

# ANNUAL REPORT 2008

Summary



This is a summarised presentation of  
the 2008 Annual Report of the Greek Ombudsman.

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## Preface



YORGOS KAMINIS  
Greek Ombudsman

Greece's political system, the basic characteristics of which were established after the restoration of democracy, has been in decline for some considerable time. This is a long-standing crisis, which manifests itself as a crisis of credibility at the level of public institutions. All public opinion surveys show that Greek citizens no longer trust the main institutions of the political system – political parties, parliament, government, the judiciary system, public administration and local government, unions, the media, universities etc. – and that society holds these institutions in low esteem. The post dictatorship vision of parliamentary democracy was realised, but the manner in which this democracy operates in Greece is no longer acceptable to anyone.

This domestic institutional crisis coincides with an acute global financial crisis whose effects have become increasingly apparent in Greece. Until recently, large parts of the population have lived in relative prosperity, which did not, however, correspond to the country's actual economic capability. The disastrous consequences of this imprudence are now apparent, particularly among lower socioeconomic classes.

In periods of economic crisis, citizens are usually called on to make sacrifices for an indefinite period of time, in order to safeguard both their own and their children's future. Promises of a better future, particularly when made in such circumstances, should have a strong basis on credibility. Unfortunately, it appears that the Greek public's reserves of trust in the political system have been exhausted. Society does not believe that public institutions are capable of safeguarding a better future. Such mistrust springs from the belief that public institutions have long since ceased to serve the public interest and occupy themselves solely with satisfying private or sectional interests.

Unfortunately, there is a widespread perception in Greece that any dealings with the state lack fairness. Irrespective of the truth in such a belief, the fact that only a very few of the allegations made over time have been resolved creates a climate of disappointment and reduced collective self-respect in society. Although public opinion has, for at least twenty years, been bombarded with accusations of political corruption, no corresponding clean-up has resulted. Traditional mechanisms for the scrutiny of the executive - namely judicial and parliamentary scrutiny - appear incapable of fulfilling their constitutional mission.

With a few exceptions, such as the Council of State or, recently some individual public prosecutors, the judiciary, whose leadership, despite successive constitutional reforms, is still selected by the cabinet, intervenes with great delay or not at all. Even worse, in recent years, it has been customary for the Prosecutor's Office of the Supreme Court to intervene, only to hinder the work of independent authorities. In November 2007, such action resulted in the members of the Hellenic Data Protection Authority resigning. Similarly, the Prosecutor's Office of the Supreme Court intervened twice (2004 and 2007) on the issue of the Ombudsman's access to prisons. Invoking the opinions of the Prosecutor's Office, the ministry of Justice refused to allow the Ombudsman independent access to prisons, despite the express provisions of the law establishing the Ombudsman's office. This is a breach of the law, which compromises our country internationally, since the vast majority of Ombudsmen in democratic (especially European) countries has independent and free access to prisons.

In Greece, accountability, in matters of legality of those who govern us, is hindered by various obstacles, starting with the way in which the leadership of the justice system is appointed. However, the problems appearing in the framework of parliamentary scrutiny are more general. Of course, parliamentary scrutiny constitutes the apex of public accountability for those in power. It is, however, overwhelmingly political in nature, since it is exercised within the daily cut and thrust of party opposition. It is a scrutiny which might have been sufficient for the relatively simple structures of state and society in the 19th century, but current problems are much more complex and require deep expert knowledge.

In order for such scrutiny to be as substantive as possible, it should be based on detailed preparation. It should also take into consideration a quasi preliminary examination conducted away from the tumult of political conflict, under conditions of calm and political neutrality and, when required, with the necessary guarantees of technical credibility. Such preliminary examinations have been conducted for years by the five constitutionally established independent authorities (article 101A of the Constitution), since each one is publicly accountable within the specific scope of its mandate.

The Ombudsman is the independent authority, more than any other, that promotes accountability of the executive, due to the vast scope of its mandate (protection of citizens' rights, observance of legality, fighting against maladministration) and the range of public services that come within its scrutiny. On issues concerning the protection of human rights in particular, the Ombudsman is often called on to decide on controversial issues which cause intense political debate. The activities of the security forces, the rights of economic migrants and the mentally ill, religious education etc. are some of the issues where the Ombudsman has discovered serious deficiencies concerning the rule of law in our country. Since its mission is the "protection of the rights of the citizen", the Ombudsman is required by law to intervene in these issues and express its views when citizens bring them to its attention; in the event that they are unable to do so because of objective difficulties (in the case of minors or the mentally ill, for example), it addresses these issues on its own initiative.

In such cases, the Ombudsman's views are not always popular. This is an acceptable price to pay, since in a democracy the protection of citizens' rights primarily means protection against the

majority. In such cases, the Ombudsman needs the support of the country's political leadership: both government and opposition. Unfortunately, such support is not always forthcoming, particularly when the Ombudsman's views are contrary to the views expressed by powerful and well-organised lobbies. The Ombudsman has often experienced such situations, culminating in the recent case (November 2008) regarding the conditions required for pupils to withdraw from religious education classes.

In other cases, the Ombudsman intervenes in issues which may be less controversial but are more complex, since they pose major problems in connection with the organisation and operation of the public administration. The forest fires in the summer of 2007 which mainly hit prefectures in the Peloponnese and Evia, are a case in point. The following year, the Ombudsman conducted an own-initiative investigation. Representatives from the Ombudsman's office visited the capitals of the prefectures, as well as many villages in the neighbouring regions, and evaluated the social solidarity measures to benefit people affected, measures to rehabilitate the fire-stricken regions, and fire-prevention measures which had already been taken. The first conclusions of this investigation were communicated to the officials concerned and will soon be published in more detail as a special report to parliament.

In this report, there are also cases concerning damage to the environment and illegal constructions (constructing on common land, damage to wetlands, disposal of waste in gullies, protection of coasts and beaches, etc.). As a rule, local government organisations are involved in cases of this type, usually because they avoid carrying out the inspections they are obliged by law to perform. This avoidance is often so blatant that it cannot be attributed to simple negligence, but to illegal dealings between elected representatives in local government and private individuals who break the law. With the exception of some cases highlighted by local media and non-governmental organisations, these violations, many of them very serious, would have passed unnoticed at national level were it not for the Ombudsman.

The above issues ("difficult" human rights cases, complex administrative problems, indications of illegal dealings between public officials and private individuals) are not the only ones which have occupied the Ombudsman. Indeed, a perusal of this report will confirm that it constitutes a well-organised summary (see in particular "State-citizen relations"), of the aforementioned preliminary examination of the executive for the benefit of parliament.

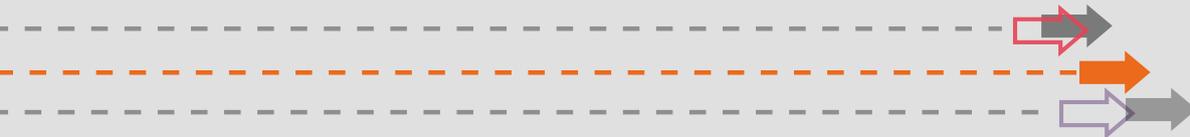
YORGOS KAMINIS  
February 2009





## *Legal framework and operation of the institution*

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# *Legal framework and operation of the institution*



## **1. LEGAL FRAMEWORK**

The Ombudsman is a constitutionally sanctioned independent authority operating since 1 October 1998 and providing services free of charge to all citizens.

The organisation, staffing and operation of the Ombudsman's office are defined in law 3094/2003 and in the operating regulations set forth in presidential decree 273/1999, within the framework established by the provisions of the Constitution following its 2001 revision. The full legal texts governing the operation of the Ombudsman's office are available on the website [www.synigoros.gr](http://www.synigoros.gr).

The Ombudsman's mission is to intervene between the public administration and the citizens in order to protect their rights, uphold the law and fight maladministration. The Ombudsman also deals with the defence and promotion of the rights of the child. Since 2004, the Ombudsman office has been assisted in carrying out its duties by the Health and Social Solidarity Ombudsman. In addition, following the adoption of law 3304/2005 on the application of the equal treatment principle irrespective of ethnic origin, religious or other beliefs, disability, age or sexual orientation, the Ombudsman's mission is to promote equal treatment in the public service. Finally, on the basis of law 3488/2006, the Ombudsman is the agency competent for monitoring the application of the equal treatment principle between men and women regarding access to employment, vocational training and development and work conditions in both the public and private sector.

Any Greek or foreign citizen who lives in Greece or abroad and deals with the public administration may have recourse to the Ombudsman. Specifically regarding the

violation of a child's rights, the child directly concerned, a parent or relative, or any third person with a clear understanding that a child's right is being violated, may have recourse to the Ombudsman.

### **The Ombudsman has jurisdiction to investigate disputes between the citizen and:**

- the public administration,
- local government (communities, municipalities, prefectures),
- other public law legal entities
- private law legal entities, businesses and organisations controlled by the state or legal entities of public law. Specifically in cases where the rights of the child or the equal treatment principle in employment have been violated, the Ombudsman also has jurisdiction over the acts of natural persons or legal entities.

### **The Ombudsman does not have jurisdiction:**

- if more than six months have elapsed from the time that the citizen became aware of an illegal action or omission of the public administration which concerns him,
- over private disputes,
- over cases pertaining to the official status of staff in the public service (unless they pertain to the unequal treatment of employees on the basis of laws 3304/2005 and 3488/2006), national defence, foreign policy and the country's international relations, and public security,
- over cases pending before the courts,
- over acts of the judicial authorities, the Legal Council of the State, independent authorities and religious legal entities of public law,

- over acts of ministers and deputy ministers pertaining to the administration/management of politics

Moreover, the Ombudsman is not responsible for the provision of information and legal advice.

## 2. SUBMISSION AND INVESTIGATION OF COMPLAINTS

The Ombudsman office investigates any issue falling within its jurisdiction, following a signed complaint by any interested party, whether such party is a natural person or legal entity or a union of persons. Complaints may be submitted in person, by post or by fax. They are allocated, depending on their subject, to the Ombudsman's respective area of activity and are then investigated by an expert in the subject. The citizen is kept informed in writing and by phone at each stage of the procedure. During this investigation, the Ombudsman forwards documents to the body concerned. However, if the case requires it, the Ombudsman may choose one of the courses of action available to him under the law, namely, conduct an on-the-spot inspection or forward the case to the public prosecutor or relevant disciplinary body. Finally, where it is considered necessary, the Ombudsman's findings are sent to the minister concerned. In addition, the citizen is informed in writing in the event that his complaint cannot be examined either because the case is outside the Ombudsman's jurisdiction or because the complaint is obviously vague, unfounded or abusive.

### The Ombudsman may:

- request from the public service any information, document or other fact with a bearing on the case; examine individuals; conduct an on-the-spot inspection; and commission an expert opinion.
- set a deadline by which the body concerned must inform the Ombudsman office of steps taken to implement its recommendations or explain why they could not be accepted.

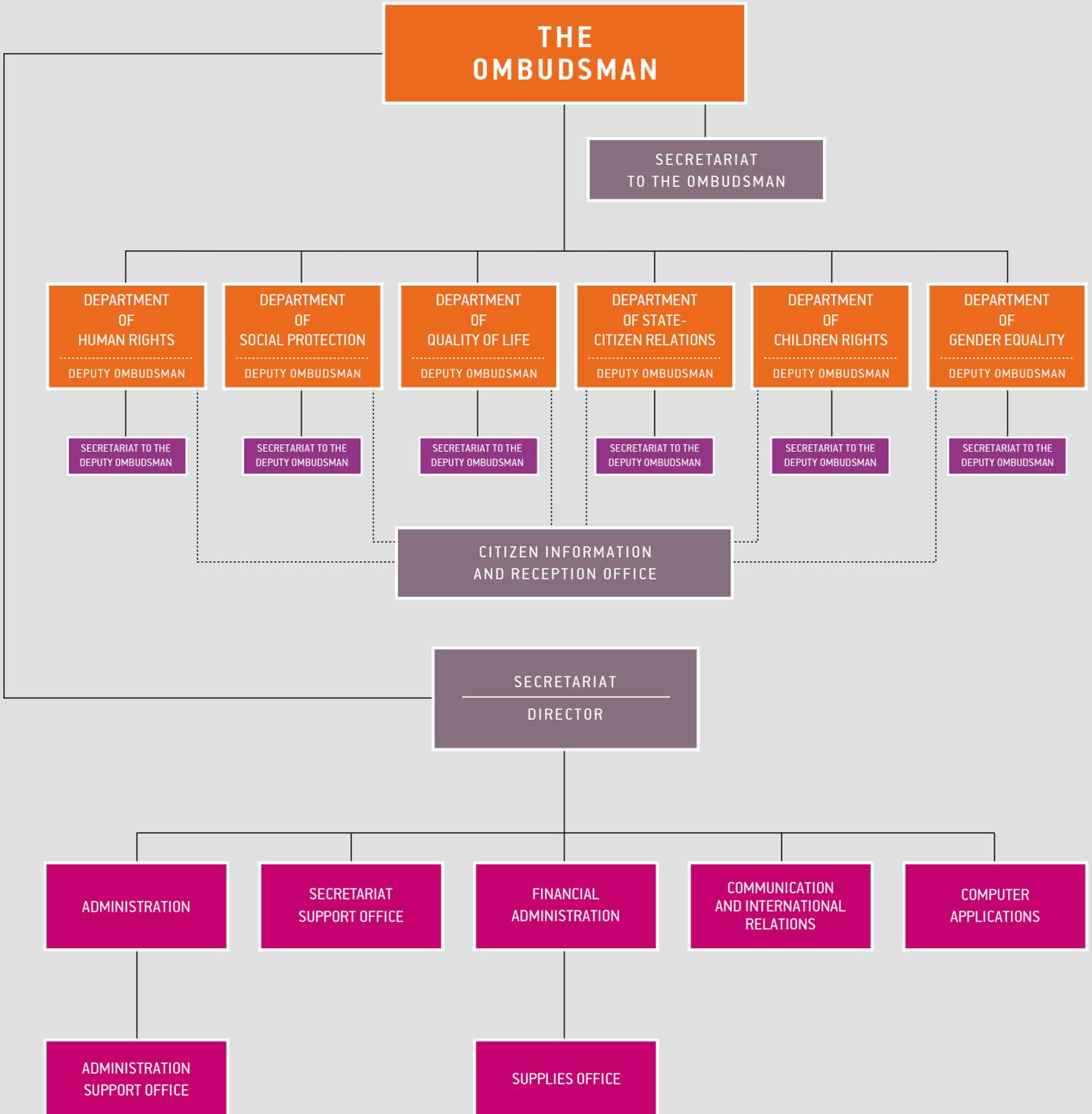
Any refusal by a public official, employee etc. to cooperate with the Ombudsman during an investigation may constitute a disciplinary offence for breach of duty or grounds for replacement. If the Ombudsman concludes that a public official or employee has impeded the investigation procedure for a second time within three years, or has refused to cooperate in resolving the problem without good cause, he may be permanently suspended. Finally, if there are sufficient indications that an offence has been committed, the Ombudsman shall also forward a report to the relevant public prosecutor.

## 3. ORGANISATION AND STAFFING

On 31 December 2008, the total number of employees including the Ombudsman and six Deputy Ombudsmen, was 192 (61 men and 131 women). The total number of scientific staff is 137, of whom 39 (28.46%) have a PhD, 73 (53.29%) have post-graduate degrees and 25 (18.25%) are graduates of Greek or foreign universities. Members of the scientific and administrative staff are qualified in a wide

range of disciplines. Among those holding a first or post-graduate university degree are lawyers, political scientists, literature graduates, economists, sociologists, archeologists, computer scientists, journalists, urban-planning architects, psychologists, geologists, oceanographers, chemists, civil engineers, educators, administrative scientists, a doctor and a survey engineer.

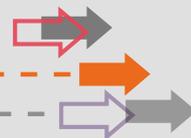
ORGANISATIONAL CHART





## *Overall assessment for the year 2008*

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# Overall assessment for the year 2008



## 1. STATISTICS

In 2008, the Ombudsman received 10,954 new complaints, an increase since 2007 of 3.23%. The Ombudsman did not have jurisdiction in 2,825 cases (25.8% of the total number of new complaints), which were closed. The number of these complaints fell by 1.7% in comparison with 2007.

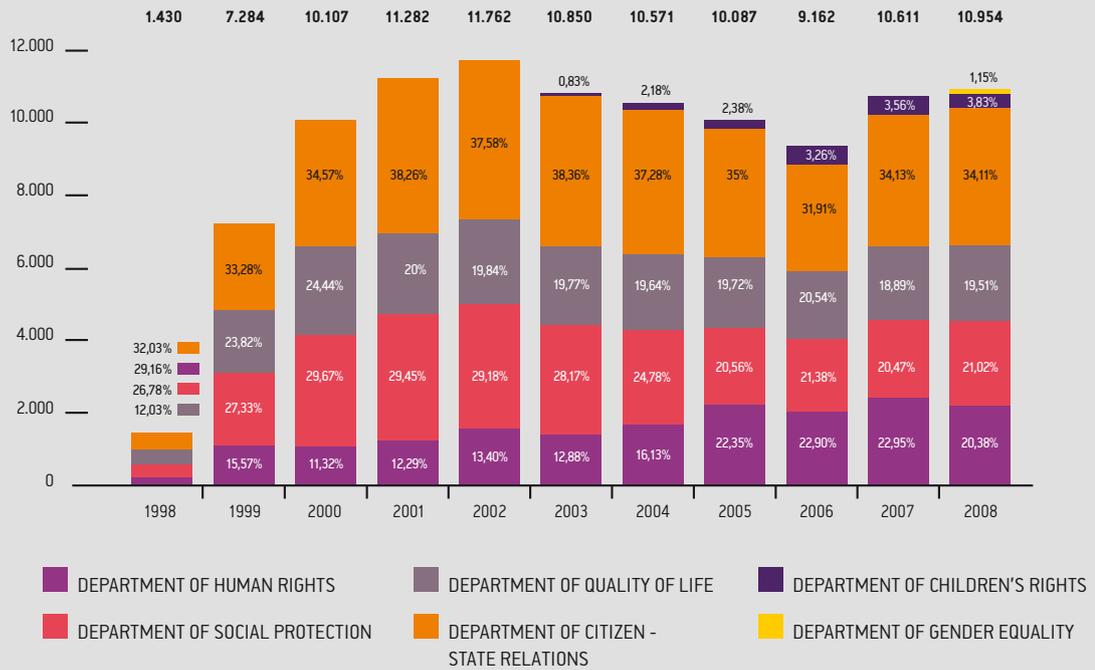
In 2008, 5,943 complaints were fully investigated.

- 3,308 complaints (55.66% of 5,943) were well-founded (i.e. the citizen's complaint was justified and maladministration had occurred).
- 2,047 complaints (34.44% of 5,943) were unfounded (i.e. the administration had acted lawfully).
- For various reasons, the Ombudsman did not pursue the investigation of 588 complaints (9.89%).

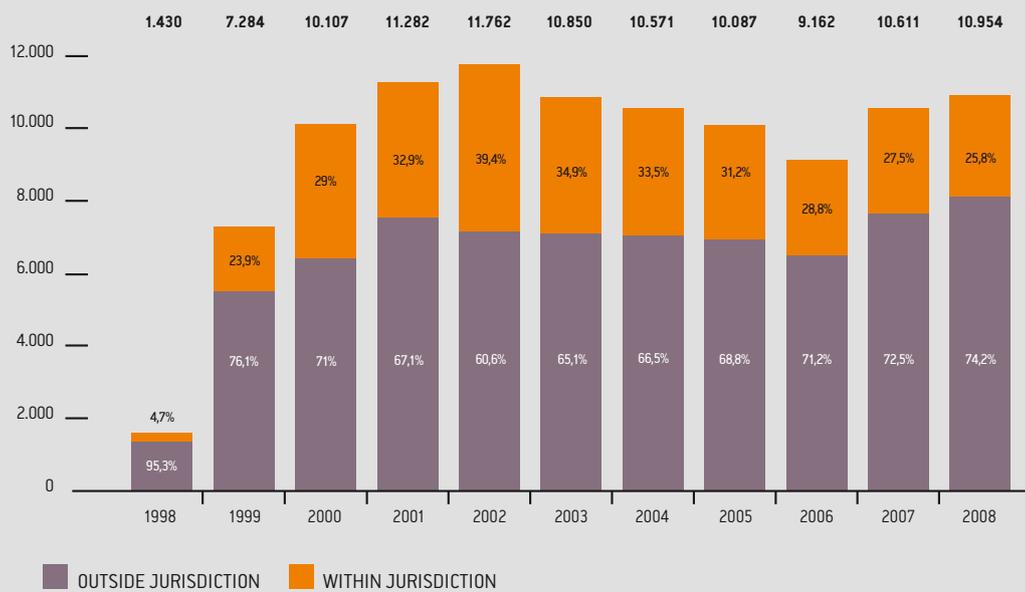
A large number of these 3,308 well-founded complaints had a positive outcome.

- 2,499 complaints (75.54%) were resolved (i.e. the complaint was dealt with to the satisfaction of the citizen).
- 299 complaints (9.04%) were not resolved, despite the intervention of the Ombudsman. In these cases, the Ombudsman's recommendations were accepted.
- 258 complaints (7.80%) could not be resolved because of gaps in the legislation and the organisational weaknesses and malfunctioning of the public administration.
- Finally, 252 complaints (7.62%) were resolved without any action by the Ombudsman, either by the body concerned or following the intervention of another organisation.

