

# I. Department of Human Rights

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## **I. AREA OF JURISDICTION**

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The Department of Human Rights undertakes cases involving individual, political or social rights. Cases of maladministration and other infringements of legal principle by public services are handled as violations of citizens' rights, which are protected by the Constitution, by international agreements, or by law.

Cases investigated by this department cover the full spectrum of public administration including : violations of personal freedom by the police; unjustified discrimination on the basis of nationality or ethnic origin in the provision of administrative services or in the field of athletics; violations of the principle of meritocracy in selection procedures for public sector positions; denials of the right of petition or the right to effective legal protection, resulting from the refusal of public services to answer citizens' petitions or to implement irrevocable judicial decisions.

Law 2477/97 establishing the Ombudsman does not allow the Department of Human Rights to investigate human rights violations by the administration, no matter how serious, if these involve certain state functions, such as national security or foreign policy.

## **2. GENERAL ASSESSMENT OF THE ACTIVITIES OF THE DEPARTMENT OF HUMAN RIGHTS**

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### **2.1 GENERAL OBSERVATIONS - CONCLUSIONS**

On the basis of the complaints investigated by the Department of Human Rights during its first three months of operation, some initial conclusions can be drawn about the stance adopted by the administration towards human rights.

The first point to be noted is that the human rights regime in our country is highly inconsistent. On the one hand, the Constitution and international agreements have shaped a

progressive legislative framework, favourable for the effective protection of human rights. On the other hand, in practice, the services which are called on to implement this legislation respond with considerable procrastination.

Despite some evident improvement in recent years, there continues to be a gulf between the legal framework and daily administrative practice. In some cases, this gulf is even widening, hindering the consolidation of the principles of the rule of law in Greece. There are a number of reasons for this.

One basic reason is the ideological downgrading of human rights, usually coupled with an unrestrained prevailing logic of "the national interest". Of course, the idea that, by definition, the public interest and human rights are in conflict, is wrong. In a society where the state of law prevails, not only does the public interest not run counter to human freedom, but it can only serve this freedom. Nonetheless, the Ombudsman was repeatedly called upon to deal with cases in which the administration did not hesitate to cite the public interest, even when this meant violating fundamental principles of the state of law.

Greece is the only country in the European Union in which the administration categorically refuses to implement irrevocable decisions taken by higher courts, by invoking, for example, "financial costs" (see section 3.6.1 below). This eliminates the citizen's last defense against state arbitrariness : the right to effective judicial protection.

Appeals to the public interest – as defined on each occasion by the administration - at the expense of human rights, mainly prevail when the administration acts on its own discretion. If its actions involve "nationally sensitive" issues, then significant human rights violations are almost automatically "legitimated" on the grounds of "national" necessity. The Ombudsman encountered examples in cases of applications for Greek citizenship, as well as over the rights of minorities, foreigners, and stateless persons (see sections 3.1 and 3.2 below).



In a second category of cases, the administration violates fundamental rights of citizens because it does not have the necessary infrastructure or staff (qualitatively and quantitatively) or, finally, because it operates irrationally. Indicative of this is the – by no means unusual – tactic of some public services not to answer citizens' petitions, claiming that they do not have sufficient means or personnel available. In addition to the contempt for the citizen indicated by such a stance, neglecting to answer not only violates the constitutional right to petition the administration, but also undermines other rights that may depend upon an answer which the citizen awaits – in vain – from the administration (see section 3.6 below). Responsibility for violations of fundamental rights is not borne only by the civil service, but also by certain other independently administered public bodies. The Ombudsman encountered instances of higher educational institutions judging applicants for teaching positions without observing meritocratic criteria (see section 3.4 below) or selecting students through procedures of dubious legality (see section 3.3.1 below), and cases of lawyers' associations bowing to pressure from existing members and refusing to register new members (see section 3.4 below). Nevertheless, it would be premature, on the basis of three months of operation, to judge whether or not the violations of human rights by the administration which came to the

attention of the Ombudsman are, in fact, indicative of the level of protection enjoyed by citizens in our country.

## 2.2 STATISTICS ON CASE FLOW AND PROCESSING

By 31 December 1998, a total of 172 complaints had been assigned to the Department of Human Rights (12% of the total complaints submitted to the Ombudsman).

During this first period of operation of the Ombudsman, it is possible that individuals belonging to vulnerable groups (such as minorities, foreigners, refugees, returning migrants, conscientious objectors) were reluctant to apply to the Ombudsman and awaited more complete information about the effectiveness and discretion of its operations. Between 1 January 1999 and 15 March 1999, however, more than 250 complaints were assigned to the Department of Human Rights, covering a broader range of issues than those submitted in 1998, indicating that this initial reluctance is gradually being overcome. Of the cases handled by the Department of Human Rights in 1998, 67 concerned issues outside the jurisdiction of the Ombudsman or were manifestly vague, 22 were found to be without foundation, and 5 led to redress in favor of the complainant before the end of 1998. At the end of the year, the remaining 78 petitions were still under investigation.

