KINGDOM OF BELGIUM

ANNUAL REPORT

2002

Published by: The Office of the Federal Ombudsmen of Belgium
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Rue Ducale / Hertogstraat 43, 1000 Brussels

Realisation: Vanden Broele Grafische Groep

INTRODUCTION

This Annual Report by the Office of the Federal Ombudsmen covers the entire year 2002.

The Federal Ombudsmen Act dates from 22 March 1995. The House of Representatives appointed the first two ombudsmen in December 1996. They took up office after being sworn in on 3 January 1997. The Office is now in its stride and its reputation is spreading. The staff now have considerable experience and working methods have been finalised.

The previous Annual Reports systematically summarised the achievements of the previous year: development of methodology and its incorporation into the Rules of Procedure, refining of the principles of proper administration and of evaluation criteria applied by the Office, closer cooperation with the House of Representatives, and in particular with the Petitions Committee as well as with the Civil Service, articles for the press, dissemination of jurisprudence (summaries) within the Civil Service, and addresses given in universities and higher education colleges and in various other bodies.

To make it easier to contact the Office, regular duty offices (surgeries) were established in several provinces: first of all in the province of Luxembourg and in Western Flanders in 2001, and then in Hainaut and Limburg in 2002. Closer cooperation with the Flemish and Walloon Ombudsmen and with municipal ombudsmen resulted in the establishment of an Interdisciplinary Research Centre on the Ombudsman, which held its first congress in the building of the House of Representatives. The common Internet site will be completed in 2003. The web site will be co-managed by the Office of the Federal Ombudsmen and by the ombudsmen of the Flemish Community and of the Walloon Region, the mediation services of public institutions, pensions, municipal authorities and, lastly, sectoral mediation services in the private sector.

One matter raised by the Office which was not followed up was constitutional recognition of this institution as such and of the right of every citizen to call upon the Office for assistance. In the vast majority of European countries, both within the European Union and outside it, and in many countries elsewhere in the world, recognition of the ombudsman in the constitution is a guarantee, at the highest level, of his independence. In the draft Constitution for the European Union, on which the Convention is currently work-

ing, the following words are found under Title II, Article 8.2: "the right to petition the European Parliament and to apply to the European Ombudsman". The Office herewith expresses the wish to see constitutional recognition granted within the next parliamentary term.

One prerogative that most national ombudsmen can exercise is the right to investigate on their own initiative rather than on the basis of an individual complaint. The law must be amended in Belgium to permit this right, which the Office would like to see introduced.

This Annual Report is divided, as usual, into three parts.

The first part consists of comments on logistical aspects and of a concise overview of international activities, and also comprises two addresses by the Ombudsmen which were given on other occasions.

The second part contains general statistics. The terminology used for the Federal Ministries is that which was in force during the year in most departments; the term *Federal Public Service* (FPS) is not used. The changes and adaptations to the new organisational chart will be made in the course of 2003.

The third part focuses on new recommendations made in 2002 and on recommendations already proposed by the Office.

Two matters in particular deserve special attention.

Because of the abolition of the printed version of the *Moniteur belge* (official gazette) by the Act-Programme of 24 December 2002, with effect as of 1 January 2003, it is necessary to inform citizens specifically of their rights and duties. The Office has already drawn attention to the need for active and passive information in its previous annual reports, and does so again here.

The Copernic reform, initiated in 2001, is far from complete. Grievances over the past year often concerned insecurity (also on the part of civil servants) regarding the consequences of the reform.

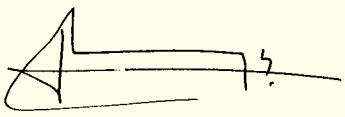
The Office cannot express a view on the thinking behind the reform as this is based on a political decision. The important thing in this process is communication: as soon as a decision is taken, it must be communicated as clearly as possible to all the persons concerned.

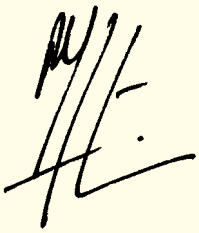
Copernic hence affects all aspects of bureaucracy: not only have modifications been made to the rights and obligations of civil servants, but departments have been thoroughly reviewed, and then

either grouped together or split up. As this is an evolving process, uncertainty has also emerged in the course of this year. The new organisational chart has disrupted people psychologically, and they will need time to adjust.

Lastly, the Federal Ombudsmen would like to thank all their staff members. This very united team is now in place. Without the personal efforts by each member, the Office of the Federal Ombudsmen would have been unable to achieve the results it is now enjoying.

The Office of the Federal Ombudsmen





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I.
General Considerations

I. GENERAL CONSIDERATIONS

1. The independence of the Ombudsman[1]

The experiences of ombudsmen differ widely within continental Europe. Although we use the same terminology – "ombudsman", "democracy" and "independence" – the meaning of and the specific concepts relating to each term can diverge to such an extent that it is advisable to clarify them.

At the meeting of the management board of the International Ombudsman Institute (IOI) held in Tunisia in October 2002, cooperation between regions, and in particular between the Europe Region and the Latin American and Caribbean Region, became a priority. Even within one region, however, Europe in this case, there is such diversity that experiences should be compared regularly. At that meeting we discussed the work of the ombudsman and the conditions under which he operates, in particular the question of the independence of the ombudsman. Our purpose here is not to explain what this independence means exactly. The intention is, rather, to raise several points that were the subject of public debate in recent months. It is hardly surprising that this speech starts by mentioning the political philosopher, John Rawls, who died at the end of last year. In his book entitled *A Theory of Justice*, published in 1971, he sets forth certain principles which have had a major influence on political thinking and on the behaviour of certain political leaders. It is not by chance that we refer to him in the first instance when talking about the independence of the ombudsman.

Rawls, like Jean-Jacques Rousseau, goes back to the fictitious idea of a "social contract". He expects man to get into a position in which he can conclude a contract between citizens. In this fiction, Rawls postulates perfect equality between the contracting parties in the sense that none of them must or should be aware of the value of talent or social position. The initial problem of inequality is thus eluded by Rawls by adopting a point of view based on equality in principle between people. The question then posed by Rawls is "*what criteria and which political institutions can be used to distribute the effects of this social cooperation*?" His answer gives priority to the principle of *the highest possible equal freedom*, which

[1] This text is a shorter, adapted version of the speech given by H. WUYTS at the opening of the annual meeting of the Europe Region of the International Ombudsman Institute (IOI) in Ljubljana on 6 December 2002.

means that each citizen is entitled to the greatest possible number of fundamental rights, and only when they are guaranteed can attention focus on the principles of economic and social distribution. In this respect, he formulated the initial principle of *fair equality of opportunity.* Theoretical access to social positions is not enough: there must also be a real possibility for each citizen to occupy these positions.

According to his second principle, the *difference principle,* social inequality is acceptable only insofar as it provides the less privileged with certain advantages. We will not go into these principles concerning social policy in more depth here as this is not the purpose of this presentation.

What is important here is the idea of the *highest possible equal freedom*, based on the fundamental rights of all citizens, as this is precisely the foundation underlying the work accomplished by ombudsmen throughout Europe. This is the general framework governing the everyday work of ombudsmen in terms of handling grievances: protection of fundamental rights against any error, any corruption or any situation within society involving the threatening of these fundamental rights for certain individuals or groups. This *Theory of Justice* (this is merely an example) is quite explicit from the Portuguese title for ombudsman: *Provedor de Justiça*, meaning the person who guarantees justice in society. This term is found, to a certain extent, in the term *Defensor del Pueblo*, the title used in Spain and in Latin America, and in the term *Human Rights Ombudsman* in use in Central and Eastern Europe. Which is slightly different from the traditional idea of an exclusively administrative ombudsman as developed in the Scandinavian countries and generally recognised in a large part of the world.

It is not our intention here to compare the various terms, contexts and working structures of ombudsmen, much less to compare the different concepts that are widespread in these structures, as such a comparative study has already been conducted on other occasions. Rather, we would like to emphasise the cardinal importance of the independence of the ombudsman so that, even with all these systems, structures and specific situations, we can actually speak of a veritable ombudsman. When preparing this address, a number of documents from different European countries or from ombudsmen based on the European model were consulted. The brief summary which follows is, obviously, not exhaustive.

The first model is that of New Zealand, which states: "*The ombudsman shall report to Parliament, not to the Government"*. Independence

from government is a vital characteristic of the ombudsman, which enables the New Zealand population to have confidence in the impartiality of investigations carried out with respect to government, its administration and its organisations.

In Portugal, Article 1 of the Ombudsman Act (Act of 9 April 1991 amended in 1996) states that: "*The ombudsman shall benefit from absolute independence in the exercise of his duties*", while Article 3, concerning the appointment of the ombudsman, says: "*only a citizen who meets the conditions necessary for election to parliament and benefiting clearly from a reputation for integrity and independence can be appointed ombudsman.*" According to Article 7, "*Once elected, the ombudsman is independent and he cannot be deprived of his office before the end of his term of office, unless an express legal provision is adopted to this effect.*" Article 8.1 states that "*the ombudsman may not be required to justify himself in either civil or criminal terms for the recommendations or comments he may make, the opinions he may express or the acts he may perform in the course of his duties.*" Article 8.2 goes on: "*The ombudsman may not be arrested or imprisoned without the express authorisation of parliament, unless he commits a crime punishable by law by a prison sentence of over three years, for which he is arrested in the act.*" This demonstrates more or less what the term independence covers in Portugal.

The term *Human Rights Ombudsman* is used in the Republic of Slovenia, with this definition: "*What is an ombudsman? The human rights ombudsman is an autonomous person, independent of state bodies, elected by the National Assembly to protect the rights of each citizen as well as fundamental freedoms insofar as they are linked to state institutions, local authorities and administrations exercising a public office.*" The legal basis for establishing the Human Rights Ombudsman in Slovenia is enshrined in the Constitution (which came into force on 23 December 1991), hence it enjoys the strongest possible guarantee.

The same guarantee exists in the Netherlands where it is stated that "*Since 25 March 1999, the office of national ombudsman is enshrined in the Constitution.*" Article 78a places the ombudsman in Chapter 4, after the Dutch Council of State and the Auditor-General's Department: "*The national ombudsman shall, on request or on his own initiative, examine the acts adopted by the central administration and by other levels of administrative authority specified by or arising from a parliamentary act. In the Netherlands, the national ombudsman is one of the High Offices of State, on the same level as the two Houses of Parliament, the Council of State and the Auditor-General's Department. The High Offices of State are characterised by their formal independence with respect to government*". Another aspect demonstrating the in-

dependence of the national ombudsman is the fact that he is appointed by the second house, not by the Crown, which is unusual in the Dutch constitutional system.

The Greek Constitution contains a general rule on independence which states that the duration of the term of office must be clearly indicated and that both personal and professional independence must be described precisely in law. This also applies to staff selection and regulations. Independence is defined in law as not being subject to the control of a government body or of an administrative authority. It is also stated that the ombudsman cannot be questioned or prosecuted or be the subject of an investigation because of an opinion he has expressed or an act he has adopted in the course of his term of office. Lastly, his term of office lasts for five years and cannot be renewed.

The Finnish system states that: "*The parliamentary ombudsman is an independent and impartial authority which monitors compliance with the law in the work of official and public services.*" Under the Constitution, the ombudsman and his "*deputies*" must have exceptional knowledge of the law. This means that the ombudsman's *raison d'être* is therefore found in the Constitution.

The oldest ombudsman institution, the Swedish Ombudsman Institute, has been in existence since 1809. At that time, since Sweden was governed by a king, Parliament (which represented the four social classes) considered it necessary to set up an institution independent of the king to guarantee compliance with laws and statutes. Therefore the ombudsman is elected by Parliament, even today.