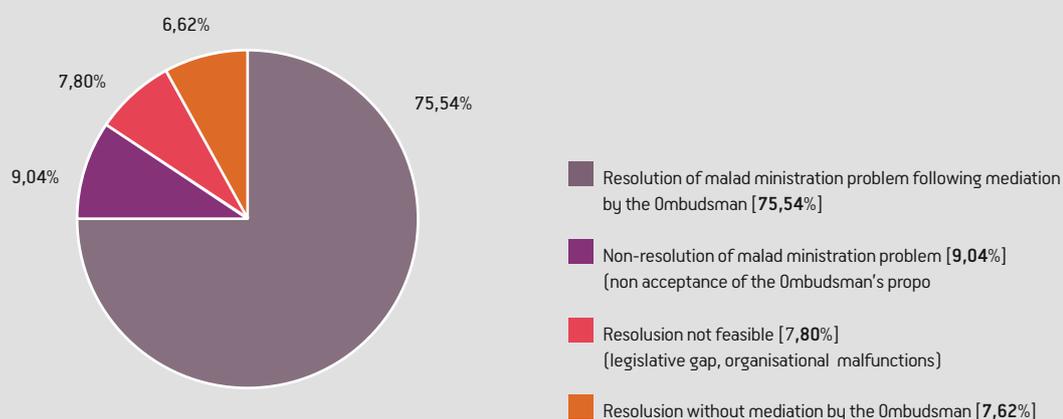
11 YEAR TREND OF COMPLAINTS RECEIVED (1998-2008)



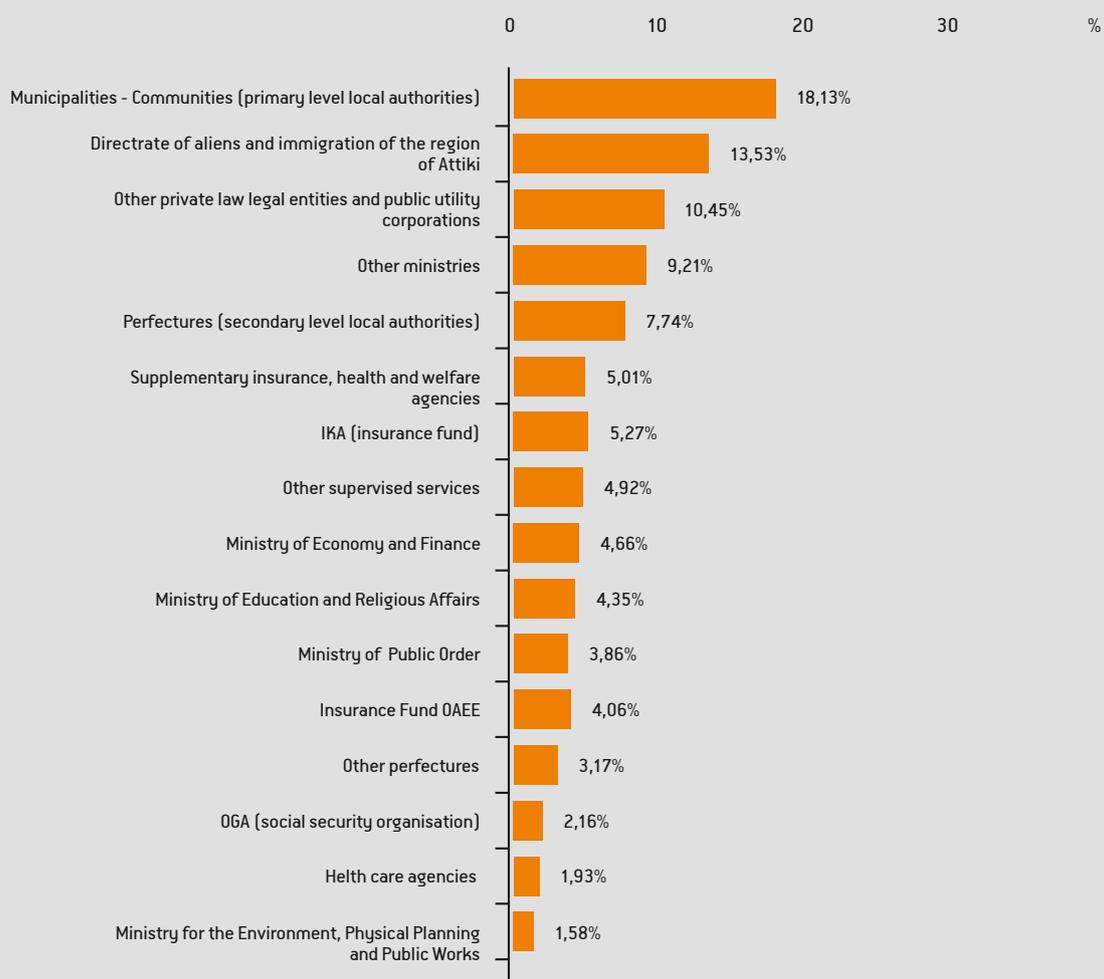
11 YEAR TREND OF COMPLAINTS FALLING WITHIN AND OUTSIDE THE OMBUDSMAN JURISDICTION (1998-2008)



## OUTCOME OF CASES INVESTIGATED IN 2008



## DISTRIBUTION OF MALADMINISTRATION CASES BY AGENCY



COMPLAINANTS PER PREFECTURE  
(per 10,000 inhabitants)



EASTERN MACEDONIA - THRACE	5,2
CENTRAL MACEDONIA	7,1
WESTERN MACEDONIA	6,4
EPIRUS	7,4
THESSALY	5,3
CENTRAL GREECE	6,6
WESTERN GREECE	6,5
ATTICA	15,7
IONIAN ISLANDS	11,6
PELOPONNESE	6,6
NORTH AEGEAN	7,5
SOUTH AEGEAN	8,7
CRETE	8,0

SOURCE OF POPULATION DATA:  
Hellenic Statistical Authority, 2001 Census Data

## 2. SPECIAL REPORTS

The Ombudsman draws up special reports on major and particularly serious issues. These are submitted to the prime minister and the president of the parliament and are forwarded to the ministers concerned. In 2008, the Ombudsman drew up two special reports:

### REGULAR PRISON LEAVE

**After examining a number of complaints from prisoners, the Ombudsman established the following:**

- Often, decisions rejecting regular leave of absence are not taken exclusively on the basis of the criteria set by the Prison Code and are not accompanied by justification, as required by law.
- The competent boards apply legislation without having a single set of interpretative guidelines to follow.

**The Ombudsman suggested that:**

- essential legal criteria should be specified and factors to be taken into consideration by boards when deciding on requests for leave of absence should be outlined.
- it should be clarified which factors may not be taken into consideration when deciding on requests for leave of absence (e.g. remaining sentence, remorse).
- prisons should exchange information in the event of a transfer.
- minimum parameters for the justification of decisions

## 3. OWN-INITIATIVE INVESTIGATIONS

The Ombudsman office conducts own-initiative investigations into issues which are deemed to be of particular importance and fall within its mandate.

### OWN-INITIATIVE INVESTIGATION INTO FIRE-STRICKEN REGIONS

The Ombudsman conducted an own-initiative investigation in regions hit by destructive fires in the summer of 2007, in order to establish what measures have been or are to be taken to assist those affected, rehabilitate these regions and to prevent similar occurrences in future. The Ombudsman, his Deputies and investigators visited fire-stricken regions in the prefectures of Evia, Iliia and Lakonia. Meetings were held with the bodies concerned and discussions took place with the residents of fire-stricken villages. In this way, the Ombudsman formed an overall view of the problems that exist and measures to support stock-farmers, and established the need to prepare a plan for the financial and social reconstruction of these regions.

should be set, and sample checks should be made of cases where requests for leave of absence have been refused at each prison.

### OPERATION OF CEMETERIES

Using its experience from the investigation of dozens of complaints on the operation of cemeteries, the Ombudsman office has drawn up a special report outlining the most important problems.

The Ombudsman considers that the relevant authorities should promptly investigate and address the following issues:

- The lack of space in cemeteries in major urban centers.
- The adoption and implementation of alternatives to burial that respect the beliefs of the deceased (e.g. cremation, alternative ways of handling and storing bones).
- Municipal authorities should adhere strictly to the operating rules of cemeteries (e.g. respect of rights in connection with the use of family graves, removal procedures).
- Revision of the rules on the operation of cemeteries in the light of current demographic trends and needs.
- Review of the fees for the right to use a grave, in order to establish commensurately equal terms for all permanent residents of a municipality in accordance with the principle of reciprocity.
- The burial of new-born babies.

Emphasis was placed on necessary measures for the organisation, staffing and coordination of the bodies concerned, in order to avoid similar destructive occurrences in future. A special report is being prepared on this issue.

### OWN-INITIATIVE INVESTIGATION INTO THE OPERATING CONDITIONS OF PUBLIC NURSERY SCHOOLS

A new law 3518/2006 established compulsory education from the 5th year of age (as of 2007) and put an end to the transitional provision which allowed children of this age to attend municipal and private day nurseries which are not licensed nursery schools. After taking into account the right of all infants to enjoy free, quality education that meets the educational needs of their age, the Ombudsman has decided to conduct an own-initiative investigation in order to establish whether, after the adoption of the new legislative regulation, there are still infants who do not have access to public education. This investigation is in progress.

#### 4. REFERRAL TO DISCIPLINARY AUTHORITY

If, during the investigation of a case, the Ombudsman establishes that an official, employee or member of the administration has conducted himself in an illegal manner, he may cause disciplinary action to be taken against the person concerned, or, if the person is not subject to disciplinary control, suggest any appropriate measures. In this case, the Ombudsman draws up a report which is forwarded to the body responsible for disciplinary control. It should be noted that in certain circumstances, refusal to co-operate with the Ombudsman constitutes a criminal offence. A prosecution is brought only if the Ombudsman submits a report to the public prosecutor.

**In 2008, the Ombudsman requested, inter alia, that disciplinary action should be taken by:**

- The Region of Attiki against the mayor of Acharnai, who refused to co-operate with the Ombudsman's investigation into the non-implementation of a decision by the municipal council (case 17689/2005).
- The Prefect of Thessaloniki against employees of the Urban Planning department of the Prefectural Government of Thessaloniki. The employees concerned failed to impose a fine for an illegal building and delayed in forwarding the relevant inspection report to complainant (case 10843/2007).
- The Region of Western Greece against the mayor of Rio, who failed to take any measures to remedy the consequences of the illegal opening up of a coastal road by private individuals in the region of Rio (case 3296/2007).
- The Region of Attiki against the mayor of Nea Makri. The municipality created illegal landfills in the region of Nea

Makri and operated an area for the disposal of solid waste which did not conform to legal specifications. The General Secretary of the Region of Attiki summoned the mayor to give his defense (case 20742/2007).

- The Prefectural Government of Athens & Piraeus against the members of the prefecture committee responsible for supervising and inspecting private clinics. Although a report by the Health and Care services Inspectors' Body found that the members of the committee had acted negligently in their inspection of a private clinic, the investigation under oath which was carried out dismissed the charge.
- The head of a Social Security Organisation (IKA) health unit against a doctor who refused to examine a patient admitted to the emergency department and conducted himself improperly towards the patient. Disciplinary action was taken against the doctor, who was fined half of one month's salary.
- The management of Vostaneio general hospital in Mytilini against a doctor who was absent when on duty, with the result that a patient's health was harmed through misdiagnosis. An investigation under oath found that the doctor had acted wrongly and he received a written reprimand.
- The Management of the General Hospital of Western Attiki against members of the hospital's staff. Inadequate treatment and a delayed blood transfusion resulted in the death of a patient from hemorrhage. According to a preliminary investigation conducted by a doctor of the hospital, the case was handled in accordance with the rules of medical science and the hospital judged that no investigation under oath should be conducted.

#### 5. REFERRAL TO THE PUBLIC PROSECUTOR'S OFFICE

If, during the investigation of a case, there are indications that an offence has been committed by an official, employee or member of the administration, the Ombudsman must send a report to the public prosecutor concerned.

**In 2008, the Ombudsman referred two cases:**

- To the District Court Prosecutor of Pyrgos. The case concerns environmental pollution by two pickling plants and one cheese dairy in the region of Amaliada in the

Peloponnese. The Ombudsman established that the authorities in the Prefecture of Iliia had systematically failed to undertake the required actions and refused to co-operate (case 3696/2001).

- To the District Court Prosecutor of Xanthi. The case concerns grave infractions on the part of a mayor in respect of the legality of convening the mayor's committee as a meeting. The subject of the meeting concerned the direct award of public contracts (case 2193/2008).

## 6. ON-THE-SPOT INSPECTIONS & WORKING MEETINGS

In 2008, the Ombudsman conducted approximately 44 on-the-spot inspections and 56 working meetings, some of which are highlighted in specific chapters of the report.

### MEETING “PROTECTION OF LAKES: FROM PUBLIC-USE TO PRESERVING THE ECOSYSTEM”

In December 2008, the Ombudsman organised a meeting on the protection of lakes. The aim of this meeting was to

analyse ways of effectively protecting lake ecosystems by outlining the vague legal framework and examining how administrative protection measures work in practice. The meeting was attended by academics, members of the judiciary, officials of the ministry for the Environment, Physical Planning and Public Works, investigators from the Ombudsman's office, representatives of environmental NGOs, etc.

## 7. THE OMBUDSMAN IN PARLIAMENT

In the framework of the responsibilities assigned to him by the Constitution, the Ombudsman appears before parliamentary committees with the object of informing parliament on more specific issues of his mandate. The Ombudsman appeared before the following committees:

- The Special Standing Committee on Equality and Human

Rights, and informed the committee on issues related to the protection of children's rights.

- The Special Standing Committee on Institutions and Transparency and informed the committee on issues related to (a) the protection of minors from the media and (b) issues highlighted in the 2007 Annual Report.

## 8. REGIONAL CAMPAIGNS

From time to time, the Ombudsman sends investigators to different regions of Greece. The aim of these visits is to enable citizens living in the province to learn directly about the Ombudsman's fields of competence and to file complaints. At the same time, the Ombudsman's representatives take the opportunity to discuss issues which are of concern to the local community with representa-

tives of local government authorities and the local public service in general, and come into contact with the local media. In 2008, the Ombudsman visited Kalamata (30 June – 1 July), Iliia (13–16 October) and Lakonia (10–12 November) in the Peloponnese, the Region of Continental Greece (8–9 December) and Evia (3–5 July).

## 9. COOPERATION WITH NON-GOVERNMENTAL ORGANISATIONS (NGOs)

The Ombudsman attempts to establish systematic co-operation with NGOs in order to reach out to population categories that belong to particularly vulnerable groups and for various reasons do not have access to the Ombudsman's office. With this objective, the Ombudsman:

- Continued the operation of the network providing mutual information and familiarization on the protection of rights and social support for socially vulnerable groups such as Gypsies and asylum seekers.
- Held a working meeting with NGOs involved in the protection of children's rights to discuss: a) the possibility of the Children's Ombudsman co-operating with NGOs

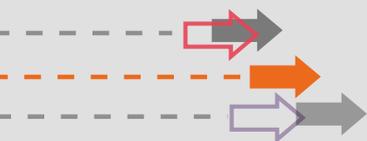
and the prospect of a network being created to monitor the application of the International Convention on the Rights of the Child and b) the joint presentation to European institutions of the views of NGOs involved in the protection of children's rights (16 October).

- Carried out an introductory meeting with NGOs, professional and trade-union organisations which are active in gender equality issues. At this meeting, the organisations concerned were informed about the establishment and operation of the Ombudsman's new department on gender equality issues (16 December).

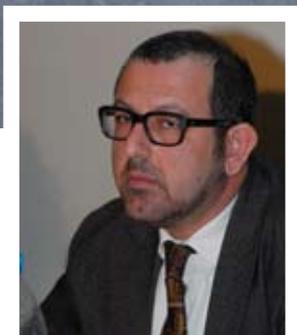


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# Human rights



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## 1. INTRODUCTORY REMARKS

2008 was marked by a series of events of crucial importance to human rights (the first same-sex marriage, the right to opt out of religious education, the divergence of views on the existence of minorities etc.). Overall, however, the most prominent problems were those which had apparently been smouldering under the surface for several years and are now coming to the surface with grave consequences on several fronts.

a) To start with, there is the chronic issue of prisons, where outdated structures for managing day-to-day operations are collapsing beneath the weight of the medieval conditions in which a very large number of detainees are kept. The Ombudsman, in collaboration with other authorities or social organisations, depending on the case in question, performed a series of actions, including the preparation of a special report on regular prison leave. In addition, one of the requests of detainees which was finally fully accepted by the Minister of Justice was to allow members of the Ombudsman's staff unimpeded access to prisons, which, in violation of the law, was not previously allowed by the prison authorities.

b) Correspondingly, however, there has been a wave of strong – and contradictory – reactions to the application of the Community institutional framework ensuring the professional rights of holders of EU university degrees in

all Member States, Greece included. The structural inflexibility of Greek higher education institutions and reactions from interest groups appear in practice to have prevented Community law from being applied. The Ombudsman made repeated interventions in an attempt to help unlock the procedures for recognising rights for specific categories and speed up the issuing of regulatory acts that put the Community framework into practice.

c) The third problematic human rights issue in Greece concerns the treatment of undocumented aliens. Given the practical impossibility of deporting the majority of those arriving in Greece back to countries which are at war, the rise in traffic simply created a rapidly increasing population of "illegal" aliens – already about 220,000 according to official estimates. The attempts by many to seek refuge in other EU countries are hampered by the application of Community legislation and consequently such people are trapped in poverty-stricken ghettos in the heart of large cities, thus inciting fear among local populations (Aghios Panteleimonas and Petrou Ralli St. in Athens, as well as in the cities of Patras and Igoumenitsa). Inevitably, the political asylum and subsidiary protection systems are under extreme pressure from tens of thousands of requests by people who in the majority of cases do not actually meet the narrow conditions for protection. Since the existing mechanism and infrastruc-

ture are at an embryonic stage, asylum services and decision-making bodies are in reality part of a police mechanism dealing with a population of potential invaders. These people, deprived of almost any guarantee of safety, are left exposed to the peremptory practices of state bodies (mass arrests, multiple deportations, unjustified detention, refoulement and physical assaults) and, chiefly, to the extreme exploitation of illegal employment by trafficking networks (cf. agricultural regions of Iliia, Achaia and Epirus).

The Ombudsman has intervened in a variety of ways in a large number of individual cases to ensure that individual foreigners, asylum seekers in particular, are treated in accordance with the law. In addition, through repeated visits to detention areas and encampments of undocumented aliens and through ongoing contact both with the leadership of the competent authorities and the most active social organisations in this field, he has tried

to contribute to realistic and viable solutions where both the public interest and the non-negotiability of human rights are taken equally into account.

In the paragraphs below, an attempt will be made to show how the practices of the Greek administration often reflect a tendency to regard otherness as something that mitigates the obligation to care about human rights or even as grounds for allowing different treatment per se. However, in addition to the extremely serious long-term consequences on social cohesion within an internationalized and multicultural environment, which are already beginning to appear, this tendency also seems to offer much more room for discretion by the public administration in handling otherness, deciding as it sees fit whether an individual will be judged under this or that category or status, which determines, often in an inconsistent and uncontrolled manner, the extent to which his/her rights will be protected.

## 2. SOCIAL INCLUSION OF IMMIGRANTS

The very serious difficulties in activating the legal framework that is meant to ensure full social participation of those foreigners who have formed strong ties with Greece jeopardize the prospect of full integration and of social cohesion itself.

### 2.1 ENSURING LEGAL RESIDENCE

A series of cases that have occupied the Ombudsman's attention prove that neither the legal framework nor the relevant administrative practice enable even long-term foreign residents to preserve their legal resident status. Characteristic examples include immigrants who forfeit their legal status for formal reasons, as well as aliens of Greek ethnic origin from Albania who are residing in Greece under this status. Equally problematic is the impossibility of transferring from one category of residence permit (refugees, aliens of Greek/non-Greek ethnic origin) to another; nor can the inadequacies of the institutional framework be addressed by current provisions on residence permits for exceptional reasons. A characteristic case is that of a foreign woman married to a Greek and the mother of two minor children of Greek citizenship, who has been residing in Greece for more than ten years and currently cannot be given a legal status because she cannot produce a visa for Greece or an older residence permit (case 19096/2007).

### 2.2 DURATION OF LEGAL STATUS

Legal residence can only be made permanent – and social inclusion can only therefore be promoted adequately – if a long-term residence permit is obtained.

Although the long-term residence permit has existed since 2005, only very few have been issued, for reasons related to the procedure that must be followed for them to be granted, and, in particular, to the requirement that the terms that must be met (knowledge of Greek language, history and culture) must be certified.

However, difficulties have also been identified in the issuing of residence permits for an indefinite period of time, for which there are fewer requirements. The 10-year period of legal residence required to obtain the permit has become a controversial issue with respect to calculation of the start of the period. Following the Ombudsman's intervention to the ministry of the Interior and the Manpower Employment Organisation (OAED), the period of legal residence was calculated in a more logical manner.

### 2.3 LONG-TERM RESIDENCE AND RIGHTS

Legally resident foreign nationals have legally recognized rights that vary depending on residence status and are much stronger when a foreigner has been residing in Greece for a long period of time.

Serious problems arise when the right to family reunification is exercised. The complexity of the procedure, the lack of coordination among the services involved and the

fact that the final grant depends on value judgements by the administration, leads to excessive delays and the rejection of requests without sufficient justification. The problem resides in particular in the cautious attitude shown by Greek consulate authorities when the family relationship of applicants is checked.

In addition, problems arise when the right to work is exercised. In this respect, a characteristic example was the rejection of a request to buy an existing business on the grounds that the requested purchase is not deemed advisable because the profession was saturated (case 14307/2008). Foreigners who are third-country nationals and family members of Greek nationals or EU citizens face similar problems in the exercise of their professional activity.

Finally, the Ombudsman intervened to argue that scholarships and awards should be granted to long-term residents who are citizens of third countries as a measure to achieve their social inclusion (case 17817/2005).

## 2.4 CONCLUSIONS

The problems pointed out above are related to the reluctance of the administration to guarantee the legal residence of foreigners residing for many years in Greece and the rights arising from legal residence. The social inclusion of immigrants is conditional upon such rights, which are undoubtedly connected with the handling of immigration in general and the illegal residence of a large number of foreign nationals in Greece in particular.

## 3. THE ADMINISTRATION AND VULNERABLE GROUPS

### 3.1 THE ADMINISTRATION, SOCIAL COHESION AND THE ROMA

The living conditions of Gypsies in Aspropyrgos, Votanikos, Patras and other regions of the country are an affront to human dignity and affect the wider region where Gypsies have settled illegally and have lived for a long period of time. The consequences for their own health and for the public health and quality of life of the remaining population (cases 10960/2008, 10964/2008, 10969/2008, 11004/2008) and the tolerance shown by the public authorities towards the activities they engage in to earn a living, have a serious impact on the wider area where they have settled (Aspropyrgos, Votanikos). Thefts attributed to Gypsies are often not properly investigated by the police (cases 10969/2008, 13896/2007).

At the same time, this situation feeds tension and social conflict between Gypsies and non-Gypsies living near encampments. Both the central and regional administrations appear hesitant to adopt drastic solutions and determinedly co-ordinate public organisations which are directly involved in one another's respective fields of competence in a determined manner.

### 3.2 THE ADMINISTRATION, ILLEGALLY RESIDENT FOREIGN NATIONALS AND SOCIAL PEACE

The degrading living conditions in shanty-towns and the consequent impact on and reactions of the local community resulting from the administration's failure to deal successfully with a lasting problem, also concerns other vulnerable groups. The shanty-town near the port of Patras, where hundreds of foreign nationals illegally residing in Greece live in inhuman conditions of utter

poverty, is a characteristic example. Their removal from Greece is objectively unfeasible because of the political situation in their countries of origin. However, what is effectively their enforced residence in the region, under a peculiar system of tolerance and without any state care, feeds and perpetuates an ever-growing problem (cases 18364/2007, 8616/2008).

### 3.3 EXPLOITATION OF THE WORK OF ILLEGALLY RESIDENT FOREIGN NATIONALS

The absence of any regulations regarding labour relations and vulnerable population groups creates conditions in which human labour can be exploited. A case that strongly occupied the attention of the public, concerning the exploitation of foreign workers in greenhouse strawberry production in a region of the Prefecture of Ilia is neither accidental nor the only one. Foreign workers living and working for a pittance in inhuman conditions were completely under the control of their employers and were entirely dependent on them, a situation that is not dissimilar to the way in which human trafficking is organised by criminal gangs.

## 3.4 CONCLUSIONS

In this section, attention was focused on the progressive social degradation of entire population groups, which is to a significant extent due to the failure of the administration to address the existing problems and their causes in an effective manner. With on-site investigations and interventions, the Ombudsman aims to encourage the organisations concerned to take action in their respective fields of competence.

## 4. CITIZENSHIP AND OTHERNESS

The previous two sections focused on the grave consequences that seem to exist for human rights and social cohesion in Greece as a result of the passivity and/or reluctance with which the administration often treats requests for social support for population groups that show signs of ethn racial otherness. However, even beyond the difference in treatment and in the rights accorded to Greek citizens compared to their foreign counterparts, which may be legitimate in principle, a series of distinctions can be seen in both categories of individuals, thus raising questions about the principle of equality.

### 4.1 THE ADMINISTRATION AND ALIENS OF NON-GREEK ETHNIC ORIGIN

The consequence of the serious malfunctions observed in the procedure for issuing and renewing residence permits for aliens of non-Greek ethnic origin (see repeated interventions and findings of the Ombudsman recorded in all annual reports) was that the foreigners in question were deprived of a series of rights and benefits provided for under the applicable legislation (see chapter 2.1).

### 4.2 THE ADMINISTRATION AND ALIENS OF GREEK ETHNIC ORIGIN

In contrast with other countries, Greece's legislation provides a series of rights and welfare policies for that category of third-country foreign nationals who have been characterised as aliens of Greek ethnic origin. However, the attribution of Greek descent appears to depend more on changing practices determined by wider geopolitical considerations at any given time than on the application of the constitutional precept protecting Greeks abroad. The recent refusal by the administration to renew the Special Identity Card for Aliens of Hellenic Descent (EDTO) for Albanian nationals whose Greek descent had been recognized by Greek authorities in the past (cases 13870/2007, 210/2008, 4035/2008) is a characteristic example. The change of position over the issue in question seems to be connected with the procedure for obtaining Greek citizenship through the naturalization of persons who have been characterised as aliens of Greek ethnic origin from Albania, which has recently begun. The Ombudsman pointed out to the police that specific and sufficient reasons must be provided for such decisions and at the same time proposed that a provision should be enacted to ensure

that persons whose applications for the renewal of the Special Identity Card for Aliens of Hellenic Descent have been rejected are residing legally in Greece.

### 4.3 CONFERRING GREEK CITIZENSHIP

In the Greek system, citizenship is granted on the basis of an assessment of the applicant's ability to belong to the nation (see annual report 2007, pp. 68–75). Indeed, aliens of non-Greek ethnic origin who are citizens of other states (usually neighbouring ones) are not naturalized, although in many cases their bonds with Greece are unquestioned (cases 6994/2007, 13752/2007, 15116/2007, 9886/2008 etc.).

The reluctance of the authorities to confer citizenship on those who do not meet the criteria of ethnic "Greekness" is apparent even in cases where the Greek descent of the applicant has been recognized (case 10896/2008). Descendants of Armenians who came to Greece after the Asia Minor Catastrophe are a characteristic example. Although they are stateless and should have obtained Greek citizenship at birth, the police consider them to be Turkish nationals (case 12884/2007). As for those who settled in Greece after 1922 and went to the former Soviet republic of Armenia in 1947–1948, although they had in the past been recognized as stateless, the ministry of Foreign Affairs has to date questioned their status deeming that they had in the meantime obtained Soviet citizenship (cases 3359/2007, 8088/2007). In this specific case, the Ombudsman's intervention led to a positive outcome and the interested parties obtained Greek citizenship as stateless persons.