### Graph I

Cases handled by the Department of Human Rights, 1 October - 31 December 1998





The following tables show the categories of complaints that fall outside the Ombudsman's jurisdiction (Table 1), complaints judged as

being without foundation (Table 2), and cases which had not been settled by 31 December 1998 (Table 3).

**Table 1**  
Complaints outside the Ombudsman's jurisdiction

Falling outside the six-month deadline specified in Law 2477/97	4
Pending court cases, pending judicial appeals	7
Manifestly vague (no clear request)	10
Dispute with a private party	9
Lack of administrative act	2
Complainant not directly affected	8
Actions taken by authorities outside the Ombudsman's jurisdiction*	14
Rights created in favour of third parties	2
Service status of public sector employees	11
<b>Total</b>	<b>67</b>

\* Authorities outside the Ombudsman's jurisdiction include government ministers, legislative authorities, judicial authorities, religious organisations, military services, the Ministry of Foreign Affairs, the National Intelligence Agency, the Legal Council of the State, independent administrative authorities

**Table 2**  
Complaints judged to be without foundation

False evidence	3
Actions taken by the administration judged to be legal and proper	19
<b>Total</b>	<b>22</b>

**Table 3**  
Cases pending on December 31, 1998  
(Stage of investigation)

Mediation in progress	62
Refusal by the administration to co-operate or to implement recommendations	8
Awaiting implementation of recommendations	8
Under examination (no action taken yet)	0
<b>Total</b>	<b>78</b>



### 2.3 CLASSIFICATION OF CASES BY SUBJECT

The number and type of complaints submitted to the Department of Human Rights during the first three months of operation should be considered in the light of :

- the amount of information about this new institution available to the public, especially members of vulnerable social groups whose constitutional rights are often violated in their dealings with the administration;

- the extent of trust which these individuals have in the effectiveness of the Ombudsman. As could be expected, many complaints were submitted by individuals who have or have had regular dealings with the public administration (public functionaries and civil servants, judicial functionaries). Foreigners, whether of Greek descent or not, seem to be quite well informed about the Office of the Ombudsman, probably through their own information and solidarity networks.

Nevertheless, the public does not appear to be well informed about the legal limits of the institution's jurisdiction. As a result, the most frequent category of complaint involved the right of access to a public sector job. Current

legislation, however, requires the Supreme Council for the Selection of Personnel (A.S.E.P.) to conduct or oversee the hiring of all civil service personnel. For this reason, many of the complaints examined by the Department of Human Rights fell outside the Ombudsman's mandate.

The second most common category of complaint involves cases in which the administration either fails to respond to petitions submitted by citizens or fails to implement judicial decisions. Such cases are particularly revealing of the kind of treatment which citizens often receive from the public sector and the extent to which certain public services comprehend the principles of transparency and the state of law.

Particularly noteworthy is the high number of complaints submitted by foreigners, whether of Greek descent or not. These complaints enable us to draw significant conclusions about the extent to which human rights are actually protected in practice in our country.

The complaints received by the Department of Human Rights can be classified as follows:

**Table 4**  
Classification of Cases (1998)

Status of foreigners, acquisition of citizenship, entry and residence permits, deportation, refugees, political asylum	12
Minorities, recognition of citizenship, identity cards, passports, repatriation of political refugees	19
Freedom of movement and emigration, denial of permission to leave the country	3
Protection of personal dignity, equality, diplomatic protection	6
Education, access to education	6
The right to work, access to civil service jobs	30
Financial and professional freedom, the right to form partnerships	15
Private ownership, copyright, civil liability of the government	12
Freedom of the press	1
Public order	8
The right to petition, the failure of the administration to reply	23
The right of access to information in the possession of the administration	3
The right to judicial protection, refusal to implement judicial decisions	18
Other	16
<b>Total</b>	<b>172</b>

### 3. PRESENTATION BY SUBJECT CATEGORY OF THE MOST SIGNIFICANT CASES

#### 3.1 THE RIGHT TO CITIZENSHIP

Citizenship is the public bond linking an individual with the polity formed by the people to whom s/he belongs. Citizenship is the prerequisite for the enjoyment of a whole series of human and political rights; it is also a definitive element of personality. For this reason, the 15th article of the Universal Declaration of Human Rights states that "every individual has the right to citizenship". Under international law, an individual with no citizenship, i.e. a stateless person, is in a particularly weak position and in need of special protection.

