

## Report on Case No CEDUC-24-5415

### *The complaint*

1. The complaint was filed by Mr Graham Sansone, Executive Head of the Union of Professional Educators (UPE) on the 1<sup>st</sup> November 2024 both in his own name and on behalf of the union in question. It was formally communicated in terms of Article 18(1) of the Ombudsman Act to the Permanent Secretary at the Ministry responsible for Education on the 13<sup>th</sup> November 2024.
2. The complainant alleged that Directive DG DES 28/2024 of the 25<sup>th</sup> September 2024 infringed the rights of educators, including members of the said UPE, by violating their right to freedom of expression, by discouraging educators from engaging in public discourse aimed at reforming and improving the educational system, and by diminishing the quality of such public debate. In sum, the complainant claimed that the said circular would have a chilling effect on union members in the public service from engaging in an effective dialogue both within the educational community and without.
3. At the time that this complaint was filed, a separate complaint was filed by a teacher A.B. in the public service who is also a member of the House of Representatives. This complaint was also duly served upon the Permanent Secretary, MEYR. This fact is being underlined as the Permanent Secretary's reply to A.B.'s complaint is, at the request of the said Permanent Secretary, also being considered as a reply to the instant complaint.



## ***The investigation and the findings***

4. It is important to clarify at the outset exactly what the impugned directive of the 25<sup>th</sup> September 2024 said (and how it said it):

### ***“Objective***

*This policy outlines the guidelines and procedures for educators (all grades) regarding their participation and appearances in media, including television, radio, blogs or newspaper articles, when participating as public service employees within schools in Malta and Gozo. The participation and contribution of educators to the public debate are encouraged. Establishing guidelines will ensure that while the debate on educational matters is healthy, this is done without compromising the system’s integrity.*

### ***Definition***

*For the purpose of this policy, ‘educators’ refers to all educators within the educational system, including teachers, SLT members, Heads of Schools and the Head of College Network (HCN).*

### ***Media Appearances***

*This policy refers to educators participating in media appearances (TV, radio, newspapers, vblog, podcast or online publications) provided that the subject matter is directly related to the national curriculum, pedagogy methods, policies, specific initiatives, or other topics directly linked to the educational system in Malta and Gozo.*

### ***Approval Process***

*Educators wishing to participate in media appearances must seek prior approval from their line manager. The request for approval must be submitted in writing, specifying the nature of the media appearance, topics discussed, and the media house involved. It is the applicant’s responsibility to ensure that the request reaches the Director General of the Department of Educational Services (DG DES). Prior approval is in line with the PSMC, which provides specific guidelines regarding the conduct of public officers, including their appearances in the media.*



### ***Representation of the Education System***

*If approval is granted, educators participating in media must adhere to a strict representation policy:*

- *Ensure that their comments reflect the policies, guidelines, and objectives of the Ministry for Education, Sport, Youth, Research, and Innovation (MEYR).*
- *Statements perceived as politically-biased or compromising the educational system's neutrality are to be avoided.*

### ***Media Content Guidelines***

- *Educators must ensure that the content discussed in media appearances is factual, based on current data, professional, and aligns with educational priorities.*
- *Participation should not result in the promotion of personal opinions, political ideologies, or any content unrelated to education.*

### ***Conflict of Interest***

*Educators must not participate in media appearances that pose a conflict of interest with their professional duties or could undermine their position as impartial and responsible educators.*

### ***Policy Observation***

*The Head of School (HoS) and Head of College Network (HCN) should ensure adherence to this policy. Any breaches of the policy are to be referred to the DG DES for review and ensuing action.*

### ***Conclusion***

*Educators have a role in positively representing the educational community in public forums. This policy aims to guide them in contributing to discussions on education while maintaining professional standards and safeguarding the integrity of the educational system.”*



5. The Office of the Permanent Secretary, in their reply to the instant complaint raised a number of preliminary issues which need to be addressed *seriatim* before passing on the merits of the complaint. The Ministry contends that the complainant in his personal capacity is not subject to the directive as he is employed by, and teaches in, a Church school and therefore is not a public employee. This objection is well-founded, in that Mr Sansone in his personal capacity cannot be said to have a “*sufficient personal interest in the subject matter of the complaint*” (Art.17(2)(c) of the Ombudsman Act). The same cannot be said, however, of the complaint in so far as it is being made for and on behalf of the UPE. The union, as a juridical person representing the interests of its members, has more than enough interest in the subject matter under examination. The Office of the Permanent Secretary also pleaded that the UPE has no standing with regard to this complaint, citing again Regulation 5 of Subsidiary Legislation 452.112. The undersigned emphasises the adverb ‘again’ because this regulation was also raised by that office in order to stop the UPE from complaining against the ‘personalised union directive’ – the subject of this Office’s Final Opinion of the 4<sup>th</sup> October 2024, and which has since been laid on the Table of the House of Representatives. As the undersigned has had occasion to state, that regulation only protects the recognised union (or the joint recognised unions) from attempts by another union or unions to bargain collectively; that regulation, however, is no bar to free union membership, to members of a non-recognised union following the directives of that non-recognised union, or to the non-recognised union from espousing and protecting the interest of its members. The plea in so far as based on the above-mentioned Regulation 5 is therefore dismissed.