For the time being at least, the Ombudsman's intervention in the cases of male citizens of Greek ethnic origin from Constantinople (Istanbul) has not met with a positive outcome, since such people are deemed by the Greek administration to be Turkish nationals, although in the past their citizenship had been revoked by the Turkish state.

The administration takes the same view in the case of aliens of Greek ethnic origin whose parents had Albanian citizenship which was revoked by the Albanian state after they settled in Greece between the two World Wars and afterwards (case 14993/2008).

### 4.4 FOREIGNERS AND RIGHTS OF MUNICIPAL CITIZENS

The hesitant or confused stance of the Greek administration in conferring rights where elements of otherness

exist is not limited only to foreigners who are of third-country citizens but often concerns EU citizens as well. Here, there is a paradox that people who have the right to vote in municipal elections do not enjoy the full rights of municipal citizens. A case in point is that of a Community citizen who was a permanent resident of the municipality of Zografou and was also listed on the population register. In the hiring procedure for seasonal employees in the municipality, he was ranked last in the table of classification on the grounds that he did not have the required "degree of locality". In the Ombudsman's intervention, which was ultimately successful, it was argued that because the interested party had been permanently settled in the area for a long time and was also listed on the population register, the provisions of the relevant clauses had essentially been met (case 11155/2006). However, the requirement that someone be a citizen of the municipality creates unfair inequalities even among Greek citizens. Given that municipalities are responsible for establishing, operating and managing cemeteries, the use of cemeteries by non-municipal citizens is often prohibited even if they are permanent residents of the region (case 11327/2008).

#### 4.5 THE ADMINISTRATION AND THE RIGHTS OF GYPSIES

The discriminatory attitude of the administration towards categories of citizens who display elements of cultural otherness manifests itself with particular intensity in the case of Gypsies, the majority of whom are Greek citizens. For example, the police require that people applying for a replacement identity card should present a certificate stating their educational level, which has serious consequences on the social relationships and daily transactions of the interested party. In the Ombudsman's intervention, which was finally accepted, it was pointed out that such a practice is not provided for in the applicable legislation, while its application only to Greek Roma may constitute a case of discrimination (case 18706/2007). In addition, Gypsies face serious problems when dealing with the administration in issues related with their civil status. The refusal by the Municipality of Sofades to grant a family status certificate to Gypsy citizens on the grounds that they had not declared their children's names is another symptom of the unfair treatment of this population group (case 11299/2008).

Indeed, the refusal by municipalities to grant certificates often leads to a large number of beneficiaries being excluded from rehousing regulations. A characteristic example is the case where a request for a housing loan was refused because the applicant had not been given the required certificate proving that he resides permanently in the administrative region of the municipality where he is registered (case 9817/2008). The refusal of Local Government Organisations (LGOs) to issue real estate tax certificates or to co-operate with banks in the rehousing loan programme for Gypsies has similar consequences. In addition to issues of legality arising from the stance of the municipality, questions regarding racial discrimination might justifiably be raised (case 15366/2008).

#### 4.6 PROBLEMS IN ISSUING PASSPORTS FOR GREEK CITIZENS

However, even Greek citizens may cause the administration to adopt a distrustful attitude if they exhibit some elements of otherness. Thus, citizens who have "non-Greek" surnames or racial characteristics which distinguish them from the "average Greek" may face particular difficulties in the issuing of a passport. Indeed, delays lasting months have been observed as a result of checks carried out on the basis of elements of "foreignness" such as a name and surname of non-Greek origin, resulting in the intentional and selective mistreatment of the interested parties. Although the Ombudsman has intervened, pointing to explicit legislative provisions, the police, citing the need to detect and clear up cases of illegal naturalization, do not appear to have abandoned this controversial practice (cases 137/2008, 145/2008, 6354/2008, 6788/2008, 12812/2008).

#### 4.7 CONCLUSIONS

The summary of the issues raised, which are related in particular to the handling of ethn racial otherness by the Greek public administration, highlights practices and fields where the level of protection of human rights is sorely tested. Thus, rights are often weighed up and ultimately violated, with the invocation of arbitrary and virtually uncontrolled judgements on the protection of the public interest, which appears as a concept in competition with the protection of rights.

## 5. PUBLIC SECURITY, PUBLIC INTEREST AND HUMAN RIGHTS

### 5.1 INVOKING PUBLIC SECURITY

Since the very first days of the Ombudsman's operation, public security, public order or the public interest have been invoked to justify the limitation of rights. Of course, in the framework of administrative procedures, public security is not always wrongfully invoked. However, it is often presented by the administration as being of paramount importance, thus bypassing any procedural guarantee, while citizens are burdened with the onus of proving that they are not a threat to such security.

### 5.2 DEVIATIONS FROM THE PROCEDURE FOR ISSUING A PASSPORT

Recently, most problems have typically concerned the issuing of passports. The recent undertaking of this remit by the police has caused a series of problems, since the entire procedure was included in the general policing plan of the Greek Police.

Thus, there is systematic cross-checking of the personal details of all passport applicants to investigate whether they are wanted by the police. In this way, however, all citizens are in principle regarded as suspect or dangerous in the abstract, in violation of the presumption of innocence and freedom (cases 871/2007, 3647/2007, 5912/2007, 8924/2007, 20056/2007 etc.).

In addition, as mentioned above, the police also check additionally and incidentally whether Greek citizenship has been acquired legally in cases where elements of "foreignness" appear.

By invoking the allegedly overriding principle of passport or identity card security, the provisions on delays and required documents for the issuing of such papers are systematically violated. Thus, for example, when a slightly different version of the father's or mother's name is identified between the population register and the old passport or identity card, the citizen is required to go through the expensive and time-consuming procedure (judicial or administrative) of correcting or changing the name (cases 11071/2008, 11333/2008). When only a city is entered as place of birth on documents that are presented, without the country being indicated, however obvious it may be, the citizen is obliged to apply for a certificate from the respective embassy (cases 6238/2007, 9436/2007, 13333/2007, 2671/2008). When a police investigation is carried out against an applicant for an offence connected with the issue or use of the old passport, the procedure for issuing the new passport is interrupted for months, although according

to the law it should be impeded only in the event of criminal prosecution (cases 20138/2007, 2349/2008). When an investigation into the loss of the old passport is carried out, the application for a new one is rejected, even if the responsibility for a delay in the investigation lasting several months rests with the police itself (case 11245/2008).

### 5.3 JUSTIFICATION OF ARRESTS AND REMANDS

Public security is repeatedly and wrongfully used by the police to justify a failure to meet the conditions required for body or vehicle searches, as well as the conditions for arrest, remand and detention. A common feature of the relevant individual cases is the confirmed belief of officers conducting administrative investigations that to justify police actions, it is sufficient to cite the subjective impressions of a police officer in respect of dangers to public order and security. As a rule, the arrested persons themselves are held responsible for being present "without purpose" at the place and time that an event occurred, as if the law requires citizens to link their physical presence in a public area with a specific "legal" purpose (cases 20354/2005, 7519/2006, 4911/2007, 18589/2007, 3422/2008 etc.).

### 5.4 OTHER CASES

The phenomenon discussed in this section is not limited to the police, but is also encountered on the part of other services that have a tradition of relative sensitivity in matters of individual rights.

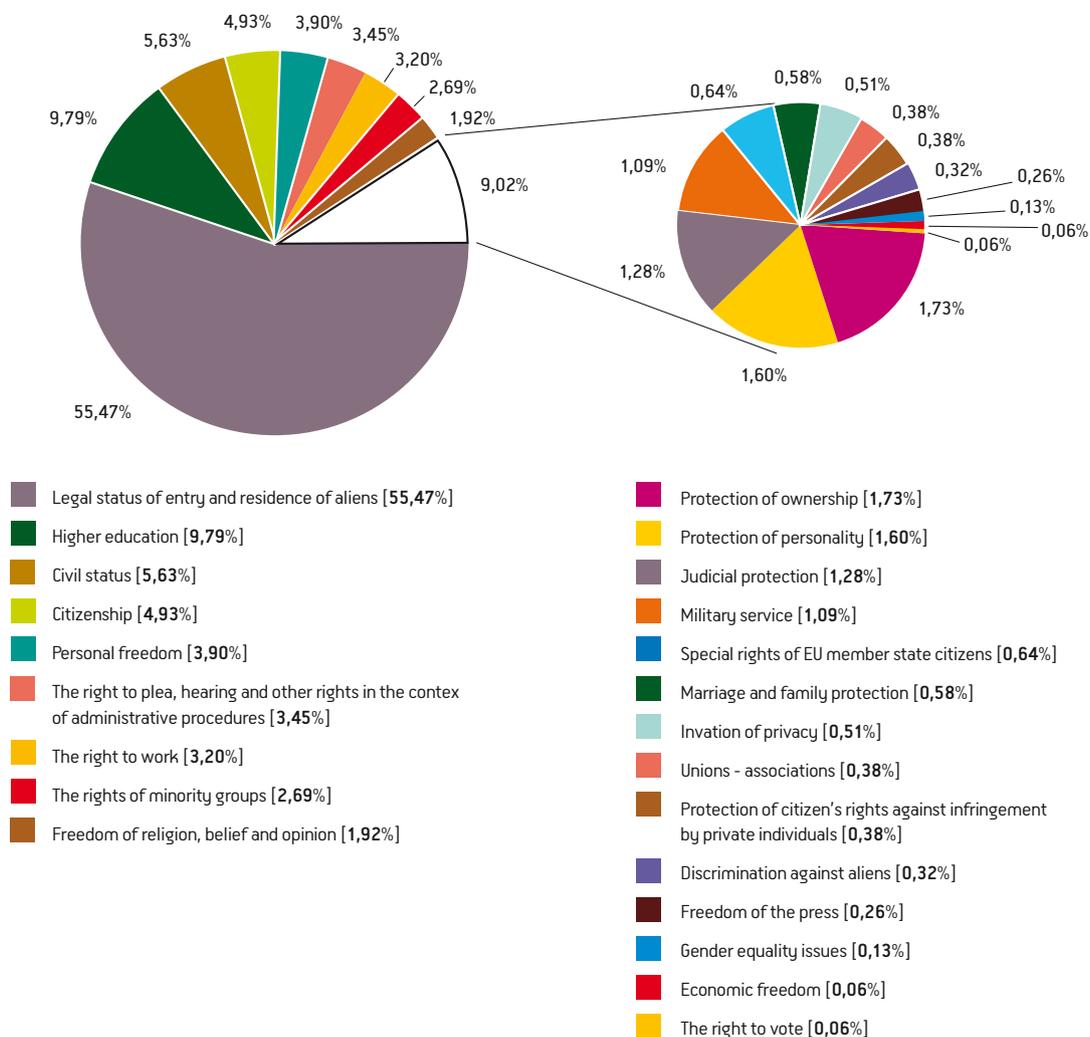
Thus, in the framework of applications for the naturalization of aliens of Greek ethnic origin from Albania, the ministry of the Interior added additional conditions that the translations of supporting documents should be authorized by lawyers. In answer to an observation on this point by the Ombudsman, the ministry admitted that these conditions diverge from the applicable provisions, but cited "protection of the public interest", the "major importance" of such naturalization and the consequent "reasons of security and public order" (case 15974/2007). There is similar reasoning in cases where it is not public security in the narrow sense of the term that is at risk, but another, equally inflexible version of public interest, before which, according to the administration, explicit legislative or even constitutional guarantees give way. Thus, citing "possibly negative consequences for the national interest", the ministry of Foreign Affairs deemed

that a foreign monk of non-Greek ethnic origin from Mount Athos was justifiably stripped of his Greek citizenship even without the exhaustive list of reasons and procedures required by the Constitution being adhered to (case 18233/2006). In another case, citing “the interest of the armed forces”, the General Staff deemed that forcing draftees to enrol in the army was sufficiently motivated, even before the competent medical board had finally passed them as physically fit, which is required by law (cases 19464/2007, 11822/2008, 14346/2008, 15990/2008). The Hellenic Railways Organisation acknowledged the absence of a relevant prohibitive provision, but until recently prohibited the taking of photographs of areas and trains accessible to public view, invoking the safety of the facilities (cases 14417/2004, 18914/2004, 19054/2007).

## 5.5 CONCLUSIONS

In the framework of various meetings held with the administration, the Ombudsman has often formed the impression of an outdated view – albeit held in good faith – that the public interest is self-evidently of overriding importance. When the administration is called on to provide fuller justification for its practices, where once the invocation of state priorities supposedly superseding any individual right, let alone the principle of good administration, would have sufficed, the response is one of genuine surprise or even puzzlement. Even when the Ombudsman understands these priorities as reasonable, he points out that such priorities can be ensured only by reference to explicit legislative regulations, which, if they restrict rights, should also be thoroughly checked to ensure that they are compatible with the relevant constitutional and international provisions.

DEPARTMENT OF HUMAN RIGHTS - BREAKDOWN BY MAIN CATEGORIES OF COMPLAINT RECEIVED IN 2008





# *Social protection, health and social solidarity*

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# Social protection, health and social solidarity



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## 1. THE REALITY OF SOCIAL POLICY IN GREECE

The Ombudsman examines complaints by citizens or makes own-initiative interventions concerning social security and in particular issues such as insurance benefits (pensions, allowances, etc.), employment and unemployment, health services and social solidarity. These issues are directly influenced by the wider social environment and developments in a) the demographic issue, b) employment and unemployment and c) the field of economic and social inequality.

### *Developments in the demographic issue*

The relatively high rate of mortality, which is due to a growing ageing population, in combination with a low fertility rate, means a negative balance of births and deaths, worsening the ratio of young to old. Low fertility coupled with increased life expectancy results in a rapidly ageing population, which bodes ill both for the viability of the pension system (unless other economic parameters change significantly) and the level of health expenditure. These developments are setting the framework for the reform of the social insurance system in every European country. In Greece, of course, any attempt to reform social insurance faces an additional challenge: the administrative inefficiencies of the current system and the fragmentation of legislation, phenomena which are systematically reflected in the large number of related complaints addressed to the Ombudsman.

### *Developments in employment and unemployment*

Although the labour market participation rate has increased, partly because of the entry of women, it remains at low levels, particularly with respect to women. However, the growing labour force is expected to push up unemployment rates and, therefore, to increase demand for public employment services (the Manpower Employment Organisation). In addition, any increase in seasonal employment and flexible forms of employment will intensify the need for measures to mitigate the consequences of unemployment and secure the basic rights of employees in the spirit of “flexicurity”. This year’s report deals specifically with insurance against unemployment for persons hired under temporary contracts.

### *Poverty and social exclusion*

In recent years, the percentage of households with an income below the poverty line has stabilised at 21%. To support groups affected by poverty and social exclusion, the social solidarity system has to operate in an organised manner. However, the welfare state in Greece resembles the southern European model, with family playing an important supporting role as a substitute, to a large extent, for state organisations involved in the exercising of public policy. A wider institutional framework for fighting poverty is lacking, while even in sectors

where institutional measures have been taken, access to benefits provided free of charge is not without obstacles for potential beneficiaries who, as result of social exclusion, possess neither the required information nor the appropriate means to claim their rights.

In 2008, the Ombudsman's work was defined by the strengthening of interventions to improve health services,

establish the rights of patients and secure the rights of health professionals. At the same time, action in the field of social insurance continues to be of importance. This year's report highlights two more specific social insurance issues, the first pertaining to the procedure for recognising the years of insured service when the insured person loses his/her social security booklet and the second to the procedure for characterising accidents at work.

## 2. SOCIAL INSURANCE

### 2.1 IKA INSURANCE BOOKLET

The social security booklets issued by the Social Insurance Foundation (IKA) are crucial evidence of the insurance career of each insured person. This was especially true before 2002, when IKA's integrated information programme began operating. When an insured person loses his/her booklet, the procedure for recognising the time of insurance is followed, whereby a solemn declaration is submitted to IKA stating that the insurance booklet has been lost. The declaration includes a request for recognition of the time of insurance quoted in the lost booklet.

**With respect to the above procedure, the Ombudsman has detected two main problems:**

- Major delays in examining IKA's records or those of the employer, in order to find the data legally required to prove that the work has been performed and the contributions paid.
- A high rate of rejection of requests, in particular of those pertaining to the recognition of the time of insurance for work provided before 1990.

**These problems are mainly due to:**

- The very poor condition of the records at IKA offices (incomplete classification, inadequate storage conditions, complete destruction of records).
- Lack of coordination between offices in cases where more than one office is involved in the investigation of a solemn declaration in connection with the loss of an insurance booklet.
- The difficulty in finding the respective records of the employer, either because many businesses have ceased operating or because they are not obliged to keep their records for more than ten years.
- The limited evidence accepted by IKA in order to replace the social security booklets.

In 1988, IKA adopted stricter provisions in relation to the

evidence required to replace a social security booklet. Under these provisions, registration in the employer's salary schedule was accepted as evidence, as were employer payrolls filed with the social security organisation and attestations and inscriptions made by competent employees of IKA in the employers' auditing books which may have been given in the past by IKA's services.

The Ombudsman has established that (a) in the majority of cases, the restriction of evidence to facts for which the main responsibility rests with IKA rather than the employer has resulted in insured persons who have lost their stamp card (social security booklet) losing their social insurance rights and (b) the above restriction of evidence has not been accompanied by an improvement in the organisation of the records which are kept by IKA itself and pertain to the period until 2002.

The Ombudsman considers that IKA now has a greater responsibility to keep the relevant data safe. Otherwise, the burden of the consequences of losing data passes from the administration to the insured person when a legal relationship of public law such as the set of legal relationships in respect of social insurance is concerned. It should be pointed out that in the event that, irrespective of their liability, the actions or omissions of the administration's bodies are prejudicial to the citizen's interests, the organisational responsibility of the public service is governed by the provisions on the civil liability of the state.

### 2.2 INSURANCE AGAINST ACCIDENTS AT WORK

When an accident at work is so characterised, this has a decisive impact on the type and duration of the insurance coverage provided to the victim (retirement, leave and sickness benefits). The complaints filed with

the Ombudsman regarding this issue pertain primarily to the procedure employed by IKA for characterising an accident at work as such. The Ombudsman has established that the rationale behind the decisions rejecting the relevant applications is often defective, and, in some cases, the evidence has not been thoroughly assessed.

#### Some indicative cases:

- The IKA office in Halandri did not take into consideration a hospital certificate, on the grounds that it proved the day of the accident not to have been a working day. This is immaterial, however, since, pursuant to the applicable case-law, the provision of work, even in breach of the legislation on the safety at work or at a time prohibited by labour legislation, does not prevent an accident being characterised as an accident at work.
- The IKA office in Agios Stefanos did not properly check the circumstances surrounding an accident to an employee of a local government authority. It did not ask for additional clarification and/or solemn declarations regarding the scene of the accident from fellow - employees, who, although they were not present when it occurred, transferred the injured person from the scene of the accident to a health centre. In both cases, following an intervention by the Ombudsman, IKA revoked the rejecting decisions and characterised the above accidents as accidents at work (cases 17232/2007, 6981/2007).

### 2.3 INVALIDITY ALLOWANCES

The full invalidity allowance is granted to invalidity and survivor pensioners of all social insurance organisations (which fall under the competence of the ministry of Employment and Social Protection), who remain fully disabled and must be constantly watched, supported and cared for by a third person. The legislative framework governing the granting of this allowance (law 1140/1981) excludes old-age pensioners (except for blind people), even if, in the opinion of the competent medical commit-

tee, they are fully disabled as a result of their health condition. The Ombudsman considers that these provisions are discriminatory against pensioners who face the same or similar health problems, since they do not distinguish between beneficiaries on the basis of their illness or health problem, but on the basis of the cause (old age, death, invalidity) of their retirement.

The Ombudsman, taking into account (a) that article 4 of the Constitution establishes the equality of Greek citizens before the law, which is binding on the ordinary legislator regulating essentially identical relations or situations and (b) that the financial reasons put forward as the main reason for not extending the above allowance to old-age pensioners do not provide sufficient legal justification according to the Constitution and the relevant case-law of the country's supreme courts, recommends that full invalidity benefit should also be granted to old-age pensioners.

A similar approach has been taken by the Ombudsman in relation to the quadriplegia-paraplegia allowance. This allowance is granted to insured persons suffering from quadriplegia-paraplegia or other severe illnesses expressly cited in the relevant legislation. However, the express enumeration of such conditions excludes other insured persons with conditions manifesting the same functional results as quadriplegia-paraplegia, which are not cited in the relevant provisions. The Ombudsman recommends that the quadriplegia-paraplegia allowance should be extended to all those suffering from illnesses that have the same results as quadriplegia-paraplegia. It is pointed out that pursuant to the standard case-law of the courts, it is not only persons suffering from the specific condition who are entitled to the above benefit, but any persons suffering from illnesses which, in the opinion of the competent medical committee, result in the same form of disability as the above two conditions.

### 3. PROTECTION OF THE UNEMPLOYED

In the special report “Unemployment benefits: rights of the unemployed and the operation of the services of the Manpower Employment Organisation (OAED)”, which was prepared in 2007, the Ombudsman pointed out that it was necessary to clarify the insurance legislation regarding the characterisation of the employment relationship as independent or dependent, in order that persons employed under temporary contracts are insured against the risk of unemployment, provided they meet the fixed and operational needs of the employer. The Ombudsman insists on this matter, because employers increasingly favour temporary contracts in order to avoid the obligations and commitments entailed in the employment of salaried employees, although they are essentially demanding dependent work. However, as has been repeatedly pointed out, to transform a salaried employee into an independently employed person entails the loss of protection against the risk of an accident at work and unemployment.

#### 3.1 PERSONS EMPLOYED UNDER TEMPORARY CONTRACTS

The Manpower Employment Organisation (OAED) rejected a request for unemployment benefit by persons who had been employed in University of Athens scientific programmes co-funded from national and Community funds, on the grounds that the interested parties were employed under temporary contracts. OAED took this decision without taking into consideration that although the above employees had signed private agreements whereby their employment relationships were characterised as temporary contracts, the relationships had the character of dependent employment for a fixed period of time. In addition, the employees were insured at the Social Security Foundation (IKA) for all risks, including unemployment.

The Ombudsman maintained that persons hired to work personally as their main or joint profession under a temporary contract in natural or public or private entities or the public sector and LGAs under conditions which,

from the point of view of duration, manner and place of employment are similar to those encountered in cases where labour is hired and who are obligatorily and by right insured at the Social Security Foundation & General Employees’ Insurance Fund (IKA–ETAM), should also be insured in respect of unemployment. The Ombudsman also pointed out that, in addition to the issues arising in connection with the competences and obligation of OAE D to determine the character of the relationship between the parties involved, another important issue arises from these cases, namely, the application of the principle of formal insurance.

According to this principle, if an insured person has regularly been paying contributions to a social insurance organisation, believing in good faith that he is insured in the specific organisation, while the organisation has been receiving such contributions without reservation, then, if the organisation were to question the status of said person, not only after a significant period of time had elapsed but also once the risk insured against had occurred, this would be contrary to the principles of good administration. These principles oblige the administration to respect the rights arising by showing tolerance and cooperation, provided such rights are not against public order and were not created fraudulently by the insured person.

Since (a) the only event in which the principle of formal insurance does not apply is if there is a provision expressly prohibiting it and (b) the employees were insured at IKA pursuant to the common provisions on the insurance of employees with a dependent employment relationship and contributions had been deducted for the payment of unemployment benefit by OAED, the Ombudsman called on OAED’s administrative board to review the decisions, thus exercising the administration’s discretion to revoke an administrative act with adverse consequences issued in violation of a general principle of social insurance law, in this case, the principle of formal insurance (cases 3731/2008, 5929/2008, 11055/2008).

## 4 HEALTH

### 4.1 RIGHTS OF PATIENTS: PRIVACY AND ACCESS TO FILES - INFORMATION

All legislative acts on the rights of patients establish, inter alia, the private and confidential character of medical data. The Code of Medical Ethics lays down that doctors must maintain absolute discretion regarding any information coming to their knowledge or revealed to them by the patient or third persons in the framework of carrying out their duties and when it concerns the patient or his relatives. In addition, the Code expressly defines when and under what conditions such confidentiality can be lifted. The patient's consent is one of these. The Code of Medical Ethics also lays down that patients have the right to access medical records and make copies of their files. Posthumously, this right passes to their heirs, provided they are relatives to the fourth degree. The right of access of citizens (patients) or third persons to medical files kept in the public health sector is regulated by the Code of Administrative Procedure (article 5). Finally, in all international texts setting the rules for medical ethics, it is a basic right of patients to be kept properly informed.