Since being a citizen of a country is directly associated with the exercise of fundamental political rights, citizenship is normally granted at the discretion of the responsible authorities and is usually considered the act of a sovereign state, which requires no justification and is not subject to control by the courts.

As in other countries (the best example being the Federal Republic of Germany), Greek legislation concerning citizenship places higher priority on ethnic origin than on place of birth. That is why foreigners certified to be of Greek descent by the Greek consular authorities in their country of residence are given preferential treatment in acquiring Greek citizenship or having their Greek citizenship recognised. As in other European countries, the insistence of Greek law on "ius sanguinis" (the so-called "blood principle") is the source of many problems, not only for foreigners of non-Greek descent who settle permanently in Greece with the intention of integrating into Greek society or acquiring Greek citizenship (see section 3.1.1), but also for individuals of Greek descent seeking to acquire Greek citizenship or to have their Greek citizenship recognised as well as by stateless persons and individuals of indeterminate citizenship.

#### 3.1.1 Naturalisation of Foreigners of Non-Greek descent

Article 6 of the "Greek Citizenship Code" specifies the conditions under which foreigners, whether of Greek descent or not, can acquire Greek citizenship by naturalisation. For foreigners of non-Greek descent, one of the conditions is to have lived in Greece for at least ten out of the twelve years before submitting their applications or for five years afterwards. Serious difficulties in co-ordination between the Ministry of the Interior, Public Administration and Decentralisation and the Ministry of Public Order cause problems for citizenship applicants. For example, a French citizen married to a Greek submitted an application for naturalisation to the Ministry of the Interior in 1987. From then until now, whenever the applicant asked about the progress of her application she was given the same answer : that the required legal investigation was being conducted. Furthermore, from time to time, she was asked to provide other documents not required by law, such as certification of the specific type of religious ceremony with which she was married.

The Ombudsman contacted the Ministry of the Interior, Public Administration and Decentralisation and the Ministry of Public Order, requesting the reactivation of the investigation which had apparently, for no reason, become dormant. As a result, the police requested the applicant to provide additional information and then sent their report to the Ministry of the Interior. The Ministry's final decision concerning the naturalisation application is still awaited (case 893/6.11.98). It is true that current legislation does not require naturalisation cases to be handled within the usual administrative time limits. It would, however, be illogical and contrary to the principle of good administration to claim that the obligation of the public authorities to respond to an application for citizenship is not subject to some reasonable time limit or that the passage of more than ten years since the



application constitutes a reasonable delay. See below for the Ombudsman's suggestions for the necessary measures to deal with such problems (see 4.1.1).

### 3.1.2. Participation by Foreigners in Sports Events Held in their Country of Permanent Residence

Foreigners of non-Greek descent encounter difficulties, not only when they apply to become naturalised Greek citizens, but also when, having long been permanent residents of Greece, they attempt to participate fully in the social and economic life of their country of residence. These problems do not arise only from the difficulties involved in acquiring a long-term residence permit (see below). Not having Greek citizenship deprives them, with no apparent rationale, of opportunities vital to their constitutionally guaranteed right to develop their personal potential.

A typical example is the refusal of the Greek Gymnastics Federation to issue membership cards to young athletes, European Union citizens, who have been permanent residents of the Peloponnese almost since their birth and attend the local school (case 989/12.11.98.).

The excuse given for this refusal was that the young athletes are not Greek citizens. This refusal was in violation of current law.

According to a decision by the Deputy Minister for Sports, foreigners can join Greek sports associations, but do not have the right to participate in pan-Hellenic games and national championships.

Obviously, however, depriving foreign athletes of the right to compete in the most important (and virtually the only) events deprives them to a considerable extent of their motivation for participating in sports. Simply permitting them to become members of sports associations is essentially meaningless. This restriction of the right to develop one's potential (confirmed by article 5, paragraph 1 of the Greek Constitution for citizens and foreigners alike) is even more unfair for minors, excluded from an opportunity

basic to their spiritual and physical development and readily available to their schoolmates and friends. Furthermore, this restriction would also appear incompatible with the right to freedom of movement and settlement enjoyed by citizens of the European Union, because an individual's right to participate in social events in his/her country of permanent residence is an important aspect of the right of establishment within the European Union. Following intervention by the Ombudsman, the Greek Gymnastics Federation agreed to issue membership cards to the young athletes. In addition, the General Secretariat for Sports confirmed that it will seriously consider the written comments submitted by the Ombudsman, in order to end this unjustifiable discrimination against those foreigners who are permanently established in Greece and integrated into the country's social life. It is anticipated that the annual decree issued by the Deputy Minister for Sports to regulate such issues will end this discriminatory practice. (See 4.7 for the relevant proposal by the Ombudsman).

