

Report on Case No CEDUC-24-4991

The complaint

1. The complainant is the Principal and CEO of the Malta College of Arts, Science and Technology, regularly appointed in terms of the provisions of Article 93(1)(e) of Cap. 327. He states that he has been given notice that his appointment will be terminated with effect from the end of August 2024.
2. In his complaint, lodged with this Office on the 16th of July 2024, the complainant alleges that his dismissal (with effect from the 31st instant) is both unlawful and politically motivated.

The investigation and findings

3. Notice of the investigation in terms of Article 18(1) of the Ombudsman Act was served upon the Permanent Secretary at the ministry responsible for education on the 23rd of July 2024. The formal reply from the Permanent Secretary – in effect stating that everything was done *rite et recte* by the ministry – was received on the 16th of August 2024.



4. It is pertinent at this stage to note that under the Ombudsman Act, an “act of maladministration” ensues whenever, in the words of Article 22 thereof, “a decision, recommendation, act or omission ... appears to have been contrary to law.” Likewise, the decision, recommendation, act or omission will amount to an act of maladministration if it is “based wholly or partly on a mistake of law or fact,” if it is “wrong”, or if the discretionary power underpinning that decision, recommendation, act or omission was “exercised for an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations.” Failure to give cogent reasons for certain decisions by, for instance, relying on generic and substantially meaningless expressions as “the exigencies of the service” or “in the public interest” also undermines the rule of law and good governance and good public administration. Indeed, Article 22(2) *in fine* of the Ombudsman Act clearly states that there will also be an act of maladministration “... where the Ombudsman is of [the] Opinion that ...in the case of a decision made in the exercise of a discretionary power, reasons should have been given for the decision.” The above reasoning underpins the whole rationale of the administrative investigations conducted by the Office of the Ombudsman, with the rule of law as a leitmotif and transparency and accountability as linchpins. Indeed, even if a 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” (Article 22(1)(b) *in fine*), there would also be an act of maladministration requiring rectification.



5. From the evidence received and written information obtained it transpires that the post of Principal and CEO of MCAST does not fall within the remit of the Public Administration Collective Bargaining Unit of the Office of the Prime Minister. This is consonant with the provision of Article 93(1)(e) of the Education Act, Cap. 327 (which governs the complainant's appointment), reflected in the more recent Article 11(1)(g) of the Malta College of Arts, Science and Technology Act, Cap. 638. Under both provisions, intended ostensibly to underscore the academic and administrative independence of MCAST from the political establishment, the Board of Governors is the supreme governing body of the institution. Like with the University of Malta, whose Rector is elected (and therefore in effect appointed) by the Council of the University, the Principal and CEO of MCAST is appointed by the Board of Governors. When, in March 2021, the Board of Governors decided to extend the complainant's contract (originally dated 25th of April 2018) on a definite basis from the 1st of June of that year to the 31st of May 2026, the said Board of Governors knew fairly well the age of the complainant. No evidence has been submitted to the undersigned Commissioner suggesting that the complainant's date of birth somehow fell within the ambit of any of the provisions of Cap. 50 of the Laws of Malta. In the contract of employment proposed by the Board of Governors and eventually signed by the parties (and renewed in 2021) there is no reference to any requirement of a (periodic) approval by the Ministry of Education or by the minister's *alter ego*, the Permanent Secretary. Likewise, no such reference, hint or suggestion was made by the President of the Board of Governors in his letter of May 2021



addressed to the complainant informing him of the renewal of the contract for five years ending 31st of May 2026.

6. This means, and can only mean, that the definite contract of employment expires only on the 31st of May 2026 and is governed exclusively by the provisions of Cap. 452. Any “condition” or “conditions”, whether self-imposed by the complainant himself (presumably unaware of the fine print as to his rights at law) or assumed to exist and applied by others (e.g. by the former Permanent Secretary at the ministry responsible for education) – see the complainant’s letter to Dr Frank Fabri of the 14th of May 2021 and the latter’s elusive reply of the 20th of May 2021 – are all *præter legem* and can never be relied upon to determine the definite contract of employment before the 31st of May 2026.

7. But there is more. As has already been observed above the exercise of a discretionary power must be backed by cogent reasons. This is the facet of good governance on the administrative side which is more generally reflected in employment and industrial relations by the requirement of a “good and sufficient cause” for dismissal from, or abandonment of, a contract of service for a fixed term. To date, no valid reasons or reasons have been given by the education authorities either to the complainant or to the undersigned for the constructive dismissal of the complainant with effect from the end of this month other than that the complainant’s “request” to work beyond the age of 67 had not been accepted (see in this respect the email of the 27th of May 2024 by the Director General of the People Management Department of the



Education Division to the Deputy Principal (Administration) of MCAST, and the letter dated 26th of June 2024 by the current Permanent Secretary addressed to the complainant). As already observed, this reason – that permission is somehow required in the instant case to work beyond a certain age – is spurious and makes a mockery of the authority of the Board of Governors and of the provisions of Cap. 452; and, in the particular circumstances of the instant case this purported reason renders the (constructive) dismissal both unreasonable and unjust (Article 22(1)(b) of the Ombudsman Act). Nor is the Manual on Resourcing Policies and Procedures, referred to by the Permanent Secretary in his formal reply to this Office of the 16th of August 2024, relevant. What is relevant is the law, and not what is clearly *præter legem*.

8. The devious way in which the education authorities are attempting to (constructively) dismiss the complainant is further underscored by a note – a To Whom It May Concern Note – dated 24th of June 2024 penned by Professor Ian Refalo in his capacity as President of the Board of Governors and before he resigned from that post. In that note, after declaring that the complainant “was not removed by the BoG from the position of Principal/CEO of the Malta College of Arts, Science and Technology”, he goes on to praise the complainant’s unwavering “contribution to break the deadlock with the Union in the current negotiations for a new collective agreement”; he also states that the complainant’s “commitment towards students and staff well-being was equally commendable.” The then President of the Board of Governors further states that the complainant “has steered the College to



unprecedented academic heights, whilst ensuring that each and every one of the students was given all the support and guidance necessary to reach his or her full potential.” The note ends by stating that the complainant’s “integrity and commitment towards vocational and dual education is exceptional.”

Conclusion and recommendation

9. For all the above reasons the complaint is sustained, as the forthcoming and imminent constructive dismissal by the Education Authorities of the complainant is in breach of several heads of Article 22(1)(2) of the Ombudsman Act, Cap. 385. The undersigned Commissioner for Education recommends that the Education Authorities desist from giving effect to the forthcoming and imminent dismissal of the complainant earmarked to come into effect on the 31st of August 2024.

Vincent A De Gaetano
Commissioner for Education

27 August 2024