#### Indicative cases

##### *Publication of a patient's photograph in a medical book*

In a case where a doctor published photographs of a patient without her consent which had been taken when she was a child (in a university book, illustrating a disease), the Ombudsman argued that under the Code of Medical Ethics (a) doctors must take all necessary measures to ensure that the identity of the patient is not in any way revealed in academic publications, (b) the publication and use of patients' photographs in books and at congresses is permitted only if the patient has given his/her consent or his/her identity cannot be determined and (c) if, by the nature of the publication, it is necessary to reveal the patient's identity or data indicating his/her identity or which may lead to its verification, the patient's consent should be obtained beforehand.

##### *Refusal to provide copies of a medical file*

When the administrative services of an Athens hospital refused to return to the husband of a hospitalised woman who eventually died, the tests he had brought during her hospitalisation, as well as a copy of her medical file, the Ombudsman argued that under the Code of Medical

Ethics a patient's access to his medical file is a basic right of both the patient and his natural heirs after his death. The hospital's management satisfied the request of the interested party (case 7029/2008).

##### *Insufficient information*

In response to the refusal by a hospital to inform a patient in writing of the pharmaceutical treatment he had received while hospitalised, the Ombudsman maintained that during hospitalisation, patients are entitled to be informed in writing and in a clear and complete manner about their illness, their hospitalisation and the medical treatment followed. The Ombudsman called on the hospital to provide such information in writing, particularly when requested to do so by patients (case 8014/2007).

### 4.2 PHARMACEUTICAL CARE

The provision of the appropriate care, including pharmaceutical care, is an obligation of the state which is not only established in national (article 21 of the Constitution) and international law (Convention on Human Rights and Biomedicine, Oviedo 1997), but also, according to the Code of Medical Ethics, constitutes a doctor's obligation and a patient's right. The Social Security Foundation (IKA) is obliged to offer insured persons and pensioners the necessary, proper and most expedient care for each illness, according to its regulation on Diseases.

#### Indicative case

IKA's Special Committee on Foreign and High-Cost Medicines approved only ten of twelve injections that had been prescribed by the doctor of a retired woman suffering from macular degeneration. Although the vision of the patient had improved during treatment with the new high-cost medicine, which had been approved by the National Organisation for Medicines, the committee did not take into consideration that the treatment had to be completed for her condition to stabilise.

The Ombudsman argued that since no maximum number of allowable injections has been laid down for the medicine, the Special Committee should take into consideration the necessity for such a treatment and the clinical condition of the patient.

The Ombudsman proposed that the IKA committee should reconsider the request of the retired woman guided by the necessity of the specific treatment for the

restoration of her health. The Ombudsman also suggested that until an official recommended dosing regimen is adopted on the basis of clinical studies and included in the treatment protocols of a clinical act and the marketing authorisation or in the summary of the medicine's properties, the need for treatment should constitute the only criterion for the number of approved doses. IKA accepted the Ombudsman's view and decided that until the adoption of a recommended dosing regimen for the medicine, the committee shall decide on a request for treatment of more than ten doses on the basis of whether the continuation of such treatment is necessary. This requirement should arise from the doctor's expert opinion and tests substantiating the gradual improvement of the condition of the affected eye (case 1487/2008).

### 4.3 PRACTICE OF THE PROFESSION OF MEDICINE

#### 4.3.1 PROFESSIONAL RIGHTS OF FOREIGN DOCTORS

The status of doctors who are third-country nationals differs from that of doctors who are Greek or EU citizens when it comes to issues concerning the procedure for being placed on a waiting list for a speciality or for their appointment to the rural medical service. However, according to the applicable legislation, the benefit of equal treatment to Greek nationals which is recognised for EU citizens is also granted to third-country nationals who are family members of a Greek or EU citizen.

##### Indicative cases

##### *Registration on a waiting list for a speciality*

A third-country national who is a family member of a Greek citizen applied to the Health department of the Prefecture of Athens to be placed on the waiting list for a speciality. The prefecture rejected her request on the grounds that the applicant did not have a long-term residence permit.

The Ombudsman asked the ministry of Health and Social Solidarity to issue an order to the Health department of the Prefecture of Athens to re-examine the interested party's application, because the benefit of equal treatment that Community nationals enjoy in the framework of application of the European Communities Treaty is also granted to family members who are third-country nationals, provided they have the right to stay legally or permanently in Greece. Following the Ombudsman's intervention, the application of the interested party was accepted (case 18868/2007).

##### *Appointment to the rural medical service*

The Prefecture of Athens refused to include a doctor who is a third-country national and married to a Greek citizen in the selection procedure for appointment to the rural medical service on the grounds that she is not a EU citizen. In this case, Ombudsman maintained that the foreign nationality of the interested party in conjunction with her status as the spouse of a Greek citizen should not impede her appointment to the service. The Ombudsman requested that the application filed by the interested party be examined and that her name be included in the relevant list to be drawn up in a future announcement of postings. The Ombudsman's view was also adopted by the State Council, whose opinion was sought by the ministry of Health and Social Solidarity. As a result, the appointment of the interested party to the rural medical service was accepted (case 7906/2008).

## 5. INDICATIVE CASES OF MEDIATION

### 5.1 ACCESS OF THIRD-COUNTRY NATIONALS TO HEALTH SERVICES PROVIDED FREE OF CHARGE

The Prefecture of Piraeus refused to issue a booklet for non-insured persons to a foreigner of Armenian descent who is a member of the Chamber of Plastic Arts of Greece (EETE), on the grounds that according to the relevant ministerial decision the booklet can only be issued to Greeks who are non-insured members of EETE and their family members (spouse and minors), members who are nationals of EU member states and persons of Greek descent. As a result of the Prefecture's refusal, the interested party was unable to renew his own and his family members' residence permits.

The Ombudsman maintained that compared to a previous ministerial decision whereby EETE members were entitled to health services free of charge without any further reference to their national or ethnic origin, the administration's position reduced social benefits to the specific category of beneficiaries without appropriate justification.

The Ombudsman (a) suggested that booklets for non-insured persons should also be issued to third-party nationals who are EETE members as a result of their status as such and independent of nationality, on the condition that the remaining conditions are fulfilled and (b) requested that an interpretative circular be issued to this effect.

The ministry of Health and Social Solidarity accepted the Ombudsman's view and issued an interpretative circular to this effect (case 11226/2007).

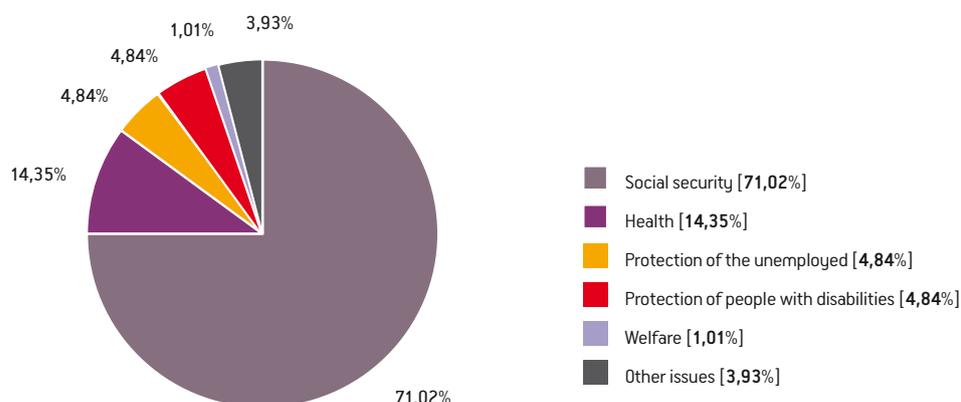
### 5.2 SUSPENSION OF HOUSING BENEFIT

The Prefectural Government of Pella refused to grant housing benefit to a citizen who had filed all the necessary supporting documents, as well as a report by the social worker of the municipality in which she was resident. The Ombudsman was informed that since no social worker had been employed for several years, no programmes under which social research could be conducted with the participation of a social worker were applied.

The Ombudsman pointed out that the objective inability of the prefectural government to conduct an investigation due to the absence of a social worker should not entail the suspension of benefits or impede citizens in the exercising of their rights. The Ombudsman argued that since the necessary supporting documents had been filed, the relevant department should examine the application, substituting the social worker's report with other appropriate means (e.g. a solemn declaration by the applicant, inspection by another employee of the Health and Welfare department, use of the report from the municipality's social worker). In addition, the Ombudsman suggested that the administration should issue the relevant decision, with the proviso that the request will be re-examined once the prefecture is staffed with social workers.

The Health and Welfare department of the Prefectural Government of Pella adopted the Ombudsman's suggestions, accepted the report from the Municipality of Pella social worker and paid the benefit to the interested party (case 17998/2007).

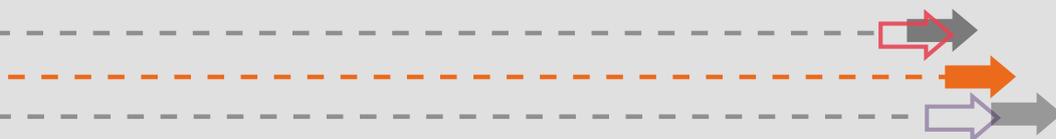
DEPARTMENT OF SOCIAL PROTECTION - BREAKDOWN BY MAIN CATEGORIES OF COMPLAINT RECEIVED IN 2008



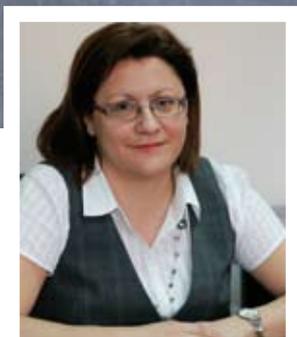


## *Quality of life*

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# Quality of life



CHRYSSA HATZI  
Deputy Ombudsman

## 1. SCOPE AND STRATEGY

The Department of Quality of Life investigates a large number of complaints connected with the protection of the natural, urban and cultural environment and the everyday life of the citizen, such as the protection of public spaces, the seashore, lakes, streams, forests and wooded areas, as well as of listed buildings, waste management, air pollution, quality of drinking water, freedom of movement of disabled persons etc.

The department aims to highlight how everyday quality of life is related to the organisation of urban, social and economic co-existence and the protection of the environment as an ecosystem by mediating for the application of rules and principles of environmental protection and in particular the constitutional principles of sustainability and sustainable development. The cases handled by the Ombudsman in this area have revealed gaps in the cohesion and codification of the relevant legislation; frequent deviations from legality at all levels of central, decentralised and self-governing administration; environmental administration staffing deficiencies particularly at the level of prefectures and problems in the coordination of jointly competent services, etc. These examples of maladministration are highlighted, analysed and delegatised as a result of the mediation of the Ombudsman, who protects the constitutional right to submit complaints and is an engine of administrative reform and awareness of environmental sustainability. This framework includes

an own-initiative investigation which the Ombudsman conducted in 2008. The investigation examined the restoration of the environment in regions such as Iliia, Evia and Laconia, which were hit by destructive fires during the summer of 2007. At the same time, the investigation afforded the opportunity for a fruitful exchange of views with all services which are jointly competent for the protection of the environment at local level. This is a method to which the Ombudsman attaches particular importance for the solving of administrative problems in the mediumterm. Similarly, the involvement of citizens themselves in reporting problems, especially in areas which are a long way from the centre of the municipality falling under the “Kapodistrias” programme\*, is a prerequisite for finding solutions that will ensure the viable and sustainable development of the regions.

\* “Kapodistrias” programme (which took its name from Ioannis Kapodistrias, the first Governor of Greece) consists in the compulsory merging of small local authorities which reflects the general political framework for the regeneration of the primary level of local government and it is part and parcel of the overall plan for the reconstruction of the State. It is believed that the operation of such local authorities will be facilitated thereby and that they will be eligible for financing under various EU programmes.

## 1.1. ENSURING TRANSPARENCY AND THE RIGHT TO COMPLAIN

In principle, ensuring the constitutional right to complain means removing any obstacles that the administration raises. A typical example is that citizens who requested that an area be classified as forest or non-forest had to state on the application form issued by the Forestry Office of Piraeus that they accepted any delay beyond that provided for by law. The Ombudsman pointed out that this provision did not provide information to the citizen but was a condition for submitting a request and should be removed as improper. The ministry of Rural Development & Food accepted the Ombudsman's view and asked all forestry offices to remove any improper conditions from the relevant forms (Case 10871/2007). The main objective of the Authority which is connected with the right to complain, is to give citizens access to environmental information and strengthen the transparency of administrative action. The systematic publication of cases on the website "The Ombudsman for the environment" [www.synigoros.gr/perivallon](http://www.synigoros.gr/perivallon) and co-operation with non-governmental organisations such as WWF, at whose suggestion a legal guide for the environment was created, fall within this framework.

### 1.1.1 THE RIGHT TO COMPLAIN AND THE PROPERTY REGISTRATION FEE

As institutional guardian of the right to complain, it is the Ombudsman's duty to raise issues of proportionality in

matters related to property obligations. Continuing his co-operation with "Ktimatologio S.A." ("Cadastre S.A.") to solve problems arising in temporary cadastre offices and in particular the time taken to correct obvious errors (c.f. 2007 Annual Report, page 117), the Ombudsman received a new wave of complaints due to the introduction of property registration in more than 100 regions of the country. In a letter to the Minister for the Environment, Physical Planning and Public Works, the Ombudsman requested that because of the procedural problems faced by citizens (delays in settling ownership of property, the corresponding workload of land registries, notary's offices, etc.), the deadline for submitting applications, which was 31 October, be extended. This request was partially accepted. In addition, the Ombudsman raised the issue of proportionality of the property registration fee, which was designed to be collected from each beneficiary, despite the property-based character of the new registration system which, in contrast to the registration of individuals' shares in a property, which was formerly the case, involves the registration of properties and not of beneficiaries. The manner in which payment of the fee is enforced means the average Greek family is charged more than once for the same property and allows banks to charge beneficiaries of housing loans an additional corresponding amount. The Ombudsman's proposal to establish a single charge per property and not per owner was not accepted (cases 10645/2008, 10909/2008, 10953/2008, 11347/2008, 11735/2008 and 13278/2008).

## 2. MAIN FIELDS OF ACTION

### 2.1 THE NATURAL ENVIRONMENT

The Ombudsman receives a large number of complaints pertaining to protection of the natural environment. This category covers a large range of cases from protection of forests, management of protected areas and management of water resources to the operation of public or private enterprises and their obligation to observe environmental terms, or the adverse consequences of such plants on the environment and public health.

#### 2.1.1 AIR POLLUTION: PREVENTIVE AND PENAL MEASURES

In a case regarding air pollution in the city of Volos, the Ombudsman pointed out that while legal limits for the concentration of suspended particles in the city have been exceeded for a number of years, the services of the

ministry for the Environment, Physical Planning and Public Works of the Region of Thessaly, which are jointly competent for dealing with air pollution, have not taken the necessary preventive and penal measures in this regard, thus perpetuating the long-standing problem of air quality and the aggravated health problems of residents of the region. In addition, given that the Region of Thessaly claimed that it could not operate air-quality monitoring stations as required by law, it was established that the project has been running for years, in the knowledge of the ministry for the Environment, Physical Planning and Public Works, by the Prefecture of Magnesia. The Ombudsman therefore asked the ministry for the Environment, Physical Planning and Public Works to ensure that the relevant competence be exercised in an efficient and systematic manner by the Region, while at

the same time asking the Region of Thessaly to examine the possibility of installing a second station to measure traffic pollution in Volos, thus treating the city and the neighbouring municipalities as a single urban complex. At the same time, the Ombudsman received complaints from citizens' associations in the region of Magnesia in connection with environmental problems caused by the operation of a cement plant in the region. These complaints were related both to the legality of the plant's operation and to the more general issue of air pollution control in Volos. The Ombudsman pointed out that approval of the new environmental terms for the operation of the business is pending before the ministry for the Environment, Physical Planning and Public Works, while the deadline for the adaptation of existing facilities in the light of EU requirements to adopt best available techniques has expired.

Following the mediation, the Minister for the Environment, Physical Planning and Public Works responded to the Ombudsman's letters by imposing a fine of 250,000 euro on the cement factory. However, since the services concerned did not express a view on all the points made by the Ombudsman office, it again made the findings public through a press release. The Region of Thessaly responded to the Ombudsman's proposals by asking the ministry for the Environment, Physical Planning and Public Works to make it permanently responsible for installing and operating air quality monitoring stations, to connect it directly with the ministry in order for it to be kept informed of the results of monitoring and the installation of an additional station to measure traffic pollution in Volos. The ministry for the Environment, Physical Planning and Public Works informed the Ombudsman that it is working with the Municipal Water Supply and Sewerage Company of Volos to incorporate the company's existing station into the National Network for Monitoring Air Pollution. However, the ministry has not taken the necessary steps to approve the operational air pollution plan specifically for Volos that was tabled in 2005 and to determine in which zones the excess of suspended particles is observed, in order that short-term and long-term measures to address air pollution are taken. The study commissioned by the Prefecture of Magnesia, which is pending and pertains to the percentage of local natural sources in measured concentrations of suspended particles is expected to make a positive contribution to the entire issue of air pollution and the determining of the necessary remedial measures (cases 9528/2007 and 20121/2007).

### 2.1.2 LAND USE AND THE DEGRADATION OF WETLANDS

Environmentally sensitive regions need not have special protected status (e.g. to belong to the Natura network or to be a special protection area for birds (Google) or a landscape of outstanding natural beauty) to be covered by the provisions on protected regions. In accordance with standard case-law of the Council of State, when a region conclusively has all the characteristics of a wetland ecosystem, any measures necessary for its protection should be taken.

The Vourkari wetland in Megara, Attiki was a case that occupied the Ombudsman's attention. Following a complaint by an ecological organisation, correspondence with the competent services and the collection and analysis of water and soil samples in collaboration with the Hellenic Centre for Marine Research, it was established that a large amount of construction had taken place in the region and was increasing with time. This included buildings for residential and industrial use and an elevated road without anti-flood works running through the middle of the wetland, bisecting it in two and preventing rainfall from draining away into the sea. The results of the investigation showed that the wetland area had shrunk and the quality of water had deteriorated.

In this particular case, the crucial point is that land uses in the region have not been determined. Until 2001, the wider area surrounding the wetland was designated a zone for industrial units generating medium disturbance levels (presidential decree 84/1984 regulating land use in the prefecture of Attiki). These provisions were annulled by law 2965/2001 and the physical planning studies and maps necessary to determine new land uses are still pending from the Organisation of Planning and Environmental Protection of Athens. In the meantime, however, the administration has adopted the view that for as long as land use is not determined, the old uses will apply and permits will be granted in accordance with them.

The Ombudsman drew up a report addressed to the Minister for the Environment, Physical Planning and Public Works, asking that the maps specifying the Athens Master Plan be drawn up and published immediately, and requesting that until this procedure is completed, permits for the establishment and operation of industrial or craft units should not be issued, in accordance with international (the Ramsar convention) and Greek legislation on the protection of sensitive ecological systems (case 12392/2005).

### 2.1.3 WASTE DISPOSAL IN STREAMS

The Ombudsman investigated a complaint pertaining to the pollution of the Agios Georgios stream from the leakage of liquids of unknown origin coming from the facilities of the Racecourse at Markopoulo. From the investigation that was carried out it emerged that stagnant waters had accumulated at the facilities of the Olympic Sports Centre and the New Athens Racecourse, while, since the project was built within river basins, the natural flow of water was obstructed. At the same time, the water was added to by rainwater from carry-off pipes. This situation, in combination with the implementation of other major technical projects in the region (the Attiki Road, Spata Airport) and the fact that structural works had not previously been carried out on streams, caused floods in the region. The Ombudsman's investigation also established that the approved environmental terms of these facilities with respect to the management of horse manure were not observed, while the operating permits of the sports facilities had expired.

The Ombudsman asked the competent services to complete the required studies, to ask for quotations and carry out all the necessary works on streams pertaining to the anti-flood protection in the region, and immediately to commence licensing procedures in accordance with the law. In addition, the Ombudsman requested that the manner of disposal of treated waste water from biological purification be re-examined and that the possibility that stagnant water might be coming from an underground disposal system for liquid waste from biological purification be investigated. Finally, the Ombudsman requested that a study for managing the mud resulting from biological purification be drawn up and that the competent services be equipped with suitable laboratories to analyse samples and establish whether pollution has taken place. Following the Ombudsman's interventions, the Region of Attiki granted a new permit for the facilities, in relation to the observation of safety requirements for those taking part in sporting activities.

The ministry for the Environment, Physical Planning and Public Works announced that the financing and implementation of structural works on the Erasinos stream had been included in a financing programme for 2007-2013, while the required supplementary studies will be also financed so that the project becomes eligible for financing within the above period. Finally, the Prefect of Eastern Attiki imposed an administrative fine of 20,000 euro on the Olympic Equestrian Centre and the Horse Racing Organisation of Greece for failing to address the issue of stagnant waters and the management of manure

and for failing to renew the permit for the disposal of treated waste and waste water before its expiry (case 8151/2005).

### 2.1.4 AUDIT OF COASTAL INTERVENTIONS

The protection of coastal zones which form a natural border between land and sea, involves various types of man-made interventions, projects and uses. Pressure to build in these regions, together with plans for the development of tourist and financial activities, often leads to complex and thorny problems. The Ombudsman insists that a special environmental study be drawn up before any such interventions, and seeks to involve the competent services for the protection of coastal zones.

#### *A) Interventions in the coastline of Zacharo through a memorandum from the Public Land Authority.*

The Ombudsman investigated complaints by ecological organisations regarding a memorandum from the Public Land Authority granting the Municipality of Zacharo the use of a 2,593,000 m<sup>2</sup> coastal area protected under the Natura 2000 network, for a period of at least 49 years immediately following the fires of August 2007. The regeneration of the area was to include canteens, infrastructure, access, walkways, parking lots, public utility networks, sanitary installations, etc.

The municipality did not respond to the Ombudsman's request to be kept informed of any structures built and permits granted and for the necessary documents to be forwarded to him, while the Urban Planning Office of Zacharo did not apply the necessary procedure regarding illegal structures. An investigation by the Public Real Estate Authority of Ileia in July 2008 established that illegal structures had been built on public land and after stating to the Ombudsman that it was not aware of any memorandum, asked for instructions from the ministry of Finance. The Public Land Authority eventually informed the Ombudsman that it had initially approved the announcement of a study by the Municipality for the regeneration of the area in accordance with the memorandum. In October 2008, the Ombudsman organised a meeting among all the services involved at the Municipality of Zacharo, where it was established that a road had been opened and fixed structures built. It was pointed out that the intended regeneration could not proceed through a memorandum of co-operation between the Public Land Authority and the Municipality without the approval of a special environmental study by the ministry for the Environment, Physical Planning and Public Works, as laid down by national and Community legislation on the

development of protected areas. The Ombudsman's view was endorsed by the Environment and Land Use Division of the Region, which asked to be informed about the memorandum and pointed out that the Municipality should also wait for the completion of the General Urban Plan which was already being prepared for the entire Municipality of Zacharo. The Ombudsman also asked that the urban planning and environmental departments of the Prefecture of Ilia carry out the required on-site investigations and actions and that demolition protocols be issued by the Public Real Estate Corporation.

### ***B) Access of persons with disabilities to beaches***

On the other hand, the Ombudsman pointed out that the Public Real Estate Corporation of Zakynthos acted too quickly in removing wooden ramps in coastal zones of the Municipalities of Arkadia and Alykes in Zakynthos. In connection with a complaint forwarded by a disabled people's association, the Ombudsman stressed the obligation of the Public Real Estate Corporation to take measures and remove obstacles that prevent the access of people with disabilities to the seashore and the coast. The Ombudsman pointed out that access for people with disabilities is an essential component of their fundamental right to independence and equal participation in political and social life, as established legally at international, European and national level. In the case in question, from a systematic interpretation of legislation on the seashore and the coast (law 2971/2001) in conjunction with ministerial decision 52488/2008 ensuring that provision is made for people with disabilities in public spaces, it follows that municipalities should take every appropriate measure to ensure that people with disabilities have access to the seashore, also taking into consideration the instability and the construction material of ramps (case 7585/2008).

