

2. Department of Health and Social Welfare

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I. AREA OF JURISDICTION

The Department of Health and Social Welfare is responsible for complaints concerning the following policy sectors:

- Social insurance, including pension rights, payment of and receipts for contributions, register of insured persons, etc.
 - Health, including issues of hospital and out-patient care, sickness benefits, including payments to kidney patients and paraplegics, and issues concerning health professionals and, more generally, the operation of the National Health System.
 - Public health.
 - Welfare, including different benefits, such as for sickness, disability, maternity, large families, etc. as well as welfare benefits in kind, including the social tourism programme of subsidised holidays, workers' housing, recreation, etc.
 - Care of the elderly, children, people with special needs, and the unemployed, with emphasis on institutional and non-institutional care, professional training, job placement, etc.
- The cases handled by the Department of Health and Social Welfare cover a relatively wide spectrum of public services, including insurance funds, welfare services, prefectural health committees, the Ministry of Finance Treasury Department, hospitals, etc.

2. GENERAL ASSESSMENT OF THE ACTIVITIES OF THE DEPARTMENT OF HEALTH AND SOCIAL WELFARE

2.1 PROBLEMS ARISING FROM ADMINISTRATIVE ACTION – GENERAL OBSERVATIONS - CONCLUSIONS

The following graphs provide a clear picture both of the subjects raised in complaints and of the problems which citizens face every day in their relations with public services. Most of the subjects raised in complaints concern social insurance, mainly pensioners' rights (see Graphs 6-8); health, particularly sickness benefits paid in kind (see Graphs 6, 7, 9); and welfare, where the main problem concerns welfare benefits in kind, i.e. subsidies (see Graphs 6, 7, 10).

In the case of problems arising from administrative action, the following graphs (1-4) show the areas of administrative responsibility with most problems and the more common forms of maladministration. Graphs 1 and 3 present a breakdown of the types of problems raised in all complaints received, and Graphs 2 and 4 present the types of problems raised in cases which have been resolved.

Graph 1
Categories of Issues Raised (All Complaints)





Graph 2

Categories of Issues Raised (Resolved Complaints)



* Other: problems arising from prescriptions, insurance contributions, etc.

Graph 3

Categories of Maladministration (All Complaints)



** Other: delay in holding meetings of administrative organs, discriminatory practices, etc.

Graph 4
Categories of Maladministration (Resolved Complaints)



*** Other: delay in holding meetings of administrative bodies, discriminatory practices, etc.

The most important issues which emerge from an examination of these complaints were:

A. Delay by the social insurance funds in issuing decisions and making payments. This is due to: **i)** the irrational organisation of social insurance organisations and **ii)** poor information of the social insurance beneficiaries. There are many cases of citizens having to wait for periods from a few months up to many years for a decision to be taken about their pension and/or the payment of a supplementary pension or special payments.

i) The irrational organisation of Social Insurance Funds.

The administration often creates problems for citizens because of its irrational organisation. A typical example concerns a complainant (case 320/9.10.98) who was asked to make the payments owed by his employer - to the order of 2.5 million drachmas - because his employer had not made these payments at the appropriate time - due to the poor organisation and functioning of the fund (lack of personnel, inability to monitor that companies fulfil their insurance obligations, etc.) – with the result that the legal time limit during which the payments should have been made had already expired.

The main cause of delays in issuing decisions is the irrational organisation of the services and not the lack of personnel, as most insurance funds claim. By "irrationally organised" is meant:

- On the one hand, staff assignments are not based on the needs of the service as a whole or on the needs of particular sections, and on the other hand, there is no flexibility concerning mobility of personnel (task force).
- So many bureaucratic and time-consuming procedures are involved in taking decisions that the process of paying pensions cannot be simplified.
- There is a fragmentation and excessive number of laws. The existence of so many social insurance organisations and so many laws regulating insurance issues make it even more difficult for pension funds to be run efficiently and for citizens' petitions to be processed effectively. There are more than 200 insurance funds and a multitude of laws regulating social insurance issues. In the case of most of the insurance organisations, the laws have not been codified and simplified so that citizens can understand their responsibilities and rights. The lack of codified legislation makes it impossible to impose any control over the administration for its actions. The scattered and extensive



legislative regulations deprive the administration of credibility, to the extent that citizens doubt the validity of all administrative actions, even when these are taken in accordance with the law. It is not accidental that the cases which closed without redress in favour of the citizen fell into this category. The multiplicity of laws is noted by many citizens in their complaints.

ii) The failure of the civil service and public services in general to inform citizens about their rights and obligations stemming from the legislation concerning social insurance, health, and welfare.

- With regard to insurance rights

Some citizens experience problems with their insurance rights, due to inadequate information. A typical example concerns the case of a pensioner of the Social Insurance Foundation (IKA) who was unaware that, as a paraplegic, she was entitled to apply for higher pension payments. When, by chance, she did learn of this possibility, she had already lost two years' payments (case 351/9.10.98).

- Insurance obligations

Similarly, some citizens have problems with insurance funds, which could have been avoided if they had been properly informed about their obligations. Citizens' ignorance about their obligations, e.g. to IKA, creates significant problems to the extent that they result in both moral and material damage in instances where the insurance organisation imposes additional contributions, which in some cases involve excessively high amounts.

One example concerns citizens who undertake construction projects and are unaware that they are required to insure their workers with IKA. Another example concerns the case of a taxi driver (case 301/8.10.98), who, owing to a recent legislative amendment, was required to keep accounts. In so far as the administration did not inform him about the new regulations, the taxi driver justly complained about the imposition of a fine.

