

ANNUAL REPORT **2009**

Summary



This is a summarised presentation of the 2009 Annual Report of the Greek Ombudsman.

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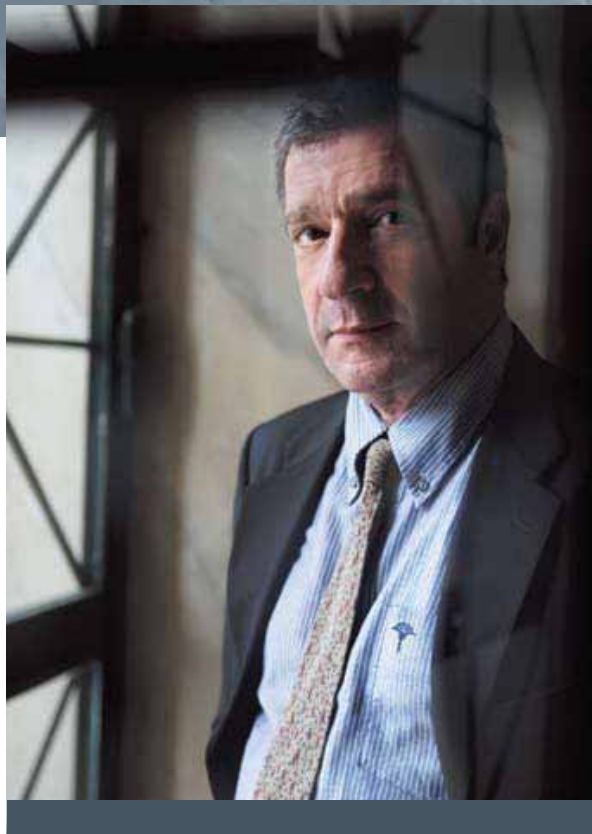
Contents

4	Preface
7	Legal framework and operation of the institution
11	Overall assessment for the year 2009
21	Human rights
28	Social protection, health and social solidarity
36	Quality of life
44	State-citizen relations
51	Children's rights
58	Gender equality
65	Legislative and organisational proposals
71	International activities





Preface



YORGOS KAMINIS
Greek Ombudsman

The deep crisis we are witnessing today in the economy and the credibility of the political system are the consequences of a collective universal crisis of authority; for some time now, the joint and common, active and responsible research into the public interest has ceased to exist. The crisis in the economic and political system, as a partial manifestation of the general crisis, is spreading its corrosive side effects in public administration where it is being metabolized and reproduced. At the same time, this universal internal crisis occurs at a time when external factors, i.e. the massive flow of regular and irregular immigrants, realign in the broader European area collective values and symbols, overturning standard social concepts and attitudes and upsetting social balances which were fluid but otherwise familiar and easily discernible. The disadvantage of the Greek society compared to other European ones is that it is called upon to handle the big issues of national and collective "identity" while being completely unprepared for such a task. For some time now, domestic political debate had disappeared inside the foggy landscape of incessant scandals which hid the country's real problems and the political system's untrustworthiness. Politics, today, are making a comeback to find, however, society in ideological bewilderment, psychologically weary and completely unprepared to face the overwhelming issues lying ahead.

It goes without saying that the political powers of the country, either government or opposition, are called upon to seek solutions. The Greek Ombudsman's contribution in shaping public debate can be decisive, as it has stated already its view on a number of critical issues that will constitute major concerns for public opinion in the years to come. What is most important is that the Ombudsman's

views on these issues have been formulated through its 12 year experience of everyday contact with problems that citizens bring to its attention. These problems fall under two main categories: First, the everyday contact of citizens with state public services – such as health, welfare, education, social security, environment, taxation, all kinds of licensing, public utility transactions, etc. These fields of administrative action have an intense impact on the citizen's daily life. Any attempt to radically reform these fields would collide inevitably with strong and organised interests and trade unions, inside and out of public administration.

Second, there is another category of cases that have been dealt with in large numbers by the Greek Ombudsman, namely the protection of human rights. Specifically, third country nationals rights, the preconditions for regular entry and stay in the country, integration of regular migrants in the labour market, education and social security, pre-requisites and procedures for citizenship acquisition or for political asylum, discrimination on grounds of nationality, race, religion. The Greek Ombudsman has repeatedly stated its point of view on these issues, based on the tens of thousands complaints investigated, always within the boundaries of the Constitution, legislation and international conventions binding the country.