The oldest Parliament in the world, the Icelandic *Althing*, states that the Icelandic ombudsman is chosen by Parliament for a four-year term of office, that he must fulfil the conditions laid down by law to be appointed as a member of the Supreme Court and that he is independent in terms of exercising his duties, and cannot receive instructions from anyone, including Parliament.

Belgian documents in French (the example of the Walloon Region Ombudsman is given below) state that: "*The ombudsman is completely independent of the administrative authorities he must investigate. The efficiency of his role is based on five essential characteristics, the main one being independence. The others are: the description of his powers, his capacities and means for exercising his powers, an indication of his jurisdiction and the quality of the bodies he represents.*"
In the French system, the status of ombudsman is referred to as a personalised institution, and since the Act of 13 January 1989, the

ombudsman is explicitly described as an *independent authority* which "*does not receive direction from any authority within its jurisdiction.*" This provision is also found in the Federal Ombudsmen Act in Belgium, more precisely in Article 7 which goes on to say that "*within the limits of their powers, the ombudsmen do not receive instructions from any authority. They may not be relieved of their duties because of acts they have performed in the context of their work.*"

Now let us look at ombudsman organisations.

The first one we will examine is the British and Irish Ombudsman Association. There is a provision on members that states that voting rights (which means full membership) within the Association are possible for those ombudsmen offices that satisfy the criteria of public knowledge as laid down in the Association's rules, in particular: independence of the ombudsman from those whom the ombudsman has the power to investigate; objectivity; fairness and public accountability. Independence is defined more specifically in the detailed criteria. Independence means that: "*The jurisdiction, the powers and the method of appointment of the Ombudsman should be matters of public knowledge. The persons who appoint the Ombudsman should be independent of those subject to investigation by the Ombudsman. The appointment should be either for a minimum of three years or until a specified retirement age. The appointment must not be subject to premature termination other than for incapacity or misconduct or other good cause. The remuneration of the Ombudsman should not be subject to suspension or reduction by those subject to investigation. The Ombudsman alone (or an appointed deputy) must have the power to decide whether or not a complaint is within the Ombudsman's jurisdiction. Unless otherwise determined by statute the Ombudsman should be required to report to a body independent of those subject to investigation. The office of the Ombudsman must be adequately staffed and funded, either by those subject to investigation or from public funds, so that complaints can be effectively and expeditiously investigated and resolved*".

In the By-Laws of the *Association des Ombudsmans et Médiateurs de la Francophonie* (*AOMF* - the association of ombudsmen and mediators of the international organisation of the French-speaking countries) we find the same provision under Article 7.1.1.3, relating to voting members: "*The ombudsman does not receive direction from any public authority and is independent of the administration with regard to which he has jurisdiction.*" Next, it states that he has a fixed-term mandate and cannot be removed from office except in certain clearly established and recorded cases. Article 7.1.2 states that "*an organisation which satisfies the criteria in Section 7.1.1 but which simultaneously performs its duties within the administration and*

in the private sector or which is subject to the authority of an administration, as stated in Section 7.1.1, cannot become a voting member unless there is explicit agreement by the Management Board".

Lastly, let us look at the Membership By-Laws of the IOI[2] as approved at the World Congress in Durban, South Africa, in November 2002. Point 6.iii on institutional members runs as follows: "*The ombudsman does not receive any direction from any public authority which would compromise its independence and performs its functions independently of any public authority over which jurisdiction is held*".

It is therefore clear that independence is the most important criterion to be respected when speaking of an *ombudsman.* While all the criteria cover the same idea, there are some differences in practice.

[2] International Ombudsman Institute

2. Added value of the Ombudsman in a state governed by the rule of law: the principle of equity[3]

Control of equity, also known as control of equitable administration, is a power that is eminently specific to the ombudsman, although it is found in only some judicial cultures. Where the application of the law to a particular case would lead to a situation that would clash deeply with natural human justice, the principle of equity allows the parliamentary ombudsman – or the national ombudsman in countries with a presidential system – to recommend to the administration that the implementation of the law be administered in a flexible manner or even suspended in the case concerned, and that a decision be adopted that is based, not on law, but on equity. Hence the name *aequitas para legem*[4]. In other words, equity consists of adapting the rule of law to a particular situation, to rectifying unjust, unfair or disproportionate effects of a law or decree in relation to a particular case, of tempering the rigidity of the law and of balancing the law and its effects.

To complete these indispensable semantic explanations without which there is a risk of giving a different meaning to equity, and in so doing, of misrepresenting its very essence, equity should be distinguished from equity law which is specific to Anglo-Saxon law. Under the 1258 *Provisions of Oxford*, the powers of common law courts were abolished in a number of domains, with justice then being rendered in these matters by the king (and later by the Lord High Chancellor) "in conscience": this was the birth of equity law. Based on the rule of precedent, this gradually became codified over the centuries, turning into a veritable separate body of law in the 14th century, first competing with and then, from the 16th century on, taking precedence over common law, until the common law and equity law courts were merged in the 19th century. Far from informally correcting the law, equity law was thus a formal source of Anglo-Saxon law, in the context of which it partly con-

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3 Extract from the article by P.-Y. Monette, "*La plus-value de l'ombudsman dans l'Etat de droit: intermédiaire agissant, lecture plurielle et principe d'équité*" (The added value of the ombudsman in a state governed by the rule of law: active intermediary, plural interpretation and principle of equity), in *L'ombudsman en Belgique après une décennie*, Centre of Interdisciplinary Research on the Ombudsman, *La Charte – Die Keure* ed., 2002, p. 113-126. Only some of the footnotes are given here. The full article can be consulted on the web site of the Office of the Federal Ombudsmen.

4 Some speak of *aequitas contra legem*, but we prefer *aequitas para legem* because equity is not against the law but is conceived to be on the margins of the law. There is more than one qualification to be made here: the principle of recourse to equity is in fact based on the law itself and is intended to alleviate or suspend the effects of the law rather than to oppose it.

stitutes positive law. The saying "equity follows the law" shows how the concept of equity law was not at all comparable to that of *aequitas para legem*.

Turning to continental law, we must not, either, confuse equity with the principle of reasonableness[5]. Application of this general principle of law, which is often but not always associated with the principle of proportionality, ensures that an administrative decision is reasonable. This operation, which constitutes an intellectual exercise comprising four stages, is aimed at checking the existence of the fact invoked by the Civil Service to justify its decision, then the appropriateness of the legal classification of this fact by the Civil Service, the relevance of the fact as regards the decision, and lastly the fairness of the Civil Service's appraisal in making its decision correspond to a particular fact. In other words, a check is conducted to ensure, first, that the Civil Service understood the administrative situation correctly and that it classified it pertinently and adequately, and that it then applied the most judicious decision *(judicium)* within the limits permitted by law and by a fair interpretation of the law, while refraining from analysing the propitious *(propitius)* nature of the decision. In other words, while the control of reasonableness can restrict the Civil Service's power of appraisal, and while it has certainly brought the control of abuse of power close to the control of expediency, it nevertheless must stop where the control of expediency begins. The person responsible for verifying abuses of power is empowered to redress only errors of qualification, pertinence or appraisal, not of expediency.

A formal – and hence binding – basis of law, the principle of reasonableness can be applied in a situation of discretionary powers and, albeit to a lesser extent, in a situation where the law must be applied as it stands. It thus forms an effective shield against abuses of power by the Civil Service since it prevents any divergence from the public interest. This is particularly true in that the ombudsman can apply the principle of reasonableness by calling the Civil Service to account even in the case of errors of appraisal that are not obvious, thus completing the control of abuse of power of the judge by resolving situations where the Civil Service's error of appraisal is not sufficiently obvious to enable it to be sanctioned. An extremely valuable tool for refining our judicial system, control based on reasonableness constitutes (and this bears repeating) a permanent part of the law and of its fair interpretation.

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5 In relation to the principle of reasonableness, see OFO, *Annual Report 2000*, p. 26-28.

The principle of equity

The situation regarding the principle of equity is quite different: it allows emancipation from the law. While at first sight it may appear to be completely contrary to legal certainty and to constitute heresy in a democratic state dominated by prescriptivism and positivism, the principle of *aequitas para legem* in fact proves to be an essential tool for making the law more humane. How wise of a democratic state – or more simply, a realistic state, one is tempted to say, in agreement with Thomas Aquinas – to accept the idea that the law (contrary to the widely held fictitious view that, since it is the expression of the general will, it forms a perfect and sufficient guarantee for citizens) might in effect not be perfect, and that one might seek to deal with its imperfections by establishing, by law, a mechanism that permits exemption from the law in exceptional cases. Unlike heresy, the principle of equity is a veritable refinement of the rule of law, and is probably only possible wherever legal certainty is guaranteed by a sufficiently well-established practice of respect for the rule of law, and where there is therefore no risk of confusing the application of equity with the weakening of legal rules. For if the innovative (some would say revolutionary) nature of the mechanism of *aequitas para legem* disturbs or even frightens people, this should only be so if they doubt whether the rule of law can be sufficiently developed to be based on the supremacy of the law while at the same time managing to purge the inevitable inequities of it, if necessary by setting it aside temporarily.

The principle of equity, which is as old as the debate on the link between the law and justice, is at the heart of the question of the rule of law and, more precisely, of the meaning of the word "law" and of the position of the State in relation to it. The rule of law is justified by the need to establish rules in order to live together and to combat the arbitrary nature of power and, more generally, the arbitrary nature of the strongest. But while the development of the rule of law thus allows civilisation to surpass itself and to guarantee the same rights and the same obligations to all, respecting the integrity and dignity of each citizen, the deployment of a prescriptive legal system based on a general rule can, however, lead to a certain number of cases of blatant injustice. The rule of law must serve people, not make them subservient to legal rules. If implementing the law proves inequitable for people, even only for one person, the superior principle of solidarity demands that this be

remedied[6]. It is this principle which justifies the necessary difference between the general and the particular, and between the rule and the exception. It is precisely in the respects which the general organises with regard to the particular that the value of a legal system is gauged on a human level, and hence the value of the society which practises it. The time for "*dura lex, sed lex*" (the law is hard, but it is the law) is over, and it is, on the contrary, a question of "*summa ius, summa injuria*" (the rigor of the law may be the height of injustice). This is probably yet another instance of civilisation surpassing itself, with the principle of equity acting as one of the tools for achieving this.

The intrusion of equity into a legal system based on the primacy of legal rules must be achieved, nonetheless, by means of a legal rule. For while *aequitas para legem* is, to a certain extent, the rule of non-legislation, it is not, far from it, the rule of non-law. Taking natural law as its basis and the principle of solidarity as the source of its legitimacy, its legal basis must be legislation itself. This is in fact the case in the French and Belgian legal systems which have developed the principle of equity. It is worthwhile noting that, at Federal level, there was some desire to skip this explicit recognition of equity in the Federal Ombudsman Act of 22 March 1995 by including it only in the preparatory work to the Act[7], with the result that the ombudsman's power to recommend equity is undermined by certain Civil Service departments, while others recognise that it has a definite legal basis. This situation, which demonstrates just how important the legal basis of the principle of equity is in a state governed by the rule of law, induced the Office of the Federal Ombudsmen to recommend the enshrining of the principle of recourse to equity by the Federal Ombudsman in the law itself and not simply in the preparatory work to the law[8], a recommendation which members of the House of Representatives turned into a bill[9], and which was subsequently submitted to the *Conseil d'Etat* (Council of State) for its opinion[10].