B. Injustices generated by legislation

Government departments and agencies base

their actions on legislation. Nonetheless, often legislation itself treats people unjustly. An example of this is the complaint of an elderly uninsured citizen who applied to the Agricultural Insurance Fund (OGA) for a pension (case 1036/16.11.98). According to the law, OGA provides pensions for individuals who have no income or other benefits. As proof of this, OGA requires a copy of the annual income tax demand. The individual concerned had no income and was living in his brother's house. His income tax statement, however, showed that he had declared a one-quarter share in an inherited automobile, which had a value for taxation purposes higher than the maximum level set by OGA for eligibility for this type of pension. As a result, he was not entitled to the pension, even though he made no use whatsoever of the automobile.

It is perfectly reasonable for OGA to use an income tax statement to determine eligibility for this pension. In this case, however, the decision was manifestly unjust, particularly since the declared amount was an accounting entry, not real income. In such cases the Ombudsman should intervene sparingly with the administration, citing the principle of equity, so that justice may be done, satisfying the citizen's deeper sense of what is fair. That is, in such cases of obvious injustice, the Ombudsman, on the basis of the office's findings, should propose that exceptions be made in applying particular regulations, providing a solution for a particular person in a particular situation which will not, in any way, be taken as setting a precedent.

2.2 STATISTICS ON CASE FLOW AND PROCESSING

2.2.1 Complaints handled

During the period from the beginning of October until the end of December 1998, the Department of Health and Social Welfare dealt with 383 written complaints, which is equivalent to 27% of the total 1,430 complaints submitted to the Ombudsman. Of these 383 complaints, 53 were judged to be outside the Ombudsman's

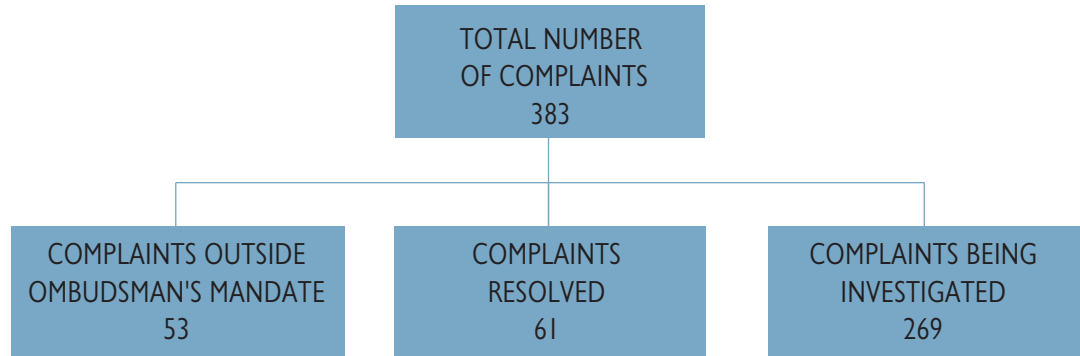


mandate, 61 were resolved during 1998, and 269 were still being investigated at the

beginning of 1999. Of these 269 cases, 145 had reached the stage of issuing findings (see Graph 5).

Graph 5

Complaints Submitted to the Department of Health and Social Welfare (1 October -31 December 1998)



2.2.2 Complaints Outside the Ombudsman’s mandate
The main reasons why complaints were judged to be outside the mandate in accordance with the

law founding the Ombudsman (Law 2477/97, Government Gazette A 59) are the following:

Table I

Complaints Outside the Ombudsman’s Mandate

Beyond the six month deadline	20
Pending court cases, pending judicial appeals	16
Imprecise, insignificant	8
Dispute between private parties	3
Service status of civil servants	2
Other issues outside the mandate*	4
Total	53

* Actions taken by agencies excluded from the Ombudsman’s mandate, lack of administrative act, no legitimate interest, third party rights, judicial authorities, etc.

As time passes and the role and mission of the Ombudsman becomes better understood, it is expected that the number of complaints outside the institution's jurisdiction will decrease. This will improve the functioning of the office.

2.2.3 Complaints Resolved

Of the 383 cases submitted to the Department of Health and Social Welfare, 61 had already been resolved by 31 December 1998. Of these, 38 were resolved in the favour of the complainant.

The remaining 23 cases were not resolved in the complainant's favour, either because there had been no omission or unsound action on the part of the administration, or because the law had been correctly interpreted or because the case was without real foundation, and so on. In other words, the complaints were without substance or legal foundation (see Table 2). In many of these cases, considerable legal research was undertaken before they were judged to be without foundation.

Table 2
Complaints Resolved (October – December, 1998)

Cases resolved in favour of the complainant	38	
Refusal by the administration to implement recommendations	0	
Complaints without foundation	Complaints with inaccurate information	2
	Administrative actions taken in accordance with the law	21

Some cases, due to their nature and the response of the service involved, were resolved over the telephone through discussion with the responsible authorities. These were the cases resolved by simple mediation. In most cases, however, recommendations were carried out only after the Ombudsman had intervened repeatedly with both telephone calls and letters to both the administration and the complainant. It should be noted that on several occasions, the administration delayed some considerable

time in acting on the Ombudsman's findings. Most of these delays involved subsidiary payments from the Metal Industry Supplementary Pension Fund (ETEM). Of the 269 complaints still under investigation on 31 December 1998, 56 were settled during January of 1999 (of which, 27 in the complainant's favour). Most of the remaining 213 cases are in the final stage before the issuing of the findings (see Table 3).

Table 3
1998 Complaints: Stage of Investigation on 31 January 1999

Initial	0
Advanced	56
Publication of findings	145
Temporary suspension of investigation*	12

* Temporary suspension of investigation either because the complainant has not provided all the information needed or because the case has been taken to an administrative appeal committee, in which case the Ombudsman cannot intervene.