The Greek Ombudsman's experience on these issues, indicatively listed above, may be used as a common point of reference, possibly a trustworthy point of convergence, at least for those who, in good faith, will take part in the public debate shortly. Whether it relates to (a) attempts to reform public administration, which will give rise to the reaction of organised interests and trade unions, or (b) human rights protection issues that may polarize the political debate, the relevant findings of the Greek Ombudsman have considerable advantages. First of all, they are proof of sober reflection, drafted at an unsuspected time, i.e. when the relevant issue was not on the daily political agenda. Moreover, as they assess administrative action from the aspect of prevailing legislation, they can be cross checked to bear evidence of objectivity. Finally, as these findings have been put forward by a public authority vested with statutory independence, they indisputably bear evidence of impartiality.

In order for the Ombudsman to carry out the special mission assigned to it by the state, ie to act as an effective extrajudicial mechanism for the resolution of problems between citizens and the state administration, it is essential for state institutions to carry out their own constitutional mission. When these institutions suffer from dysfunctions, the Greek Ombudsman is also affected. This burden is immediate and anticipated particularly when the problems pertain to the function of public administration, since dealing with these pathogeneses is at the core of the Greek Ombudsman's mission. Indirect yet equally severe consequences are also possible, when the Greek Ombudsman is called upon to cover lacunae of other institutions' operation, in the service of citizen protection, e.g. judicial power.

This example was not selected randomly. Lately the crisis of the political system has touched the judicial too, hence the Greek Ombudsman is compelled to transcend its role of supplementing the courts; the Greek Ombudsman is often called upon to cover shortcomings in the administration of justice. These shortcomings have deep roots that prima facie are perceived by citizens as increasingly prolonged delays in the administration of justice. In other words, citizens complain to the Greek Ombudsman in order to bypass the long delay of pendency of proceedings, hoping to find a

quick solution this way; in actual fact, the Greek Ombudsman as a mediating institution does not have the sanctionary, thus effective, competences at the court's disposal. There is a danger here, of investing the Greek Ombudsman with expectations which can only be fulfilled by the judicial system.

During 2009, the Greek Ombudsman received 13,433 new complaints; this is an increase of 18.50% compared to the prior year and to the largest number of complaints filed within one year ever received by the authority. This increase is not only due to the delays in administering justice. According to successive public opinion polls taken during the last three years, the Greek Ombudsman is highly ranked among other institutions and enjoys the citizens' trust. This increase in confidence coincides with the significantly increased presence of this independent authority in the sphere of public life.

Certainly, this large increase in complaints should also be attributed to the aggravated circumstances in which the public administration operates. Firstly, the economic conditions, whose first certain victim are the citizens, who witness a welfare and subsidy-centered administration rendered unable to find resources and thereby respond to their needs. Moreover, the financial crisis highlights the already grave prevalent inadequacies of the Greek public administration.

It would be misleading, though, to attribute the generalised degradation of the quality of services offered to citizens by the state, to the financial crisis. These pathogeneses of public administration are not coincidental; rather they are endemic and due mainly to the clientelism, that is the widespread phenomenon of unlawful "favours" exchanged inside the administration as well as when coming into contact with citizens. These instances are being perpetuated by the mutual supply of both parties, and in certain cases upgraded to corruption networks.

Clientelism, corruption and lack of transparency afflict social cohesion and push the country to the margins of international development. As this crisis is extremely severe, the need for a radical and long-term reform of public administration is now more than compelling. Operating on a long term basis and disregarding political concurrence, investigating and studying in depth all issues presented by citizens, the Greek Ombudsman considers it is its obligation to contribute to this debate with appropriate ideas and practical, applicable recommendations.

Yorgos V. Kaminis
Greek Ombudsman
February 2010

Legal framework and operation of the institution

- 8 1. LEGAL FRAMEWORK
- 9 2. SUBMISSION AND INVESTIGATION OF COMPLAINTS
- 9 3. ORGANISATION AND STAFFING



Legal framework and operation of the institution



1. LEGAL FRAMEWORK

The Greek Ombudsman is a constitutionally established 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 revision in 2001. The complete texts of the laws on the operation of the Ombudsman office are available on the website www.synigoros.gr.