## **2.2 BUILDING AND ILLEGAL STRUCTURES**

### **2.2.1 NON-DEMOLITION OF ILLEGAL STRUCTURES IN PUBLIC SPACES ON THE GROUNDS OF LACK OF FUNDS**

A large number of complaints submitted to the Ombudsman since the Quality of life department began operating concern the failure of the administration to demolish illegal buildings. This important issue is recorded in every annual report by the Ombudsman. The Ombudsman's actions aim at the raised awareness and the coordination of all levels of administration both locally and centrally so that the action required by law is taken and legality is observed. Often, the services responsible for demolition

invoke a shortage of funds as a reason for not demolishing illegal structures, which the Ombudsman believes may sometimes constitute an obstructive tactic. Where public spaces are concerned, the Ombudsman asks the State General Accounting Office to provide financial assistance to the services which are competent for demolishing such structures.

This occurred in a case where the Municipality of Kerkini encroached on public land near Lake Kerkini and allotted it to a private person who erected an illegal building. It should be noted that Lake Kerkini is part of the Natura 2000 Network and is protected under the Ramsar Convention (2007 Annual Report, page 114). Due to the gravity of this issue, the Ombudsman referred the case to the relevant prosecution authority and insisted that the Administration should restore the natural environment to its original state. The Region of Central Macedonia invoked shortage of funds as a reason for failing to demolish the building. Following the Ombudsman's mediation with the State General Accounting Office, the necessary sum was made available and the demolition of the building began. The Ombudsman sent a team to conduct an on-site investigation and it was discovered that only part of the illegal two-storey building had been demolished. The Region promised to complete the demolition (case 9265/2005).

### **2.2.2 LAND AND USE: SOCIAL REHABILITATION AND RESIDENTIAL AREAS**

The majority of settlement areas in the country's municipalities are designated as exclusively or generally residential (cf. 2007 Annual Report, page 122 ff.). This characterisation excludes several professional activities from receiving legal operating permits. The Ombudsman has repeatedly dealt with the broad interpretation or direct violation of the law by the municipalities responsible for granting permits, with the purpose of allowing professionals and businesses to operate in their region.

However, the problem also has an opposite aspect, as emerged from a case handled by the Ombudsman. Specifically, the group "over 18", which runs various programmes for the rehabilitation of ex-drug users, wanted to lease a building in the Municipality of Psychico to use as a residential social rehabilitation centre. The Municipality objected to this on the grounds that it would not be a residence but a business premises similar to a clinic. Indeed, the Municipality invoked the precedent of a dental clinic which was closed in the same region. The ministry for the Environment, Physical Planning and Public Works also considered that residential rehabilitation centres fall under a special category of "hospitalisation".

The Ombudsman considered this interpretation particularly narrow and erroneous in the case in question. A residential centre for individuals undergoing social rehabilitation is a residence, even if its residents are temporary. In a letter which took the form of a report the Ombudsman insisted that any objection to such programmes is in conflict with the administration, since the state's aim of social rehabilitation is in practice annulled (case 11849/2008).

## 2.3 CULTURAL ENVIRONMENT ISSUES

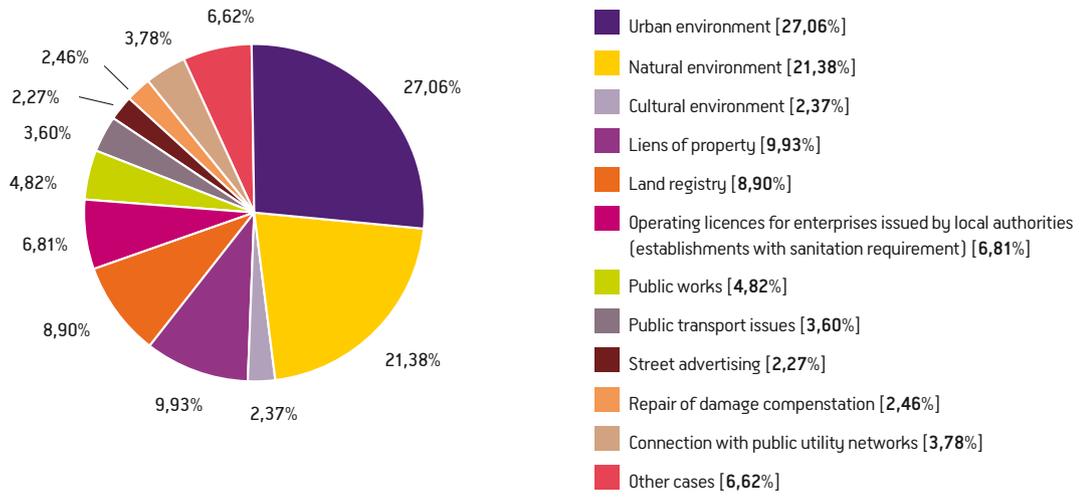
Highlighting the problem related to the number of restricted properties and the delay in carrying out expropriations for archaeological purposes, which may be associated with shortage of funds, the Ombudsman established that since May 2007, on-site investigations by the relevant committee were scheduled by the office of the General Secretary of the ministry of Culture who was in charge at that time and not on the basis of updated lists of all pending expropriations, which raised questions as to the application of objective criteria in the expediting of pending cases. For this reason, in October 2008, the Ombudsman sent a team to meet with the General Secretary of the ministry of Culture. At this meeting, similar administrative problems were also raised pertaining to departments of the ministry of Culture regularly mentioned in citizens' complaints. Specifically, in addition to the clarification of the criteria on the acceptance of expropriation requests, the meeting focused on restrictions placed on properties in order for prolonged excavations to be carried out and the shifting of the financial burden to citizens even in the event of test excavations. Other issues specifically discussed included access to the minutes of the Central Archaeological Council and other records; shortcomings in the boundaries of archaeological sites; the pending issue, which is also the responsibility of the ministry for the Environment, Physical Planning and Public Works, of conditions of use in the 2nd zone of archaeological sites; and the understaffing of services which are expected to carry out extensive

excavation and inspection work, etc. During the meeting, information was given on the progress of pending expropriations, in respect of which the Ombudsman requested the schedule and the criteria in writing. The ministry of Culture clarified that the main criterion for expediting expropriations is the possibility of highlighting the profile of antiquities as a whole. The remaining issues were discussed in detail and the foundations were laid for constructive co-operation between the Ombudsman and the ministry of Culture leading to solutions consistent with the law and the principles of good administration.

### 2.3.1 MARKING OF ARCHAEOLOGICAL SITES

Following a complaint by citizens regarding the rejection of a request to install a sheep pen on a farm within the archaeological site of the Valley of the Muses in Askra, Viotia, by the 7th Ephorate of Pre-historical and Classical Antiquities, the Ombudsman established that the Ephorate's actions were taken in accordance with the law. However, he also established that a forest road had been opened within the archaeological site, in connection with which, following an intervention by the Ombudsman, the ministry of Agricultural Development made funds available for a landscape restoration study to be drawn up. However, the Ombudsman pointed out that the boundaries of the archaeological site were not clearly marked, there were no protection zones, and there was a general prohibition of "any human activity". It was on the basis of this restriction that the citizens' request for a test excavation to establish the existence of antiquities in the specific area with a view to consenting to the building of the poultry farm had been rejected. The Ombudsman observed that such a strict but vague regulatory framework neither protects the archaeological site effectively (it is impossible to prohibit "any human activity" over a large area), nor satisfies citizens' requests to run a business (agricultural, craft or other) within the wider areas of archaeological sites. Therefore, the marking of archaeological sites with clear boundaries is imperative (case 15714/2006).

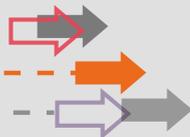
DEPARTMENT OF QUALITY OF LIFE - BREAKDOWN BY MAIN CATEGORIES OF COMPLAINT RECEIVED IN 2008





## *State - citizen relations*

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# State - citizen relations



CALLIOPE SPANOU  
Deputy Ombudsman

## 1. GENERAL OBSERVATIONS

It has been often pointed out that the Ombudsman cannot directly “measure” the extent to which the administration has improved as a result of its interventions, although the response of the authorities to its recommendations could be viewed as one such indicator. In any event, the Ombudsman should also emphasize changes in the types of maladministration appearing in citizens’ complaints. As a result, it is worth pointing out some changes that have come to the Ombudsman’s attention.

In January 2007, the Ombudsman prepared a special report on the procedures of personnel recruitment which do not fall into the scope of competence of of the Supreme Council for Personnel Selection (ASEP). The report points to problems of transparency and guarantees of fairness in the entire procedure in general. The report was never answered by the administration. However, a different version of the problem has appeared in citizens’ complaints in the past year. In some announcements of permanent posts, which were to be filled according to the official ASEP hiring channels, persons who were

not previously employed on a limited-term contract in the organisation in question were excluded by law (cases 6258/2008, 7271/2008, 8428/2008).

This practice undermines the principle of meritocracy, which demands an open competitive procedure. Furthermore, it circumvents the constitutional provision that prohibits temporary contracts from being turned to permanent. Indeed, the provision of the relevant law was passed unanimously by parliament. The Ombudsman expresses the hope that this practice, which lies beyond its direct control, will not result in the indirect neutralisation of the rules and guarantees of meritocracy and objectivity which characterize the ASEP hiring system. Deficiencies were also observed in other hiring procedures. A characteristic example was at the Municipality of Erineos in Achaia, where lists of successful candidates in a competition for part-time employment were posted during the electoral period, when all hiring procedures were suspended (case 16208/2007).

## 2. ASPECTS OF MALADMINISTRATION

A horizontal overview of the problems faced by the Greek public administration has been selected in order to show some common practices and beliefs that characterize

administrative action as a whole. In this manner, the Ombudsman’s observations do not take the form of criticism against particular organizations, but describe

the symptoms of deeper problems. In the cases referred to by way of example, the following areas suffer from maladministration:

- policy making and policy changes;
- policy implementation and the use of discretionary power;
- internal relations between administrative bodies and authorities;
- the relationship between the administration and the judiciary;
- the requirements of European membership.

In all these fields, the administration appears to operate in a defensive and inward-looking manner both towards society and the individual citizens whom it is committed to serve.

## 2.1 FRAGMENTATION OF LEGISLATIVE REGULATIONS AND POLICY INCONSISTENCIES

This category covers cases of policy inconsistencies, gaps or contradictions, as well as sudden changes in the relevant legislation with significant effects on citizens and businesses. Examples from various policy fields follow.

### 2.1.1 SPECIAL TAX-FREE INVESTMENT RESERVE FUND

Under law 3220/2004, businesses were given the opportunity to form a special tax-free investment reserve fund from their undistributed profits for 2004 and 2005 (financial years 2003 and 2004); this fund was to be used for investments of an equal amount within the next three-year period and thus to benefit from an exemption from the corresponding income tax.

However, article 88 of the EC Treaty obliges Member States not to apply measures whereby businesses are assisted financially by the state without first seeking the opinion of the European Commission regarding their compatibility with the provisions of European law. The Greek state enacted law 3220/2004 without first notifying the European Commission, believing that it was not a case of state aid. However, the European Commission decided that this was a case of impermissible state aid and called on the Greek state to recover the aid. Law 3614/2007, which was adopted subsequently, specified that businesses that made use of the above tax exemption must pay the corresponding tax with interest. The Ombudsman pointed out to the ministry of Finance and Economic Affairs that the circular that was issued regarding the application of the relevant provision was confusing and incomplete, and that the failure of the administration to timely notify the Commission of the regulations in question caused great damage to businesses, since they were obliged to pay back the tax incentive with interest (case 5369/2008).

### 2.1.2 QUALIFICATIONS OF CANDIDATE EDUCATORS

Candidate educators reported to the Ombudsman, that they were required to provide a "certificate of pedagogical aptitude" in order to be appointed to permanent posts or hired as substitute teachers (paid on an hourly basis). After investigating the issue, the Ombudsman pointed out that the corresponding requirement is ill defined concerning whether it is needed and how it is to be proved. Apart from the fact that there is no consistency in the cases where it is required, the ways in which pedagogical aptitude is proved are contradictory, complex and fragmentary. As a result, the credibility of the appointments procedure is affected (cases 10291/2007, 10654/2007, 14849/2008, 13820/2008, 6490/2008, 12840/2008, 13464/2006, 6341/2003 etc.).

In October 2008, the Ombudsman submitted a special report on this issue, calling on the administration to rationalize the relevant provisions.

## 2.2 CONFUSION OF THE ADMINISTRATION TOWARDS DISCRETION

The use of discretionary power by the administration appears often contradictory. In some cases, the administration does not use the discretion expressly provided by the law, showing indifference to the consequences for citizens, while in other cases, it makes extensive use of it, on the basis of arbitrary criteria and in violation of the principle of equality.

### 2.2.1 TEMPORARY ASSESSMENT OF THE VALUE OF INHERITED PROPERTY

In a case handled by the Ombudsman, a citizen inherited a plot of land from his father in 1999 and submitted the relevant inheritance tax statement to the competent tax office. Since the property was situated in a region where neither the objective nor the composite system of assessing values applied, the citizen made his own declaration of the value of the land on the relevant form. Eight years later, the head of the tax office, after auditing the above inheritance tax statement, ordered him to pay fines and additional taxes, on the grounds that the tax statement was inaccurate, since from comparative and other data, it emerged that the market value of the property exceeded the declared value.

However, this could have been avoided if, back in 1999, the head of the tax office had made a temporary assessment of the property's market value, as it was within his discretion to do (article 73 of legislative decree 118/1973 and currently of law 2961/2001).

The Ombudsman suggested to the ministry of Finance

and Economic Affairs that in the case of inheritance, heads of tax offices should be expressly obliged to make an immediate temporary assessment of the value of a property and/or taxpayers could submit a supplementary tax statement when their initial statement is audited by the tax office, whenever this takes place within a ten-year-period, without additional taxes being imposed. In any event, it should henceforth be stated on the inheritance tax statement that when neither the objective nor the composite system of assessing value applies, taxpayers can request a temporary assessment of the market value of the inherited property (case 17145/2007).

### 2.2.2 USE OF ARBITRARY CRITERIA BY ADMINISTRATION

During the audit of individual administrative acts that impose obligations, the Ombudsman often incidentally audits the regulatory acts on the basis of which the administrative acts were issued. From the relevant cases, it emerges that arbitrary criteria are introduced when rights are to be recognized in favour of a category of citizens. According to the rulings of the courts, when legislating by delegation, the administration may regulate the various situations and relations either in a uniform or in a case-by case way, taking the relevant conditions into account. In any case, it has to act on the basis of general and objective criteria related to the subject of the regulation. In other words, when selecting the method for such regulation, it should adhere to the principle of equality, which does not permit unjustifiably unequal treatment. Such a violation of the principle of equality was established in the case that follows.

By a decision of the Municipality of Gallikos, only people with three children or more who were financially less well off and were at the same time also citizens of the municipality (i.e. not just permanent residents) were exempted from water supply and drainage charges. The Ombudsman pointed out that such discrimination is contrary to the principle of equality, which allows discrimination only on the basis of objective criteria. The Ombudsman's recommendation was finally accepted by the Municipality (case 3181/2008).

### 2.2.3 OBLIGATION TO PUT OUT WASTE BINS

A certificate verifying that no municipal real estate duty is owed is a necessary requirement for a property to be supplied with electricity. In one of its decisions, the municipal council of Ilioupoli made it a condition for the granting of this certificate that the owners of every new building should provide an area for waste bins, purchase them

and pay for them to be delivered.

The Ombudsman reminded the municipality that the clearing and collecting of waste is the exclusive responsibility of the municipalities, and the special user charges received by municipalities are set on this basis. The Ombudsman also underlined that any charge imposed on applications for the above certificate violates the principle of equality. The case ended with the desired result when the new administration of the municipality took office (case 9314/2005).

## 2.3 IGNORANCE OF THE LAW-MISAPPLICATION AND MISINTERPRETATION OF THE LAW

Public services are often unaware of the legal framework, possibly due to subsequent amendments or the annulment of provisions. They also might misinterpret it as a result of decentralized services not being kept sufficiently informed. In most cases, the administration chooses the solution that is in its own interests and convenience rather than the in interest of the citizens dealing with it.

### 2.3.1 INSUFFICIENT INFORMATION ON THE LEGAL PROVISIONS TO BE APPLIED

In these cases, the Ombudsman investigates the current legal framework, brings it to the attention of the administration which is unaware of it, and makes sure that it is properly interpreted. Some characteristic cases follow.

The 1st tax office of Xanthi refused to allow the grandfather having the custody of a minor to set the tuition fees against income for tax purposes, although the mother of the minor had died and the residence of the father was unknown. The tax office maintained that pursuant to the provision of article of law 2238/1994, the grandchild was not considered a dependent of the grandfather, since his father was still alive. However, the Ombudsman reminded the tax office of an older document issued by the ministry of Finance and Economic Affairs following his own intervention, which specifically clarified this matter (case 4914/2008).

In another case, in 1996, the area declared by siblings on the relevant tax statements for a piece of property transferred to them by parental donation was found to be larger than the actual area, due to a mistake in the contracts. After a corrective notarial act was sent to the competent tax office, the siblings requested, on 26.01.07, that the initial parental donation tax statements be partially revoked and the non-owed tax refunded. The committee of article 99 of law 2961/2001 rejected their requests on the grounds that the applications for revoca-

tion should have been submitted by 1.12.2006 at the latest. The Ombudsman pointed out that the specific provision had already been annulled and that the application for revocation could be submitted until the dispute was settled by the administration or until an announcement was made regarding the honesty of the tax statement, neither of which had yet occurred (case 17145/2007).

In another case, in September 2005, the Prefectural Government of Thessaloniki renewed the retail license of a seller of heating oil in application of the law that existed prior to the issue of the relevant Joint Ministerial Decree in February 2005. The new decree provided that for the renewal of such a license, an amount of 40 euros should be paid, as a special user charge. In 2008, the seller was notified by the Prefecture of Thessaloniki that, in addition to this charge, he should also pay a fine of 40 euros for not having paid the above charge. The Ombudsman pointed out that the non-payment of the charge is due to the fact that the Prefecture of Thessaloniki had not implemented the right provisions (case 14226/2008).

### 2.3.2 CIRCUMVENTING LEGAL REQUIREMENTS

In some cases, the administration circumvents legal requirements in order to advance its own interests (e.g. collection of debts, non-disbursement of sums) promptly; it thus disregards the adverse consequences to citizens.

Such a case arose when an olive-producer thought that the sum recognized by the Payment and Control Agency for Guidance and Guarantee Community Aid (OPEKEPE) as an individual single payment entitlement for 2006-2013 was disproportionately low in relation to the arable land he owns and in comparison to the amount received in 2005, the last year when the old system of production subsidy was still applicable. In his view, he had received a reduced subsidy because he was forced to prune his trees in a "rigorous" manner, with the result that during the crucial reference period (1999-2002), his production was particularly low.

The Ombudsman called on OPEKEPE to decide whether the actual facts constituted an "exceptional circumstance" in the meaning of article 40 (4) of Regulation 1782/2003 (EC). More specifically, the relevant provisions list five examples of "force majeure" or "exceptional circumstances" which justify the payment of additional fees. It transpired that OPEKEPE took the reasons referred to above to be exhaustive. The Ombudsman pointed out to OPEKEPE that it should form its own internal criteria in

order to decide which cases, in addition to the five examples, constitute "exceptional circumstances". Following an exchange of letters, OPEKEPE decided that the actual circumstances cited by the citizen did not constitute an "exceptional circumstance" (case 6766/2006).

## 2.4 REFUSAL TO COMPLY WITH COURT DECISIONS

The Ombudsman has repeatedly reminded the administration of its obligation to comply with court decisions, as expressly laid down in law 3068/2002. Non-compliance is due either to a lack of the legal knowledge necessary to understand the operative part of a decision or to the reluctance of the administration to assume the responsibility that the execution of a court decision entails.

### 2.4.1 FAILURE TO UNDERSTAND THE OPERATIVE PART OF A COURT DECISION

A citizen sold a construction machine. However, since the new owner did not register the transfer with the relevant prefectural local government authorities, the former owner continued to be debited with the relevant circulation fees. Following a lawsuit filed by the interested party, the purchaser was sentenced, without leave to appeal, to make a declaration of will for the transfer of the machine in his name. Although the decision was issued, the department demanded that for the completion of the procedure, the purchaser should come and sign the relevant documents (case 2315/2008). This showed that it had not understood that the decision of the court was making that no longer necessary.

Equally, on the basis of a private agreement, a citizen was entitled to indicate to a limited liability company that he wished a specific private lorry to be transferred in his brother's name. Since the company refused to co-operate in the transfer, the citizen took his case to court, which ordered the company to transfer the lorry to his brother and make/carry out the necessary statements/actions before the tax office and the departments of the competent prefecture. However, when the interested party addressed himself to the competent Division of Transport and Communication for the completion of the transfer, the latter maintained that such transfer should "be made by the company administrator" and that it was in no position "to carry out such transfer without the owner's consent" (case 6108/2008).

The Ombudsman pointed out to the administration that pursuant to article 949 of the Code of Civil Procedure "when somebody is sentenced to make a declaration of will, the declaration is deemed to have been made as

soon as the decision becomes final... "Consequently, the administration should have registered the transfer as soon as the final decision was brought to its attention.

#### **2.4.2 REFUSAL TO COMPLY WITH ADVERSE COURT DECISIONS**

By a decision of the municipal council of Papagos, a special cultural charge was imposed on each electricity meter of a residence or business premises. This decision was annulled by the committee of article 7 of law 2839/2000, on the grounds that a cultural charge does not correspond to a special consideration for the municipality's citizens and does not have a reciprocal character. Following a petition for annulment filed by the municipality before the Council of State (supreme court), the municipality implemented its decision and collected the charge for 2004-2007 through the bills of the Public Power Corporation. Finally, the Council of State ruled that such a charge was not a special user charge, although, to date, the municipality has refused to refund to its citizens the sums collected (case 15367/2007).

In another case, a female citizen disagreed with the interpretation given by the competent tax office and the ministry of Finance and Economic Affairs regarding whether the pension received from an insurance organization in the state of Baden-Wurtemberg should have been taxed, pursuant to the Greek-German convention for the avoidance of double taxation. The interested party appealed against the income tax assessment for the year 2000 and succeeded in having the pension received from Germany removed from her taxable income. However, invoking the principle of annuality, the tax office continued to refuse to allow the pension in question to be exempt and imposed taxes. The Ombudsman notified the ministry of Finance and Economic Affairs, which referred the matter to the Legal Council of the State. The latter issued its opinion in 2006, approval of which is pending at the Minister's office (case 11345/2004).

### **2.5 CONTESTING THE VALIDITY OF THE DECISIONS OF OTHER ADMINISTRATIVE BODIES**

The principle of legality requires mutual respect among the various administrative bodies with regard to the allocation of responsibilities, but also the use of established channels for contesting decisions (e.g. administra-

tive law appeal). However, some administrative bodies contest the legality of actions of their counterparts, demonstrating a narrow perception of how the administration, which should operate as a single body, performs its tasks.

#### **2.5.1 PROVING THE ADDRESS OF A FOREIGNER'S PLACE OF RESIDENCE**

Several tax offices in Attiki have refused to assign a tax registry number or change the details (home address) of foreigners who are political refugees, and hold the special asylum seekers card. The above tax offices, considering that the home address on the card was insufficient, demanded that supporting documents showing their home address should be brought (a private lease agreement or a solemn declaration by the host).

In a letter to the ministry of Finance and Economic Affairs, the Ombudsman pointed out that the procedure followed does not have any legal basis. To assign a tax registry number or change the details entered in the register, it is sufficient for the relevant form to be filled in and an identity card or passport shown, while for foreigners, details proving their permanent residence in Greece are also needed. Regarding asylum seekers in Greece, the above refugee card, which shows their home address and any subsequent change in place of residence, is evidence of the legality of their residence.

In response to the Ombudsman's suggestion to the ministry of Finance and Economic Affairs that a circular be issued clarifying the matter, a verbal pledge was made to do so (cases 6051/2008, 6841/2008, 8376/2008, 8675/2008).

#### **2.5.2 CONTESTING A CERTIFICATE**

A professional farmer, to whom an area of agricultural land was transferred by his father through a parental donation, requested an exemption from the parental donation tax, since article 26 of law 2961/2001 stipulates that when farming land is transferred to persons whose main profession is farming, they should be totally exempted from the above tax. Although a certificate from the Agricultural Division was produced at the tax office, the latter, following an inspection, judged that the area had lost its agricultural character and refused to grant the tax exemption. The Ombudsman pointed out that such exemption should be granted, since, with the certificate issued by the competent administrative body, the legal conditions were fulfilled, and the tax office had no authority to contest the accuracy of the certificate (case 14075/2007).

