

Report on Case No CEDUC-22-2586***The complaint***

1. The complainant is a student registered with the Islands and Small States Institute of the University of Malta and pursued his studies thereat for a Master of Arts degree. In part fulfilment of the requirements for this degree, the complainant submitted a dissertation (thesis) titled [REDACTED]

2. The complaint (lodged with this Office on the 8th January 2022) is, basically, that he was unfairly treated in the course of the examination and grading of his dissertation; and, moreover that the University authorities – notably the Director of the abovementioned Institute and two Pro-Rectors to whom he wrote in November of last year complaining about the handling of his dissertation, were completely dismissive and, in the case of the Director, displayed a patronising attitude towards him. He complained about what he calls “wilful neglect” on the part of the University (through the Institute) particularly in the composition of the board which eventually examined his dissertation and which, by assigning to that dissertation a very low mark when compared to the marks he had previously obtained for the other components of the course, resulted in an overall low-grade mark for his Master’s degree.

The investigation

3. As the Commissioner has often reiterated in his Opinions and Letters of Closure, it is not his function to re-examine the grades or marks awarded to students but only to ensure that in the process leading up to that grading or marking there was no element of maladministration as defined in Article 22(1) and (2) of the Ombudsman Act (Cap. 385) read in conjunction with Article 13(1). This delimitation of powers is highlighted in particular by

Rule 18(1) of the Commissioners for Administrative Investigations (Functions) Rules 2012 (as subsequently amended) which provides that: “*The Commissioner for Education shall have no functions relating to the exercise of academic jurisdiction unless there is evidence of maladministration*” (emphasis added).

4. It was for this reason that in communicating the complaint to the University of Malta for the purposes of (Article 18(1) of Cap. 385), the Commissioner limited his queries to the composition of the board which examined the complainant’s dissertation and the alleged lack of communication and/or response by the University authorities with/to the complainant.

5. After examining all the documents submitted by the complainant and by the University, and after hearing evidence, the commissioner is struck – negatively, as will be explained – by the composition of the board tasked with examining the dissertation in question. The subject of the dissertation was in sociology with heavy ethnomusicological and performative arts components. Yet, for a reason that has remained unexplained, two of the three effective examiners (the fourth member, the Chairman of the Board and Head of the Institute having ostensibly no formal say in the marking process) have no known expertise in the ethnomusicological and performative arts fields. One is an eminent economist; the other – the external non-visiting examiner – is an eminent political scientist with a specialisation in democratisation and comparative politics and in qualitative techniques. It is significant and, indeed striking, that out of the three effective members of the board of examiners the highest individual mark was awarded by the member of the board with expertise in ethnomusicology, particularly that of small states. The Commissioner can compare the situation obtaining in the instant case with that of a law student writing a dissertation on a particular institute of civil law (e.g. on hypothecs or on *retrato successorio*) where the Board of Examiners is composed of an expert in civil law and two (eminent) professors one in maritime law and the other in public international law! The set-up would clearly be wrong in principle and, moreover, highly likely to lead to negative results in connection with the student’s work being examined. To that extent, therefore, such a composition would be *a priori* unfair.

6. In the Commissioner's considered opinion, the complainant's dissertation was doomed from the very moment that the Board of Examiners was approved by the Senate on the recommendation of the Institute. The perceived subjectivity and lack of rigour in the complainant's work as articulated by two of the examiners, in justification of the low marks awarded, is difficult to comprehend considering that by convention sociological research is to a considerable extent subjective and the more so where ethnomusicology is concerned. The complainant's dissertation was precisely speaking of his own status and identity as a "glocal" (global and local) small state citizen/subject in the music sphere. As one witness put it "subjectivity and reflexivity are in this case necessary and essential, rather than methodological flaws".

7. In sum, the composition of the examining board in this case was, for the reasons given above, wrong in principle and resulted – predictably, one may add – in a very low mark contrasting sharply with the complainant's overall performance in the other component parts of the course as well as with the overall assessment of the dissertation by his supervisor.

8. In the official reply to the complaint submitted to this Office on 1st February 2022, the Pro-Rector for Student and Staff Affairs and Outreach pointed out that the complainant had an "ordinary remedy" to his complaint, namely to apply for a revision of paper within one week from the publication of the result, and that the complainant did not resort to this remedy. The Commissioner takes note of this fact, also in the light of the provision of Article 13(3) of Cap. 385. The Commissioner, however, is of the view that it was not reasonable to expect the complainant to resort to this "ordinary remedy" since even if an additional examiner had been appointed for the purpose of revision, the inherent prejudice of appointing the two original members of the board with no expertise in ethnomusicology could not reasonably be expected to be remedied. Moreover, there is in the instant complaint an aspect of general interest which goes beyond the personal interest of the complainant. This is the diligence that must be displayed by Faculties and Institutes in proposing to Senate the composition of examining boards, particularly for Master's and higher degrees.

9. Finally, the complainant raised an issue in connection with the lack of prompt and adequate replies from University authorities to his emails immediately following the publication of the results of his dissertation; and also queried whether it is proper that the chair of the Board of Examiners should be related by affinity to one of the effective examiners. As regards the first point, the Commissioner, in light to the conclusion below, does not see any need to examine this point further. With regard to the question of relationship by affinity, that specific complaint was not communicated to the University's authorities. The Commissioner will limit himself to say – and this is quite *obiter* – that if there was indeed this relationship, this could be highly problematic for the image of an examining board, an image which should be entirely free from even the vaguest suspicion of “internal” pressures affecting its independence or impartiality.

Conclusion

10. For all the above reasons, the Commissioner allows the complaint to the extent that the composition of the board appointed to examine the complainant's dissertation was wrong in principle and unfair, resulting in an *ab initio* prejudice to the ensuing process and final result. To that extent, therefore, the complaint is sustained.

11. The Commissioner **recommends** that the Board of Examiners be reconstituted afresh (with or without the original chair and the examiner who awarded the highest mark to the complainant) with persons with appropriate expertise, who are to re-evaluate the dissertation in question in its entirety.

Vincent A De Gaetano
Commissioner for Education

4 March 2022