The mission of the Greek Ombudsman is to mediate between the public administration and the citizens in order to protect the latter's rights, to ensure the former's compliance with the rule of law, and to fight maladministration. The Ombudsman also deals with the promotion of the rights of children. Since 2004, the Ombudsman has been assisted in carrying out his duties by the Social protection, 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 extended to include the promotion of equal treatment in the public sector. Finally, according to law 3488/2006, the Ombudsman is responsible for monitoring the implementation of the equal treatment principle for men and women as regards access to employment, vocational training and promotion, and working conditions in both public and private sector. Law 3772/2009, published on July 10, has explicitly confirmed that the Ombudsman has access to penal institutions. In this way there are no longer obstacles to Ombudsman visits to these institutions due to misinterpretations.

Any Greek or foreign citizen living in Greece or abroad and having dealings with the Greek public sector may

have recourse to the Ombudsman. Specifically regarding infringements of the rights of children, the child directly concerned, a parent or relative, or any third person who is directly aware of an infringement of children's rights, 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 entities, enterprises and organisations controlled by the state or public law legal entities.

Exceptionally in cases where the rights of children 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 complainant became aware of an illegal action or omission of the public administration which concerns him.
- to provide information or legal advice.
- over private disputes.
- over cases related to the service status of civil servants (unless they pertain to the unequal treatment of employees on the basis of Laws 3304/2005 and 3488/2006), national defence, foreign policy and international relations, and state security.
- over cases pending before the courts.
- over actions taken by the courts, the Legal Council of the State, independent authorities and religious legal entities of public law.
- over actions taken by ministers and deputy ministers regarding the political operations.

2. SUBMISSION AND INVESTIGATION OF COMPLAINTS

The Ombudsman office investigates any issue falling within his mandate, following a complaint in writing by any individual, legal entity or association directly concerned by the issue. Complaints may be submitted in person, by post or by fax. They are allocated, depending on their subject, to the respective department and are then investigated by an expert in the subject. Complainants are kept informed in writing and by phone at each stage of the process. During the investigation, the Ombudsman addresses the authority concerned. If, however, the nature of the case calls for it, the Ombudsman can instigate the institutional competences foreseen under law 3094/2003 and proceed to an on-site investigation or refer the case to a prosecutorial/disciplinary examination. Finally, where 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 element concerning 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 of steps taken to implement his recommendations or explain why they could not be accepted.