## 3.2 PERSONAL FREEDOM

The Greek Constitution, in Article 5, paragraphs 2 and 3, guarantees the personal liberty of all individuals within the Greek state. The guarantee of personal liberty ensures that each individual may circulate and act without being restricted in any way unless so determined by law.

Among the most important aspects of personal liberty for both Greek citizens and foreigners are the freedoms of movement and residence, and the related right to enter and leave the country at will. Obviously, the ease with which an individual may enter and reside in the country varies considerably according to whether or not s/he is a Greek citizen.

Differences in the legal status of Greek nationals and foreigners regarding the rights of free movement and choice of residence are reflected in the different types of problems encountered



by citizens and non-citizens. In the case of Greek nationals, the ban on departure from the country by individuals who owe debts to the public sector, although now illegal, continues to be applied (see section 3.2.1). Meanwhile, foreigners encounter particular difficulties in obtaining legal residence (see section 3.2.2).

### 3.2.1 The Right of Greek Citizens to Leave the Country

Greek citizens have the inalienable right to enter the country, a right that is guaranteed by both international and national law. However, the right of Greek citizens to leave the country is subject to certain legal restrictions usually associated with the failure to fulfill certain constitutional obligations (such as military service or the payment of taxes). These restrictions include a ban on departure from the country by individuals owing debts to the public sector. When limited companies owe money to the state, the restriction extends to chief executives and senior management. If the debt was incurred during their time in office, the restriction continues to be applied even when the individuals concerned are no longer in office. Moreover, a recent regulation has now extended this restriction to payments owed to the Social Insurance Foundation (IKA). However, the International Covenant on Personal and Political Rights, which has been incorporated into Greek legislation (Law 2462/97), declares that "every person is free to leave any country, including his own... except for restrictions needed to protect national security, public order, public health, morality, or the freedom of others...." (article 12, paragraphs 2 and 3).

It is clear from the above that debts to the public sector are not included among the exceptional cases in which a ban on leaving the country is permitted. Despite this, a recent decision by the country's highest administrative court, the Council of State (4674/98), reiterated the view that the ban on leaving the country is

in accordance with the Greek Constitution. The administration claims that this practice implements the Constitution and laws as they are interpreted by the courts.

The Ombudsman dealt with this issue in connection with two complaints:

The managing director of a tourist company contracted a loan with the National Bank on behalf of the company. When the guarantee which he had signed was not honoured, the local Tax Office imposed an exit ban.

In the second case, the chief executive of a textile company which had suspended social insurance payments offered collateral which was considered inadequate. Again, an exit ban was imposed, this time by the local office of the Social Insurance Foundation (IKA).

In reports sent to the ministers involved (the Minister for Finance and the Minister of Labour and Social Security), the Ombudsman recommended that the administration stop applying the above legislation and revoke decisions based upon it (cases 220/6.10.98, 492/19.10.98).

Regardless of the outcome of these particular cases (already during the period that the Ombudsman has been mediating, the Tax Office involved in the first case lifted the exit ban), the Ombudsman is proposing an amendment to the legislation (see below, 4.2 and 4.3).

### 3.2.2 Legal Entrance and Residence of Foreigners in Greece

Foreigners residing in Greece face a series of problems concerning the renewal of residence permits (section 3.2.3). Given that these problems often lead to forcible expulsion from the country, the Ombudsman has intervened repeatedly to ensure that the security forces consider each case on the basis of the principle of equity (section 3.2.4).

### 3.2.3 The Problem of Residence Permits

The conditions for legal entrance and residence by foreigners are basically regulated by Law 1975/91, according to which legal entry (for



example, with a visa issued by a Greek consulate) usually includes a three-month period of legal residence. Only one extension is permitted, for a further three months, following an application to the police, who are called upon to judge the application on the basis of the criteria laid down in the law. A longer-term permit may be granted, but only if, before entering the country, the foreigner has been given permission to work in the country by the Ministry of Labour and Social Security.

The Ombudsman's experience has shown that police practice on this issue diverges from the legal framework, nor is the legislation adequate to deal with the mass illegal entry of foreigners into the country in recent years.

The complicated, slow process of issuing work permits and long-term residence permits has led to their tacit replacement by short-term residence permits which are issued essentially illegally for one, two, or even more years. This increasing exercise of "equity" on the part of the police inevitably entails dangers of arbitrary and unjustified decisions, since the duration of residence depends on the degree of goodwill shown by the individuals working for the police. The result is an unpredictable and perhaps unfair application of the law, particularly for those foreigners who have lived in the country for a long time and have become fully integrated into the social and economic life of the country. It also creates conditions conducive to illegal transactions and corruption.