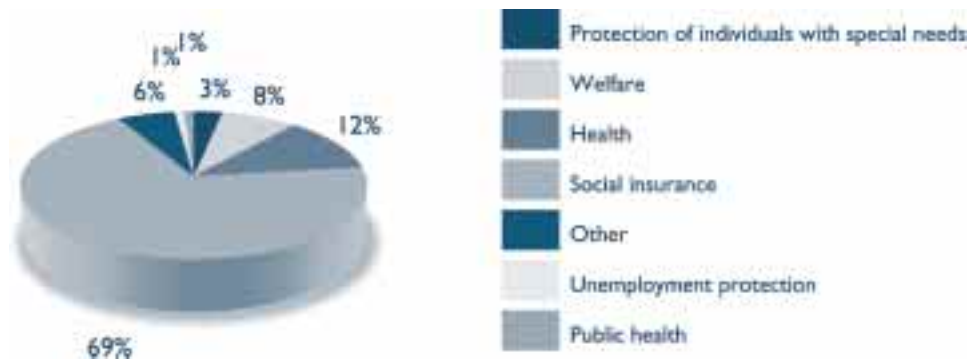


2.3 ISSUES RAISED IN COMPLAINTS

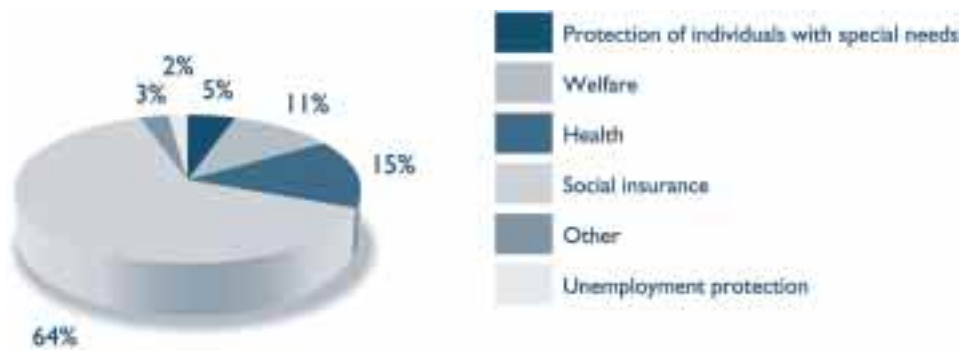
The following graphs provide a breakdown of the types of cases submitted to the Department of Health and Social Welfare and a breakdown

of the types of cases the department has resolved.

Graph 6
Breakdown by Subject (All Complaints)



Graph 7
Breakdown by Subject (Complaints Resolved)

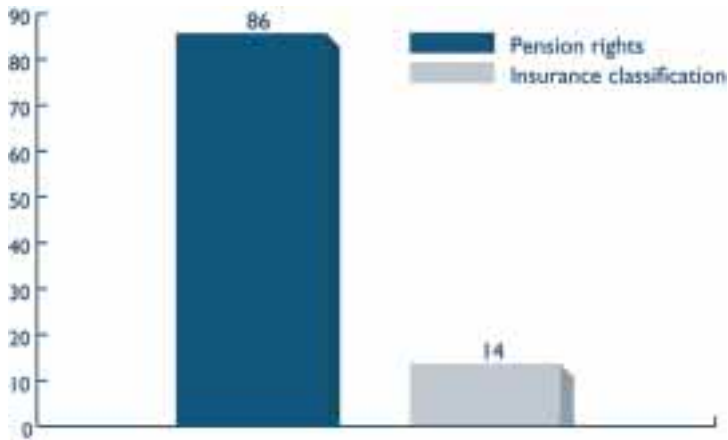




The following graphs show a breakdown of the types of cases by the sectors of social insurance, health, welfare.

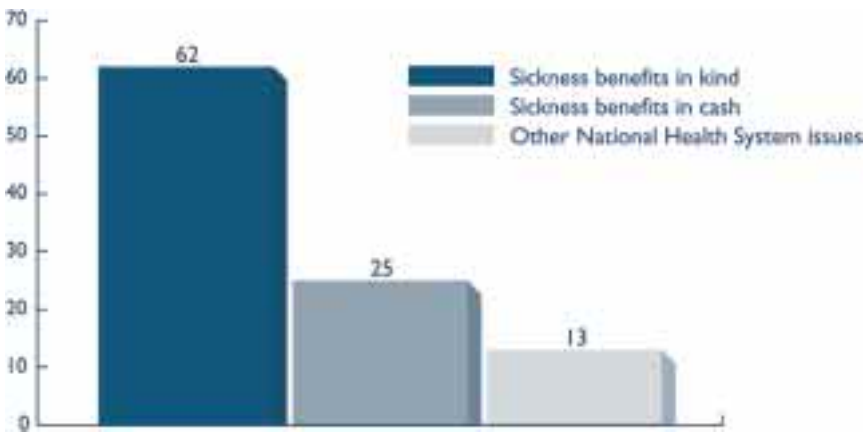
Graph 8

Social Insurance : Breakdown by Subject (Complaints Resolved)



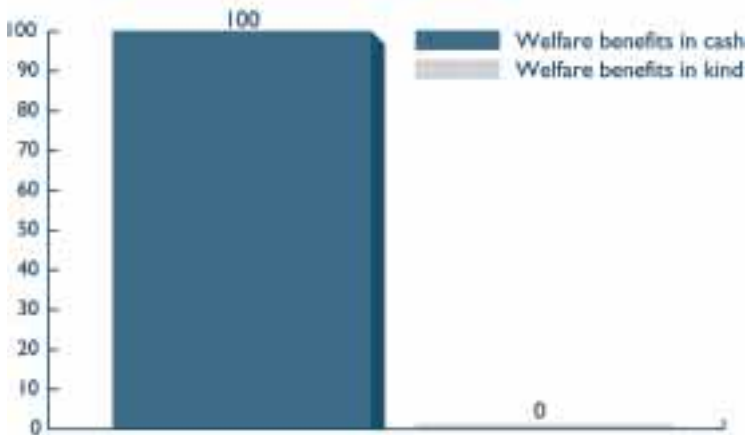
Graph 9

Health : Breakdown by Subject (Complaints Resolved)



