

Case No CEDUC-24-4991

Your Ref: MEYR/11/2024/34

9 September 2024

Mr Matthew Vella
Permanent Secretary
Ministry for Education, Sport, Youth, Research and Innovation
Great Siege Road
Floriana

Dear Mr Vella

**Re: Final Opinion of the 27th August 2024
in Case No CEDUC-24-4991**

Thank you for your letter-minute of the 2nd September 2024 and for the meeting held in my office (prior to receipt of that letter-minute) in the Presence of the Permanent Secretary at the People and Standards Division of the OPM and of the Head of our Investigations Unit.

After considering carefully your letter-minute and the gist of the discussion with Ms Cassar, allow me to state the following:

1. In your letter-minute aforementioned you provided (even by way of attachments) a lot of information which had been omitted in your (rather parsimonious) formal reply of the 16th August 2024.
2. The thrust of your now beefed-up reply is to the effect that this Office's conclusion that Prof Calleja's complaint is justified is based on a "factually and legally incorrect premise", to wit that the complainant's employment is not regulated – or not regulated also – by the Public Administration Act. In the said letter-minute you devote two pages to explain the difference between the UoM and MCAST and to assert that the Manuals and Directives under the Public Administration Act are not in any way contrary to law.



3. Regrettably, you fail to grasp the whole purport of paragraph 4 of the Final Opinion of the 27th August 2024 as to the functions of the Ombudsman and the Commissioners for Administrative Investigations. As I tried to explain – unsuccessfully, it would seem – in that paragraph, an act of maladministration may occur even if the administrative decision, recommendation, act or omission is “in accordance with a law or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory”. Therefore, and if I may be allowed to spell it out, compliance with a law is not the only and ultimate yardstick for the Ombudsman’s and Commissioners’ decisions: one has also to see whether, in the particular circumstances of a given case, the law (or practice) “is *or may be*” unreasonable, unjust, oppressive or improperly discriminatory.

4. In the instant case, shorn of all the chaff about the Manuals “complementary with the Public Service Management Code”, the situation which emerges even after your letter-minute of the 2nd inst, is strikingly clear: the complainant had his original contract (which Ms Cassar admits she never vetted) extended in March 2021 for a definite period of five years (under Cap. 327 and Cap. 452), but at the same time (at least as you claim) subject also to periodic approval by the Ministry responsible for education (*semble* under Cap. 595). It is this blatant anomaly that allows a contract for a definite period to be rescinded upon what could be a whimsical decision, that renders the situation both unreasonable and unjust. The definite nature of the contract is undermined by the periodic requirement for approval, a situation that is in and of itself a blatant contradiction. That is why in the final opinion the situation was categorised as *præter legem*, not *contra legem*. Of course, there may be weighty reasons – good or sufficient cause/s – for terminating the contract before the stipulated time, but none have been disclosed to this Office or communicated to the complainant before the end of August.

5. In the course of our meeting of the 2nd instant you stated that the complainant never asked for the reasons why he was being dismissed (constructively or otherwise) before the 31st May 2026. There is also a suggestion to that effect on the last page of your letter-minute aforementioned. I find this suggestion – that a decision based upon a discretionary power may be taken without cogent reasons being given – quite astounding. You seem to imply that the complainant, no less than this Office, has to specifically ask for the reason or for those reasons. The giving of reasons for administrative decisions is a cornerstone of the rule of law and the litmus test of public accountability. This omission is also another reason why the complaint was upheld.

In view of all the above, and in particular your clear declaration at the end of your letter-minute (a declaration that you make not on behalf of your Ministry but in the name of “the Public Service”) that you do not intend to implement this



Office's recommendation, I see no purpose in engaging in further communication on the matter and will therefore proceed as per Article 22(4) of the Ombudsman Act.

Yours sincerely

Vincent A De Gaetano
Commissioner for Education