A typical case is that of a citizen of the United States, an internationally respected researcher who has lived on an Aegean island for the last ten years, until recently renewing her initial short-term residence permit without difficulty. During an informal meeting with the police, she realised, to her great surprise, that her permit would not be renewed, and she appealed to the Ombudsman. While still unaware that there was a deadline before which she needed to apply for her residence permit to be renewed, she was informed that her application had been rejected because it had been submitted after the

deadline. She kept in frequent contact with local police authorities and the Ministry of Public Order in trying to avoid being forcibly expelled from the country and to guarantee that, if she left the country, she would be allowed to return. Finally, she was told that it would be in her best interest to return to her own country for a short period, at least until the current status for residence permits changes (case 1366/8.12.98).

Because Greece in recent years has increasingly become a pole of attraction for immigrants, the competent government ministries have long acknowledged the need to update and rationalise the legislative framework relating to the legal residence of foreigners in the country. (See below 4.5.1 for the Ombudsman's proposals for legislative amendments.)

#### 3.2.4 Treating Foreigners in Accordance with the Principle of Equity

In many cases, the caution exercised by the police and their failure to treat cases with the equity consistent with the principle of just administration result in solutions that are not in accord with the protection provided by the Constitution to the personal dignity of foreigners and the institution of the family. Current legislation should be supplemented to cover such cases.

For example, a family of Georgian citizens, settled in Greece since 1995, legally acquired a residence permit ("White Card") valid for both the parents and their children, then minors. A month after his eighteenth birthday, the eldest son was stopped during a police check and arrested for not having his own residence permit. The Aliens' Department of the Police ordered that he be deported immediately. The Office of the Ombudsman contacted the officials involved, while the Ombudsman personally discussed the case with the Minister of Public Order, pointing out that it is against the principle of equity to insist on the immediate issue of a residence permit for a foreigner who has just come of age and had

until quite recently been covered by his parents' residence permit. In a short while, the young man was released (case 1592/18.12.98).

In addition to the particular case above, the Ombudsman has repeatedly intervened on behalf of foreigners, encouraging the responsible authorities, in the context of their discretionary powers, to adopt a stance based on equity.

For example, a Greek citizen of Bulgarian descent requested entry and residence permits for her Bulgarian relatives so they could help her care for her gravely ill Greek husband. After confirming the serious nature of the complainant's concerns, the Ombudsman asked the Greek consulate in Sofia to consider the case, within the legal framework, on the basis of equity and to consider granting permits for the successive and alternating entrance and residence in Greece of her relatives. The consulate has already responded positively to this appeal and the complainant has been informed to begin the necessary procedures (case 27/29.9.98).

### 3.3 THE RIGHT TO EDUCATION

Education is both a right of each citizen and a duty of government, since the exercise of this right requires government action to provide state education and supervise private education.

#### 3.3.1 The Right of Access to Education

The right of access to state institutions above the level of compulsory education does leave room for restrictions, but these are permitted by the Constitution only when imposed by the physical capacity of each department or when they interpret meritocratic selection criteria. Meritocracy, however, requires transparency, so that the observance of meritocratic selection procedures can be checked. The need is particularly pronounced in the case of new levels or providers of education and new selection procedures, whose public acceptance depends upon the extent to which applicants

trust the procedure. The Ombudsman dealt with such cases.

Two rejected applicants for the Interdepartmental Postgraduate Studies Programme, "Social Exclusion and Minorities: an Interdisciplinary Approach", based in the Sociology Department of Panteion University, requested clarification of the qualifications and selection criteria for applicants in 1998, because these had been unclear in the initial call for applications. In this specific case, both existing legislation and relevant ministerial decisions require the university authorities to issue an internal Regulation. The course, however, may begin before the Regulation is published and continue for an indefinite transition period, during which university officials can settle "all relevant issues" without being tied by specific provisions. When this transition period is prolonged, selection procedures become fluid and unclear (case 650/26.10.98).

See below (section 4.4) for the Ombudsman's proposals on these issues.

### 3.4 THE RIGHT TO WORK AND THE FREEDOM TO PRACTICE A PROFESSION

The Constitution guarantees everyone the freedom to select and practice a profession. This freedom may be subject to certain reasonable controls, such as the requirement to hold a license, especially when the particular profession requires special qualifications. According to current legislation, such licenses are usually issued by the collective representative bodies of the professions themselves (such as doctors' or lawyers' associations) organised as legal entities of public law.

As is apparent, however, from the Ombudsman's experience, such associations often operate in a protectionist spirit. When called upon to license new members of their professions, they do not hesitate to apply corporatist criteria.