6. In substance, the respondent entity claimed that Directive DG DES 28/2024 merely re-iterated the position at law as far as public officers are concerned in connection with comments made publicly and in particular to the media. In fact in his reply to the complaint by A.B., the Permanent Secretary



MEYR cites (a) paras 7.1.14 to 7.1.15.2 of the former Estacode; (b) circular DES/DQSE/04/2008 of the 18<sup>th</sup> April 2008; (c) paras 7.2.4.2 and 7.2.4.3 of the PSMC of March 2011; (d) paras 7.2.4.2 and 7.2.4.3 of the PSMC of June 2013; and – *dulcis in fundo* – (e) Directive 5 of the 24<sup>th</sup> February 2011 issued by the Principal Permanent Secretary.

7. Having carefully examined all the documents mentioned in the foregoing paragraph, the undersigned cannot agree with the proposition that Directive DG DES 28/2024 is merely a re-statement of what already existed prior to the 25<sup>th</sup> September 2024. The Directive issued by the Director General Educational Services targets all teachers irrespective of grade (i.e. scale) in the public service. As can be seen by the parts reproduced in bold in para. 4, above, the directive also has an element of doublespeak: while ostensibly harping upon the need for a healthy debate on educational matters, it at the same time requires total conformity with official policy by requiring, inter alia, that “*comments [must] reflect the policies, guidelines, and objectives of the Ministry for Education, Sport, Youth, Research and Innovation (MEYR)*”; and that “*participation [in media debates] should not result in the promotion of personal opinions*” – which is the very opposite of what para. 5.2 of Directive 5 provides: “*Public officers in scales 6 and lower are allowed to engage in public comment in a personal capacity. Moreover they are allowed to do so only as long as they ensure that their comments are being put forward solely as a matter of personal opinion*”. Moreover, the impugned directive put, as it were, all teachers irrespective of grade “*on notice*” by requiring prior approval “*from their line manager*” but ultimately from the Director General Educational Services. The subliminal meaning of all this did not escape the complainant, who rightly remarks that all this has a chilling effect on teachers who are, in effect, being told to keep their peace.



8. It is not clear what possessed the Director General Educational Services to issue the impugned Directive. Clearly that Directive is not a consolidation or re-statement of what already existed before it was published. When one considers that what is greatly lacking in our educational system is critical thinking, it beggars belief that anyone in the educational establishment should require that educators' comments must "*reflect the policies, guidelines and objectives*" of the Ministry responsible for education.

9. Educators in the public service do not, by virtue of their public service, lose their right to freedom of expression particularly on matters touching upon their particular area of work. While it is generally accepted in democratic societies governed by the rule of law that certain restrictions may be imposed on public officers occupying certain managerial position – positions which require a special duty of loyalty to the executive branch of government – these restrictions cannot be of a blanket nature extending to everyone.

10. It is significant that on the 4<sup>th</sup> of March 2025, the Permanent Secretary at MEYR issued Circular PS 08/2025, which, while not expressly revoking or withdrawing Directive DG DES 28/2024, attempted a retrenchment on the matter. The circular of the 4<sup>th</sup> March 2025 states verbatim:

*“Reference is made to Circular number DES/DQSE/04/2008 (Annex 1) and Circular number DES/28/2024 (Annex 2), both of which address the responsibilities of public officers in dealing with the media.*

*To ensure clarity and simplicity in the procedures, all public officers within this Ministry are reminded that it is their responsibility to familiarise themselves with the content and to adhere with the established procedures outlined in the following directive and central policies:*





–Directive 5 – Political Participation and Communications with the Media

–Public Service Management Code

–Policy on the use of social media in the Public Service

*As a way forward, only this circular will serve as the reference for all public officers within this Ministry regarding communication with the media.”*

So basically, the Permanent Secretary has effected a *renvoi* back to the PPS’s Directive 5 and to the milder DES/DQSE/04/20008. This latter circular is practically irrelevant for the matter under examination, as it refers to official communications by Directorates and Colleges with the media.

11. This leaves Directive 5. Here the situation is far from clear. According to the current sectoral agreement, Deputy Heads of School can fall either in Scale 5 or in Scale 6. All teachers, however, beginning with senior teachers and going down to LSEs technically fall within the ambit of para. 5.2 of said Directive 5 (partly quoted in para. 7, above). This paragraph 5.2 ends with the following sentence: *“But public officers are to refrain from commenting on matters that pertain to their ministry and in particular their area of work, even if in a personal capacity”*.

12. This in effect casts a blanket prohibition on all teachers and educators, whatever their scale in the public service, from commenting on anything that has to do with teaching and education, including the education of the children entrusted to their care. This blanket restriction is clearly in violation of teachers’ and educators’ right to freedom of expression since such a limitation cannot, by any stretch of the imagination, be considered to be reasonably necessary – in other words, required by a pressing social need – in a modern democratic society.



13. For all the above reasons, the complaint, in so far as it is being made for and on behalf of the UPE, is well-founded in terms of Article 22(1)(a)(b) and (d) of Cap. 385 and is being sustained both in regard to Directive DG DES 28/2024 as well as in regard to the position obtaining under para. 5.2 of Directive 5 of the PPS of the 24<sup>th</sup> February 2011.

14. The undersigned recommends that the Ministry responsible for education ensure, by the issue of proper guidelines and directives, that teachers and other educators not engaged in significant managerial roles are free to express their personal opinions about matters touching their area of work without let or hindrance and without fear of disciplinary proceedings or other negative repercussions.

Vincent A De Gaetano  
Commissioner for Education

30 April 2025