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6 "It is, in fact, the response to the duty of solidarity within a community which constitutes the legitimacy of the intervention based on equity". *La place de l'équité dans la mission du médiateur de la République* (The place of equity in the mission of the Ombudsman of the French Republic), in the *Rapport du médiateur de la République* (Report of the Ombudsman of the French Republic), Paris, 1991, p. 219.

7 See *"The Office of Federal Ombudsmen and equity"*, OFO, Annual Report 1998, p. 14.

8 GR 97/12; OFO, Annual Report 1997, p. 14-15, 61.

9 Bill amending Article 14 of the Federal Ombudsman Act of 22 March 1995, *Parl. Doc.*, House of Representatives, ordinary session 2000 – 2001, 10 October 2000, 0889/001.

10 Opinion by the Council of State of 20 December 2000, *Parl. Doc.*, House of Representatives, ordinary session 2000-2001, 0889/002.

This opinion, which was negative on the grounds of absence of compliance with the constitution, was criticised by some. The highest administrative court in fact considered that Article 108 of the Constitution[11] is a constraint prohibiting not only the Civil Service (the King, in other words, in this case, the Executive Power, of which the Civil Service is the secular arm) from granting an exemption from the enforcement of laws, but also preventing the law (the Legislative Power) from authorising the King (the Civil Service) to grant an exemption from the enforcement of laws. In so doing, the legislation section of the Council of State appears to be conferring a certain scope on constitutional rules which they do not have. For while the first part of the prohibition invoked by the Council of State enshrines, by expediency, the role of strict enforcement of laws by the Executive, the second part of the prohibition betrays, in our view, the spirit and letter of Article 108 of the Constitution. By stating that "*it is not for the legislator to allow the King to derogate from the Constitution*", the highest administrative court is absolutely right, except that the bill was intended to authorise the legislator to allow the King to derogate from the law, not from the Constitution. For while the King cannot ever grant an exemption on his own initiative from the enforcement of laws, which is the meaning of Article 108, otherwise he would infringe Articles 33.2, 37, 105 and 108 of the Constitution, he can, however, precisely by virtue of these same constitutional rules, enforce a law that would provide for a system of exceptional exemption from the enforcement of other laws. In this respect, the distinction, based on a particular analysis of Article 108 used to support the opinion of the Council of State, between a sectoral or selective derogation from the law authorised by the constitutional rule, and a system of derogation on a universal scale forbidden by it, is, in our view, artificial. It also, once again, goes beyond the scope of the text and of the spirit of Article 108 of the Constitution, which enshrines nothing less (but also nothing more) than the implementing role of the Executive Power, pursuant to the principle of separation of powers described by Montesquieu, on which the Belgian Constitution is largely based.

Prudence in equity

The monitoring of equitable administration, insofar as it is beyond the scope of the law, must be handled extremely carefully. Moreover, to ensure that equity (an eminently subjective concept) can be

[11] "The King makes the rules and decrees necessary to implement laws, but may never suspend the laws themselves or dispense anyone from implementing them".

harmoniously inserted into our rule of law, which is based on objectivity, the application of equity must be guided, while at the same time limiting the effects. This threefold requirement explains why legal systems that recognise *aequitas para legem* as a non-formal source of law organise its use by entrusting the exercise of it to a single body, the ombudsman, and application of equity by the latter is not only marked with the seal of prudence, but is never accorded the value of a precedent.

The unicity of the body empowered to apply equity is an essential condition required by the principle of legal certainty, which is always at the basis of the rule of law. Since no recognised universal definition of equity exists and each one must make up his or her own mind about it, it would be untenable for equity to originate from several different institutions. Moreover, as recourse to *aequitas para legem* enables a citizen to be exempted from the enforcement of the law, it would be quite unthinkable to entrust application of the principle to the Civil Service itself, since it is a body of the Executive whose mission, as its name implies, is precisely to enforce the law and not, conversely, to decide to grant an exemption from it. Therefore the exercise of recourse to equity has been entrusted to a single body, which in addition is collateral with the Parliament (at least in parliamentary systems) and in this capacity is under the aegis of the Legislative Power, which is in fact responsible for enacting the law. In addition, to meet the need arising as a result of the eminently subjective nature of equity, this body is a personalised institution, with the exercise of equity being defined and assumed by the holder of the office. Lastly, since equity can be defined as a mediating principle between justice and legality, it is very logical that the law should entrust exercise of it, not to the body that renders justice nor to the one that enforces the law, but rather to the intermediary, the mediator, which is the ombudsman. A regulatory authority as opposed to an authority of sanction, a magistrature of influence as opposed to a magistrature of command, the ombudsman does not have the power to impose equity on the Civil Service, but only to recommend it and, in so doing, to authorise it to diverge from the law. In other words, equity is understood as a corrective mechanism of the law, application of which requires a recommendation by the ombudsman combined with acceptance by the Civil Service[12]. This dual key to access combined

[12] In France where *aequitas para legem* was introduced over a quarter of a century ago, recourse to equity has shown that the latter responded to an evident need, to the point that the Civil Service itself sometimes asks the Ombudsman of the French Republic for a recommendation on equity.

with the unicity of the body hence provides a clear guarantee of legal certainty.

Equity and equality

Given the eminently subjective nature of equity, its use by the ombudsman must also be clearly defined. The point of this is not only the concern to handle the legal system carefully, seeking complementarity rather than opposition between what is fair and what is legal, but also, in a very practical way, to guarantee the credibility of the ombudsman who will have "*the wisdom to invoke equity only when it is not disputable*"[13] and, hence, to ensure that the Civil Service will accept his recommendation on equity. Just as the assessment criteria for proper administration applied by the ombudsman are developed in most countries by the ombudsman himself, and not by the act establishing or organising his office, the same applies to the criteria for invoking equity. Thus before sending a recommendation on equity to the Civil Service, the ombudsman shall, essentially, verify four parameters: that his recommendation is not arbitrary but concerns an equally exceptional and genuinely unfair situation[14], that it concerns a situation of inequity that has not been knowingly assumed by the legislator when enacting the law, that the possible financial cost of the recommended solution based on equity must be affordable for the community and, lastly, that the said solution does not in itself generate inequity or even injustice with regard to others.

In this respect, it must be explained from the outset that the fact of seeing the enforcement of a law made more flexible or even suspended because of a recommendation on equity does not, in any case, constitute a break with the principle of equality, as this could in fact be used as an example to argue that equity harms the person who has not benefited from it and with respect to whom the law has been enforced normally. The principle of equality before the law does not in fact mean that the authorities must not examine each case meticulously and equitably in relation to laws and

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13 P. Legatte (who was Ombudsman of the Republic and a member of the Council of State in France), *L'Etat de droit français et l'intervention du médiateur de la République pour la protection du citoyen* (Rule of law in France and the intervention of the ombudsman to protect citizens), 1998, p. 10, not published.

14 Is there any need to point out that equity is not synonymous with but is, on the contrary, antonymous with arbitrary? Where the second term reflects authority without any other basis but the good will of the person exercising it at the expense of justice and reason, the first term constitutes a rule based on reason imbued with moral and social constraint, and aimed precisely at attaining more justice.

other provisions applicable. The law must not be stated (interpreted) in such a way as to prevent the authorities from handling each case in a manner appropriate to the circumstances. Moreover, according to the jurisprudence of the *Cour d'arbitrage* (the Belgian supreme or constitutional court), in distinguishing between real equality and formal equality, as several international courts do, the constitutional principles of equality and non- discrimination are to be understood as not opposing different treatment of persons in a comparable situation and even, moreover, as opposing identical treatment of persons in a different situation, provided that this difference of treatment - or unless this identical treatment - is justified objectively and reasonably. While it is undeniable that equity, which is, in essence, marked by subjectivity, cannot justify a difference of treatment between persons facing a comparable situation, it will however induce us to dispute the *comparability* established between situations that are, in reality, different. In fact, this comparability is "elusive, or at the very least open to a very subjective appraisal. […] Comparability of individuals to which the rule of equality has recourse is in no way an objective "ontological fact", but rather the legal product of a value judgement which selects, depending on each rule, the pertinent criterion against which individuals can be measured and can be said to be comparable."[15] Thus the ombudsman could validly dispute the fact that a person, with respect to whom the enforcement of a law engenders profound inequity, may find himself or herself in a situation comparable to that of other citizens with respect to whom the enforcement of the same law does not result in any inequitable consequence, and he could therefore appeal for a different solution for this person, without this recommendation affecting the principle of equality of citizens before the law. This is how the saying "*equity begins where equality ends*" should be understood, since equity is not by any means a negation of equality, but rather an extension of it.

It is precisely because of the unique nature of each inequitable situation for which the ombudsman invokes equity that his recommendations on equity apply only to the specific case for which they were formulated, without any *erga omnes* effect and without the authority of precedent ever being attached to them. This abso-

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[15] S. Van Drooghenbroeck, *"L'équité et la Constitution – A propos de l'avis du Conseil d'Etat du 20 XII 2000 sur une proposition de loi modifiant l'article 14 de la loi du 22 mars 1995 instaurant des médiateurs fédéraux"* (Equity and the Constitution – the opinion of the Council of State of 20/12/2000 concerning a bill to amend Article 14 of the Federal Ombudsman Act of 22 March 1995), in C.D.P.K., Mys & Bresch, Ghent, 2001, Chapter II.3, "*Les relations ambivalentes de l'égalité et de l'équité*" ("Ambivalent relation between equality and equity"), p. 368 and after.

lute relativity of the ombudsman's recommendations on equity (which in fact is the guarantee of legal certainty) cannot in any case be seen as a kind of breach of the principle of equality since anyone who were to find himself or herself, taking into account all parameters and circumstances, in an identical situation to the one experienced by the person for whom the ombudsman invoked equity, could in turn approach the ombudsman to have a recommendation on equity invoked.

An exceptional tool in terms of making the law more humane, equity is not the fantasy of absolute justice removed from a law that would undermine it, or heresy in the form of subjectivity taking precedence over the objectivity of prescriptive law that some people perceive it to be. Far from being the much-disparaged antithesis of positive law, it in fact constitutes its completion, the last act of this collective undertaking. In other words, it provides unique added value in a state governed by the rule of law, added value for which the ombudsman is simply the active vector, the Civil Service the consenting enforcer, and the citizen the exclusive beneficiary. Added value, whose ensuing moral elevation – as a result of having pushed the system of law to the height of solidarity – has benefits for society as a whole.

3. International contacts

The following activities took place abroad.

During a couple of two-day trips to Paris (on 24 and 25 January and on 16 and 17 April), Dr Herman Wuyts, Regional Vice-President - Europe of the *International Ombudsman Institute (IOI)*, maintained relations with UNESCO at a select level (UNESCO was preparing the Johannesburg Summit).

Dr Herman Wuyts and Pierre-Yves Monette went to Vilnius, Lithuania, on 5 and 6 April to attend a meeting of European ombudsmen organised by the Lithuanian ombudsman in conjunction with the Council of Europe Commissioner for Human Rights on the theme *"The role of the ombudsman in the protection of human rights"*.

Dr Herman Wuyts and Pierre-Yves Monette took part in a conference of ombudsmen held in Madrid on 24 and 25 April in the context of the Spanish Presidency of the European Union. The title of the meeting was "*International meeting on the protection of human rights - European Union / Latin America / Caribbean"*.

At the invitation of the Minister responsible for administrative reform in Lebanon, Pierre-Yves Monette took part as an expert in a colloquium on 3 and 4 June concerning the establishment of an ombudsman in Lebanon.

Both ombudsmen attended meetings in Sofia on 6 and 7 June organised by the Centre for the Study of Democracy, which was preparing a bill to establish an ombudsman in Bulgaria. This bill is currently being discussed by the Bulgarian Parliament. On the same occasion, an *International Conference on European Standards and Ombudsman Institutions in South-East Europe* was organised.