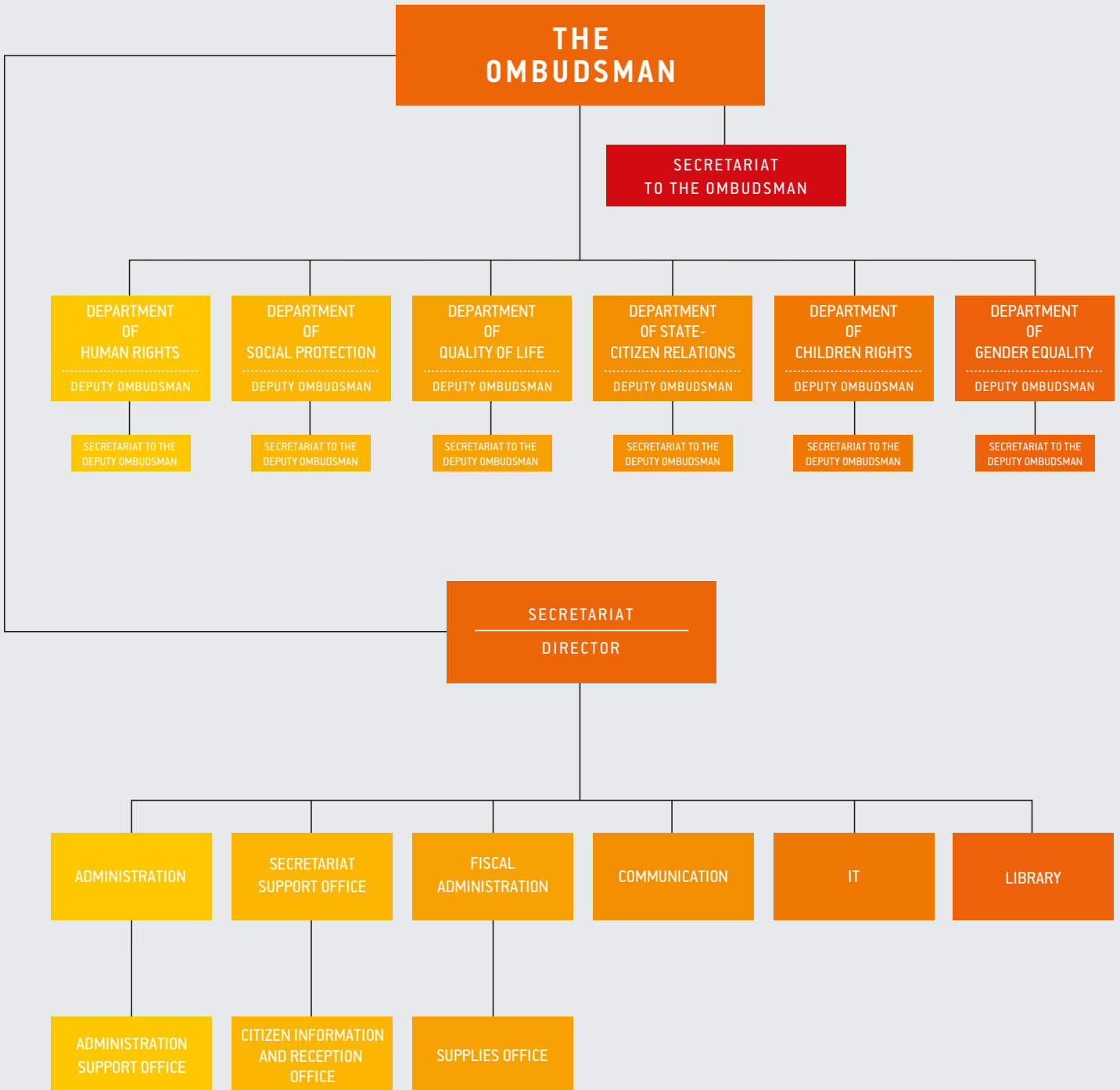
The refusal of an official or employee or member of the administration to cooperate with the Ombudsman in the course of an investigation constitutes a disciplinary offence for breach of duty or grounds for replacement. If the Ombudsman concludes that a public official or employee has impeded the investigation 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 of criminal acts by an official, employee or member of the administration, the Ombudsman shall also forward a report to the appropriate public prosecutor.

3. ORGANISATION AND STAFFING

On 31 December 2009, a total of 204 persons, of which 62 men and 142 women, were employed by the office of the Greek Ombudsman, including the Ombudsman and six Deputy Ombudsmen. The total number of expert personnel is 144, of whom 39 (27.08%) hold a PhD, 78 (54.16%) hold post-graduate degrees and 27 (18.75%) are graduates of Greek or foreign universities. The scientific and administrative staff is 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, information scientists, a librarian, a doctor and a survey engineer.

ORGANISATIONAL CHART



Overall assessment for the year 2009

12	1. STATISTICS
16	2. SPECIAL REPORTS
16	2.1 CIVIL REGISTRATION OF ROMA
16	2.2 EQUAL TREATMENT OF MEN AND WOMEN IN EMPLOYMENT AND LABOUR RELATIONS
16	3. OWN-INITIATIVE INVESTIGATIONS
16	3.1 INTEGRATED WATER MANAGEMENT AND PROTECTION
17	3.2 OWN INITIATIVE INVESTIGATION ON THE ENCLOSURE OF RAVINE NEAR PETROU RALLI STREET
17	4. REFERRAL TO THE PUBLIC PROSECUTOR'S OFFICE
17	5. ON-THE-SPOT INSPECTIONS & WORKING MEETINGS
17	6. CONFERENCES
17	6.1 CHILDREN WITH MENTAL HEALTH PROBLEMS: THE RIGHT TO PSYCHOSOCIAL REHABILITATION
17	6.2 ACCESS TO DOCUMENTS AND ADMINISTRATIVE ACTION TRANSPARENCY
18	6.3 MENTAL HEALTH REFORM IN GREECE: NEEDS, SUGGESTIONS, AND SOLUTIONS
18	6.4 EQUAL TREATMENT OF MEN AND WOMEN IN EMPLOYMENT: IS THIS A PREREQUISITE TO EXIT THE CRISIS?
18	7. THE OMBUDSMAN IN PARLIAMENT
18	8. PARTICIPATION IN GOVERNMENTAL BODIES AND COMMISSIONS
18	9. REGIONAL CAMPAIGNS
19	10. EDUCATIONAL ACTIVITIES
19	11. COOPERATION WITH NON GOVERNMENTAL ORGANISATIONS (NGOs)
19	12. PUBLICATIONS