### 2.5.3 CONTESTING THE DECISION OF A REGIONAL COMMITTEE

A citizen who had applied for information to the Manpower and Employment Organisation Office (OAED) considered OAED's response inadequate. He approached the competent Regional Committee seeking compensation on the grounds that OAED had failed to answer his application. Although the Committee ruled that OAED should pay compensation, OAED refused to comply, claiming that it had replied to the citizen. The Ombudsman pointed out that pursuant to the relevant provisions, the decision taken by the Regional Committee constitutes an order for OAED to pay the amount specified, plus interest. However, the latter has refused to comply with the decision (case 2513/2008).

## 2.6 PUBLIC ADMINISTRATION AND EU REQUIREMENTS

The public administration in Greece has not fully realized that the practices followed should be consistent with the EU requirements, that it should avoid creating impediments to the achievement of the objective of the single market and that it should take decisions facilitating the geographical mobility of workers within the borders of EU.

### 2.6.1 EXCLUSION OF AN EU CITIZEN FROM A HIRING PROCEDURE

A German citizen permanently residing on Leros was excluded from a hiring procedure on the grounds that she had not provided a certificate proving that she was a citizen of the municipality. The Ombudsman notified the municipality of the opinion of the Legal Council of the State, according to which the provisions of law 2190/1994 that require citizens of other EU member states to be municipal citizens and to acquire Greek citizenship before they can be hired in a post which is not vested with public powers, are contrary to Community legislation and articles 1 and 2 of law 2341/1996. In addition, the Ombudsman pointed out that where a connection with a municipality is required, such connection for an EU resident should be sought on the basis of common civil law provisions on the existence of a place of residence. In the end, the token entry made for the applicant in the municipality's family register and her residence in the municipality for a period of more than ten

years gave her the status of a citizen of Leros and she was hired after being placed on the list of candidates with the highest class of municipal citizenship (case 14994/2007).

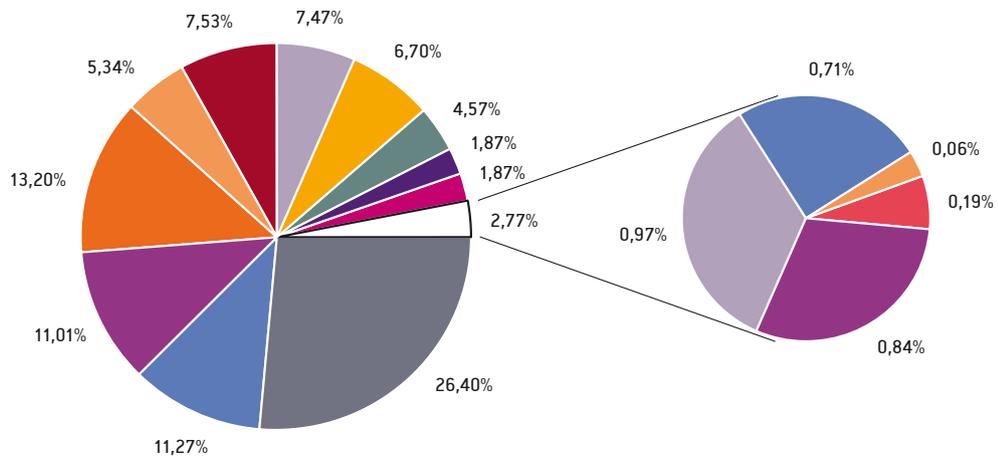
### 2.6.2 PREVIOUS SERVICE OF EDUCATORS IN SCHOOLS OF EU MEMBER STATES

The provisions of laws 3027/2002 and 3391/2005 recognize the service provided in a "public sector school" as previous service of a temporary substitute educator or an educator paid at an hourly rate in a EU Member State. Two educators approached the Ombudsman requesting the recognition of their previous service in schools of EU Member States which were neither in the private sector nor state-owned, but were owned by bodies governed by public law. The Ombudsman maintained that the requirement laid down by law, namely, that schools where the educators in question were employed should be public, also includes schools owned by organizations which are public in character or are bodies governed by public law. This led to an opinion by the Legal Council of the State, which adopted the views of the Ombudsman. Article 2 of law 3687/2008 specifies that the previous service of a temporary substitute educator or an educator paid at an hourly rate also includes service provided in primary and secondary public-sector schools which are under the administrative supervision of the competent ministry of the particular EU Member State (cases 13364/2005 and 14719/2005).

### 2.6.3 EQUIVALENCE OF COMPUTER QUALIFICATIONS

Due to the refusal of the Organisation for Vocational Education and Training (OEEK) to recognize computer qualifications (ECDL - the European Computer Driving Licence) issued by a British computer learning centre that was not certified by it, candidates were unable to apply for posts announced by the Supreme Council for the Selection of Personnel (ASEP). The Ombudsman established that there is no recognition procedure for qualifications awarded by organizations not certified by OEEK which are equivalent to those awarded by Greek organisations (e.g. ECDL Hellas SA) which are recognised by OEEK. It is unfair for candidates to be deprived of the right to compete with fellow candidates with the same qualifications, which furthermore undermines the promotion of the European dimension in education and the mobility of human capital (cases 260/2008, 12834/2008).

DEPARTMENT OF CITIZEN-STATE RELATIONS - BREAKDOWN BY MAIN CATEGORIES OF COMPLAINT RECEIVED IN 2008



- Provision of services and public administration responsibility [26,40%]
- Public utility corporations - Municipal water supply and drainage enterprises [11,27%]
- Taxation [11,01%]
- Maladministration in the local authorities [13,20%]
- Personnel recruitment (falling outside the ASEP jurisdiction) - Work contracts [5,34%]
- Penalties imposed for traffic offences [7,53%]
- Transport - communications [7,47%]
- Agriculture - agricultural policy [6,70%]
- Labour - employment [4,57%]
- Loans - workers' tenements [1,87%]
- Education (teaching - formation - training) [1,87%]
- Imposition of fines by administrative authorities [0,84%]
- Customs [0,97%]
- State procurement (tenders - awards) [0,71%]
- Organisation of public materials management [0,06%]
- Public works' machinery licencing dues [0,19%]



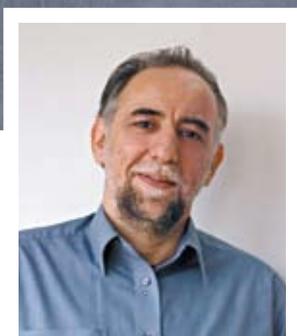


## *Children's rights*

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# Children's rights



GEORGE MOSCHOS  
Deputy Ombudsman

## 1. GENERAL ASSESSMENT

In 2008, the Children's Ombudsman intervened in major issues pertaining to children in Greece and made strenuous efforts to generate a debate on the protection of children's rights. Not for the first time, it was established that there was a significant deficiency in decentralised psychosocial services, structures and procedures for the support of vulnerable categories of minors. The Ombudsman notified the competent organisations and Parliament of his findings and institutional recommendations in the annual report and was invited to appear before special standing committees over the course of the year. In 2008, the Children's Ombudsman was also engaged in the preparation of a "National Children's Rights Action Plan". In 2007, the Ombudsman forwarded specific proposals to the ministry of Health and Social Solidarity for the preparation of a detailed, credible and effective plan to organise, plan, coordinate and develop decentralised actions for children. It also set policy objectives and a framework for financing, quality control and evaluation of services and actions. By the end of 2008, the plan had not been completed by the ministry, but it had been announced that specific actions in respect of its preparation had been assigned to a non-governmental agency. In 2008, the General Secretariat for Youth reopened the National Observatory for Children's Rights, which added to the public debate on the application of the International Convention on the Rights of the Child (ICRC) in

Greece, in particular in the context of a congress organised in November by the above organisations in collaboration with the Ombudsman.

The fact that Greece has not responded sufficiently to the obligations arising from the ICRC, such as the submission of five-year reports and compliance with the recommendations of the United Nations Committee on Children's Rights, constitutes a challenge for all public actors who shape policy on children.

Between 2007 and 2008, the number of cases handled by the Children's Ombudsman increased by 11%, reaching 420. The continuous rise in the number of cases related to the violation of minors' rights is connected with the increasing awareness of citizens about the operation of the Department and their trust in the Children's Ombudsman. The majority of complaints (62%) were again from parents and children themselves apparently choose not to submit written complaints to the Children's Ombudsman (5%). However, the children with whom the Children's Ombudsman communicated during his 55 visits to schools and institutions over the course of the year, who are estimated to exceed 2.000, frequently described to him the violations they experience in their daily lives. Indeed, they often asked for the Ombudsman's opinion or requested its informal intervention.

The cases that occupied the attention of the Children's Ombudsman pertain mainly to education (44%), followed

by health, welfare and social insurance issues (13.65%), exercise of custody in the family and contact of children with parents who live apart from them (13%), etc.

The Ombudsman undertook various initiatives for the promotion of children's rights. In 2008, the Children's Ombudsman continued meetings with professionals who work with children and representatives of public and non-governmental organisations. Through lectures, seminars and meetings, the Ombudsman made a significant contribution to the provision of information, the shaping of policies and good practices and coordination among agencies. Awareness was also raised among those occupied with children in respect of the International Convention on the Rights of the Child and relevant legislation. The Deputy Ombudsman and the members of the scientific personnel participated in meetings and events in 20 cities and gave 65 lectures at congresses,

meetings and seminars in Greece and abroad.

More than 20,000 brochures aimed at children, 3,000 children's rights calendars for 2008 and 10,000 copies of The Simplified International Convention on the Rights of the Child, together with instructions to educators on its use and suggestions for educational activities were sent to a large number of schools throughout Greece.

Finally, in 2008, the activity of the Children's Ombudsman abroad was of major importance. The Deputy Ombudsman and staff members participated in congresses and seminars organised by the European Network of Ombudspersons for Children and the Council of Europe, in UNESCO's Conference on Education, in the European Forum on Children's Rights and in other international meetings. In addition, the Deputy Ombudsman participated in the delegation to Sweden headed by the President of the Hellenic Republic, which included visits to welfare institutions.

## 2. PUBLIC INITIATIVES AND INTERVENTIONS BY THE CHILDREN'S OMBUDSMAN

### 2.1 COMMUNICATING WITH CHILDREN AND PROMOTING THEIR PARTICIPATION

Ever since its creation, the Children's Ombudsman has laid special emphasis on direct communication with children, as well as on hearing and highlighting their views.

#### HEARING CHILDREN'S VIEWS

As he does every year, the Children's Ombudsman visited a large number of schools, institutions and other areas such as penitentiary institutions, NGO shelters and encampments where refugee children and Roma live. The Children's Ombudsman met and communicated with children and teenagers in an effort to record their views and listen carefully to their suggestions for the best possible implementation of their rights.

#### DIALOGUE DAYS

In January and April 2008, the Children's Ombudsman organised meetings on the topic of "I express myself, I get heard, I participate". These meetings were attended by male and female school pupils in Attiki and Northern Greece respectively, who had participated in the first Dialogue Day for children (Athens, April 2007). Pupils expressed their views, co-operated in workshops and made proposals for how school could better respect them and take them into consideration. The last part of the meeting was also attended by educators.

The result of the meetings and conversations in schools

and the answers of pupils to a questionnaire (posted on the website [www.0-18.gr](http://www.0-18.gr)) was a list of proposals which is due to be forwarded to the ministry of Education and Religious Affairs, accompanied by the Ombudsman's observations on the issues raised by the children themselves.

#### SETTING UP A GROUP OF TEENAGE ADVISERS

In the autumn of 2008, the Ombudsman implemented a plan to set up a 20-member group of teenage advisers, consisting of boys and girls aged 13-17 from all regions of the country. This group will function on the model of similar European bodies and its mission will be to assist the Children's Ombudsman by conveying the views of children on issues with which it is concerned. The idea for setting up the group emerged from the Children's Ombudsman's meetings with children on Dialogue Days. The Children's Ombudsman worked with the ministry of Education and Religious Affairs, which sent all schools in the country a letter describing the Ombudsman's work and inviting applications to join the group of teenage advisers. At the same time, NGOs working with children were informed and the operation of the group was publicised on the internet, in the press, as well as on the radio, with an advertisement created by the Children's Ombudsman featuring a group of pupils.

The final selection of the group was made by drawing lots from the 410 applications and by using criteria to ensure that there was an equal number of girls and boys

and that teenagers from different age groups and regions of the country were represented, as were those with disabilities, immigrants, refugees, those from minority groups and those living away from their natural families. The group will serve for two years. Its members will meet together with the Children's Ombudsman 3-4 times a year and in the meantime will communicate among themselves and with other children and young people. All teenagers who applied to participate in the group will be advised on its actions and will be invited to take part in the public debate on various issues.

## 2.2 WORKING WITH NGOs

On 16 October 2008, the Children's Ombudsman held a meeting with NGOs engaged in children's rights. The purpose of the meeting was to develop co-operation between the Children's Ombudsman and NGOs and between NGOs themselves, with the aim of more effectively monitoring how the ICRC is implemented.

## 2.3 SPECIAL EDUCATION

The Children's Ombudsman made observations and put forward his views on the special education bill to ensure equal opportunities for persons with disabilities and special educational needs which was published for public consultation by the ministry of Education. The Children's Ombudsman has pointed out that the main problem lies in the inability of the general educational system to adapt to the principles of equal participation in education, since insufficient funds and expert human resources are available, not because the legal framework is insufficient but because it is not properly implemented. The Children's Ombudsman also underlined the need to incorporate special education into the general educational system in the best possible manner.

## 2.4 MINOR IMMIGRANTS AND REFUGEES AND UNACCOMPANIED MINORS

The Children's Ombudsman called on all competent government and local organisations to take the necessary measures to protect and care for foreign minors, avoiding the use of violence against them and ensuring that human rights are respected. The statement was made following the eviction of Afghan immigrants and refugees, including a significant number of (mainly unaccompanied) minors, from the shanty-town in Patras. The Children's Ombudsman also visited the detention centre for foreigners illegally entering the country at Pagani, Lesvos and the reception centre for unaccompanied minors at Agiasos, Lesvos. The Children's Ombuds-

man made public his observations on the conditions in which minors were being held and called on the competent organisations to immediately take the necessary institutional measures regarding the care of unaccompanied minors living in Greece.

## 2.5 MENTAL HEALTH

On World Mental Health Day, the Children's Ombudsman expressed his deep concern at the emerging downgrading and reduction of mental health services for children and teenagers.

The Children's Ombudsman has in the past pointed out serious problems in the area of child protection resulting from the lack of specialized accommodation and treatment facilities for children and teenagers with mental disorders or serious psychosocial problems.

### The problems pointed out included:

- The lack of access of a large number of children and teenagers with mental disorders to suitable treatment facilities.
- The extremely difficult situation at the Emergency Unit of the Children's Psychiatric Hospital of Attiki, where teenagers who are not in need of medical attendance but remain there due to the lack of suitable facilities are hospitalised.
- The precarious situation of the very few model mental health units set up by private non-profit organisations, due to a 50% reduction in state funding between 2007 and 2008.
- The lack of accommodation facilities and a services network for autistic children and teenagers.

## 2.6 ABUSE AND NEGLECT

The Children's Ombudsman deals continuously with child abuse.

### The main findings pertain to the need for:

- A code of ethics to be adopted for all professionals working with children on the handling of information and indications of child abuse, and for them to be kept informed and educated about this phenomenon;
- Educators in schools to be supported by mental health specialists and social workers;
- Stronger and more specialised local child protection services to be developed, leading to more effective and long-term interventions on a preventive or post-abuse basis;
- Appropriate care structures to be created in cases where children need to be taken away from their families temporarily or permanently, and for the institution of foster care to be made stronger;

- Local networks to be developed with the participation of all competent organisations so that referrals are made in a timely and responsible manner and so that the organisations work together;
- Research - particularly epidemiological - to be carried out throughout Greece and for a documentation centre to operate on abuse and neglect issues;
- Information campaigns to be organised for children, parents and all citizens, with specific actions for vulnerable social groups and high-risk families.

## 2.7 PREVENTING AND COMBATING CORPORAL PUNISHMENT

The Children's Ombudsman participated in the Council of Europe campaign to achieve a continent free of physical violence against children and in his capacity as coordinator of the Greek Network to Prevent and Combat the Corporal Punishment of Children, had the Council's publication and television message on this subject translated into Greek and participated in actions to educate professionals and raise public awareness on these issues. In the framework of these actions, the ministry of Education forwarded the network's message to schools throughout the country on the International Day against Corporal Punishment.

## 2.8 MINORS AND TELEVISION ENTERTAINMENT PROGRAMMES

Given the increasing presence of children on television entertainment programmes, including talent contests, and the absence of a relevant legislative framework, the Children's Ombudsman intervened publicly with the aim of protecting minors participating in and viewing such programmes. In a letter to the competent organisations, the Children's Ombudsman pointed out the consequences of such programmes on the private life and mental health of minors and called on them to work together to create a code of ethics for television entertainment programmes, offering his own assistance in this direction.

## 2.9 PROTECTING MINORS FROM THE MEDIA

Participating in a public debate initiated by the General Secretariat of Communication, the Children's Ombudsman once again pointed out that the institutional framework protecting minors from the media must be strengthened

and that all competent organisations must work more closely together to this end.

### Specifically, he stressed the need for:

- Strict enforcement of legislation concerning the media;
- Use of the legal role of independent authorities;
- Special regulations to prevent the publication of information and incidents that might lead to minor victims or perpetrators being identified in cases pending before the courts;
- Additional voluntary self-regulation agreements for the media;
- Incentives for quality television programmes to be produced for minors;
- Information campaigns and educational programmes for children and parents.

## 2.10 MINORS AND INTERNET CAFES

After considering concerns expressed about possible effects on health of uncontrolled access by minors to internet cafés, the Children's Ombudsman initiated a public debate on the issue with representatives of public and private organisations. In October 2008, the Ombudsman organised a conference on the protection of children's rights at internet cafés, with the aim of examining the possibility of drawing up recommendations to be sent to the competent state bodies.

### The following recommendations of the Children's Ombudsman were discussed at the conference:

- Written authorisation from parents/guardians of young minors to be made obligatory
- Entrance to minors to be prohibited after midnight
- A time-billing system to be established with a maximum daily time limit for use of services
- Introduction of a special procedure to ensure that the law is observed in internet cafés
- Establishment of criteria and a certification procedure for internet cafés
- Information campaigns explaining how any new measures will apply.

The Children's Ombudsman called on organisations dealing with this issue and young people's associations to send their views and suggestions to him, in order for them to be recorded in a text to be forwarded to the government.

### 3. SPECIAL ISSUES

The Ombudsman investigated cases related to education, family, and the rights of immigrants/refugees, etc. The findings and observations arising from the handling of these cases are described below.

#### 3.1 EDUCATION

##### 3.1.1 PENALTIES IMPOSED ON PUPILS

The Ombudsman investigated a number of cases regarding penalties imposed on secondary school pupils as a result of inappropriate behaviour.

More specifically, the Ombudsman focused its attention on the legality and advisability of the punishments imposed in each specific case that came to its attention. It was assumed that on the one hand, in accordance with the law, punishments are selected on the basis of the degree to which such behaviour deviates from acceptable standards, while taking into account the child's interests; and on the other hand that in respect of punishments that are not internal measures (hourly expulsion, reprimand), but are individual acts by an administrative body, the Code of Administrative Procedure should be adhered to provided no more specific provisions apply.

##### 3.1.2 SCHOOL ATTENDANCE OF ROMA PUPILS

The integration of Roma children into education constitutes a stated aim of the ministry of Education, which has prepared programmes and issued circulars with relevant guidelines for educators. However, the absence of a targeted social policy and co-operation among local municipality organisations to improve living conditions, and a lack of acceptance by some local communities, means that existing measures to integrate and keep Roma children in school are insufficient.

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**On the basis of his findings, the Children's Ombudsman supports the following:**

- Children should not be barred from enrolling in school

for not possessing the necessary supporting documents.

- Making places available for Roma children at a larger number of schools mitigates the negative reactions of parents of other children and has positive effects on their attendance.
- In schools with a number of Roma pupils, educators possessing the relevant specialisation or training should be posted, as well as social workers.
- Further actions are required to inform the vulnerable population on hygiene issues and to raise the awareness of the parents of other children.
- In cases where Roma settlements are not close to a hospital, it is advisable for visits to schools to be made by doctors so that personal health cards can be issued to pupils.
- The payment of a school-attendance allowance for pupils from low-income families does not promote the aim of retaining Roma children at school when it is paid in the form of a lump sum at the start of the school year.
- The social acceptance of the educational solution selected on each occasion is a necessary condition for the successful integration of Roma children in school, but also requires the mobilisation of organisations inside and outside the educational system.

##### 3.1.3 EDUCATION OF CHILDREN WITH SPECIAL EDUCATIONAL NEEDS

Pupils with special educational needs and/or disabilities need particular support to meet schooling obligations and enjoy the right to education on an equal opportunity basis. In everyday practice, the fact that legislative provisions are applied in an inefficient manner or are essentially violated means that this right is nullified. The lack of in-school support structures for children with special educational needs is a general long-term phenomenon. Even more difficult are the conditions for pupils with complex or serious disabilities as well as cognitive and behavioural problems.

##### 3.1.4 RELATIONS BETWEEN PARENTS AND SCHOOL

School is responsible for implementing established educational aims, including respect for a child's parents. Since such respect consists of working with parents and providing information on the progress of their children, the school must also work with parents who do not have custody of their children and allow them access to enter the school, unless they are expressly prohibited by the Prosecution Department or other judicial authorities.

## 3.2 FAMILY

### 3.2.1 COMMUNICATION BETWEEN CHILDREN AND PARENTS IN THE EVENT OF ESTRANGEMENT OR DIVORCE

The rise in the number of divorces internationally highlights a major and particularly difficult issue, namely, the handling of communication between children and parents who do not live together, since children have an inalienable right to communicate and interact with both their parents.

In addition to efforts to mediate between parents and encourage counselling in the interests of the child and his or her mental and emotional balance, the Ombudsman also suggests, on the basis of the ICRC, that the state should take the necessary measures to ensure the right of every child to communicate in particular with the absent parent, since communication constitutes a parental right and obligation.

The Ombudsman has suggested the following measures to ensure the rapid and successful settlement of disputes between parents:

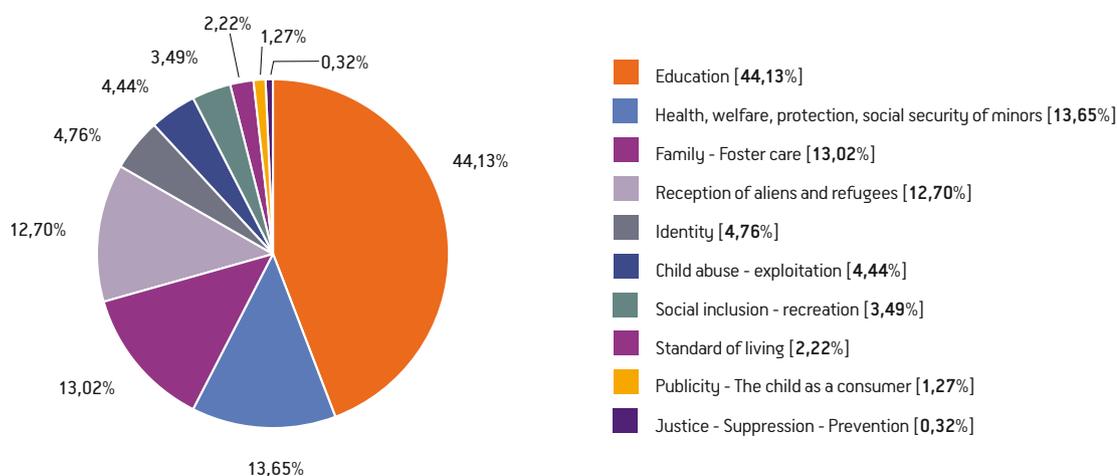
1. The operation of family courts (provided for by law 2447/1996)
2. The creation of decentralised family mediation services, which will monitor the application of court decisions related to custody and the communication of minors with their parents and will intervene to support the out-of-court settlement of disputes between parents who have joint custody of their children.

## 3.3 FOREIGNERS AND REFUGEES

Police stations which issue pink cards to asylum seekers enter the personal details of applicants in Latin characters without transliterating them into Greek. Asylum seekers include a large number of unaccompanied minors without travel documents who come from countries from which it is objectively impossible to bring official documents proving their identity.

As a result, there is an urgent need for legislation on this issue. Until this happens, minors should be responsible for the transcription of their full names into Greek accompanied by a solemn declaration.