Select meetings concerning the internal organisation of the IOI were held in London, Vienna and Lisbon, on the initiative of Dr Herman Wuyts. The latter, together with Pierre-Yves Monette, attended only the meeting held in Lisbon on 22 and 23 July.

At the invitation of the *Agence Internationale de la Francophonie* (AIF - international organisation of the French-speaking countries), Pierre-Yves Monette attended the *Assemblée Internationale des Instituts et des Réseaux Francophones des Droits de l'Homme, de la Démocratie et de la Paix* (international assembly of French-speaking institutes and networks for human rights, democracy and peace), which was held in Beirut, Lebanon, on 12 and 13 October.

In his capacity as Regional Vice-President - Europe of the IOI, Dr Herman Wuyts attended the annual meeting of the IOI Management Board held in Hammamet, Tunisia, from 14 to 16 October. He also took part in the 7th Annual Congress of the *Federación Iberoamericana de Ombudsman* held in Lisbon, at the invitation of the Portuguese Ombudsman.

Pierre-Yves Monette took part in the annual meeting of the Management Board of the *Association des Ombudsmans et Médiateurs de la Francophonie* (*AOMF* - the association of ombudsmen and mediators of the international organisation of the French-speaking countries), which was held in Italy, Courmayeur from 23 to 25 October.

The annual meeting of voting members of the Europe Region of the IOI took place in Ljubljana, Slovenia, from 5 to 7 December. It was chaired by Dr Herman Wuyts.

Lastly, Dr Herman Wuyts met the European Ombudsman in Strasbourg on 18 December.

Philippe Vande Casteele, Director at the Office, attended a seminar in Strasbourg on 9 and 10 September organised by the Council of Europe on "*Partners in the protection of human rights – strengthening the interaction between the European Court of Human Rights and national courts*".

The Social and Financial Affairs Committee of the Benelux Inter-Parliamentary Advisory Council held a public hearing in Luxembourg on 16 December, attended by Philippe Vande Casteele. The topic was '*Evaluating the office of the ombudsman*".

4. Logistical management

The Office of the Federal Ombudsmen engaged in considerable training efforts in the context of human resources management. These training courses can be summarily divided between operational courses (taxation, social law, etc.) and training in logistical support (IT, personnel management, accounting, etc.). The training was organised both in-house and outside the Office (some courses were arranged with the support of the Federal Civil Service Training Institute).

4.1. Staff management

Since January 2002, the Office has been calling upon the services of the Ministry of Finance Treasury Department (Central Fixed Expenditure Service) for the administrative aspects of salaries. This has considerably reduced management costs and ensured greater efficiency.

The table below shows the staff at 1 January 2003.

Grade	Language		Sex		Status		Total staff	Total staff framework
	Dutch-speaking	French-speaking	M	F	Statutory	On contract		
A	12	11	13	10	19 (*)	4	23	24
B	6	6	4	8	11	1	12	12
C	1	1	1	1	0	2	2	2
D (**)	1	1	0	2	0	2	2	(2) (**)
Total	20	19	18	21	30	9	39	38+2 (**)

(*) including 2 special advisers with temporary mandate (the administrator and the director),
(**) cleaning staff, similar to grade D, article 4 of the staff framework

There was an increase of two units in the staff compared with the situation at 1 January 2002. The number of staff members on contracts rose from five to nine because of the replacement of a driver-usher (post not occupied at 1 January 2002), of a statutory staff member taking one-year's leave, of a statutory staff member (grade B) who resigned from the Office, and because of the recruitment on contract of the winner of a competition for recruiting junior officials (*attachés*). This last contractual recruitment took place in the expectation that this position would be converted into a statutory post once a senior official/coordinator-in-office had been ap-

pointed as a special adviser (after an examination organised in cooperation with SELOR). The position became a statutory post on 1 February 2003.

IT management, at 1 January 2003, is still taken care of by a staff member on a contract who is a university graduate. A request for a modification of the staff framework and, hence, of the language framework, adopted on 19 November 1998, was lodged with the House of Representatives at the end of 2002 in order to establish a specific post as senior/junior official (*attaché/auditeur*) responsible for IT services. The management of the constantly growing number of cases requires an updated and adaptable IT tool that meets the considerable demands of the Office, complainants, Civil Service departments and the Parliament.

A Dutch language post (grade B - administrative officer) is currently vacant and is being temporarily filled by a staff member on a contract.

With regard to the four remaining staff members on contracts, the staff framework explicitly states that these positions shall be (two cleaners) or may be (two drivers-ushers) filled by members on temporary contracts because of the special nature of the posts.

4.2. Financial and budget management

For its accounts, based on business accounting practices as mentioned in the previous Annual Reports, the Office of the Federal Ombudsmen no longer calls upon the services of an external accountant except in very specific cases in which it requires technical assistance (special entries, closing of the financial year, adoption of new measures, etc.).

The 2003 budget amounted to EUR 3,188,020.00. The slight increase (+2.36%) compared with the previous year was mainly due to the fact that salaries are index-linked as well as to normal career development, the annual index-linking of building charges (maintenance contacts and rent) and the increase in the number of regular duty offices (surgeries) established in several provinces. The increase in salary charges is in line with the Office's multi-annual estimate presented to and approved by the House in 1998.

The 2001 accounts show a positive balance of EUR 440,699.38 (allotted funding of EUR 3,030,250.45 – EUR 2,601,086.24, income and

expenditure). This allowed the House of Representatives to reduce the allotted funding for 2003 to EUR 2.747 million[16].

4.3. Management of the equipment

The new computer system, developed in-house and in operation since 4 April 2001, was analysed, completed and developed throughout 2002 in cooperation with a user working group. This has enabled the user-friendly case-monitoring system to be refined and new possibilities to be explored in relation to statistics and data management. In addition, as a result of this practice, the "cases of principle" were computerised and the case-monitoring system was able to be adapted to the new Federal authority structures following the Copernic reform.

A new IT development process was recently carried out in the Office's library and document management system using the same method and technology as for the case-monitoring system. This application was made available to internal users at the beginning of November. Case managers now have access to information without leaving their work stations. Moreover, the application optimises the actual management of the library and of internal documentation.

[16] Report by Mr Pierre LANO on behalf of the Accounts Commission, 10 December 2002, Parl. Doc., House of Representatives, ordinary session 2002-2003, No2181/001, p. 31 and after.

II.
STATISTICAL ANALYSES

II. STATISTICAL ANALYSES

1. Introduction

Here the reader will find a series of general statistical data which give an overall picture of the number of complaints, the language, the means of communication used, the geographic breakdown, the breakdown per sector, the handling phase, the cases passed on to others and the final evaluation of each case handled.

The figures given in the various tables always refer to the situation at 31 December 2002. Following on from the 2001 Annual Report (1 January 2001 - 31 December 2001), the period covered by this 2002 Annual Report is twelve months (1 January 2002 - 31 December 2002). Moreover, the trend in the general figures for 2001 and 2002 is compared whenever the elements are available or comparable.

It is useful to bear in mind the following explanations when analysing the various Federal Ministries[17].

- A case being handled may concern either a complaint or a mediation request.

- With the exception of semi-public bodies operating in the social field and of the semi-public bodies and the public corporations which are not attached to a specific ministry from an organisational point of view, we will analyse semi-public bodies together with their supervisory ministry, although we are quite aware that these institutions do not form part of the ministry properly speaking.

- Pursuant to Article 14 of the Coordinated Laws on the Council of State, a minister is also a Federal administrative authority. The Office of the Federal Ombudsmen is therefore also competent to evaluate his (purely administrative) action in the course of handling a complaint or a mediation request.

[17] See Introduction, p. 4, concerning the terminology used for the Federal Ministries in the present report.

2. Some figures

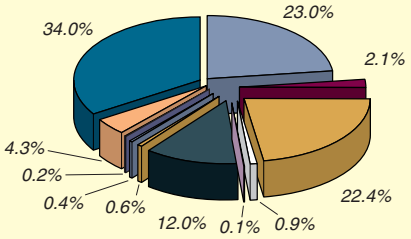
A total of 5 848 cases was handled in 2002. Of these, three cases had been initiated in 1997 (the latter have been closed in the meantime), 17 in 1998 and 98 in 1999. Of these 5 848 cases, 331 were started in 2000, 1 122 in 2001 and 4 277 in 2002; the latter figure includes 1 343 requests for information. The period of time referred to is the respective calendar year.

From 1 January 2001, the Office of the Federal Ombudsmen adopted the rule of closing an individual case at the latest after two years, with some exceptions, compared with three years in the past, and of monitoring the matter, where necessary, at a more general level on the basis of "cases of principle". The Office therefore regularly closes all cases of over two years that are still open. The vast majority of cases are, however, closed after a few months, or even one year. Most of the here above-mentioned files opened in the period 1997-2000 and still dealt with at the beginning of 2002 have therefore been closed in the meantime.

The cases are broken down in accordance with the ten phases of handling listed under Article 12 of the Rules of Procedure of the Office of the Federal Ombudsmen[18]: acknowledgement of receipt, information procedure, investigation, mediation process, statement of non-competence / non-admissibility, suspension of handling procedure, proposal, official recommendation, complaint forwarded and finally, termination of the procedure.

[18] See *Moniteur belge* -official gazette-, 27 January 1999, p. 2339-2345, see also OFO, Annual Report 1997, p. 44-46.

Break-down according to the handling phases



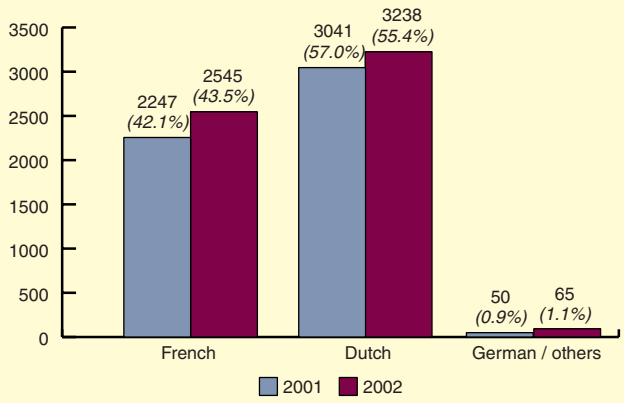
	Number
Requests for information	1343
Acknowledgment of receipt	125
Information procedure	1308
Investigation procedure	53
Mediation process	6
Statement of non-competence / non-admissibility	701
Suspension of handling procedure	36
Proposal	26
Official recommendation	10
Complaint forwarded	253
Termination of the procedure	1987
TOTAL	5848

(*) There were 9 mediation processes, 39 proposals and 13 official recommendations in the past year. The figures shown in the graph (only) reflect the situation at 31 December 2002, since the phases of a case are by definition progressive.

The complaints handled in 2002 are also broken down according to the language in which they were filed: French: 2 545, Dutch: 3 238, others (including German): 65.

The following graph shows the evolution in the number of cases according to the breakdown in 2001 and 2002 (situation at 31 December of each year). In proceeding in this way, a number of cases (opened before 1 January 2002) are listed in the 2001 statistics as well as in those for 2002. These figures are still very relevant, though, as they reflect the Office's real workload according to year and language of the cases.