Graph 10

Welfare : Breakdown by Subject (Complaints Resolved)





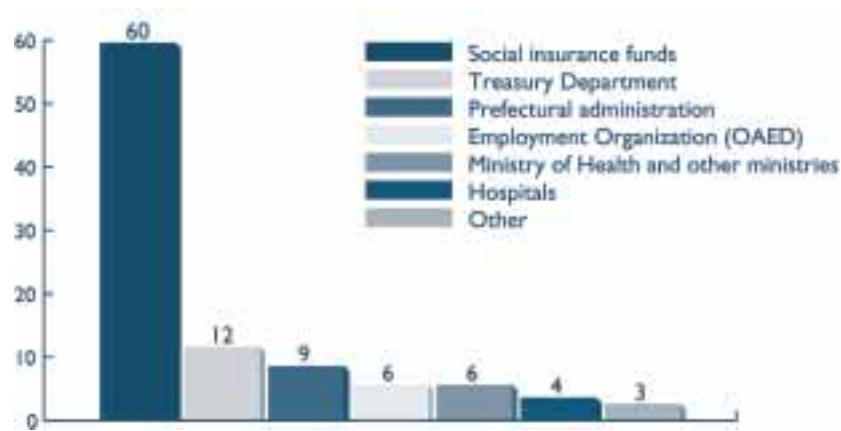
It is worth noting that the majority of cases concern cash benefits. In contrast, there are strikingly few cases concerning the protection of the rights of sensitive social groups, such as the physically or mentally handicapped, the elderly, and children. To a large extent, this is explained by the still paternalistic role of medical care.

2.4 BREAKDOWN OF ISSUES BY GOVERNMENT DEPARTMENTS AND AGENCIES

The graphs below show which public services are the object of citizens' complaints: social insurance funds, the Ministry of Finance Treasury Department, Prefectural Administrations, the Employment Organisation (OAED), the General Secretariat for Social Insurance, the Ministry of Health and Welfare, hospitals, etc.

Graph 11

Breakdown by Public Services (Complaints Resolved)

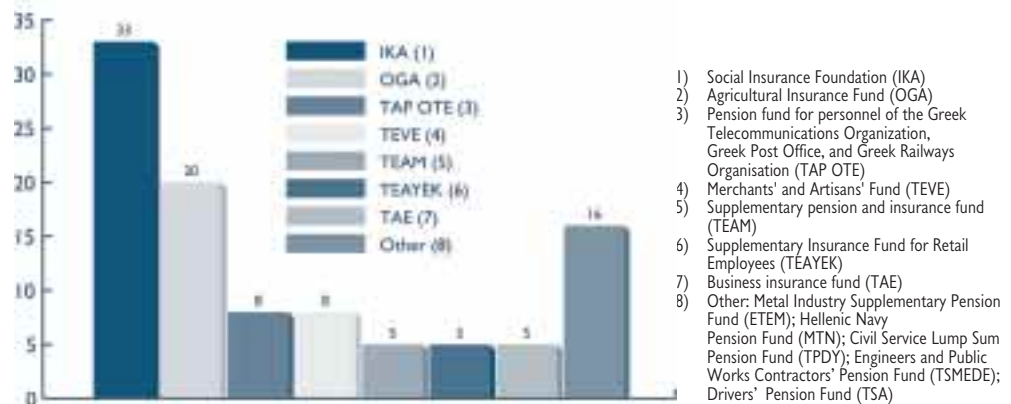


Most of the problems are associated with the insurance organisations, and in particular the two

largest, the Social Insurance Foundation (IKA) and the Agricultural Insurance Fund (OGA).

Graph 12

Breakdown of Complaints Concerning Social Insurance Funds (Complaints Resolved)



- 1) Social Insurance Foundation (IKA)
- 2) Agricultural Insurance Fund (OGA)
- 3) Pension fund for personnel of the Greek Telecommunications Organization, Greek Post Office, and Greek Railways Organisation (TAP OTE)
- 4) Merchants' and Artisans' Fund (TEVE)
- 5) Supplementary pension and insurance fund (TEAM)
- 6) Supplementary Insurance Fund for Retail Employees (TEAYEK)
- 7) Business insurance fund (TAE)
- 8) Other: Metal Industry Supplementary Pension Fund (ETEM); Hellenic Navy Pension Fund (MTN); Civil Service Lump Sum Pension Fund (TPDY); Engineers and Public Works Contractors' Pension Fund (TSMED); Drivers' Pension Fund (TSA)



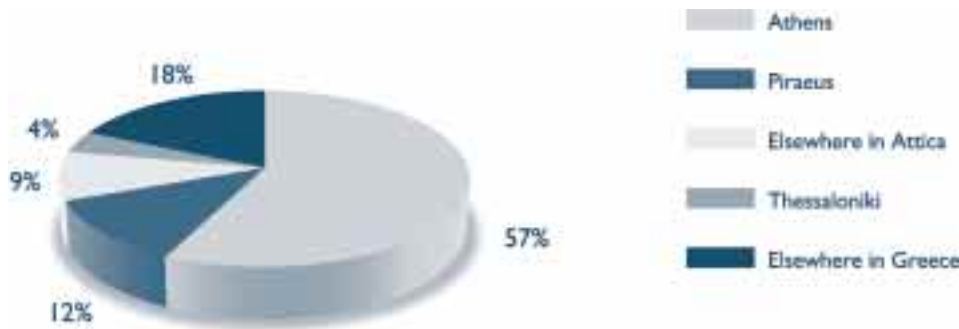
2.4.1 Breakdown of Services by Geographical Location

Finally, we note that, in both the categories of the total number of complaints handled by the Department of Health and Social Welfare and of the complaints resolved by the department, the majority of services about which citizens have complained are located in Attica, usually in the greater Athens area, although a significant

proportion also originate from elsewhere in Greece. This is directly related both to the distribution of population in Greece and to the fact that many of the complaints (such as pensions and payments) are processed by the central offices of the large organisations, or by the Treasury Department, etc., which are based in Athens.

