

Redress: the introduction of a new culture in Maltese public administration

Section 22 of the Ombudsman Act states that if at the end of an investigation the Ombudsman is of the opinion that a complainant was adversely affected by an unfair or improper action by a public body, the Ombudsman may recommend a remedy to redress this grievance.

Although this provision was enacted in 1995, several public bodies are still hesitant in cases that are sustained by the Ombudsman to accept recommendations for redress especially those which involve the award of financial remedy. This Office would like to promote a more positive attitude by public bodies in Malta.

Efforts to develop a consistent approach to the award of redress in cases of maladministration that are upheld by the Ombudsman entail an acceptance of the fact that whenever compensation is due, adequate redress should be granted promptly to the aggrieved party.

The general principle underpinning redress in the case of proven maladministration and its service-wide application is that **a justified complainant should be restored to the position that this person would have been in but for the wrongdoing by the public body concerned and before the instance of maladministration occurred.**

The Ombudsman would like to encourage public bodies to assume their responsibilities in instances where an individual is wrongly denied of a benefit or an entitlement which is rightly due; where a person's rights are only given after an avoidable delay; or where undue inconvenience, hardship or distress has been caused. In similar circumstances the public body concerned should

- accept responsibility for the fault which has occurred;
- undertake to make good any losses which may have taken place as a result of its actions; and
- in cases of undue delay, accept to compensate for loss of income.

The Ombudsman would also like to promote the introduction of a code of practice regarding redress for proven maladministration. An effective redress system serves to make the public body that adopts this system more credible in the eyes of citizens and enhances the quality of its customer service.

This new approach to the principle of redress in the case of justified complaints is alien to Maltese culture and tradition in public administration. Its introduction should, however, contribute towards a greater measure of democratic control over state bureaucracy and render public administration in Malta even more responsive to the rights of citizens.

The attitude of Maltese public bodies in respect of the award of redress is still marked by an overt reluctance to accept recommendations, especially for *ex gratia* payments. This is not unique to Malta. However, in democratic countries with a forward-looking public administration it is now accepted that public bodies have an obligation to provide equitable compensation for the wrong caused to citizens by maladministration.

The award of financial compensation to complainants whose grievances are upheld by the Ombudsman and who are found to deserve monetary benefits in restoration of their injured rights is meant to

- make up for entitlements due to citizens but which, for some reason or other, fail to reach them;
- compensate for refunds or payments of benefits which have been delayed or withheld inappropriately;
- provide a measure of relief for opportunities which have been wrongfully denied; and
- help to make up for moral, psychological and physical damage to which an injured party might have been unjustly subjected.

While giving due acknowledgement to the work done in this field by the Irish Ombudsman on whom the following sections of this document rely, hereunder is a range of instances which may be covered by the award of compensation. In cases where the extent of the loss inflicted on a citizen may be quantified, payment of compensation may be considered appropriate on the basis of the guidelines shown below.

Financial loss

Where administrative wrongdoing denies a person a specific amount of money, compensation should make good the loss that has occurred.

Loss of purchasing power

In cases where the refund or the payment of a benefit has been delayed or withheld over an unduly extended period of time as a result of an error, misinterpretation or oversight on the part of a public body, compensation should take due account of the loss of purchasing power and interest on the amount involved.

Loss of a non-monetary benefit or service

When a person incurs expenses out of his own pocket in order to secure alternative services to those normally provided by public bodies but which are inaccessible due to a fault on the part of the public body involved, the body concerned should, upon the restoration of these facilities, provide adequate redress in respect of the period when these services were unavailable.

Loss of opportunity

Whenever an act by a public agency prevents a person from taking part in arrangements under which he is eligible or results in a loss by the individual of an opportunity to exercise a right of appeal, the body concerned should ensure that compensation should enable the person to have access to his former rights.

Costs incurred

A person who decides to contest the decision or the attitude of a public body may require professional advice to defend his position. If, at the end of the process, the position taken by the individual is upheld and the original decision is reversed in his/her favour, redress should take into account reasonable expenses that were incurred and which arose as a result of the stand taken by the public body in the first place.

Time and trouble

In order to pursue a complaint, a person may need to spend time and to incur costs such as travel expenses and purchase of materials. Compensation in the form of payment for time and trouble reasonably spent by an individual in pursuit of his complaint and associated certified costs, should form part of the redress package.

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