Break-down of complaints per language
comparison 2001 - 2002

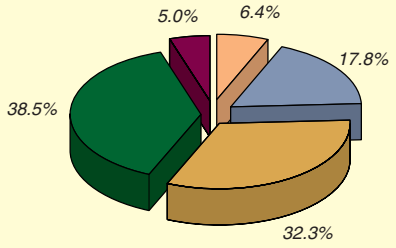


If we break down, still according to the language criterion, the 4 277 new cases opened in 2002, we get the following figures: French: 1 715 or 40.1%, Dutch: 2 515 or 58.7%, others (including German): 47 or 1.1%. When broken down according to whether they are new complaints or requests for mediation or requests for information, we get the following results:

- new complaints or requests for mediation (2 934): French: 1 249 or 42.6%, Dutch: 1 655 or 56.4%, others (including German): 30 or 1.0%.
- new requests for information (1 343): French: 466 or 34.7%, Dutch: 860 or 64.0%, others (including German): 17 or 1.3%.

The graph below shows the breakdown of cases according to the method of communication used to file the above referred complaints and requests with the Office of the Federal Ombudsmen. In descending order, we recorded 2 253 cases opened after a telephone conversation, 1 888 new cases opened following receipt of a letter sent by post, 1 039 opened following receipt of an e-mail, 376 opened following a visit to the Office and the regular duty offices (surgeries) in several provinces and, lastly, 292 opened as a result of a fax.

Break-down of complaints per method of communication



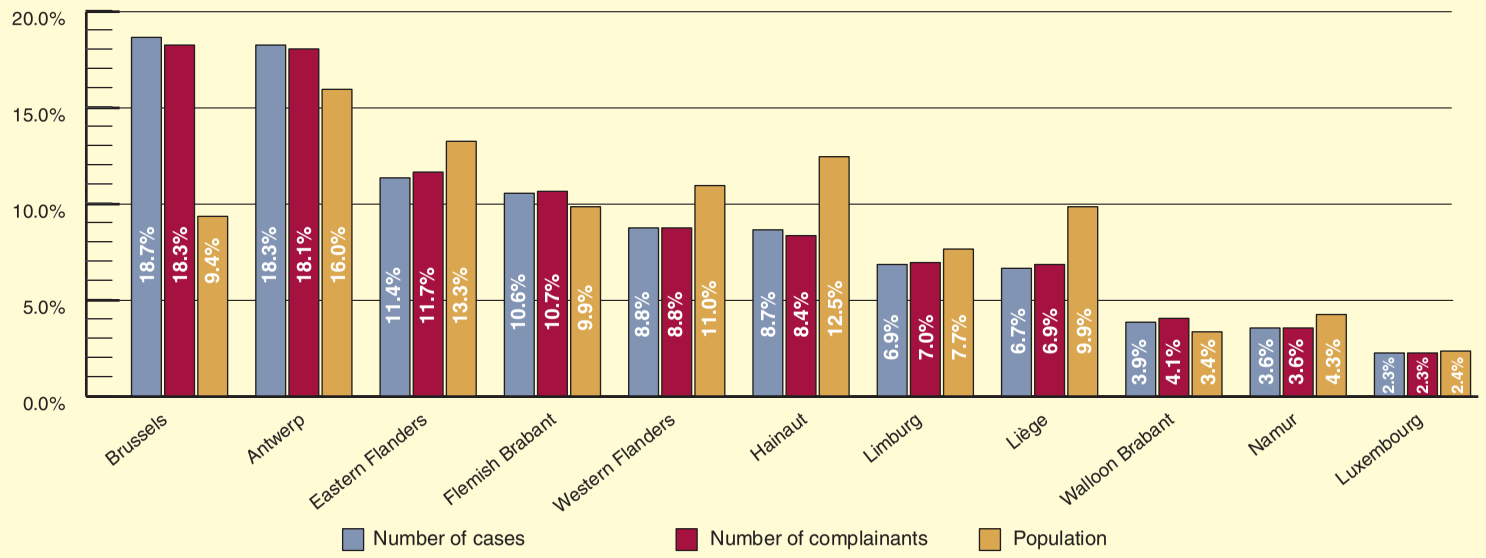
	Number
Fax	292
Visit and regular duty offices (surgeries)	376
E-mail	1039
Letter	1888
Telephone	2253
TOTAL	5848

The following graph provides an overview[19] of the geographic breakdown between the provinces and Brussels as regards both the number of cases (5 468 cases) and the complainants themselves

[19] 2001, Ministry of Economic Affairs.

(numbering 4 906). Of course these figures take account only of cases for which the residence of the complainant is known (this is not always true in the case of e-mails, requests for information or, obviously, anonymous complaints) and provided that the party concerned has mentioned a place of residence in Belgium. In fact 123 cases came from people resident abroad.

Comparison between the number of cases, the number of complainants and the population
per provinces + Brussels



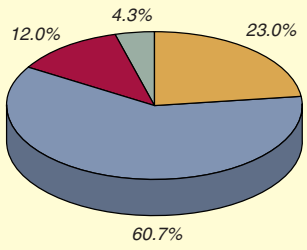
Some of these complaints (a total of 701) were in fact inadmissible. Others (253) were forwarded to Community or Regional parliamentary ombudsmen, to mediation bodies within the Civil Service or even to the administrative authority which had taken the disputed decision (in the absence of any competent parliamentary or administrative ombudsmen). Lastly, a number of requests for information (1 343) were forwarded to the administrations concerned or to the information officer of the latter. With the exception of these files, the Office of the Federal Ombudsmen thus actually dealt with 3 551 complaints.

As explained in the Annual Report 2000[20], the cases that are not admissible or forwarded represent a considerable part of the workload of the Office of the Federal Ombudsmen. In fact, in a number of cases, the decision to declare a case inadmissible or to pass it on to another body cannot be taken until the elements have been examined in depth. The same applies to requests for information.

In addition, the Office also received approximately 1 500 requests for information by telephone. Although the individual handling of each one of these requests does not require much time and they are not therefore included in the graph, contrary to the 1 343 written requests for information which require much more work because of the content, they nevertheless represent together a workload that must not be underestimated.

The graph below gives an overview of the number of admissible cases.

Admissibility of complaints



	Number
Admissible case	3551
Statement of non-competence / non-admissibility	701
Case forwarded	253
Request for information	1343
TOTAL	5848

[20] see OFO, *Annual Report 2000*, p. 9-13.

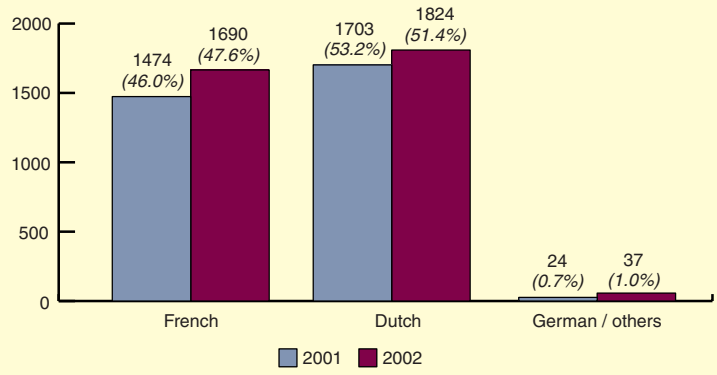
We have observed the following trend in the past two years, not taking into account requests for information:

- 2001 (for 4 198 cases): 3 201 admissible cases (76.3%), 628 inadmissible cases (15.0%) and 369 cases forwarded (8.8%)
- 2002 (for 4 505 cases): 3 551 admissible cases (78.8%), 701 inadmissible cases (15.6%) and 253 cases forwarded (5.6%).

The complaints actually handled (*i.e.* the 3 551 admissible files) are broken down according to the language in which they were made: French: 1 690, Dutch: 1 824, others (including German) : 37.

The following graph shows the trend in admissible cases over the last two years. As we already mentioned above, we cannot avoid counting certain files twice because each time we are basing our figures on the situation at 31 December. Nevertheless, these figures are pertinent as they reflect clearly the real workload which these cases represent for the Office each year.

Break-down of admissible cases per language
comparison 2001 - 2002



In 2002, the 2 060 new admissible cases which the Office recorded can be broken down according to language as follows: French: 915 or 44.4%, Dutch: 1 122 or 54.5%, others (including German): 23 or 1.1%. In 2001, the same criterion for breaking down new admissible cases (1 941) produced the following results: French: 843 or 43.4%, Dutch: 1 085 or 55.9%, others (including German): 13 or 0.7%.

As highlighted in the following graph, the College of the Federal Ombudsmen forwarded files to the following Community or Re-

gional parliamentary ombudsmen, mediation bodies within the Civil Service and institutions:

Recipients of the forwarded complaints and requests for information	number	%
House of Representatives	6	0,5%
Ombudsman (mediator) of the Walloon Region	16	1,3%
Ombudsman of the Flemish Community / Region	71	5,8%
Supreme Council of Justice	7	0,6%
Mediation body for pension-related complaints	37	3,0%
Mediation bodies attached to independent public corporations	25	2,0%
Federal administrative authorities	873	71,0%
Authorities of Communities and Regions	74	6,0%
Mediators of local authorities	4	0,3%
Local authorities	28	2,3%
Mediation services in the private sector (banks, insurance companies, etc.)	30	2,4%
Others	58	4,7%
	1229	**100,0%**

The admissible cases that were definitively closed were assessed and classified in the following evaluation categories[21]:

The "proper administration" assessment is applied when the Civil Service operated perfectly well or when its error was redressed before the Office intervened.

"Proper administration following intervention" means that an error was committed by the Civil Service, but was rectified after the Office intervened.

The assessment "Improper administration" is given when an error committed by the Civil Service has not been rectified despite the Office's intervention.

"Application of equity" concerns all the quite exceptional cases in which a decision by the Civil Service runs counter to the natural feeling of human justice, although it may fully respect legality and the principles of proper administration, thereby inducing the Office of the Federal Ombudsmen to invoke equity in order to ask the Civil Service to modify the decision in question.

[21] see OFO, *Annual Report 2000*, p. 16-17.

"Consensus" indicates that a problem has been solved either by effective mediation or by the clearing up of a misunderstanding, without there being any real question of proper or improper administration.

"Responsibility shared" is used when the responsibility for the malpractice is shared between the complainant and the administration.

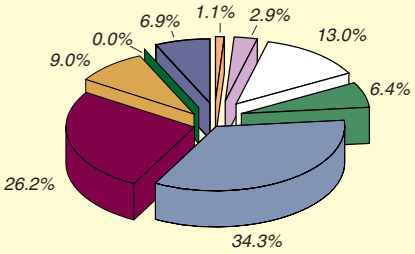
The assessment "responsibility not determinable" is given when it is impossible to establish precisely the responsibility of the complainant or of the Civil Service.

A case is said to be "closed due to lack of information" when the complainant does not forward to the Office the information essential for handling it.

Lastly, the expression "case not appraised" is applied to a case when the problem was solved before the intervention of the Office but after the intervention of a third party, or after the intervention of the Office when it is clear that the latter did not contribute decisively to solving the problem. It may also happen that an individual case was solved without the intervention of the Office, but that the structural problems or regulatory provisions causing the dispute have not yet been solved or modified.

The following graph gives an overview of the 1 987 closed files, which were evaluated as follows: 727 "proper administration", 555 "proper administration following intervention", 19 "improper administration", 1 "application of equity", 147 "consensus", 24 "responsibility shared", 62 "responsibility not determinable", 276 "closed due to lack of information", and 135 "cases not appraised". The existing difference between the number of evaluations (2 117) and closed files (1 987) lies in the fact that one complaint might concern several authorities, each of them being evaluated at the time the file is closed.