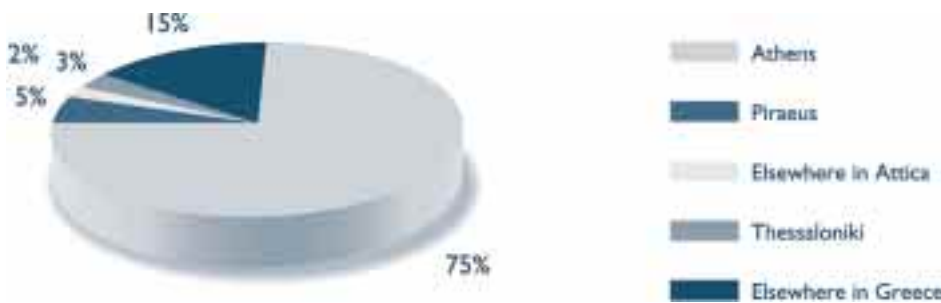
Graph 13

Geographical Location of public services (All Complaints)



Graph 14

Geographical Location of public services (Complaints Resolved)



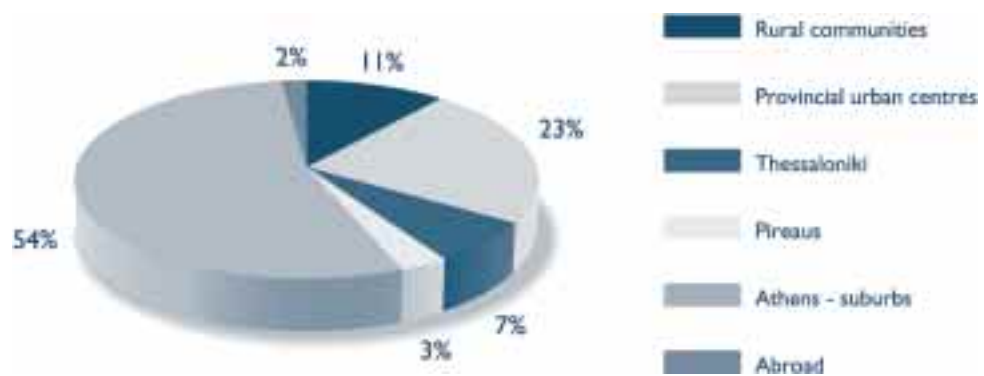


2.5 BREAKDOWN OF COMPLAINTS BY COMPLAINANT'S PLACE OF RESIDENCE

The graph below shows that more than half of the complaints were submitted by people living in the greater Athens area. The rest of the complaints were submitted by people living

throughout the country. It is worth noting that 11% of complaints were submitted by people living in very small communities, while 2% of complaints were submitted by Greeks living outside the country.

Graph 15
Breakdown of Complaints by Complainant's Address



3. PRESENTATION BY SUBJECT CATEGORY OF THE MOST IMPORTANT CASES

3.1 HEALTH

3.1.1 Intervention to Convene the Central Disciplinary Council of National Health System Doctors

Responsible Service: The Ministry of Public Health and Welfare

A doctor, who was a Director in the National Health System, protested that he had remained under suspension for three years because the Central Disciplinary Council of National Health System Doctors had not convened to consider the case of disciplinary expulsion pending against him (42/30.9.98).

The Ombudsman, without investigating the substance of the particular case, considered that the three-year delay in convening the Disciplinary Council had, in itself, directly negative consequences for the citizen and that it was a

clear example of maladministration because it caused the case to be inexcusably delayed. Intervention by the Ombudsman was considered necessary to end this particular instance of bad management. The Ombudsman sent a letter to the Minister of Public Health and Social Welfare requesting the Minister to intervene directly, in order to convene the Central Disciplinary Council of National Health System Doctors to consider the case of disciplinary proceedings pending against the doctor.

Three days later, the Ombudsman received a copy of a letter from the Secretary General of the Ministry of Public Health and Social Welfare to the president of the Central Disciplinary Council of National Health System Doctors. This letter referred to the Ombudsman's intervention and requested that the president convene the disciplinary council in order to judge the case and end the delay.

As a result of the Ombudsman's mediation, the Central Disciplinary Council of National Health



System Doctors convened on 16 December 1998 (minutes No. 5/16.12.98) and decided in the petitioner's favour.

3.1.2 Lifting the Exit Ban Imposed by Decision of the Director of a Sub-branch of the Social Insurance Foundation (IKA) in a Case of Debts Owed to IKA

Responsible Service: Social Insurance Foundation (IKA)

An individual with HIV being treated in the UK requested help from the Ombudsman, so he could visit his parents in Greece for a few days and then return to England to continue his treatment (case 1411/9.12.98).