Furthermore, since some independent public bodies do not come under the provisions of Law 2190/94 (Supreme Council for the Selection of



Personnel), they do not always observe meritocratic selection procedures for appointment to public sector posts. The lawyers' association of a town in Epirus refused to license a law school graduate, because he was above the age limit set by the Lawyers' Code (case 666/26.10.98.). The Council of State, however, ruled (decision 413/93) that this clause was unconstitutional and, therefore, should not be applied. The Office of the Ombudsman wrote to the president of the association, calling on him to license the interested party in accordance with the principles of the state of law. (See below 4.6 for the Ombudsman's proposal for legislation). According to teaching and technical associates at T.E.I. (technical schools of higher education) in two northern Greek towns, and to the Association of Substitute T.E.I. Professors in one of these towns, during the process of assigning teaching responsibilities for the academic year 1998-99 to candidates in a special category of "applicants with incomplete qualifications but with the basic degree", the usual guarantees of meritocratic procedures were not observed. These include listing candidates on the basis of merit and electors having an obligation to provide an explanation for their vote. The Ombudsman raised the issue in writing with the heads of department involved at the two technical schools, explaining why the clauses concerning selection on the basis of merit apply to all applicants seeking teaching positions at T.E.I., regardless of the job category concerned. Already, one of the two heads of department, with the Ombudsman's assistance, is examining how to deal with the legal issues brought to his attention (cases 794/2.11.98, 795/2.11.98, 1428/10.12.98, 1476/14.12.98, 1602/21.12.98).

### 3.5 THE RIGHT OF PETITION

The right of petition is guaranteed by article 10 of the Constitution. According to current provisions, the public authorities must respond promptly to citizens' requests and justify their answers.

Furthermore, Law 1943/91 sets specific short deadlines for handling cases and providing a definitive answer, for supplying information and documents, and for conveying petitions to the responsible authorities.

The Ombudsman dealt with a number of instances of non-compliance with the above obligations. In some cases, the formal replies attributed the delayed answers to specific causes, such as the principle of secrecy in investigations, even if this were not, in fact, the case. In other cases, the delay was caused by an inexcusable inactivity on the part of the responsible authorities.

It would be useful to try to sensitise public services to this issue by issuing a circular. The Ombudsman has composed a model letter to the public services explaining their obligations in detail.

#### 3.5.1. Failure to Respond Attributed to the Secrecy of Investigations

According to Presidential Decree 22/96 concerning complaints against the police, in cases of disciplinary action an administrative inquiry is conducted, which may be verbal or under oath. This inquiry "is secret and no one may learn what transpires other than the accused" (article 27). The standard practice of the police is to keep the informal investigation held before the administrative inquiry secret as well, by invoking articles 31 and 241 of the Code of Penal Procedure, "as the informal investigation assumes the form and substance of a preliminary inquiry."

In four cases brought to the Ombudsman's attention, the police authorities in certain prefectures responded to complaints against police officers by conducting the legally required investigations. They had, however, sent virtually identical answers to the complainants, containing minimal information and without referring to the reasons why the complaints had been sent to the archives (cases 905/6.11.1998, 906/6.11.1998, 987/12.11.1998, 1251/30.11.1998).

Because the Ombudsman is not a court of appeal, in such cases all that can be done is to

examine the extent to which the law has been observed and whether the conclusions of the inquiries are verifiable. Nonetheless, complaints made by citizens against police officers for acts committed by the latter while performing their duty are, at the same time, complaints about the malfunctioning of the service and, as such, are justifiable reasons for petitions as defined in article 10 of the Constitution. Therefore, they must be answered in full, with the findings explained, and the report made available to the complainant. Secrecy should be maintained only in exceptional cases, in which the inquiry reveals information required by law to be kept secret.

### 3.6. THE RIGHT TO JUDICIAL PROTECTION

The refusal of the administration to implement judicial decisions undermines the constitutional right to judicial protection, by rendering it ineffective. This observation, together with the explicit inclusion of such a refusal among the examples of maladministration listed in Law 2477/97, led the Ombudsman to examine such cases, even when the subject matter of the complaint falls outside the Ombudsman's mandate.

#### 3.6.1 Non-implementation of Judicial Decisions Involving Financial Payments

Most of the complaints in this category come from retired judicial functionaries demanding the implementation of irrevocable decisions taken by the Court of Auditors, which settled issues of pension payments by recalculating them on the basis of the salaries of their colleagues who are still working.