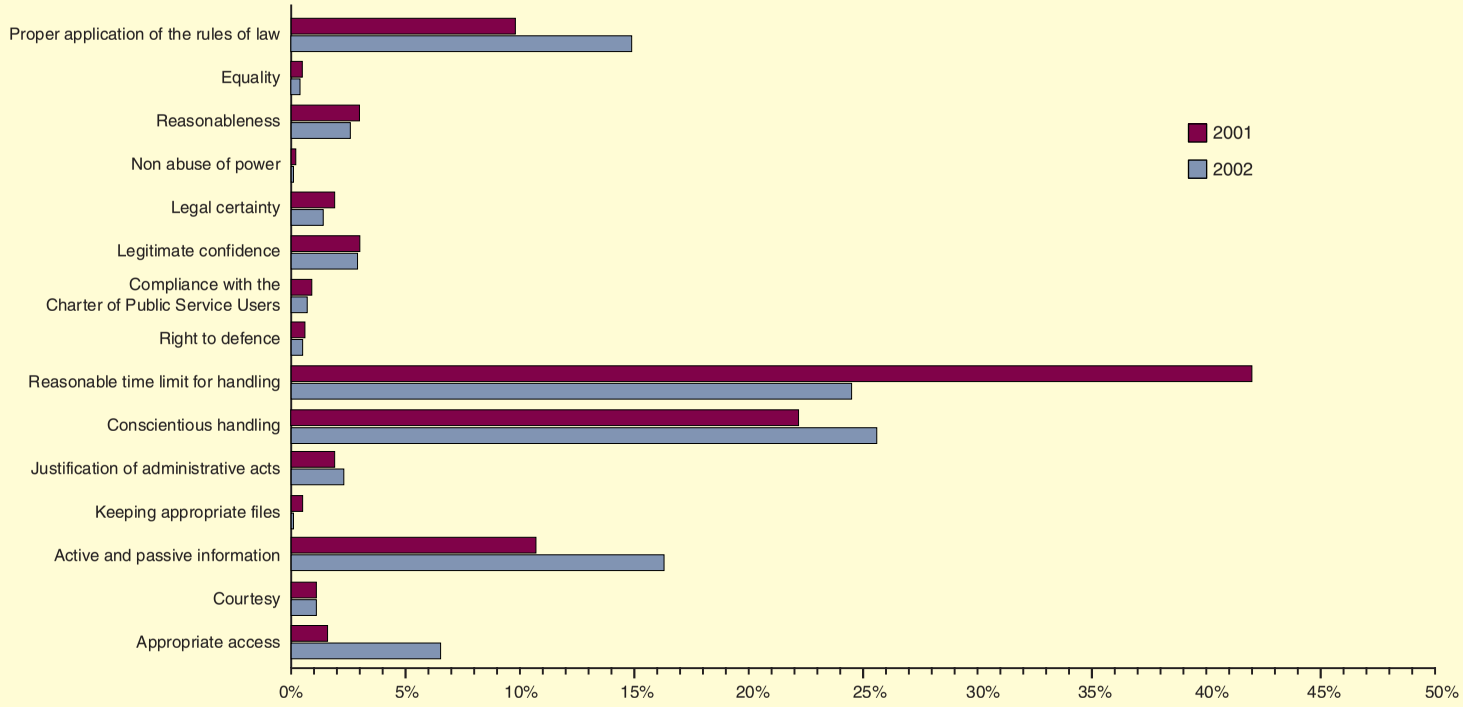
Evaluation of terminated cases



	Number
Proper administration	727
Proper administration following intervention	555
Improper administration	190
Application of equity	1
Consensus	147
Responsibility shared	24
Responsibility not determinable	62
Closed due to lack of information	276
Case not appraised	135
TOTAL	2117

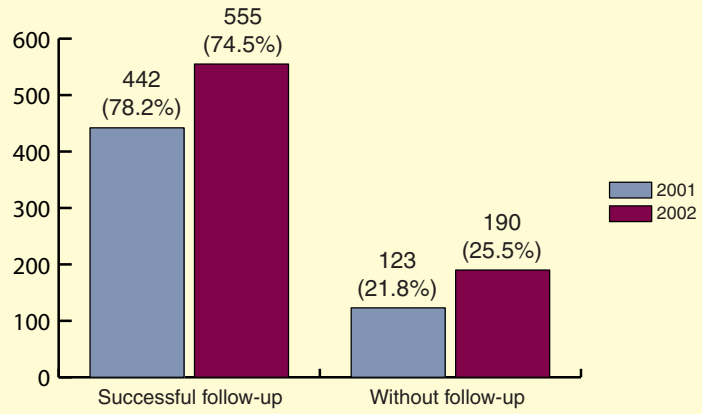
The following graph gives an overview of the evaluation criteria applied for the 745 closed cases that were designated "improper administration" or "proper administration following intervention". Since more than one criterion may have been infringed by the administration in relation to a case, several criteria may be used to evaluate the same file. Therefore, the total amount of violations of these criteria (939) is higher than the number of files.

Application of evaluation criteria
comparison 2001 - 2002



The following graph shows the results of the intervention by the Office of the Federal Ombudsmen in the cases closed under "improper administration" or "proper administration following intervention". Intervention should be understood as all the information and investigation procedures, mediation processes, proposals and official recommendations by the Office. Compared to 2001, the Office closed more files subsequent to a successful follow-up in 2002 (442 in 2001 / 555 in 2002). Taking into account the total amount of cases dealt with, however, the latter number constitutes a decrease on a percentage basis (78.2% in 2001 / 74.5% in 2002).

Result of intervention by the Office
comparison 2001 - 2002

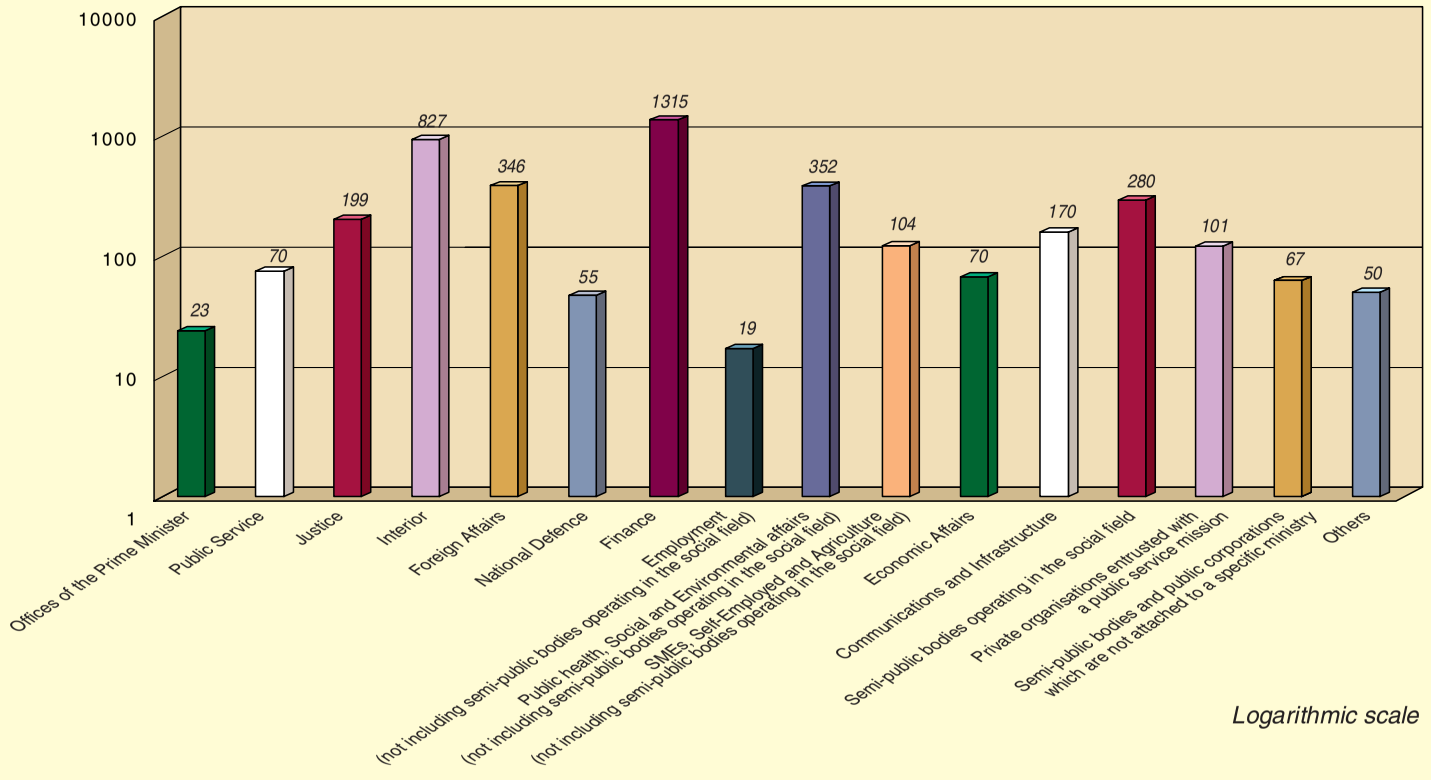


Break-down by department of the various complaints handled by the Office of the Federal Ombudsmen is as follows :

Federal Civil Service	2001		2002	
Offices of the Prime Minister	19	0,5%	23	0,6%
Public Service	91	2,5%	70	1,7%
Justice	162	4,4%	199	4,9%
Interior	581	15,7%	827	20,4%
Foreign Affairs	298	8,1%	346	8,5%
National Defence	39	1,1%	55	1,4%
Finance	1585	43,0%	1315	32,5%
Employment (not including semi-public bodies operating in the social field)	18	0,5%	19	0,5%
Public health, Social and Environmental affairs (not including semi-public bodies operating in the social field)	264	7,2%	352	8,7%
SMEs, Self-Employed and Agriculture (not including semi-public bodies operating in the social field)	90	2,4%	104	2,6%
Economic Affairs	27	0,7%	70	1,7%
Communications and Infrastructure	100	2,7%	170	4,2%
Semi-public bodies operating in the social field	244	6,6%	280	6,9%
Private organisations entrusted with a public service mission	84	2,3%	101	2,5%
Semi-public bodies and public corporations which are not attached to a specific ministry	47	1,3%	67	1,7%
Others	41	1,1%	50	1,2%
	3690	100,0%	**4048**	100,0%

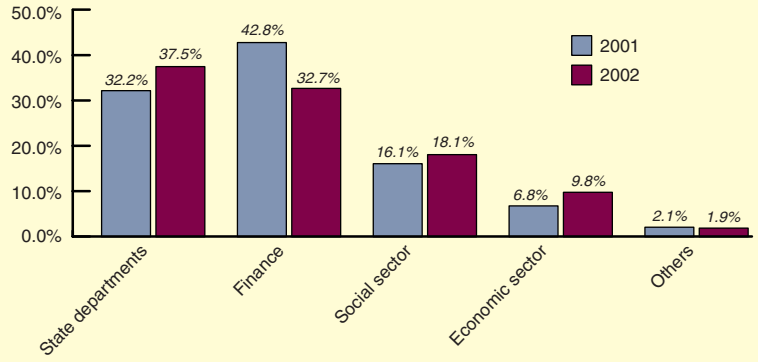
The number of complaints and requests for mediation per department (4 048) is higher than the one of admissible complaints (3 551) as more than one administrative authority may be concerned by one file. Furthermore, the number of complaints by civil servants is shown separately (and complementarily) for each department.

Break-down of the admissible cases per department (n=4048)



To conclude this overall picture, the following graph shows a breakdown per sector of the cases covered by the above tables and graphs.

Break-down of admissible cases per sector
comparison 2001 - 2002



III.
RECOMMENDATIONS

III. RECOMMENDATIONS

The recommendations by the Office of the Federal Ombudsmen are either "general" or "official". Pursuant to Article 15.1 of the Federal Ombudsmen Act, the general recommendations are sent to the Legislative Authority (more particularly, the House of Representatives, but they are also of interest to the Senate when they concern legislative improvements). Furthermore, the Executive might also find it interesting to take them into consideration. The official recommendations, in line with Article 14.3 of the said act, are sent to the Executive Authority (the Civil Service and the Government).