Overall assessment for the year 2009



1. STATISTICS

In 2009, the Ombudsman received 13,433 new complaints, the greatest number of complaints submitted since its establishment, a total accounting to an increase by 18.45% compared to 2008. The number of complaints increases steadily since 2006, by 15.82% in 2007 and then by 3.23% in 2008. From 2006 to 2009, the total increase is 46.61%. Out of these 13,433 complaints filed in 2009, 3,888 complaints were closed and archived as not falling within the Ombudsman's mandate (accounting for 31,3% of the total of new complaints), increased by 5.5% in comparison to 2008. This, however, was expected, due to the high increase in the number of new complaints in 2009. In 2009, a total of 8,308 complaints were fully investigated.

More specifically:

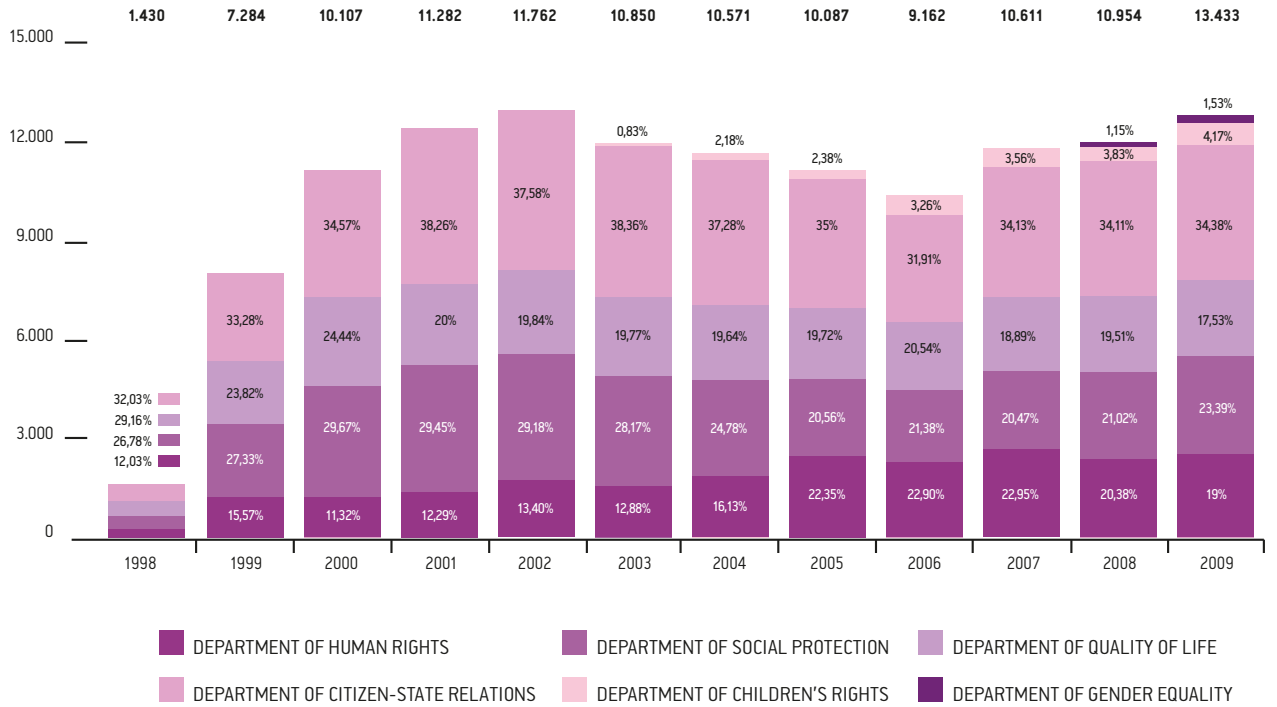
- 55.66% of the total of 8,308 complaints was founded (i.e. the complaint was justified and maladministration had occurred)
- 34.81% of the total of 8,308 complaints were unfounded (i.e. the administration had acted lawfully)
- for various reasons, the investigation was discontinued in 9.5% of complaints.