Requests from retired judicial functionaries to have their pensions readjusted were turned down by the Treasury Department of the Ministry of Finance. The pensioners appealed to the Court of Auditors which, in a series of decisions in 1997, modified the disputed acts and adjusted the pensions so that they would be "payable... gradually on the same bases as defined in the above ministerial decision for judicial functionaries still in service". Following

these decisions, the pensioners petitioned the Treasury Department to pay the recalculated amounts. Nonetheless, after a long delay, the 42nd Directorate of the Treasury Department replied that the political leadership of the Ministry of Finance had postponed the implementation of all relevant decisions pending the passage of a new law regulating pension issues. In fact, Law 2512/97 was passed, turning down all such petitions to the government, annulling all such pending court cases, and seeking the repayment of any payments made. During a plenary session of the Court of Auditors, these provisions were judged contrary to the Constitution (articles 8; 20, para. 1; 26; 87, para. 1; 88, para. 2), to the European Convention on Human Rights, and to the First Additional Protocol of the European Convention on Human Rights. After this ruling, the complainants submitted a new petition to the Treasury Department, which to date has declined to implement the relevant judicial decisions. In response to a letter from the General Commissioner for the Court of Auditors, the issue of non-implementation of these decisions was discussed by the Plenum of the Court of Auditors.

Fifteen retired judicial functionaries then submitted complaints to the Ombudsman, who requested in writing that the Director General for Salaries and Pensions in the Treasury Department comply with these decisions. In his reply to the Ombudsman, the Deputy Minister for Finance wrote that the administration maintained its position and invoked the "incalculable financial cost... which would harm the country's steady progress toward European Economic and Monetary Union."

In the context of the Ombudsman's mediation, the complainants proposed that the payments be made in instalments at a later date in order to ease the financial burden upon the state. This proposal was submitted by the Ombudsman to the Deputy Minister for Finance. In his answering letter, dated 26 March 1999, the Deputy Minister replied that he held to his



views and referred to the recently passed law "on the readjustment of pensions of retired university and T.E.I. faculty, National Health System doctors, and members of the diplomatic service", which again includes an unconstitutional provision denying financial demands made upon the government even when these are based on judicial decisions. As a result, the Ombudsman will issue a report, declaring the failure to reach a compromise (cases 314/8.10.98, 431-3/14.11.98, 837-9/4.11.98, 842/4.11.98).

#### **4. PROPOSALS FOR LEGISLATIVE AND ADMINISTRATIVE REFORMS**

(listed by ministry)

As already mentioned, many of the investigations carried out by the Department of Human Rights have revealed instances of maladministration, violations of constitutional rights, and other problems in the functioning of the administration. These problems need to be addressed through changes in legislation or at least changes in administrative regulations. The following proposals are listed according to the ministry that has the legislative or regulatory authority.

##### **4.1 MINISTRY OF THE INTERIOR, PUBLIC ADMINISTRATION AND DECENTRALISATION**

###### **4.1.1 Joint Responsibility with the Ministry of Public Order**

###### **Applications for Greek Citizenship**

Article 5 of Law 2130/93 excludes citizenship applications from the time limits set by article 5 of Law 1943/91 for the answering of petitions (see above, 3.1.1). However, the absence of any time restrictions whatsoever has contributed substantially to the particularly long delay in examining such applications.

Therefore, it is proposed that:

A reasonable time limit be set, for example 18 months, for replying to applicants.

##### **4.2 MINISTRY OF FINANCE**

###### **Ban on Departure from the Country by Individuals with Debts to the State**

Complaints investigated by the Ombudsman (see above, 3.2.1) show that the public sector continues to implement provisions prohibiting individuals with debts to the state from leaving the country, even though such provisions are contrary to article 12 of the International Covenant on Personal and Political Rights (incorporated into Greek legislation by Law 2462/97).

Therefore, it is proposed that:

These provisions (Law 395/76 and article 27 of Law 1882/90) be revoked.

##### **4.3 MINISTRY OF LABOUR AND SOCIAL SECURITY**

###### **Ban on Departure from the Country by Individuals with Debts to the State**

For the same reasons as in section 4.2 above, it is proposed that:

The provisions permitting an exit ban in such cases (article 21 of Law 1902/90) be revoked.

##### **4.4 MINISTRY OF EDUCATION AND RELIGION**

###### **Selection Procedures for Postgraduate Programmes**

Complaints concerned with procedures for handling students' applications (see above, 3.3.1) reveal a lack of clarity concerning the legal criteria upon which selection is based. Laws on new levels, programmes and providers of higher education, as well as on new selection procedures (such as article 12 of Law 2083/92 concerning postgraduate studies) usually require the university authorities to issue an internal Regulation. However, courses may begin before the Regulation is issued and continue for an indefinite transition period, during which "all relevant issues" are to be regulated by the university, which, in the meantime, is not bound by any specific provisions. When this transition period is

prolonged, it results in a lack of stability, clarity and transparency in selection procedures. Therefore, it is proposed that:

The relevant provisions be amended so that such courses may begin only after the publication of the internal Regulations governing them.

