



Our Ref.: MEYR/11/2024/34

Your Ref.: CEDUC-24-4991

2 September 2024

The Hon. Dr Vincent De Gaetano
Commissioner for Education
Office of the Ombudsman
11
St. Paul Street
Valletta

Dear Commissioner,

Re: Report on Case No. CEDUC-24-4991

Reference is made to the above-captioned report, dated 27th August 2024. Reference is also being made to the email dated 27th August 2024 sent to Mr Matthew Vella, PS MEYR.

Having taken cognisance of the report and the conclusions signed by the Commissioner for Education, and the meeting held today with your good self, the Ministry is formally informing your Office that it is not in agreement with the conclusions and recommendations made in the Final Opinion communicated on the 27th August 2024 for reasons outlined hereunder.

In the report, the Commissioner states that:

“The post of Principal and CEO of MCAST does not fall within the remit of the Public Administration collective bargaining unit OPM”

To this effect, the Commissioner is stating that the employment of Professor James Calleja does not fall within the remit of the Public Administration Collective Bargaining Unit of the Office of the Prime Minister. It is worth mentioning that, back in 2016, this Unit was replaced by the Industrial Relations Unit (IRU).

The Commissioner proceeds to draw analogies between MCAST and the University of Malta (UM) to prove this point.



The Ministry asserts that the above statement is factually and legally incorrect. The Public Administration Act defines a “government entity” as an organization, not being a government department, specialised unit, a government agency or a commercial partnership in which Government has a controlling interest, whether or not such organisation is established by law. This has been confirmed in *Paul Gauci et vs Sovrintendent tal-Patrimonju Kulturali et (573/2018GM)*.

In fact, Cap 638, the Malta College of Arts, Science and Technology Act, defines what a government entity is by referring to the definition given in the Public Administration Act, and refers to MCAST as a government entity in Article 4(1) of the same Act. Article 4(2) goes on to accentuate that MCAST employees are part of the public sector. Therefore, as delineated herunder, all manuals and directives issued by the public service apply to MCAST employees.

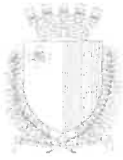
Whereas it is true that the University of Malta (UM) does not fall within the remit of the IRU, the same cannot be concluded for MCAST. It is important to note that even UM have always requested that IRU is involved in the negotiations with unions, and it aligns itself with central policies on various aspects in respect to the PSMC, such as releases. **MCAST indeed falls within this remit and is only exempt when approvals for recruitment of the lecturing staff is concerned.**

In truth, IRU is still spearheading discussions on the Collective Agreement, together with MCAST Administration, covering all the employees at MCAST, since unlike the impression given, there was no break in the deadlock with the Union. Hence, MCAST and the University of Malta are not similar in this regard and the employment of Professor James Calleja is governed by the rules of Public Administration.

In fact, Professor James Calleja was engaged as Principal and CEO through a selection process within the parameters of Directive 7, as confirmed by the attached Vacancy Form signed by the President of the Board of Governors, and marked as Annex A, being attached to this letter. This call was issued after MCAST itself had sought and attained the necessary approval from IRU (attached as Annex B). Therefore, the conclusion stating that the position of Principal and CEO does not fall within the remit of the IRU is incorrect.

The Ministry brings the following to the attention of the Commissioner as to why the employment of Professor James Calleja is regulated by the Public Administration:

- (i) In terms of the *Public Administration Act (PAA) (Cap 595)*, the Principal Permanent Secretary is empowered to issue *directives aimed at upholding and better realising the public administration values, and public employees shall comply with such directives* relating to the wider public sector employment (beyond the core public service and whereby recruitment is made in terms of art 110 (6) of the *Constitution*, that is bodies/agencies/entities where *the Government has a controlling interest or over which has effective control*:



- (ii) Directive 7.3 entitled *Delegation of Authority to effect recruitment, promotions and industrial relations in Public Sector Entities (attached and marked as Annex C)* was issued with the authority of the Principal Permanent Secretary on the 2nd September 2022 and provides that the procedures to be followed by Public Entities are delineated in the ancillary *Manual for Public Sector Entities: delegation of authority to effect recruitment, promotions and industrial relations (attached and marked as Annex D)*. It is worth mentioning that all non-academic positions and recruitment within MCAST are regulated by this Directive (attached and marked as Annex E);
- (iii) The said Manual and other Manuals, complementary with the Public Service Management Code, issued by the People and Standards Division within the Office of the Prime Minister are assigned legal status through Directive Directive 1.1.;
- (iv) The *Manual for Public Sector Entities: delegation of authority to effect recruitment, promotions and industrial relations* makes reference (at section 4.3) to the complementary *Manual on Resourcing Policies and Procedures* insofar as concerning *Extensions of Service beyond retirement age*;
- (v) On its part, the *Manual on Resourcing Policies and Procedures* lays down at section 1.13.7 that requests for extension of service beyond statutory retirement age made by public officers and by public sector employees falling under Directive 7, are to be submitted for the consideration of the respective Permanent Secretary and, furthermore, that requests for extension **beyond 65 years of age** are to be invariably referred to the People and Standards Division (P&SD) for OPM approval; and
- (vi) OPM approval was granted for complainant, in his capacity as *Principal and CEO of the Malta College of Arts, Science and Technology*, to have his service extended till May 2023 and not beyond.

Therefore, the decision is based on incorrect premises and assuming that the position of Professor. James Calleja does not fall within the remit of the Public Administration procedures, with special attention to Directive 7.3. This changes fundamentally all the considerations of the report and deeply impacts the subsequent conclusion.

Professor James Calleja was aware of the fact that he fell within the Public Administration rules and regulations and it is very important to note that:

- (i) He himself had declared that he is aware of his obligation to seek renewal of his term of employment post 65 years of age, as per letter dated 14th May 2021 (Attached as Annex F);



- (ii) He had already been given a previous extension in terms with the relative rules and procedures.

This same procedure has been used for years, both at MCAST and other public entities.

It is therefore clear that in terms of the *Manual on Resourcing Policies and Procedures*, as per section 1.13.7, Professor James Calleja requires the approval for term extension, as also evidently made clear from MCAST's own request for such approval, dated 10th April 2024 (attached and marked as Annex G). It follows that the procedure adopted by the Public Service in this case was legally and factually correct. Both MCAST and Professor James Calleja have always accepted this procedure and at no point, even in previous instances where this procedure was applied, did MCAST or Professor Calleja oppose such practice.

It is also wrong to state that this is a case of constructive dismissal. Professor James Calleja knew that there was the need of an approval every year, due to his age (after his first two years of the contract). This is not a case of dismissal but a case of non-renewal beyond retirement age, as per the *Manual on Resourcing and Procedures* Section 1.13.7. The request to work beyond the retirement age was not approved and PS MEYR approved that Professor James Calleja works till the end of the academic year 2023/24, as per emails sent on the 27th May 2024. At no point did Professor James Calleja object to this or discussed any grievance with PS MEYR, a procedure which is normally adopted before resorting to the Office of the Ombudsman.

In view of the above, the Public Service informs your Office, that it will not be implementing the recommendations outlined in your Final Opinion dated 27th August 2024.



Matthew Vella
Permanent Secretary