General recommendations concern either improvements of a legislative nature, in relation to which the Parliament may take the initiative, or administrative malfunctioning of a regulatory, cyclical or structural nature, for which the Parliament may exercise its power of control over the Executive.

In *official recommendations*, the Civil Service is requested to modify a decision brought before the Office, for which the latter has concluded that there had been a violation of legality or a non-compliance with the principles of proper administration, or for which it has invoked equity. In such recommendations the Civil Service or minister responsible may also be asked to solve an administrative malfunctioning of a regulatory, cyclical or structural nature on the basis, where appropriate, of the specific solutions proposed by the Office.

1. General recommendations

1.1. General recommendations – 2002

GR 02/01: The status of cohabiting partners under the law on foreigners.
The circular of 30 September 1997 lays down the conditions for lodging an application for a residence permit in Belgium for unmarried partners. The conditions contain new rules compared with those set down in the Act of 15 December 1980 and its implementing decree. Since they do not constitute simple guidelines sent by the Minister of Home Affairs to the Office of Foreigners, these rules confer on the said circular a regulatory nature. Given these legal considerations and a concern for legislative coherence in the law

on foreigners, it is recommended that the status of cohabiting partners as currently regulated in the circular of 30 September 1997 be inserted into the Act of 15 December 1980 or its implementing decree.[22]

GR 02/02: Adoption of a legal basis in the field of authentication and confidential lawyers.
In a bid to ensure legal security and transparency, the concept of "authentication" (in the sense of formal verification as covered by Article 2 of the Hague Convention of 5 October 1961 abolishing the requirement of authentication of foreign public records, ratified by Belgium) must be defined quickly in an act. Authentication applies only to the veracity of the signature, the capacity in which the signatory of the document acted and, where appropriate, the identity of the seal or stamp found on the document. The competence of Belgian consuls in this area should also be defined legally. Formal verification is fundamentally different from material verification relating to recognition of a decision or to the validity of a document from the point of view of the applicable law. It is therefore necessary, also, to determine legally the content of such material verification which has already been conducted in practice. The mandate and methods used in the investigation conducted by confidential lawyers in so-called "risk" countries should be inserted into such a law.

GR 02/03: The tax trap in unemployment.
Full-time unemployed persons receiving benefit and aged fifty and over are discouraged from training for tax reasons. They risk losing the benefit of *de facto* exemption from tax because they receive training allowances in addition to their unemployment benefits. In reply to a parliamentary question, the Minister of Finance said that any legislative initiative would be welcome. One solution would be to consider the training allowances as unemployment benefit. Article 146.3 CIR92 should in this case be adapted. This solution could also simplify tax records in administrative terms.

GR 02/04: Limited seizures from bank accounts.
The tax authorities confirmed to the Office that, in the event of seizure of a taxpayer's bank assets, there are no instructions providing for the preservation of a minimum amount required for vital necessities. The reason given was that, to date, there is no legal provision on the basis of which a proportion of bank assets

[22] As regards the question of the secret criteria used by the Office of Foreigners in relation to lasting relationships, see OFO, *Annual Reports 1999, 2000* and *2001.*

forming part of a seizure would be preserved. This general recommendation emphasises the need for legal protection of money placed in a bank account, the aim being to take into account the limits which the Judicial Code lays down in the case of seizures and transfers from salaries or other sources of income.

GR 02/05: The application of the Social Insurance Contributors' Charter to certain social security institutions.
The Social Insurance Contributors' Charter concerns in particular the rules on receiving and collecting contributions. Article 2.2.a) states that it applies to ministries, public social security institutions and to all bodies, authorities or legal entities *which provide social security services.* Some deduce from this that it concerns only the collection of revenue insofar as this is carried out by a body responsible for providing such services. This interpretation arises from a restrictive reading of Article 2.2.a) and therefore excludes, among others, the contributions collected by the ONSS/RSZ (national social security organisation), INASTI/RSVZ (national social security organisation for the self-employed), insofar as it collects contributions and ONSSAPL/RSZPPO (national social security body for provincial and local authorities). While it is true that the Charter expressly excludes from its scope relations with employers, this interpretation does not seem to comply in either spirit or letter with the text as far as relations between social security institutions and contributors to social insurance schemes (who may for instance request information) are concerned. The Office of the Federal Ombudsmen therefore recommends to Parliament that it clarify the scope of Article 2.2.a) of the Charter. By the same token, the Social Insurance Contributors' Charter could be made applicable to certain institutions that are currently excluded from its scope, such as the Closed Company Compensation Fund or the *Banque-Carrefour de la Sécurité sociale/Kruispuntbank voor de Sociale Zekerheid* in the social security network.

1.2. Follow-up during the past year of the general recommendations in 2001, 2000, 1999, 1998 and 1997.

GR 01/01: Greater transparency and greater legal certainty in the application by the Office of Foreigners of the Act of 15 December 1980 and of its implementing decree.
This general recommendation is still valid and is completed by general recommendation 02/01 aimed at having the status of cohabiting partners introduced into the Act of 15 December 1980 and its implementing decree.

GR 01/02: The extension of the scope of Article 143.2 of CIR 92.
In 2001, the Office of the Federal Ombudsmen made a general recommendation to extend the provisions in Article 143.2, CIR92, to guaranteed income for the elderly, which is granted to the disabled so that it is not taken into account when establishing the net amount of their means of subsistence. In reply to an oral question by Mr Olivier Chastel (*Compte rendu analytique/Beknopt verslag* -Analytic minutes-, House of Representatives, ordinary session 2001-2002, oral question No 6866 of 16 April 2002), the Minister of Finance said that if this general recommendation were accepted, there would be a risk of discrimination between the disabled and elderly people receiving guaranteed income for the elderly. He would however agree to grant an exemption from guaranteed income tax to elderly persons. This general recommendation was discussed by the Petitions Committee on 21 June 2002 and communicated to the Minister of Finance, the Committee on Finance and the Budget and to the Committee on Social Affairs.

GR 01/03: The neutralisation of the perverse effect of the aggregation of certain social benefits or, even, the introduction of progressiveness in the aggregation of social benefits.
The Office made a general recommendation concerning the harmful consequences of slight increases in one system of benefits which lead to a loss of allowances under another system. The Minister of Social Affairs and Pensions said that he had already been looking for a solution to this problem for some time, but that no viable alternative to the ceiling on income had been found, either from a conceptual or from a technical point of view. The Minister considered, however, that a limited increase in the ceiling on income for 2002 (and another in 2003) would solve the problem immediately without fundamentally amending the regulation. The Petitions Committee informed the Office that the Committee on Social Affairs, to which the recommendation had been communicated, had not yet examined the problem in 2002. Based on information communicated by the Minister of Social Affairs and Pensions, this recommendation was closed.

GR 00/01: The declaration of marriage.
No further progress has been recorded in relation to this general recommendation.

GR 00/02: The procedure for changing surnames and first names.
No further progress has been recorded in relation to this general recommendation.

GR 00/03: Training in communication and reception skills for all tax administration officials.
Comprising GR 99/10, this recommendation emphasises the need for training of tax administration officials that is geared to communication with and reception of taxpayers. No further progress was recorded in relation to this general recommendation in 2002.

GR 00/04: Payment of road traffic tax by automatic debit.
The Office of the Federal Ombudsmen underlined in 2000 the need to be able to pay road tax by automatic debit. The House of Representatives did not follow up this general recommendation. At the end of 2002, the Tax Collection Authorities at the Ministry of Finance informed the Office that a working group would be set up in May 2003 to look into this proposal concerning an alternative payment method.

GR 00/05: The abolition of the requirement to take account of the income of the person with whom a disabled person had been living following the separation of the persons concerned.
The Government officer responsible for social security announced that, as of 1 July 2003, the income ceilings of spouses and cohabiting partners would be increased also for categories I and II (the increase took place in 2001 for category III and IV allowances), which is a partial solution as a smaller number of disabled people are likely to lose their allowances because of marriage or of cohabitation with a partner, hence finding themselves without resources in the case of separation. However, for the disabled persons who will not benefit from this new measure, no further progress was made in relation to the general recommendation. The Office of the Federal Ombudsmen has been informed, however, that the Government officer responsible for social security intends to abolish the condition of one year of separation in the context of the reform of the regulation currently in progress. The draft royal decrees were submitted to the Council of State for an opinion at the beginning of 2003.

GR99/01: Increasing the resources of the Office of the Federal Ombudsmen as an instrument for promoting and protecting human rights.
The seminar on "Ombudsmen against Discrimination" organised by the Office of the Federal Ombudsmen and by the European, Walloon and Flemish Ombudsmen on the occasion of the Belgian Presidency of the European Union provided an opportunity for the national and regional ombudsmen of the fifteen EU countries to emphasise, in line with Recommendation 85/13 of the Committee of Ministers of the Council of Europe, the essential role played by

ombudsmen in protecting and promoting human rights and fundamental freedoms. In legislative terms, however, no further progress was made regarding this recommendation.

GR 99/02: The establishment of an ad hoc commission entrusted with monitoring the implementation of the law on formal justification of administrative acts.

The Petitions Committee held a hearing for the Federal Ombudsmen in May 2001 concerning this general recommendation in order to refine its information on this matter. In the light of the assessment of *improper administration* with lack of justification applied by the Office to many cases handled by the Committee relating to exemption from social security contributions, the Department responsible for the social contributions of the self-employed (formerly under the aegis of the Ministry of the Self-Employed and Agriculture, and now under the Federal Social Security Public Service) presented proposals to its supervisory minister at the beginning of 2001 aimed at adapting the standard decisions of this Committee to include adequate justification. The Minister responsible for the self-employed approved these proposals. The competent authorities recently informed the Office that internal budget resources had been set aside and that tests were being conducted with a view to effectively implementing these proposals in the course of 2003.

Given the crosscutting nature of this general recommendation, which concerns the entire Federal Civil Service, the Minister of the Public Service and Modernisation of the Civil Service is obviously the most appropriate authority for implementing it.

GR 99/03: External control of administrative acts and of the functioning of administrative jurisdictions.

No progress has been recorded regarding this general recommendation. While an external control with respect to administrative acts and the functioning of judicial jurisdictions exists since August 2000 with the establishment of the Supreme Council for Justice, the same does not always apply to administrative acts and the functioning of administrative jurisdictions.

GR 99/04: The evaluation of additional staffing needs of certain Civil Service departments.

The Petitions Committee held a hearing for the Federal Ombudsmen in May 2001 concerning this general recommendation in order to refine its information on this matter. No further progress was made, however. More pertinent now than ever as regards some sections of the Federal Civil Service (many of the Tax Revenue offices, national social security, social integration authorities, etc.), this general recommendation calls for attention to be focused,

through the analysis of needs, on the requests by some departments to be granted additional staff. Following the Copernic reform, the Federal public services henceforth have increased powers as regards management of their own staff. It is premature at this juncture to draw conclusions regarding the way in which staff needs will be met by these public services. It is worthwhile pointing out, however, that known needs concern not only additional staff but also equipment, computer programs and more suitable management tools.

GR 99/05: The adoption of measures to ensure that the general public is more aware of the existence and missions of information officers.
The Petitions Committee held a hearing for the Federal Ombudsmen in May 2001 concerning this general recommendation in order to refine its information on this matter. No further progress was made, however. Given the crosscutting nature of this general recommendation, which concerns the entire Federal Civil Service, the Ministry of the Public Service and of the Modernisation of the Civil Service is obviously the most appropriate authority for implementing it. It would, to this end, benefit by being included in the Copernic reform plan for the Federal Civil Service.