#### **Application of Meritocratic Criteria in Appointments to Teaching Posts in Higher Education**

A series of investigations by the Ombudsman (see above, 3.4) show that during procedures for the appointment of teaching staff in the category of "candidates with incomplete qualifications" at T.E.I. (technical schools of higher education), generally applicable guarantees of meritocracy for ensuring that candidates are selected on the basis of merit (such as compilation of a list of candidates in order of their qualifications, justification of the votes cast by the people making the selection) were not observed. Technical schools of higher education could already apply by analogy the legal provisions providing the above guarantees of meritocracy to candidates in this category (as the Ombudsman has already requested). Nonetheless, for reasons of legislative clarity, it is proposed that :

The relevant provisions be explicitly extended to candidates in the above category.

#### **4.5. MINISTRY OF PUBLIC ORDER**

##### **Procedures for the Investigation of Complaints Against Police Officers**

A series of cases concerning allegedly inadequate investigation of citizens' complaints against police officers (see above, 3.5.1) indicated that the obligation to provide an explanatory reply is inadequately legally based. Informal investigations and administrative inquiries carried out after such complaints are kept completely secret (article 27 of Presidential Decree 22/96, together with articles 31 and 241 of the Code of Penal Procedure). When complaints are judged to be without foundation, they are simply filed in

the archives, without the complainant being informed of the reasoning behind this decision. Since citizens' complaints concerning acts committed by police officers in the course of public duty constitute petitions as defined in article 10 of the Constitution, they should be answered with an analytical explanation, with at least the conclusions of the inquiry made available to the complainant. Secrecy should be maintained only in exceptional cases in which the inquiry reveals information required by law to be kept secret. The authorities already have the possibility to modify their practice, by directly invoking Article 10 of the Constitution or by applying by analogy the procedural principle of "disclosure of information between the interested parties" (Articles 97 and 108 of the Code of Penal Procedure).

Nonetheless, it is proposed that:

The law be amended to ensure consistency and clarity concerning the limits of secrecy and disclosure.

##### **4.5.1 Joint Responsibility of the Ministry of Public Order, the Ministry of the Interior, Public Administration and Decentralisation, and the Ministry of Foreign Affairs**

###### **Residence Permits for Foreign Nationals**

As mentioned above (see section 3.2.2), the fact that Greece has increasingly become a pole of attraction for immigrants makes it necessary to modernise and rationalise the legislation concerning the legal residence of foreigners, a need which has been acknowledged by the co-responsible Ministries of the Interior, Public Administration and Decentralisation; Foreign Affairs; and Public Order.

In the context of the imminent legislative reform, it is proposed that:

- The presence of a large number of foreigners, long settled in Greece and integrated into the social and economic life of the country, be taken into consideration.
- With reference to this category of foreign residents, a system should be established for the issue of medium- and long-term residence



permits (for example, 1-5 years).

- Such permits should no longer be dependent upon the existence of a work permit and should be issued following a relatively simple process or even immediately (for example, in cases of the foreign parents of Greek citizens who are minors).
- The procedures and criteria for the issue and renewal of residence permits should be clear and transparent. On the one hand, this will restrict as much as possible the almost unlimited freedom of the police to take decisions on such issues at their own discretion and on the other hand, it will fully guarantee the rights accorded to foreigners by the Constitution and international agreements.
- In defining specific criteria, any special link with Greek society (such as blood relationship with Greek citizens, academic interest, regular financial transactions) should be taken particularly into consideration.

#### 4.6. MINISTRY OF JUSTICE

##### **Licensing Lawyers to Practice their Profession**

A complaint from a citizen who was refused a license to practice his profession as a lawyer (see above, 3.4) revealed the continued implementation of an unconstitutional provision. The "Lawyers' Code" sets an age limit for registration as a practicing lawyer. Since the

Council of State has ruled that this provision is unconstitutional and therefore cannot be implemented, the lawyers' associations are already obligated not to apply it.

It is proposed that:

The provision (article 4 of Legislative Decree 3026/54) be revoked, so that lawyers' associations cannot cite it.

#### 4.7. MINISTRY OF CULTURE: GENERAL SECRETARIAT FOR SPORTS

##### **The Right of Long-term Foreign Residents to Participate in National Athletics Contests**

As mentioned above (see 3.1.2), foreigners living in Greece legally for a long period of time and fully integrated into the social life of the country sometimes suffer unjustifiable discrimination, as in the case of participation in amateur sports events.

It is proposed that:

The decision issued each year by the Deputy Minister for Sports (Law 75/75) guarantee that foreigners be permitted not only to join athletics associations but also to participate in national competitions. This regulation is all the more necessary in the light of the steadily expanding legal foundation of the right of establishment of European Union citizens anywhere in the EU.