

Special Report on Case No. 323

1. In mid-June the Ombudsman presented to the Chief Minister his first special report.
2. The Special Report involved Case No. 323 against the Department of Transport for destroying a car, which had been towed away when found illegally parked.
3. The Ombudsman pointed out that his special report intended to bring to the attention of the House of Assembly an issue, which to his mind, did amount to an act of maladministration, which regrettably, had not been remedied as per his recommendation, which had been rejected by the authority concerned.
4. The Ombudsman said that although GSS had acted within the remit of policy as set down by Government, he, the Ombudsman had taken the view that the measure taken by the Department had not been proportional to the offence committed.
5. The Ombudsman expressed the view that the authority concerned committed an act of maladministration because of its failure to mitigate the effects of rigid adherence to the letter of established policy. This resulted in the destruction of a car with serious and costly loss of property to the Complainants.
6. The Ombudsman brought to the attention of the Chief Minister Article 6 of the European Code of Good Administrative Behaviour as set down by the European Ombudsman and approved by the European Parliament.

1. "When taking decisions, the official shall ensure that the measures taken are proportional to the aim pursued. The official shall in particular avoid restricting the rights of citizens or imposing charges on them, when those restrictions or charges are not in a reasonable relation with the purpose of the action pursued.

2. When taking decisions, the official shall respect the fair balance between the interests of private persons and the general public interest.

7. The Ombudsman explained that the Charter of Fundamental Rights of the European Union as proclaimed at the Nice Summit in December 2000, included as a fundamental right of citizenship, the right to good administration. The European Code of Good Behaviour (the Code) adopted by the European Parliament in September 2001 is intended to explain in more detail what the Charter's right to good administration should mean in practice. The Code is meant to regulate the relationship of EU Institutions vis-à-vis E.U. Citizens. The Ombudsman said that in the absence of a more binding definition of maladministration, he took the definition accepted by the European Parliament as having persuasive authority. The Ombudsman pointed out that rules, regulations and policies should not be applied so rigidly or inflexibly as to constitute unfairness. The Ombudsman felt that in this case Government policy was applied in such a way that it did constitute unfairness and amounted to an act of maladministration, hence the issuing of his special report. This was laid by the Chief Minister to the House of Assembly on 12 July 2002. It was later debated in the House on 18 October 2002 and the Ombudsman's recommendation duly accepted by the Government.