GR 99/06: The obligation for citizens to produce documents, whereas the Civil Service may have or could easily have the means of obtaining them itself.
The Petitions Committee held a hearing for the Federal Ombudsmen in May 2001 concerning this general recommendation in order to refine its information on this matter. Included in the past in the Government officer's plan on administrative simplification, no further progress was made. It should be noted that, in the social security field, the *Banque-Carrefour de la Sécurité sociale/Kruispuntbank voor de Sociale Zekerheid* is already playing a valuable role in this respect, and that the *Banque-Carrefour des Entreprises/Kruispuntbank van Ondernemingen* (a data bank containing information on companies and self-employed) established by the Act of 16 January 2003 establishing a *Banque-Carrefour des Entreprises/Kruispuntbank van Ondernemingen*, modernising the trade register, setting up approved business assistance services and implementing various provisions (*Moniteur belge* - official gazette - 5 February 2003) looks set to do the same in the economic field. In line with this recommendation, a bill provides that the authorities should not ask citizens to produce data unless no other authority already has these data (bill *aimed at improving the relationship between citizens and the Civil Service* (Cornil and Nagy), Art. 12, *Parl. Doc.*, Senate, ordinary

session 2001-2002, 6 June 2002, 2-1194/001).
Given the crosscutting nature of this general recommendation, which concerns the entire Federal Civil Service, the Ministry of the Public Service and the Modernisation of the Civil Service is obviously the most appropriate authority to implement it.

GR 99/07: International adoption.
The House of Representatives approved the bill reforming the adoption system (*Parl. Doc.* - Parliamentary documents-, 2002-2002 ordinary session, No 1366/014) on 16 January 2003. It was forwarded to the Senate, which raised the matter and sent it to the Justice Committee.

GR 99/08: Problems arising when a property is evaluated by the tax authorities.
There were no marked developments regarding this general recommendation in 2002.

GR 99/09: The extension of the possibilities of tax relief at decentralised level by rectifying (the data of) the initial tax assessment.
This general recommendation is still pertinent, yet no legal initiatives have been taken with respect to it. The fact that the possibilities have not been extended to allow tax officials to have recourse to this tax relief procedure as a way of speeding up the solution of less complex tax disputes is still the subject of complaints received by the Office of the Federal Ombudsmen.

GR 99/11: Recurrent blocking of teachers' pension files.
In April 2001, the Petitions Committee took up this general recommendation, considering that the attention of the competent minister should be drawn to this problem (*Parl. Doc.*, House of Representatives, 2000-2001 ordinary session, No 1186/001, p. 17, and No 1420/001, p. 13). When discussing the Annual Report 2001, the Petitions Committee recalled the proposal to improve follow-up of general recommendations by the Federal Ombudsmen (*Parl. Doc.*, House of Representatives, 2001-2002 ordinary session, No 1879/001, p 10). However, no further progress has been made with respect to this general recommendation. The Office of the Federal Ombudsmen has not received any complaints regarding statutory pensions since June 1999.

GR 99/12: The consideration of military service when calculating pensions relating to colonial or overseas service.
In April 2001, the Petitions Committee took up this general recommendation and decided to forward it to the Committee on Social Affairs (*Parl. Doc.*, House of Representatives, 2000- 2001 ordinary

session, No 1186/001, p. 17, and No 1420/001, p. 13). No further progress was made, however. The Office of the Federal Ombudsmen has not received any complaints regarding statutory pensions since June 1999.

GR 99/13: The lack of transparency of the Medical Association.
In April 2001, the Petitions Committee took up this general recommendation and decided to forward it to the Social Affairs Committee (*Parl. Doc.*, House of Representatives, 2000-2001 ordinary session, No 1186/001, p. 17, and 1999-2000 ordinary session, No 0570/001, p. 36). This general recommendation has not yet been discussed by the Committee on Public Health.

GR 99/15: The legal protection of the term "ombudsman".
This matter was discussed at the colloquium on *Public Mediation* organised by the Presidency of the House and the Petitions Committee 15 January 2001. It should be compared with GR 97/03, since the legal protection of the term "ombudsman" is in fact closely tied to the connection between primary and secondary level mediation. It is also related to the question of confusion between the terms "mediator" and "ombudsman", used indiscriminately in the French and Dutch versions of the Federal Ombudsmen Act of 22 March 1995. Readers should refer to the proceedings of the above-mentioned colloquium for further information on this matter.

GR 99/17: The discrimination between pension systems as regards the waiving of recovery of amounts not due.
In April 2001, the Petitions Committee took up this general recommendation (*Parl. Doc.*, House of Representatives, 2000-2001 ordinary session, No 1186/001, p. 17, and No 1420/001, p. 13). A bill was drawn up at the same time in relation to this general recommendation (Bill *amending Article 59 of the Act of 24 December 1976 concerning the 1976-1977 budget proposals* (Chastel and Bacquelaine), *Parl. Doc.*, House of Representatives, 2000-2001 ordinary session, 23 August 2001, No 1397/001, which has not yet been discussed by the competent standing committee. When discussing the Annual Report 2001, the Petitions Committee recalled the proposal to improve follow-up of general recommendations by the Federal Ombudsmen (*Parl. Doc.*, House of Representatives, 2001-2002 ordinary session, No 1879/001, p 10).

GR 98/01: The administration's use, in the context of Article 9.3 of the act of 15 September 1980, of confidential criteria, contrary to the principle of administrative transparency and to the principles of legal certainty and legitimate confidence.

The problem of recourse to confidential criteria by the Office of Foreigners was the subject of a new general recommendation in 2001 (GR 01/01 - see above).

GR 98/02: The issuing, in one form or another, of an acknowledgement of receipt establishing the submission of documents to a Civil Service department.

The Petitions Committee held a hearing for the Federal Ombudsmen in May 2001 concerning this general recommendation in order to refine its information on this matter. A bill was drawn up at the same time in relation to this general recommendation (Bill *completing the Act of 29 July 1991 on formal justification of administrative acts with a view to obliging the Civil Service to issue an acknowledgement of receipt* (Van den Broeck, Bouteca, Bultinck, De Man and Goyvaerts), *Parl. Doc.*, House of Representatives, 1999-2000 ordinary session, 26 April 2000, No 0598/001). In line with this recommendation, another bill states in addition that citizens should receive evidence of submission of their documents to a Civil Service department under conditions to be determined by the King (Bill *aimed at improving the relations between citizens and the Civil Service* (Cornil and Nagy), Art. 16, *Parl. Doc.*, Senate, 2001-2002 ordinary session, 6 June 2002, 2-1194/001).

Given the crosscutting nature of this general recommendation, which concerns the entire Federal Civil Service, the Minister of the Public Service and the Modernisation of the Civil Service is obviously the most appropriate authority for implementing it.

GR 97/02: Constitutional recognition of the Office of the Federal Ombudsmen.

Article 28 of the Constitution, declared open for revision, permits the constitutional recognition of the right of citizens to have recourse to a parliamentary ombudsman and the recognition of the granting of a constitutional basis to the Office of the Federal Ombudsmen as an institution guaranteeing this right. Two proposals to amend the above Article to this effect were tabled during 2001, one in the House (*Parl. Doc.*, House of Representatives, 2000-2001 Ordinary Session, 8 May 2001, No 50 1244/001 - Chastel and Decroly), and the other one in the Senate (*Doc. Parl*, Senate, 2000-2001 Ordinary Session, 29 November 2001, No 2-972/001 - Dallemagne and Thissen). They have not yet been examined by the competent standing committees.

GR 97/03: The establishment of the Office of the Federal Ombudsmen as a second level of mediation, after the primary bodies (such as the sectoral mediation services and complaint services).
This matter was discussed at the colloquium on *Public Mediation* organised by the Presidency of the House and the Petitions Committee 15 January 2001. In line with this general recommendation, a bill provides for the establishment of the Federal Ombudsmen as a second level of mediation (Bill *introducing a right of complaint concerning the functioning of the Federal authorities and amending the Federal Ombudsman Act of 22 March 1995* (Van Riet, De Schamphelaere, Cornil, Malmendier, Pehlivan, Nagy and Lozie), *Parl. Doc.*, Senate, 2002-2003 ordinary session, 4 December 2002, 2-1374/001). The bill has been sent to the Senate Committee on Home Affairs and Administrative Affairs. In addition, the question of mediation as such was the subject of a one-day study - "*Ten years of mediation in Belgium*" - organised at the *Maison des parlementaires/Huis van de Parlementsleden* (the house of the Members of Parliament) on 4 December 2002.

GR 97/04: The suspension of deadlines for judicial appeal while the matter is before the ombudsman.
The Petitions Committee held a number of hearings (Ministries of Home Affairs and of Justice, the Council of State, university professors and lawyers) relating to this general recommendation. A bill was drawn up at the same time concerning this general recommendation (*Parl. Doc.*, House of Representatives, 1999-2000 session, No 50 0853/001 - Chastel). However this has not yet been discussed by the competent standing committee.

GR 97/05: The possibility of the Office of the Federal Ombudsmen asking the Court of Arbitration for a preliminary ruling.
The Petitions Committee held several hearings (Ministries of Justice and of Home Affairs) relating to this general recommendation. Given the increasingly frequent interpretations of the law by certain Civil Service departments that are, in the view of the Office, infringing Articles 10 and 11 of the Constitution, the Office sees the preliminary ruling mechanism as a valuable tool in the context of institutional mediation, as it has in fact been for a long time in other European Union countries.

GR 97/11: Dispute between two Civil Service departments regarding which of the two has to pay costs indisputably due to a citizen.
The Petitions Committee forwarded this general recommendation to the Committees on Home Affairs, General Affairs and the Public

Service. However no further progress was made.
Given the crosscutting nature of this general recommendation, which concerns the entire Federal Civil Service, the Minister of the Public Service and the Modernisation of the Civil Service is obviously the most appropriate authority for implementing it.

GR 97/12: Explanation of the principle of the parliamentary ombudsman's recourse to equity in the Federal Ombudsman Act of 22 March 1995.
Provided for in the preparatory work to the Federal Ombudsman Act of 22 March 1995, it would be advisable to ensure that recourse to the principle of equity by the parliamentary ombudsman is explicitly included in this Act, as is the case in French law and, at regional level, in the Walloon decree. A bill was tabled to this effect (*Parl. Doc.*, House of Representatives, 1999-2000 Session, No 50 0889 - Chastel and Maingain), with respect to which the Speaker of the House asked the opinion of the Council of State. Following the latter's negative opinion, the Deputy Government Officer at the Ministry of Finance decided to set up a working group comprising judges, law professors, the authors of the bill and the Federal Ombudsmen, the aim being to examine the legal conditions for introducing recourse to the principle of equity by the parliamentary ombudsman under Belgian positive law. This group commenced its work during the second half of 2002.

GR 97/13: The long period for handling files by the Closed Companies Compensation Fund.
The new Act of 26 June 2002 *concerning company closures* (*Moniteur belge* - official gazette -, 9 August 2002) lays down maximum periods for handling a company file and for paying redundancy compensation. The general recommendation has been closed given the absence of any further marked complaints lodged recently with the Office.

GR 97/16: Clearing of backlog of files handled by the War Victims Office.
Partially covered by the Act of 18 May 1998 *amending the legislation on war pensions and allowances* and by the Ministerial Decree of 19 October 1998, the problem of the delay in handling files at the War Victims Office has arisen again in a serious way with the extension of the deadlines laid down in the Act of 26 January 1999. The Act of 10 June 2001 *amending the procedure for granting national recognition status* did not deal with this matter adequately.

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