DEPARTMENT OF CHILDREN'S RIGHTS - BREAKDOWN BY MAIN CATEGORIES OF COMPLAINT RECEIVED IN 2008





## *Gender equality*

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# Gender equality



STAMATINA YANNAKOUROU  
Deputy Ombudsman

## 1. INTRODUCTORY REMARKS

In May 2008, a new department was established within the Ombudsman. The Gender Equality Department monitors the application of the principle of equal treatment of men and women in employment and occupation. Since May 2008, the Ombudsman has handled cases of gender or family status discrimination regarding access to any kind of employment, in the private, public or wider public sector, access to vocational training or the practice of a profession. This special task was assigned to the Ombudsman by law 3488/2006, implementing directive 2002/73/EC. According to the directive every EU member state should appoint an independent body to provide assistance to victims of discrimination, investigate whether the principle of equal treatment is applied and publish reports recommending measures to eradicate gender discrimination.

In this respect, the Ombudsman examines complaints concerning infringements of the equal treatment principle either by the State (in its capacity as employer or when making payments such as maternity benefits to employees) or by private sector employers (natural or legal persons). Thus, the Ombudsman may, by way of exception, investigate cases of gender discrimination associated with the conditions of service of employees of the civil service, non-departmental public bodies and local government authorities, and with the rights and obligations arising from these conditions. In addition, the

Ombudsman looks into cases where the conduct of individuals breaches the principle of equal treatment of men and women in employment. It is important to note that this new remit, extends into areas which in principle did not fall within the Ombudsman's sphere of competence.

The Ombudsman's new expanded competence pertains in particular to concepts defined at EU level (e.g. direct and indirect discrimination, sexual harassment, gender harassment) and is based on rules and principles which have, in the majority of cases, been formed gradually through EU law and a rich case-law constantly developed by the European Court of Justice (ECJ). Through this new remit, the Ombudsman aims to contribute to a uniform and systematic interpretation of EU law concepts and requirements in the public and private sector, to the elaboration of suitable methodological tools and methods of mediation regarding equal treatment and, finally, to the establishment of a culture of equality at the workplace.

Despite the fact that this responsibility was assigned relatively recently, the Ombudsman has received complaints regularly. The complaints chiefly focus on unequal treatment of men and women regarding terms and conditions at work. A smaller number of complaints pertain to unequal access to employment or unequal treatment at the termination of employment. In addition, a number of complaints refer to problems in the payment of benefits to mothers, in particular maternity

benefits paid by the Social Security Foundation (IKA), supplementary maternity benefits paid by the Manpower Employment Organization (OAED), and the special protection-of-maternity benefit under article 142 of law 3655/2008. The said benefits concern women only and actually serve as salary substitutes during maternity leave. Finally, about 1/3 of the total number of complaints have been filed by men. They are mainly against the civil service and public or local government organizations, and less often against private employers.

The cases of mediation presented in the following pages serve as a representative sample of the cases handled by the new department. They were selected on the following grounds:

- Cases offering a clear picture of the difficulties that arise when attempting to define and classify legally an act or conduct as direct or indirect discrimination, a justified exception from the equal treatment principle, or a positive measure in favour of a specific category of individuals of one gender where there are inequalities in practice.
- Cases highlighting the obstacles often encountered when training and providing guidance to the administration as to drafting and formulating individual and regulatory administrative acts in conformity with the gender equality principle and law 3488/2006.
- Cases showing the Ombudsman's constraints when trying to judge impartially and balance private-sector interests, where expertise and a good knowledge of how the labour market operates is required.
- Cases demonstrating the inadequacy of the existing means and tools of extra-judicial mediation in labour disputes at the private sector, particularly in cases of dismissal due to pregnancy.

It can readily be concluded that the number of such complaints will increase in the immediate future, as the Ombudsman's new remit becomes more widely known.

**The following factors are expected to contribute to this:**

- The further staffing of the Ombudsman's services with experts in this field.
- Communication of the new competence through leaflets addressed to citizens and in particular to employees or job-seekers.
- The development of a more user-friendly website.
- Particular publicity actions.
- The publication of a special report on the application of law 3488/2006.

Networking and developing partnerships with national bodies and their counterparts in EU member states are also top priorities. Some of these partnerships are already provided for in law 3488/2006, such as the cooperation of the Ombudsman with the Labour Inspectorate (SEPE) in cases of complaints against a private-sector employer. The regional offices of SEPE help in conciliatory interventions to settle a dispute, while the Ombudsman and SEPE may jointly consider the possibility to impose administrative fines. The Ombudsman has already cooperated with the general secretariat of Equality of the ministry of the Interior and the department of Gender Equality of the ministry of Employment to raise the awareness of both the administration and the public regarding equality issues. The Ombudsman services have participated in seminars on the dissemination and consolidation of the gender perspective in the public administration. The seminars were organised by the general secretariat of Equality and the national centre of Public Administration and Self-Government on 25 November 2008 and 17 December 2008, with the participation of general managers and ministry directors. In addition, the Ombudsman services met with officials of the general secretariat of Equality and the ministry of Employment on 1 December 2008, with the aim of establishing permanent and regular cooperation so that issues of mutual interest can be better dealt with.

Law 3488/2006 is soon to be amended, to be brought in line with the "recast" directive 2006/54 (codifying and updating EU law by incorporating the ECJ case-law). This is expected to facilitate the Ombudsman's cooperation with EU partners, non-governmental organizations and businesses in respect of prevention and proactive intervention. The new draft law widens the Ombudsman's remit and makes the Ombudsman responsible for promoting the principles of equal treatment and equal opportunities in employment and occupation. In addition, the Ombudsman's participation in the network of Gender Equality bodies operating under the auspices of the European Commission, will allow for the transfer of know-how and good practices from other EU countries, particularly in mediation, but also in case-law interpretation of different types of discrimination and of justifiable exceptions from the equal treatment principle. Finally, it should be pointed out that it has become not just a legal obligation but also a social necessity to monitor equal treatment of men and women at work through the complaints of those affected. Economic downturn and restructuring in EU countries create an environment in which inequalities at work are intensified

and employment rights are breached, in particular in connection with pregnancy, maternity, paternity, the balancing of work, family and personal life, but also in connection with equal pay and job protection in general. The permanent weaknesses of the Greek labour market can be understood through cases of unequal access to employment and occupation, handled by the Ombudsman. These weaknesses are intensified by the consequences of the economic crisis in Greece and internationally. Inequality now concerns the entire population and not just some socially disadvantaged groups. Perpetual inequality which in the gender field affects

mainly women, i.e. 52% of the population, has the following consequences:

- Erosion of social fabric.
- Human resources lying idle.
- Reduced purchasing power and consumption.
- Adverse effect on economic and social development.

Full compliance with the legislation on gender equality and non-infringement of the rights associated with it prevent deregulation of the labour market from intensifying and help maintain social cohesion. This is the Ombudsman's most important challenge in the exercise of this new responsibility.

## 2. NOTABLE CASES

### 2.1 UNEQUAL ACCESS TO EMPLOYMENT AND VOCATIONAL TRAINING

#### 2.1.1 MATERNITY LEAVE AS ACTUAL EMPLOYMENT

Two women applied for vacancies on the basis of an indefinite duration contract, as advertised by Olympic Airways S.A. The two applicants had been working at the company since 1997 as seasonal employees under fixed-term contracts. However, they were not included in the provisional lists of successful candidates, because the period during which they were on maternity leave was not included in their active employment. They filed an appeal with the committee established especially for this purpose, which was rejected. In its decision, the committee stated that it had no authority to evaluate the hiring criteria, but did not clarify who has that authority, so that the interested parties could make the necessary application. The Ombudsman sent a letter to Olympic Airways pointing out that, during maternity leave, certain aspects of employment are suspended rather than terminated. For this reason, maternity leave is considered a period of actual employment in terms of all the rights associated with length of employment, and does not break the continuity of the employment relationship. In such cases, the employer pays the employee a proportion of her salary for the specific period of time. At the same time, the employee is subsidized by their insurance body and receives supplementary maternity benefits from OAED. Circulars issued by the ministry of Employment were brought to the company's attention by the Ombudsman, as was the rules established by the case-law of the ECJ. In addition, the Ombudsman pointed out that pursuant to law 3488/2006, any unfavourable treatment due to pregnancy or maternity leave in

relation to access to employment, including selection criteria and terms of hiring, are strictly prohibited. The same applies to the use of criteria or data which result in direct or indirect gender discrimination. These points having been made, the Ombudsman awaits the company's response (cases 12661/2008 and 13715/2008).

#### 2.1.2 MILITARY SERVICE AS A PREREQUISITE

A citizen's job application was rejected by a bank on the grounds that he had not, by the date required, filed the certificate proving that he had done his military service. The citizen complained stating that the obligation to submit the certificate in order to be admitted to the hiring procedure constitutes unequal treatment of male candidates.

The Ombudsman investigated the case and concluded that in accordance with the existing legislation and case-law, all Greeks on the male registry must undergo their military service. Greek women between 20-32 years of age may do military service only in the event of war or possible mobilization, but not during peacetime. However, even in that case, there are broad exceptions regarding for example mothers of minors.

The Council of State has ruled that the discrimination established by recruitment law regarding military service (which for women can be imposed only for the aforementioned reasons) is justified given the differences between the two genders, which allow them to be treated differently in this respect during peacetime. Therefore, this differentiation, which is justified for valid reasons, is not contrary to the constitutional principle of equality. In addition, the ECJ has ruled that EU law does not prevent military service from being imposed on men

only, since the decision by a member state to secure its defence through compulsory military service constitutes a choice at national level in connection with military organization, where EU law does not apply. Consequently, the obligation of male Greeks alone to do military service during peacetime, and the consequences of this obligation (request to produce the relevant certificate in hiring procedures etc.) do not constitute unequal treatment of men under law 3488/2006 (case 14899/2008).

### 2.1.3 AGE LIMITS IN GRANTS TO SELF-EMPLOYED PERSONS

Two citizens, whose applications for OAED grants for young self-employed persons were rejected, complained to the Ombudsman that the age limit for participation in the grants programme is 32 years for men but 36 for women mothers of minors. The two applicants took their case to the Ombudsman claiming unequal treatment on the basis of gender and family status. The OAED appeals committee rejected their appeals, by simply repeating the provisions of the law and did not address the more specific grounds on the basis of which different age limits were laid down for men and women.

The Ombudsman sent a letter to OAED, arguing that in principle, the age limit should be the same for self-employed men and women, in accordance with the principle of equal treatment for both genders with respect to access to employment. However, in this specific grants programme, gender is only a criterion for treating men and women differently in conjunction with the status of parent and on the additional condition that there are minor children. This deviation is not fair if examined in the context of the protection of maternity, since in accordance with ECJ case-law, special privileges granted to women on the basis of a status that may also be acquired by men, such as parenthood, are contrary to the gender equality principle. However, in the Ombudsman's view, this more favourable treatment of mothers of minors constitutes a positive measure which aims to correct the inequalities created in practice. In accordance with the spirit of the constitutional principle of equality, the provisions of law 3488/2006 and recent Council of State case-law, this positive measure is intended to make up for the limited self-employment opportunities of female graduates mothers of minors. The need for such a measure is also based on research data, which show that there is a significant fall in the employment rate of women who are mothers of minors, while the respective rate for fathers of minors is on the increase. In addition, there is a close relationship between

the employment rate of mothers and the number and age of their children, which reflects the fact that women take on more responsibilities in respect of child care and the needs of the family's dependent members.

However, the Ombudsman pointed out that neither in the rejecting decisions of OAED at the first and second degree, nor in the joint ministerial decision determining the beneficiaries and the terms and conditions of grants, is this exception specifically explained (in which case it could be considered a positive measure and its expediency and indispensability could be checked, with the result that the exception could be judged unconstitutional by the competent courts). For this reason, the Ombudsman has recommended to OAED that in future, such exceptions should be specifically and thoroughly explained. The Ombudsman awaits the views of OAED on this issue (cases 4962/2008 and 7945/2008).

### 2.1.4 ADDITIONAL TUITION FEES FOR CLASSED MISSED DUE TO PREGNANCY

A teacher of English in a state-owned secondary school complained to the Ombudsman against a decision by the Hellenic Open University (HOU). Following a drawing of lots, the HOU admitted the complainant to its post-graduate specialization programme for teachers of English. The applicant then selected a course and paid the required sum of money. However, she could not attend the educational meetings that followed, because she had to remain in bed since, as established a little later, she was pregnant and the pregnancy was considered to be at risk - as noted in the certificates issued both by the public hospital that monitored her health and the private doctor who examined her. Months later, the teacher asked to take the course that she had originally selected, without paying the tuition fees again. The HOU rejected her request, without stating grounds for that rejection.

The Ombudsman pointed out to the HOU that adverse treatment due to pregnancy affecting access to vocational training programmes is prohibited as it constitutes direct gender discrimination. In addition, the Ombudsman noted that the concept of "vocational training" cited in law 3488/2006 and interpreted in accordance with EU law is of crucial importance. According to ECJ case-law, the concept of vocational training includes university studies and university education leading to a qualification necessary to practice a profession, even if the acquisition of the relevant knowledge is not enforced by legislative or administrative provisions. The particular HOU post-graduate programme falls in this category, since the interested party is already an educator

and by attending this programme without being required to do so, would undoubtedly acquire knowledge and skills that would prove important in the practice of her profession.

In its reply, the HOU stated that the educator's request was rejected for purely financial reasons, since the greater part of the tuition fees paid by students funds the salaries of the teaching/research staff and that the rejection "is not related to her health condition, i.e. her pregnancy". In addition, the HOU considers that in the matter in question the special provisions of its statutory law take precedence. In view of other relevant issues brought to his attention in connection with the HOU, the Ombudsman is considering how to proceed (case 6731/2008).

## 2.2. INFRINGEMENT OF EQUAL PAY PRINCIPLE

The Ombudsman received a complaint against a private company which provides services to exhibitors at the Thessaloniki International Trade Fair. From the company's pricelist/order form, it emerges that exhibitors may select "attractive" or "very attractive" female product promoters, and pay a different cost in each case. The Ombudsman noted that the difference in cost violates the constitutional principle of equal pay for work of equal value and is offensive to the dignity and personality of the employees. However, as long as appearance rather than gender is the criterion of such discrimination, it does not appear that the treatment of male employees would have been any different. The Ombudsman pointed out the above legal considerations, but expressed the view that that the practice applied by the company does not constitute gender discrimination. In contrast, the competent Social Inspection department of the Labour Inspectorate informed the Ombudsman they had recommended that a fine should be imposed on the company organizing the Trade Fair (and not on the company employing the female promoters), on the grounds that the said practice was against equal treatment of men and women in employment. The Ombudsman is awaiting further information with regard to the above recommendation that a fine be imposed before preparing a final report on the complaint (case 4714/2008).

## 2.3 UNEQUAL TREATMENT REGARDING TERMS AND CONDITIONS OF EMPLOYMENT

### 2.3.1 CHILD-CARE LEAVE FOR MALE CIVIL SERVANTS

The issue of child-care leave for civil servants first became of concern to the Ombudsman in 2007. Thirty-nine complaints were submitted that year (18 were closed in the same year, 15 were closed in 2008 and six

are pending). In 2008, 18 complaints were submitted on the same issue (ten were closed and eight are pending). The majority of the cases concerns nine months' paid child-care leave. A smaller number concern the use of reduced working hours, which is recognized by the civil servants' code as an alternative to paid leave.

#### More specifically:

- Some complaints refer to the non-granting of the above nine-month child-care leave to fathers who are civil servants when the mother is self-employed. Most cases were settled after a circular was issued by the ministry of the Interior. It was unofficially pointed out to the competent services that could grant the full nine-month period and should not ask for a new application. A few cases where the administration has not complied with the Ombudsman's advice are still pending.
- The issue of nine months' parental leave for a second child under the age of 4 is the subject of a large number of complaints. The complaints were lodged by fathers and mothers who are civil servants (chiefly public school teachers). Although not responsible for this issue, since it does not involve gender discrimination, the Ombudsman has sent the interested parties a reasoned decision noting that there is a separate, independently exercised right for each child.
- A significant number of complaints relate to the provision of information to male and female employees regarding the right to three months' paid leave in the event giving birth to a third (or fourth etc.) child, a right also provided for in the new civil servants' code. Although there was no gender discrimination, delays and ambiguities concerning the implementation of this measure prompted the Ombudsman to intervene unofficially by contacting either the branch of the civil service where the complainants are employed or the competent division of the ministry of the Interior.
- Two cases deal with the granting of nine months' child-care leave to fathers who are civil servants and whose wives are not employed. In both cases, the fathers took the three months' leave. The first case was finally closed, since the interested party's wife, a substitute teacher, was appointed to a post and the issue was settled. The second case is still pending, because there is a suggestion that the civil servants' code should be amended, on the grounds that the wording of the relevant provision is directly discriminatory in respect of gender. A similar question concerned the question of whether a father who is a civil servant and whose wife is employed on a work experience (stage) programme can be

granted leave. This case was settled after the Ombudsman intervened with the competent directorate of the ministry of the Interior, which finally granted the leave.

- Finally, several cases concern either the provision of information regarding the application of this right as it is laid down in the new civil servants' code, or to a delay on the part of the department involved in handling applications. Following the intervention of the Ombudsman, leave was granted retroactively.

Regarding complaints made in 2007-2008 focusing on the granting of child-care leave which are still pending, the Ombudsman is preparing a report on the direct discrimination that arises when male civil servants are refused the right to take parental leave. In addition, indirect discrimination and other administrative problems are identified in cases where an employee's wife is self-employed. The Ombudsman also examines whether the right can be exercised independently for each child, including the case of twins, as well as the method for calculating the duration of leave when one spouse is a civil servant and the other is working in the private sector. Finally, the Ombudsman is examining problems arising from a refusal to grant parental leave for official reasons, as well as delays and errors in granting parental leave, particularly for fathers who are civil servants (cases 14923/2007, 18598/2007, 6917/2007, 20631/2007, 17375/2007, 15032/2007, 3897/2008, 11348/2008, 9221/2008, 11985/2008, 15871/2008, 10182/2008, 15220/2008 and 17501/2008).

### 2.3.2 TRAVEL ALLOWANCES WHILE ON PARENTAL LEAVE

A citizen working at the music organization of the Municipality of Drama requested the mediation of the Ombudsman to overturn a decision by the relevant municipal department whereby she was requested to pay back retroactively travel allowances paid to her while she was on child-care leave, on the grounds that they were unduly paid. After examining the relevant material, the Ombudsman established that the municipal department had acted in accordance with law. However, the joint ministerial decision regulating this issue needs to be amended, since the applicable regulation prejudices the rights of persons employed in local government authorities (LGAs) which are protected by both national and Community legislation. Consequently, the Ombudsman sent a letter to the ministry of the Interior explaining why an amendment is necessary.

The basic reasoning of the Ombudsman is that when an employee is absent having exercised a legal right (child-

care leave), this cannot be considered unjustified abstention from work or duties and cannot lead to part of his or her salary being cut. That would be contrary to the law which also applies to employees of LGAs under a private law contract of indefinite duration. In the case in question, paid parental leave of nine months and additional leave of three months to care for a third (or fourth etc.) child is, in any event, considered as time in employment.

In addition, pursuant to law 3488/2006, whatever the employment relationship, the unfavourable treatment of any person taking parental leave of absence while working at an LGA constitutes discrimination. Consequently, for an employee who has been granted parental leave to be deprived of benefits which fall within the definition of pay is contrary both to law 3488/2006 and EU law, since in this manner an employee who takes a leave of absence is put in a less favourable position than counterparts who do not. For the purposes of law 3488/2006, travel allowances fall within the definition of pay provided they are paid to all permanent employees of LGAs without special criteria and conditions, since they have acquired the status of a single regular benefit granted on a monthly basis as a salary increment. Consequently, it is not justified for them to be cut during paid parental leave. In response to the above, a letter was sent to the Ombudsman by the ministry of the Interior's general directorate for Local Government stating that the Ombudsman's letter had been forwarded to the General Accounting Office of the State for its opinion on the matter. The case remains open (case 16615/2007).

### 2.3.3 SPECIAL BONUS NOT PAID DURING MATERNITY LEAVE

A female teacher took her case to the Ombudsman complaining that the bonus for teachers posted abroad had been withheld because when taking maternity and child-care leave she was absent from the country to which she had been posted. Following an examination of the legislation in force and all the evidence in the case file, it was established that the joint ministerial decision regulating this issue would have to be amended.

The Ombudsman sent a letter to the ministry of Education and the ministry of National Economy and Finance, which are jointly competent for this matter, setting out in detail the reasons necessitating such an amendment. They include the fact that pursuant to the provisions of law 3488/2006, both the less favourable treatment of a woman due to pregnancy or maternity and the less favourable treatment of an employee who has taken

parental leave constitute discrimination. In their answers, both ministries informed the Ombudsman that the relevant provision would be amended so that teachers will receive the bonus during maternity and child-care leave, whether or not they spend their leave in the country where they have been posted. The relevant joint ministerial decision has not yet been issued (case 9642/2007).

## 2.4 SEXUAL HARASSMENT

A female employee took her case to the Labour Inspectorate complaining about infringement of labour legislation and falling victim to sexual harassment by her employer. The Labour Inspectorate forwarded the latter complaint to the Ombudsman and pointed out that the conciliation procedure was not able to establish whether sexual harassment had actually taken place. Since the employee had provided no satisfactory evidence on which a complaint could be based, the Ombudsman pointed out to the employee that evidence was required in order to show the likelihood that harassment had actually occurred. The employee's lawyer then submitted to the Ombudsman written explanations by his client and sworn testimonies supporting her complaint, which were taken during a preliminary examination of the complainant by the Athens public prosecutor for misdemeanours. After examining the evidence, the Ombudsman services deemed it advisable to call the employer to their offices. The employer came with his lawyer and provided the Ombudsman services with copies of the complaint filed and the lawsuit claiming compensatory damages which was legally served on him. Because proceedings were pending, with a hearing date fixed in 2009, the Ombudsman stopped investigating the case (case 18259/2007).

## 2.5 UNEQUAL TREATMENT IN THE TERMINATION OF EMPLOYMENT

### 2.5.1 DISMISSAL OF PREGNANT WOMAN EMPLOYED UNDER A CONTRACT OF INDEFINITE DURATION

When the employee was dismissed from a private company, she was not aware that she was pregnant. When she found out, she asked to be rehired. The employer refused, disputing whether the dismissal was announced after she became pregnant. Since her employer did not accept an ultrasound test from a public hospital, the employee complained to the competent Social Inspection Department of the Labour Inspectorate and filed a complaint with the Ombudsman.

The Ombudsman asked the head of the radio-diagnostic

department of the public hospital where the ultrasound test was carried out for his opinion on the date of conception. On the basis of his response, the Ombudsman then asked the employer to retract the above dismissal and restore all the rights of the pregnant employee. The Ombudsman's request was accepted and the complainant was reinstated (case 3189/2008).

### 2.5.2 DISMISSAL OF PREGNANT WOMAN EMPLOYED UNDER A FIXED-TERM CONTRACT

The Ombudsman cooperated with the Labour Inspectorate on a case concerning the dismissal of a pregnant woman by her employer, who had a family business. The dismissed woman was employed under a two-year fixed-term contract, during which she became pregnant. Shortly after her employer was informed of the pregnancy, she terminated the employment contract on the grounds that her employee was impolite to customers and was not "decently dressed". Moreover, in the notice of dismissal, the employer focused on a quarrel that had taken place between the employee's fiancé and the employer's family, after which the employer filed a complaint.

The Ombudsman sent a letter to the employer and her lawyer and communicated unofficially with both parties. He pointed out that the dismissal of a pregnant woman is permitted only under particularly strict conditions, which the employer must be able to prove. More specifically, he underlined the fact that in the notice of dismissal, there is insufficient justification for the *important reason* that is, according to the relevant legislation, the main factor permitting the termination of a contract. In addition, according to the relevant case-law, if the employee conducted herself in the manner for which she was criticised by her employer, the latter should have made a written complaint or reprimanded the employee and warned her that if she continued to conduct herself in that manner, the contract would be terminated.

Moreover, a few days before termination, a meeting between the parties took place at the Labour Inspectorate's offices following a complaint by the employee regarding back pay which was finally paid by the employer. As can be seen from the minutes of the meeting, the employer made no mention of the problems cited as an important reason leading to the employee's dismissal. On the contrary, their working relationship is described as unproblematic. Regarding the incident with the employee's fiancé, the Ombudsman reminded the parties that the judicial authorities will decide on this matter and expressed the opinion that this should not constitute a material reason for terminating

the contract.