The Ombudsman dealt with this case with particular sensitivity because of the condition of the complainant's health. To provide prompt help to both the complainant and his family, the Ombudsman investigated the legislation relating to the administrative measure of an exit ban in cases of debts owed to IKA. According to decision Φ 21/2327/24.11.1998 of the Minister of Labour and Social Security (Government Gazette B 1228/3.12.98), the lowest debt for which the travel ban can be imposed is 15,000,000 drachmas. In this particular case, the amount owed was approximately 6,000,000 drachmas. Since the amount owed to IKA was lower than the amount referred to in the above ministerial decision, the Ombudsman requested the IKA authorities in Thessaloniki to lift the exit ban. After this intervention, the director of the relevant sub-branch office of IKA in Thessaloniki informed the Ministry of Public Order in writing (ref. 489/21.1.99), with the result that the exit ban was lifted. As a result, the complainant was able to return to visit his family in Greece for a few days. (For a similar case, see 3.2.1 and 4.3 in the report of the Human Rights Department.)

3.1.3 Protection of the Public from Infectious Diseases

Responsible Service: Ministry of Health and Welfare

A patient charged that she developed an acute case of hepatitis B after receiving a blood

transfusion during a scheduled operation in a public hospital in Attica, while before the operation she had not been a carrier of the hepatitis B virus (case 346/13.10.98).

After studying the information in the complaint, the Ombudsman conducted an investigation at the hospital, where it was confirmed that the complainant had been operated upon and, during the course of the operation, had received two blood transfusions. The first transfusion came from a volunteer blood donor whose blood, according to the records kept by the hospital's blood bank, showed no sign of hepatitis B virus surface antigen (HBsAg). The second transfusion came from a donor who donated blood on behalf of a relative. The record for this donor showed no sign of hepatitis B virus surface antigen but there was a positive reading for antibodies for the core antigen (HBcAb).

The Ombudsman considered that the information provided in the investigation at the hospital was not sufficient either to prove or to disprove that the blood used in the transfusions was infected. The hospital management was asked to provide additional information which would show whether or not, after the positive reading for antibodies for the antigen, the necessary additional tests were made on the blood donor in order to rule out any chance that his blood had been infected.

The investigation into this case has not been completed. The answers to specific questions provided by the hospital management are insufficient, and further clarification has been requested (see 4.2.1, proposal for a legislative amendment).

3.2 PUBLIC HEALTH: ISSUES OF HYGIENE

3.2.1 Ex Officio Action Taken by the Ombudsman Concerning the Resettlement of 1,500 Roma Temporarily Encamped on the Banks of the Gallikos River in Thessaloniki

Responsible Service: Thessaloniki Prefectural Administration

Greek representatives of the Mediciens du

Monde submitted a complaint to the Ombudsman concerning the extended stay, for many months, of 1,500 Roma, including 400 children, on the banks of the Gallikos River in Thessaloniki, under squalid living conditions which threatened to spread epidemics both within the settlement and among the public at large (case 13/24.9.98.).

Since this issue received considerable coverage in the mass media, the Ombudsman used the powers granted by article 4, paragraph 1 of Law 2477/97 to instigate an ex officio investigation into a case which has aroused particular public interest. The Ombudsman ascertained that 1,500 Roma were living on the river banks without any drinking water, electricity, sewage system, or medical care. These conditions have turned the area into a source of contamination, threatening the health of both the Roma living there and the public at large, as well as degrading the natural beauty of the river.

In a letter to the Prefect of Thessaloniki, the Ombudsman noted that the situation constituted an infringement of Sanitary Provision number A5/696/23.4.83 concerning organised settlements for nomads as well as a clear violation of constitutionally protected human rights. The Ombudsman called for the immediate implementation of a decision (no. 95/9.7.97) taken by the Thessaloniki Prefectural Council to resettle the Roma in the former Gonou military camp in Thessaloniki and asked for an explanation why this decision had not been implemented for so many months.

The Prefect of Thessaloniki answered this letter promptly (ref. 3/80/29.1.99), promising to carry out the resettlement of the Roma community in the Gonou military base as soon as possible, no matter what objections might arise. He explained the steps taken so far, stressing that the delay was caused by the need for special investigations to ascertain that there were no unexploded shells buried underground, so the Roma coming to stay in the camp would be absolutely safe. He also described the work carried out by the prefectural administration to

ensure that the Romas' temporary stay on the banks of the Gallikos River would occur in conditions of basic hygiene and cleanliness. The Ombudsman considered the above letter a clear and specific commitment by the Prefect for the implementation of decision number 95/9.7.97 of the Thessaloniki Prefectural Council and for the restoration of legality, the protection of the human and social rights of Greek citizens and the definitive solution of the problem. The Ombudsman will continue to monitor the case and to apply pressure for the problem to be solved as soon as possible, and for the sensitisation of the responsible authorities and of the inhabitants of the area where the Roma will be settled.

3.3 SOCIAL SECURITY

3.3.1 The Principle of Gender Equality in Social Insurance: The Right of a Widower and Father of Young Children to Early Retirement Responsible Service: Social Insurance Foundation (IKA)

A father of two young children, a 51-year old widower who had made his IKA payments in full for 27 years, claimed in his complaint to the Ombudsman (case 1229/2.12.1998) that he fulfilled all the conditions for early retirement. He protested that he cannot take early retirement because such rights are recognised by law only for women. He stressed that, after the death of his wife, he has been solely responsible for raising his young children and that he cannot tend to their daily needs because of the long hours he works in a private company.

After carefully studying his complaint and the relevant laws, the Ombudsman decided that there were no grounds for direct intervention. This particular case does not involve any illegality or oversight on the part of IKA, nor is this an instance of maladministration. On the contrary, the Ombudsman ascertained that paragraphs 6 and 7 of Article 24 of Law 2084/92 reserve the privilege of early retirement only for women who fulfil the other conditions



specified in these provisions.

