

Thematic Lecture

“Transparency, Fairness and Accountability: Cornerstones of Good Administration – The Mandate of the Ombudsman.”

12th June 2025

**Speech by
Judge Joseph Zammit McKeon
Parliamentary Ombudsman of Malta**

Hon Mr Speaker
Hon Members of the House of Representatives
Colleague Advocate Gcaleka
Distinguished Guests

We are honoured to have with us today Advocate Kholeka Gcaleka, Public Protector of South Africa, who will deliver a lecture on the theme : *“Transparency, Fairness and Accountability : Cornerstones of Good Administration”*.

Advocate Gcaleka and myself are not only colleagues in Office but also co-Directors on the 24 Member World Board of Directors of the International Ombudsman Institute (IOI). On my part I am 1 out of the 5 Directors that represent Europe on the Board while on her part Advocate Gcaleka is not only 1 of the 4 Directors that represent Africa on the same World Board, but is also President of the Board of Directors for Africa and in that capacity is 1 of the 8 members of the Executive Committee of IOI.

The IOI was established in 1978 and is the only global organisation for cooperation of more than 200 independent Ombudsman institutions from more than 100 countries worldwide. The institution is organised in six regional chapters : Africa, Asia, Australasia & the Pacific, Europe, the Caribbean & Latin America, and North America. In its effort to focus on good governance and capacity building, the organization supports its members in a threefold way : training, research and regional subsidies for projects.

I start my presentation with a straight question: *“What is the big deal ?*

Don’t we all know that Transparency, Fairness and Accountability are the Cornerstones of Good Administration?”

With a likewise straight answer I say: *“Of course”*. However, there is a *“but”*.

Because where transparent behaviour, fair conduct and accountable *modi operandi* are in question, there is a strong tendency towards widespread lip service, and unfortunately lip service translates itself into a disservice.

I am afraid that in the social fabric of our country as it stands at present many speak but a few care. It is the mission of every Ombudsman to care because if an Ombudsman does not do so, the Office is in a weaker position to promote and invoke administrative justice.

There are times when, in the very interest of the institution, an Ombudsman has to hold back and remain silent. There are also other times when an Ombudsman has to be firm, has to make his voice heard, and act consistently without fear.

Every Ombudsman, by whatever name or gender is defined or called, should stand up for the principles that we shall be addressing this morning because it is the right thing to do in the interest of the common good, especially in the interest of those persons who vis-à-vis the State are vulnerable or are without a voice or even who do not have the strength to whisper.

Advocate Gcaleka will most certainly share with us her experiences on these matters of principle.

I also strongly believe that Ombudsmen have an obligation to be on the frontline for the promotion and observance of the fundamental rights and freedoms of the person, whether such a matter forms, directly or indirectly, part of their mandate or not.

This is all the more important today in our country.

Malta has a surface area of 95 square miles or 246 square kilometres (islands included). The present population of these Islands is just over 563,440. As at 31 December 2023, the last official public statistics available, third country nationals present in Malta amounted to 112,892, 20% of the population of these Islands : 67,176 came from Asia, 27,433 from European non-EU States, 8075 from South America, 8039 from Africa, 1872 from North America, 250 from Oceania and 47 described as unknown.

I have omitted nationals coming from EU nation states because they do have the protection which they merit.

- But what about third country nationals?
- Do not even they have rights that deserve protection?
- Is the Ombudsman not there for them as well?
- Has Malta become or will become a multi-racial State in the years to come?

- Are we prepared fully as a civilized country to accept and demonstrate respect towards third country nationals?

Of fact I am more than sure:

- Third country nationals are persons, who have a right to be treated lawfully, with respect and with dignity.
- Advocate Gcaleka will have an excellent opportunity to give us her insight on the sensitive issue of multiracial integration in modern societies.
- We shall all be eager to listen with care and attention to her presentation on this matter primarily because third country nationals are persons before being service providers of necessity for this country.

Let me move on:

Being the opposite of “*good administration*”, “*bad administration*” is what every Public Service Ombudsman, including a Parliamentary Ombudsman, should strive to remove from the vocabulary.

An Ombudsman is not there only to investigate complaints on acts or omissions of Government, meaning the public service and the public administration, in the performance of their administrative functions, but is also there to help resolve and find remedies for administrative practices that run counter to administrative justice, transparency and accountability. By no mere coincidence, these principles are relevant not only where good administration is concerned, but are also benchmarks of the rule of law.

In Malta the Ombudsman oversees what the public service and the public administration do or fail to do, not simply within the context of complaints investigations, but also through “own initiatives” investigations, with no other agenda but to improve public services for the benefit of the public. The Office can act of an overseer because it is independent of Government at 360 degrees and enjoys constitutional protection.

Advocate Gcaleka will surely address these matters from her viewpoint.

I quote from one of former EU Ombudsman Emily O'Reilly's consistently remarkable speeches:

“People should know that they have the right to an open and fair public administration ... and have a right to redress. A public administration that is not built on these principles is not a good public administration.”

The public service and the public administration have an obligation to place fairness, justice and accountability as their quality testers in their practical day-to-day operations. No Ombudsman can take the risk to accept that these principles become mere *buzz words*.

Public service officials should never, but never, feel in any way offended when a constitutional office like the Ombudsman speaks in clear, and at times, critical terms on the administrative operations of public offices. As persons, even if in high positions, we are all birds of passage, and we should never, but never, sit on our laurels, past and present, in order to shape our future.

Public servants cannot defend their methods simply by stating that what they do is according to law. Public administrators have an obligation to abide by rules and proper conduct, especially rules that are formulated and promoted by public bodies themselves. They may not like or they may not endorse recommendations submitted to them by the Ombudsman but nonetheless they must do their share to co-operate with the Ombudsman, which often they do, at least where the present Ombudsman is concerned.

Public servants should keep in mind that according to the Ombudsman Act 1995 there is maladministration when an administrative decision, recommendation, act or omission of Government:

- a) *appears to have been contrary to law; or*
- b) *is unreasonable, unjust, oppressive, or improperly discriminatory, or was taken in accordance with a law or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory; or*
- c) *is based wholly or partly on a mistake of law or fact*
- d) *is wrong.*

I am more than convinced that Advocate Gcaleka will share her experiences with us on these matters in particular on what happened in the past in South Africa and what is the present situation when the recommendations of the Public Protector are not implemented by the public authorities.

Rhetoric and paper principles do not resolve problems.

I shall insist on asking, maybe someday I will get a clear answer, as a matter of course, rather because of my insistence or my instinct of persuasion:

- Should not bona fide persons have a right to see that their affairs are managed by public offices with impartiality, with fairness and within a reasonable time?
- Should not bona fide persons have the right to be heard before any individual measure is taken that would affect them adversely?
- Should not persons have the right to free access to a public file that affects them?

- Is it asking too much from the public administration to give reasons for its decisions?

To conclude,

I quote again from Mrs O'Reilly:

"It is precisely the task of the Ombudsman to enable an administration to do things not because it is told to do so by the Courts or by the Ombudsman but because it instinctively and unhesitatingly knows that it is the right thing to do."

I am confident that Advocate Gcaleka will help us all with the proper answers even on this matter.

Thank you for hearing me out.