22(1)(a)(b) and (d) of Cap. 385 and is being



sustained both in regard to Directive DG DES 28/2024 as well as in regard to the position obtaining under para. 5.2 of Directive 5 of the PPS of the 24th February 2011.

15. The undersigned recommends that the Ministry responsible for education ensure, by the issue of proper guidelines and directives, that teachers and other educators not engaged in significant managerial roles are free to express their personal opinions about matters touching their area of work without let or hindrance and without fear of disciplinary proceedings or other negative repercussions.



Vincent A De Gaetano
Commissioner for Education

7 May 2025