The Ombudsman informed the complainant that, although he meets all the conditions, the law in force does not permit him to take early retirement because there is no provision in the law for men insured under the Social Insurance Foundation, even in cases where they may have the sole responsibility for raising their young children. This specific complaint, however, raises the particularly important issue of applying the principle of gender equality in social insurance. Accordingly, the Ombudsman investigated the issue in general and includes a proposal for a legislative amendment in this annual Report (see below 4.2.2).

3.4 WELFARE

3.4.1 Legal Vacuum Concerning the Provision of a Petrol Subsidy to a Spastic Paraplegic Citizen

Service Responsible: District Health Committee
A paraplegic citizen requesting a petrol subsidy for a vehicle specially equipped for a disabled driver was examined by the District Health Committee. Her request was rejected by the committee, because in its report she was diagnosed as suffering from spastic paraplegia, which, in terms of symptoms and restriction of mobility, is the same as paraplegia. (Spastic paraplegia is a form of paraplegia). Spastic paraplegia, however, is not included in the Ministry of Health's catalogue of medical conditions for which sufferers may be provided funds for fuel.

Since the complainant fulfils the conditions set by law in terms of the extent of her disability and because her disability is permanent, the Ombudsman responded to her complaint (case 1210/27.11.98) by deciding to intervene with the health committee. The committee verified that the complainant would not receive the petrol subsidy because of the legal vacuum created by the fact that her condition was not included on the Ministry of Health's list. However, as the same degree of spastic paraplegia and paraplegia restricts the movement of patients to precisely

the same extent, equally preventing patients from living a normal life, spastic paraplegia should not be excluded by law. The Ombudsman suggested that the committee should re-issue its report, without mentioning the adjective "spastic." The committee accepted the suggestion and the patient promptly received the petrol subsidy.

4. PROPOSALS FOR LEGISLATIVE AND ADMINISTRATIVE REFORMS

4.1 PROPOSALS TO IMPROVE THE FUNCTIONING OF THE ADMINISTRATION

4.1.1 General proposals

In order to minimise such instances of "maladministration" described above, it is proposed that a system be planned for continual, direct information of the public, and particularly for individuals covered by social insurance programmes. Information letters about any important change in the social insurance system should be sent out whenever a substantial change is made to the existing social insurance system. In particular, it is proposed that:

- Public services should inform citizens through printed informational material about the latest developments concerning social insurance issues and also about the procedures and documents needed for the issue of certification, decisions, etc.
- Public services should provide information in writing about the procedures and time limits for submitting documentation. The information should be standardised for all local services, accurate, and reliable, encouraging a feeling of trust and avoiding the need for repeated visits to the services' offices. Continual visits to public offices is a hardship that wastes time and generates a sense of insecurity and tension.

4.1.2 Specific proposals

4.1.2.1 Issue of a Decree about the Mode of Payment for Outpatient Care to Individuals Insured with the Agricultural Insurance Fund



Responsible agency: Agricultural Insurance Fund (OGA)

This proposal was inspired by a complaint (number 176/5.10.98), concerning delays in reimbursement from OGA for the purchase of essential medical materials.

In order to settle the costs of outpatient care for the people it insures, OGA requires that documentation be submitted to the organisation before the costs are reimbursed to the insured parties. This practice has the advantage of a comparatively low administrative cost, but it causes considerable inconvenience to the people who use the benefits. The time between submission of claims and payment can be as long as four months. This is a very long period, especially bearing in mind the particular situation of the people insured by OGA, the majority of whom do not have high incomes, are not well educated, and are not, as a group, accustomed to dealing with bureaucracy. Furthermore, these outpatient benefits are used by individuals who are seriously ill, mainly cancer patients, the elderly, and people with special needs. The delay provokes questions and often rage among the citizens concerned. A solution could be found by using the Social Insurance Foundation (IKA) structure. In other words, individuals insured with the OGA would be able use local IKA branch offices, at least for the costs of outpatient care.

It is proposed that :

A decree be issued jointly by the Minister of Labour and Social Security and the Minister of Agriculture, based on article 14 of Law 2458/97, making it possible for pensioners and others insured by OGA to be served by IKA. The joint ministerial decision has been delayed, perhaps due to the practical, managerial, or accounting difficulties of this particular plan. Extending the use of IKA services to those insured with OGA, at least with regard to outpatient benefits, will have significant positive results for the following reasons:

- It would reduce the delay in paying reimbursements.

- It would reduce bureaucratic procedures.
- It would help decentralise services and provide more immediate outpatient benefits. As OGA provides services to approximately 1,170,000 people, any improvement would have immediate results.

4.2 PROPOSALS FOR LEGISLATIVE AMENDMENTS

4.2.1 Amendment to the Legislation Concerning Blood Transfusions, Blood Plasma, and Blood Products and Standardising its Implementation

After the recent destruction of infected Greek blood in a European country, Greek public opinion has become more sensitised to public health issues in general and to blood transfusions in particular. Because of this increased sensitivity on the part of the public and in light of complaint number 346/13.10.98, the Ombudsman considers it expedient to raise a number of important issues and to propose the adoption of supplementary measures, both to improve procedures and to fill the gaps in existing regulations.

It is well known that, in the case of blood donation, the principle is applied of non-responsibility of the volunteer donor, according to which the donor bears responsibility only if s/he donates blood while knowing that s/he is a carrier of some infectious disease. In order to prevent the transfusion of infected blood, the following six measures are proposed:

- 1) Blood donors should be more fully and systematically informed about the factors that increase the chances of blood being infected.
- 2) Blood donors should be asked to reply responsibly to questions concerning the absence of factors that might increase the chances of blood being infected and to sign their answers. This would establish a greater responsibility of blood donors in relation to the potential dangers to public health involved in blood transfusions.
- 3) Existing legislation should be amended and measures adopted for the control of donated blood, in order to allow as accurate an



evaluation of its quality as possible and the safest possible diagnosis of factors found during the "serologically silent period" (when the donor has already been infected but has not yet developed antibodies detectable in blood tests). The European Commission will make a contribution here, when it presents its awaited proposals concerning the formulation of a common strategy on the suitability of blood donors and laboratory checks on donated blood.