Finally, the Ombudsman pointed out that the conduct of the employer before the termination of the employment contract (as established from the minutes of the Labour Inspectorate meeting) constitutes gender discrimination: she assigned her employee duties that aggravated her condition (in addition to those undertaken before she announced her pregnancy), she refused to give her a few hours' leave (to which she is entitled by law) for the necessary medical tests and she expressed herself in an insulting and derogatory manner regarding the fact that her employee had become pregnant. Recently, the employer's lawyer informed the Ombudsman that he regards the termination of the contract as valid and that he has recommended to the employer that the dispute should be settled in court. The case remains open (case 15211/2008).

## 2.6 PROTECTION OF MATERNITY

### 2.6.1 NON - PAYMENT OF THE SPECIAL PROTECTION-OF - MATERNITY BENEFIT

A working mother had applied to the Manpower Employment Organisation (OAED) for the special six-month protection-of-maternity benefit under article 142 of Law 3655/2008. The application was rejected on the grounds that the law does not cover mothers employed in non-profit organizations and associations. Although the decision to reject the application was overturned by the local OAED office, granting the benefit to the interested party, the office in question refuses to pay the benefit on the grounds that the interested party has returned to work. During the investigation of the case, the Ombudsman established that in breach of the relevant provisions and of the principle of good administration, a series of deficiencies had occurred both in the procedure for issuing the initial decision and in the refusal to pay the benefit after the decision was overturned. The Ombudsman sent a letter to the competent OAED offices, pointing out the following:

- OAED's initial rejection of the application is not legal, since it was based on an arbitrary interpretation of the provision regarding the benefit. The provision covers employment in any type of business or undertaking, which therefore includes non-profit organisations.
- Regarding the enforceability of the more recent decision accepting the interested party's application, it was pointed out that until an individual administrative act is annulled by a court decision or an administrative act or is revoked or abolished in any way, it is fully effective, irrespective of any legal defects. Conse-

quently, since the decision in question has not been revoked, it remains in force. However, the fact that the interested party returned to work after the decision rejecting the application was issued (it was later revoked with retroactive effect), makes the benefit redundant.

- The ministerial decision issued pursuant to article 142 of law 3655/2008 established OAED as the body responsible for paying the relevant benefits and laid down the conditions and procedure for it to be granted. Consequently, OAED is not authorized to lay down any criteria and procedures other than those expressly specified in the ministerial decision.

- Regarding the actions of the organisation's offices, OAED's circular in relation to this issue provides that decisions on the special protection-of-maternity benefit shall be issued within a fixed seven-day term. However, in the case in question, the above term was exceeded, with disproportionately adverse consequences for the employee. The deficiencies that are established to have taken place in the issuing and revocation of the relevant decision have resulted in the right to the special protection-of-maternity benefit being limited and/or removed. In this way, the constitutionally established right to the protection of maternity has been infringed, as has the legal framework created to facilitate Greece's compliance with international labour conventions and EU directives enforcing the protection of maternity through positive measures in favour of working mothers.

- A major issue is caused by the fact that the ministerial decision on the protection-of-maternity benefit specifies that the effective date of the special protection-of-maternity leave shall be the day following the expiry of the maternity leave or the leave equivalent to reduced hours of work. However, the application for the special benefit from OAED may be filed within 60 days of the expiry of the aforementioned periods of leave. As a result of this provision, the employee is obliged to stay away from work while awaiting OAED's decision, since acceptance of an application has a retroactive effect from the day following the expiry of the maternity leave or the period of leave which is equivalent to the reduced hours. Thus, if the applicant has worked during the above period, then retroactively, a period of employment during which contributions are paid to IKA and a period in which special protection-of-maternity benefit is paid by OAED coincide, with problems arising not least from the fact that insurance contributions are paid from two different sources for the same period of time. However, if the application is rejected by OAED, the employee is uninsured for the time she is away from work, while

there is even a risk that her absence could be regarded as voluntary resignation, since it does not arise from leave taken legally. In any event however, the employee would be faced with the loss of her salary and insurance rights for the time she is absent. This situation could last several months if OAED's answer is delayed.

On the basis of these arguments, the Ombudsman has asked the local OAED office to reconsider the interested party's application and grant her the special protection-

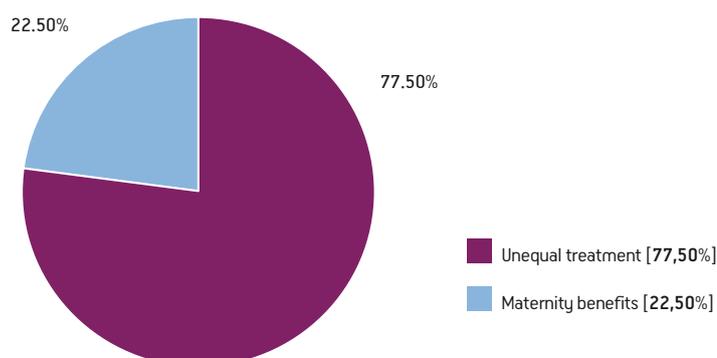
of- maternity benefit from the date of registration of a new application. The Ombudsman has also asked the central offices of OAED to take steps to ensure that local offices do not repeat deficiencies in the issuing, application or revocation of decisions regarding the payment of the special benefit. The Ombudsman awaits the response of the administration to the above suggestions (case 11177/2008).

### 3. PARTICIPATION OF THE OMBUDSMAN IN THE NETWORK OF GENDER EQUALITY BODIES

In its capacity as the competent national body for gender equality, the Ombudsman participates in the network of Gender Equality bodies, which operates under the auspices of the European Commission. The issue under examination in 2008 is the existing pay gap between men and women. The European Commission has declared that fighting gender discrimination regarding the salaries and ensuring the application of the principle of equal pay for work of equal value are issues of political priority. The direct aim set out by the Commission is to analyse the applicable Community framework and then examine possible changes to ensure that direct and indirect gender discrimination shall be excluded from the systems used to determine pay. To accomplish that aim, the

Commission has sent a questionnaire to the national independent gender equality bodies, including the Ombudsman's office. On the basis of the questionnaire, after processing data collected both from public bodies involved (the general secretariat of Equality, the ministry of Employment, SEPE) and the most representative social partners (the general Confederation of Greek Workers, the National Confederation of Greek Trade, the Federation of Greek Industrialists, the General Confederation of Professional Artisans and Tradesmen of Greece), the Ombudsman has sent a draft study which will be processed further and made public after the meeting of the Network of Gender Equality Bodies in Brussels at the end of 2008.

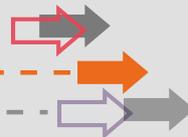
DEPARTMENT OF GENDER EQUALITY - BREAKDOWN BY MAIN CATEGORIES OF COMPLAINT RECEIVED IN 2008





## *Legislative and organisational proposals*

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# Legislative and organisational proposals



The Ombudsman sometimes deems that to deal with some of the issues investigated, either the relevant legislation must be amended or the organisation and operation of the services concerned must be restructured. In such cases, he makes legislative and organisational suggestions. The following have been selected from the total of proposals presented by the Ombudsman in 2008.

## 1. LEGISLATIVE PROPOSALS

The Ombudsman suggested to:

### THE MINISTRY OF EMPLOYMENT AND SOCIAL PROTECTION

- Tourist vouchers should also be granted to companions of beneficiaries with disabilities who are insured at the Farmer Hospitality Tent (OAE) and are unable to take care of themselves. OAE welcomed the Ombudsman's suggestion and stated that it intends to introduce such a rule and give beneficiaries with disabilities the right to participate in social tourism programmes every year (without being selected by lot).
- A full disability allowance should be granted (e.g. to old-age pensioners who need carers) irrespective of the reason for retirement.

### THE MINISTRY OF NATIONAL EDUCATION AND RELIGION

- The bonus paid to teachers posted abroad who are on pregnancy, maternity and child-raising leave should continue when they are away from the country where they have been posted.
- The previous service of teachers in schools of EU Member States (public entities under the administrative supervision of the competent ministry) should be recognised. This suggestion was accepted under article 2(34) of law 3687/2008.

### THE MINISTRY OF MERCANTILE MARINE, THE AEGEAN SEA AND ISLAND POLICY

- In order to protect the marine environment from pollution caused by shipwrecks, the relevant competence should be taken away from local government organisations and assigned to the ministry of Mercantile Marine, the Aegean Sea and Island Policy.

### THE MINISTRY OF INTERIOR

(Directorate of Immigration Policy,  
Foreign Nationals and Immigration;  
Directorate of Citizenship)

#### Regarding the legal entrance and residence of foreigners in Greece

- Special requirements be laid down for the grant of temporary one-year residence permits to foreign nationals whose deportation is not feasible.
- Long-term residence or leave to remain indefinitely should be granted to: foreign

nationals of Greek ethnic origin holding a residence card, their spouses, recognized refugees and those entitled to supplementary protection and residence for humanitarian reasons in accordance with the legislation on asylum, even if their residence cards have expired or their renewal has been rejected.

- Foreign nationals who have not resided legally in Greece without interruption should under certain conditions be granted a long-term residence permit or indefinite leave to remain.
- Residence permits should be granted to foreigners for exceptional reasons (article 44(2) of law 3386/2005), provided their residence in Greece is necessary or strong bonds with Greek society are proven.
- The conditions laid down for starting independent economic activity should be simplified.
- Family members of Greek citizens should enjoy the same treatment as family members of EU citizens in terms of access to the labour market and pursuit of a professional activity.
- A two-year residence permit should be granted to foreign monks, as it is for other categories of residence permit.
- Fines on foreign nationals married to Greek or EU citizens for failing to declare the birth of a child should be abolished. This suggestion was accepted in a circular clarifying the issue.
- Foreign nationals of Greek ethnic origin from the former Soviet Union who are resident in Greece should be able to apply for naturalisation without being obliged to return to their country of origin. This suggestion only concerns parents and children of foreign nationals of Greek ethnic origin who have already acquired Greek citizenship in any manner whatsoever. The suggestion in question was accepted under article 41 of law 3731/2008.

#### THE MINISTRY OF INTERIOR AND MINISTRY OF NATIONAL EDUCATION AND RELIGIOUS AFFAIRS

- Citizens of third countries residing in Greece on a long-term basis and citizens of EU Member States should be able to contend for prizes and scholarships offered by the National Scholarship Institution.

#### THE MINISTRY OF ECONOMY AND FINANCE

##### Public estates – Claims by private persons

- Strict specifications should be laid down during the drawing-up of diagrams submitted by interested parties and that the responsibilities, duties and obligations of the competent administration bodies should be specified in detail.

##### Assignment of a Tax Identification Number

- Foreign holders of a special asylum seeker card should be assigned a Tax Identification Number without being obliged to bring additional supporting documents to prove their home address.

#### THE MINISTRY FOR THE ENVIRONMENT PHYSICAL PLANNING AND PUBLIC WORKS

- People with disabilities should be released from the obligation to pay tolls on national roads and that this should also apply to the drivers of private vehicles fully owned by people with special needs.

#### THE MINISTRY OF HEALTH AND SOCIAL SOLIDARITY

- People with paralysed or amputated legs who wish to receive the mobility allowance (“fuel allowance”) should be released from the obligation to be examined by a health committee as long as they receive a quadriplegia-paraplegia allowance as persons insured or not insured by the state.

## 2. ORGANISATIONAL PROPOSALS

### The Ombudsman suggested to:

#### THE MINISTRY OF MERCANTILE MARINE, THE AEGEAN SEA AND ISLAND POLICY

##### Risk of assessment pollution from shipwrecks:

- In collaboration with the Hellenic Centre for Marine Research, the ministry should prepare studies assessing the risk of environmental pollution from shipwrecks.

#### THE MINISTRY OF INTERIOR

##### Protection of national parks:

- Procedures for scheduling the hiring of seasonal staff to guard protected areas during the fire-protection and the hunting season should be shortened. That a comprehensive regulatory framework should be put in place clearly determining how the various sporting and tourist activities taking place in national parks should operate and be controlled.

#### THE MINISTRY OF CULTURE

- As a matter of immediate priority, compensation should also be paid to owners of property in the event of final deprivation of use resulting from previously - declared expropriation for archaeological purposes, provided that the relevant amount is approximately equal to the property's value.

#### THE MINISTRY OF CULTURE AND THE MINISTRY OF ECONOMY AND FINANCE

##### Protection of cultural heritage without disproportionate property restrictions:

- Pending acts which delimitate or re-delimitate archaeological areas should be expedited.
- Construction requirements or other restrictions in zone B' of archaeological areas should be precisely determined.

#### MINISTRY FOR THE ENVIRONMENT, PHYSICAL PLANNING AND PUBLIC WORKS AND THE MINISTRY OF THE INTERIOR

##### Mitigation of atmospheric pollution

- Regions should again put into operation stations measuring atmospheric pollution at prefecture level and acquire the means necessary to exercise their existing remit in practice. Where such stations are not in operation, the Region should examine indicative measuring equipment. In industrial and densely populated areas, the possibility of installing a second station at the level of a single conurbation (e.g. Volos and neighbouring municipalities) should be examined.
- Regions should be connected on-line with the ministry for the Environment, Physical Planning and Public Works regarding the results of measurements of pollutants, so that they themselves can suggest direct measures for dealing with atmospheric pollution.
- Operational plans to mitigate atmospheric pollution should be approved for each region and zone of activity.
- Environmental departments of local authorities should systematically check that industrial facilities are not exceeding pollutant emission limits. The required sanctions should be imposed systematically and not on an one-off basis.

### 3. PREVIOUS YEARS' PROPOSALS

Between 2006 and 2008, the following proposals made by the Ombudsman in previous years were accepted:

#### THE MINISTRY OF INTERIOR

(Directorate of Immigration Policy)

##### • On the legal entrance and residence of foreign nationals

- A Community provision stipulating that the procedure for examining an application for a residence permit which pertains to the reunification of the family members of third-country nationals should be completed within nine months has been incorporated into national law (article 7(4) of presidential decree 131/2006).
- It was made possible for foreign nationals studying at Greek educational institutions, as well as foreign nationals who have graduated, to be granted legal residence under certain conditions until 30 September 2007 (ministerial decisions 11702/2006 and 5652/2007).
- Special criteria have been laid down determining when public order and security reasons apply in respect of revocation of a permit or rejection of an application for a residence permit (article 3 of law 3536/2007).
- It has been made possible for applications for renewal of a residence permit to be submitted up to one month after its expiry with the payment of a fine (article 4 (1) of law 3536/2007).
- Possession of a contract of employment is no longer a condition for being granted a work permit. This regulation pertains to certain professional activities of foreigners employed by more than one non-permanent employer(s) (article 6(1) of law 3536/2007).
- Interested parties may purchase up to 20% of the required number of stamps in order to meet the condition for renewal of a work permit (Article 6(2) of law 3536/2007).
- Foreign nationals have been provided with the right to work in a prefecture other than that for which the original work permit was granted, following one year of legal residence (article 6(3) of law 3536/2007).
- It has been made possible for foreign nationals to renew their study permits after they have been awarded a degree in order to participate in a post-graduate programme (article 10(2) of law 3536/2007).
- The obligation to pay a deposit in order to obtain a residence permit for a minor has been abolished (article 13(2) of law 3536/2007).
- It has been made possible to leave the country within a month of losing the right of legal residence without being obliged to pay a fine (article 4(2) of law 3536/2007).
- A fair procedure for granting a residence permit to foreign nationals who lack a passport for objective reasons has been laid down, provided they fulfil the other conditions related to legalisation of their residence (articles 15(1) and 18(2) and (10) of law 3536/2007).
- The level of fines imposed on foreign nationals for failing to state the events specified by law (article 73(2) of law 3386/2005) pertaining to their residence status in Greece has been drastically reduced (article 15(3) of law 3536/2007).
- The secondment and transfer of permanent employees has been made possible for the better staffing of the foreign nationals directorates of the ministry of the Interior and the Regions (article 16(2) of law 3536/2007).
- A residence permit for an indefinite period has been granted to foreigners when they reach 21 years of age and have resided continuously in the country for a ten-year period (article 18(1) of law 3536/2007).

- Certain supporting documents have been added as evidence for foreign nationals who entered Greece by 31 December 2004 to be included in the relevant residence legalisation programme (article 18 (4) of law 3536/2007).
- Minors residing illegally in Greece with legally residing parents were provided with the opportunity to be legalised by 30 September 2007 (by virtue of the interpretation of article 18(4) of law 3536/2007).
- The opportunity to change a study permit into a residence permit for other reasons was provided to young foreign nationals who resided near their parents, obtained a six-month temporary residence permit by virtue of Article 66 of Law 2910/2001 and were obliged to request a student visa in order to study in Greece (article 18(9) of law 3536/2007).
- A fine has been introduced for foreign nationals who fail to declare the loss of a passport and residence permit within one month. Previously, such failure constituted a reason for rejecting an application or revoking a residence permit (article 28(6) of law 3613/2007).
- A ten-year period of legal residence is now required for the grant of a residence permit for an indefinite period to holders of a green card and their family members entered on it. For green card holders, the period of legal residence shall begin on the date on which the application for legalisation was submitted, while for family members, such residence shall begin on the date on which the card on which they are entered becomes valid (ministry document 13431/18.6.2008). At this point it should be pointed out that on 23 December 2008, while the preparation of this report was nearing completion, law 3731/2008 (issue 263 A' of the government gazette) was published, which, in an attempt to regulate certain issues in connection with which the Ombudsman had put forward specific suggestions in the past, improves particular provisions of the applicable legislative framework. This development will be reflected in next year's annual report, once the provisions in question have been implemented.

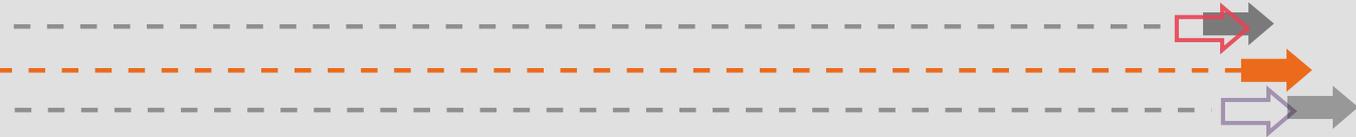
#### THE MINISTRY OF TRANSPORT AND COMMUNICATIONS

- The requirement that drivers who have lost their driving licences due to a temporary inability to drive for medical reasons must retake their theory and practical tests has been abolished (article 15(4) of law 3534/2007).



## *International activities of the Ombudsman*

- 75 1. THE EUROPEAN OMBUDSMAN IN ATHENS
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# *International activities of the Ombudsman*



The Ombudsman systematically builds bridges of communication with counterpart institutions of EU member states and candidate-EU countries, as well as with the European Ombudsman. The Ombudsman has been implementing the Eunomia Project since 2001 and participates in the Peer-to-Peer Project, which is implemented by the Office of the Commissioner for Human Rights.

## **1. THE EUROPEAN OMBUDSMAN IN ATHENS**

The European Ombudsman, Nikiforos Diamantouros, made an official visit to Athens (23-28 May). The aim of the visit was to brief the political leadership and the president of the country on the role and competences of the European Ombudsman and to inform Greek citizens of their rights as EU citizens.

## **2. CONGRESSES**

In the framework of the international activities of the Ombudsman's Office, the Ombudsman, Yorgos Kaminis, participated in the working meeting jointly organised in Paris (17-19 January) by the Council of Europe's Commissioner for Human Rights and the French Ombudsman. The topic of the meeting was the progress made in implementing the Optional Protocol to the UN Convention against Torture (OPCAT) by the states that have signed it. The title of the Ombudsman's speech was "Deprivation of Liberty and Human Rights". The Ombudsman also participated in the 2nd meeting of the Association of Mediterranean Ombudsmen, which took place in Marseille (18-19 December).

Regarding the protection and promotion of children's rights, some of the meetings in which the Deputy Ombudsman

on children's rights, George Moschos, participated were:

- The official launch of the campaign of the Council of Europe against corporal punishment of children, Zagreb (15 June).
- Meetings organised by UNICEF in Ankara with the aim of establishing a Children's Ombudsman in Turkey (7-8 April).
- The 12th Annual Conference of the European Network of Ombudsmen for Children (ENOC) in Dublin (3-6 September).

Regarding equal treatment issues:

- Deputy Ombudsman Andreas Takis participated in the Summit Meeting on Roma issues organised by the European Commission in Brussels (17 September) and the Annual General Meeting of the Equinet European network (29 October).
- Deputy Ombudsman Chryssa Hatzi participated in "The EU Anti-Discrimination Directives 2000/43 and 2000/78: Exchange of good practices and recent developments", a seminar organised by the Academy of European Law in Trier (Germany).
- Deputy Ombudsman Stamatina Yannakourou participated in the second annual meeting of the European Network of Gender Equality Bodies that took place in Brussels (9 December).

Finally, Deputy Ombudsman Calliope Spanou participated in two international meetings on public administration: The 1st Trans-European Dialogue, organised by EGPA (European Group of Public Administration) and NISPAcee (Network of Institutes and Schools of Public Administration in Central and Eastern Europe) in Tallin (31 January - 1 February).

The annual general meeting of the European Groups of

Public Administration organised by EGPA in Rotterdam (3-5 September).

### 3. EUNOMIA PROGRAMME

Eunomia was inaugurated in January 2001, funded by a special financial contribution from the Greek government to the Council of Europe's Directorate General of Human Rights. The programme contributes to the creation of mediation institutions (Ombudsmen) and supports the operation of newly established institutions in southern European countries. The managing committee of the programme consists of the Greek Ombudsman, Yorgos Kaminis, the European Ombudsman, Nikiforos Diamantouros, and the Council of Europe's Commissioner for Human Rights, Thomas Hammarberg. It is implemented under the auspices of the Council of Europe's Office of the Commissioner for Human Rights and is funded annually by the Greek government on an ongoing basis.



The programme's actions for 2008 began with a significant delay, since the relevant disbursement of the necessary funds from the ministry of External Affairs to the Council of Europe began in June 2008. Therefore, actions of the programme were implemented in the three last months of the year.

#### THE SERBIAN OMBUDSMAN IN ATHENS

Representatives of the Serbian Ombudsman's Office, headed by the Citizens' Protector, Sasa Jankovic, visited the Ombudsman's offices from 22 to 24 October. In the framework of his visit, members of the Ombudsman's staff gave presentations on: a) the internal structure of the Greek's Ombudsman office, b) the electronic workflow for handling complaints, c) the activities of each department, d) the administrative services and the reception

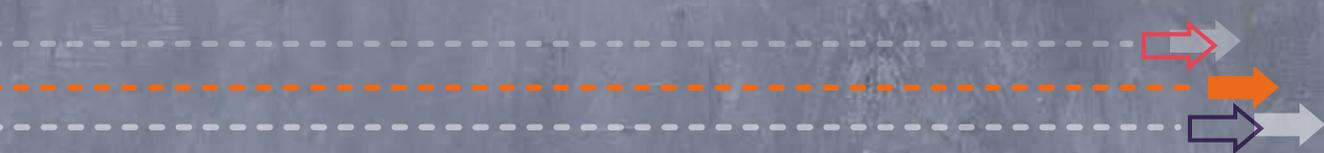
and information bureau. Special emphasis was placed on issues concerning social protection, environmental protection and cultural heritage, protection of children's rights and equal treatment of men and women.

#### THE OMBUDSMAN'S CONTRIBUTION TO THE RESOLUTION OF ADMINISTRATIVE PROBLEMS REGARDING PROTECTION OF THE ENVIRONMENT

After eight years of ongoing action in Eunomia programme, the time is ripe for closer co-operation in specific areas of interest to the Ombudsman, with the aim of highlighting best practices for tackling maladministration. In this context, the actions planned for years 2008 and 2009 concern the co-operation of the Greek Ombudsman with the Ombudsmen in neighbouring states (Bulgaria and the Former Yugoslav Republic of Macedonia) over environmental protection issues. In the framework of the actions planned for 2009 the following meetings took place:

- Representatives of Eunomia met (20-21 November) in Skopje with the Ombudsman of the Former Yugoslav Republic of Macedonia and his office head to discuss environmental issues.
- In Kavala (26-27 November), the Ombudsman organised two preparatory meetings with national agencies on the topic "Potential for the institutional intervention of the Ombudsman in water protection and integrated water management".
- At a meeting of the coordinator of the Eunomia programme with the leadership of the Bulgarian Ombudsman's Office (Sofia, 8 December), it was decided that the object of the bilateral co-operation will be the Ombudsman's contribution to the better incorporation and application of EU directives on the environment.

The results of all the aforementioned actions will be presented at a European workshop on the Ombudsman's role in the protection of the environment, to be held in July 2009.



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