4) According to article 21, paragraph 3 of the Constitution, the protection of public health is the responsibility of the state. It should not be regulated by decree (as is the case under Law 1820/88 currently in force), but exclusively by a law, defining the procedures for blood transfusions and the checking of blood.

5) The blood donation departments of Greek hospitals do not follow a standardised procedure for checking donated blood. Blood banks in some hospitals take additional measures, such as checking for the presence of Hepatitis B core antibodies. It is proposed that stricter measures of control be adopted to guarantee that current legislation be applied uniformly.

6) A policy of prevention should be adopted, with the planning of a public information campaign, to be conducted through schools, the mass media, and other social agencies, to sensitise society to the dangers of infection from blood transfusion and ways of minimising these dangers.

4.2.2 Amendment of Law 2084/92 Concerning Early Retirement with the Aim of Implementing the Principle of Gender Equality in the Social Insurance Sector

In the course of investigating the legislation relevant to complaint 1229/2.12.98 (see 3.3.1), the Ombudsman discovered that the provisions of Law 2084/92 about early retirement refer exclusively to women, resulting in unequal treatment of men, who are not treated in the same way even when they fulfil the same conditions.

Regardless of the validity of the particular

complaint, this case raised the much broader issue of the implementation of gender equality in the social insurance sector. Specifically, paragraph 1, article 24 of Law 2084/92 stipulates that citizens covered by social insurance are entitled to receive old age pensions if they have reached 65 years of age and have been insured for 4,500 days or 15 years. An exception is provided in paragraph 6 of the same article, which permits early retirement for a mother whose children are either under age or completely incapable of earning their own living, on condition that the mother has been insured for 6,000 days or 20 years. The mother receives a full pension if she has reached 55 years of age or a reduced pension if she is 50 years old.

Paragraph 7 of the same article introduces a further exception for insured mothers with at least three children who have been insured for 6,000 days or 20 years. For these mothers, the retirement age stipulated in paragraph 1 is reduced by three years for each child, down to 50 years, with the goal of providing full pension payments. Similar terms are provided in article 3 of the same law for civil service employees hired after 1 January 1993.

According to article 4, paragraphs 1 and 2 of the constitution, all Greek citizens are equal in the eyes of the law; Greek men and Greek women have the same rights and obligations. According to article 116, paragraph 1 of the constitution, every existing regulation running counter to article 4, paragraph 2 should have been rescinded by law no later than 31 December 1982.

From the combination of these articles, it is clear that the principle of gender equality is enshrined in the constitution. This principle is directly applicable to the social insurance sector. The meaning of this principle consists, on the one hand, in prohibiting any legal discrimination on the basis of gender and, on the other hand, in establishing equality of benefits and possibilities for individuals in the same circumstances, regardless of gender.

Article 116, paragraph 2 permits exceptions to the principle of equality only for serious reasons and in instances clearly defined by law. Legal precedent has established that such serious reasons include the protection of motherhood, marriage, and the family (article 21, paragraph 1 of the constitution), as well as purely biological differences, which require special measures or the establishment – in the context of the welfare state - of legal regulations to benefit working mothers (Decision 1273/96 of the Plenum of the Court of Auditors).

Nonetheless, in cases such as that described above, concerning a widower who sought early retirement in order to care for his underage children, the argument concerning the protection of motherhood is not sufficient grounds to justify the unequal treatment of citizens under Law 2084/92. Working widowers solely responsible for the care of their underage children fulfil the same conditions, have the same family responsibilities and obligations and, therefore, should enjoy the same rights to the same benefits enjoyed by working mothers of underage children.

Greek legislation should be harmonised with the terms of article 119 of the Treaty on European Union and the relevant EU directives concerning the implementation of gender equality in social insurance (directive 79/7). On the basis of this article, it is forbidden to discriminate by paying different remuneration to men and women performing equal work. According to European Court of Justice case-law (Barber C-262/88; Beune C-7/93; and Greek Public Power Corporation C-147/95), the term "remuneration" in article 119 also provides a foundation for pension rights.

Obviously, the provisions of Law 2084/92, which permit early retirement only for working

mothers, are in conflict with the provisions of article 4, paragraphs 1 and 2 and article 116, paragraphs 1 and 2 of the constitution, as well as with the provisions of European Union law. The creative application of the principle of equal treatment (see the following cases: European Court of Justice - Greek Public Power Corporation C-147/95; Court of Auditors 1273/1996; Greek Supreme Court 7/93, 3/95, and 15/97; Council of State 1261/94, 5367/96) requires the extension of this clause to insured men, who have sole custody of their underage children (either through a court decision or by becoming a widower) and who fulfil the same conditions as insured mothers, since in this case there is no sound reason to justify more favourable treatment of mothers than of fathers. The legislature has already moved in the direction of applying the principle of equality in the social insurance sector, with the recent passage of Law 2676/99. Specifically, article 62 of this law equalises the conditions for the payment of death benefits to men and women whose spouses were either insured or receiving pensions. This article ends the perpetuation of a legal framework allowing differentiation based exclusively on gender, which was in direct opposition to the provisions of the Greek Constitution, to European Union law, and to decisions of Greek and European supreme courts. The passage of this amendment clearly indicates the desire of the legislature to apply the constitutional principle of equality in the social insurance sector.

It is proposed that :

The steps already taken, as described above, be completed by amending the contentious provisions of Law 2084/92, so that the principle of gender equality in social insurance issues can be implemented in practice.