A large number of the founded complaints had a positive outcome. More specifically:

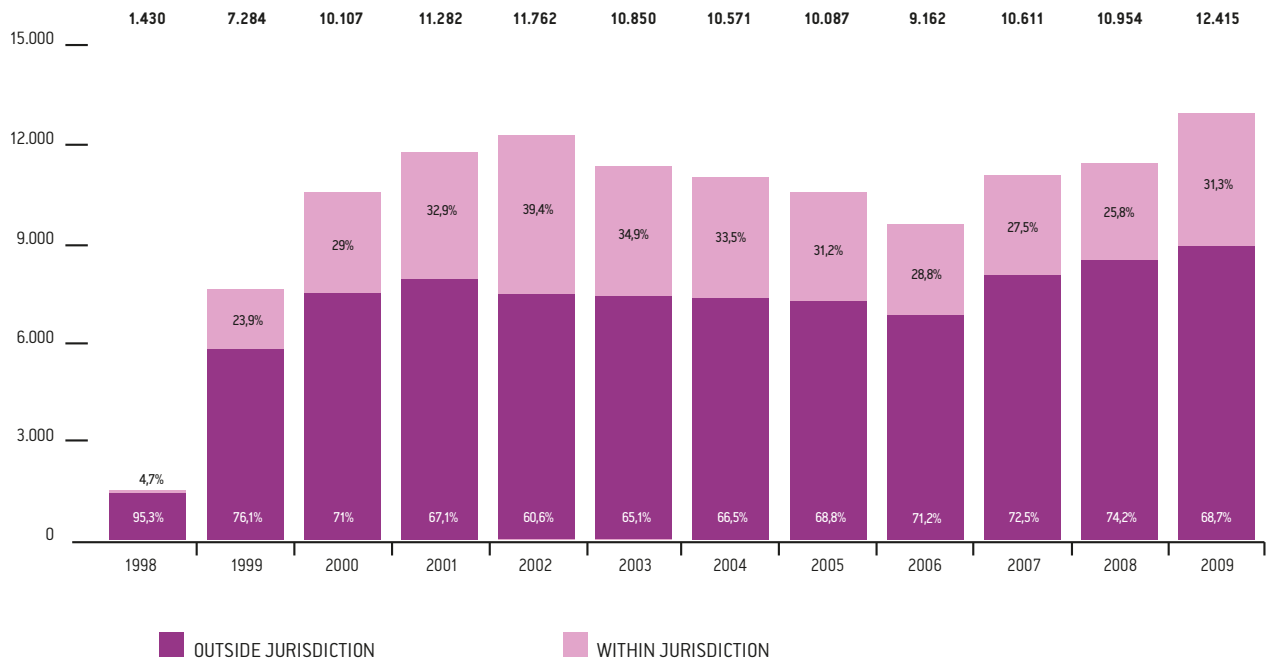
- a percentage of 70.54% of complaints were resolved (i.e. positive outcome - satisfaction of the complainants' request).
- in 9.04% of the founded complaints the problem was not resolved, despite the intervention of the Ombudsman. In these cases, the Ombudsman's recommendations were not accepted.
- in 7.80% of the founded complaints the problems could not be resolved because of gaps in the legislation, organisational weaknesses and malfunctions.
- finally, in 7.62% of the complains the problems were resolved without any action by the Ombudsman, either by the body concerned or following the intervention of another organisation.

During 2009 special effort has been put into resolving long-time pending complaints either due to shortcomings or persistent non-acceptance of the Ombudsman's proposals by the administration. A large number of the pending complaints has been archived in 2009. This explains why the number of complaints resolved this year has doubled (8,308) compared to 2008 (5,943).

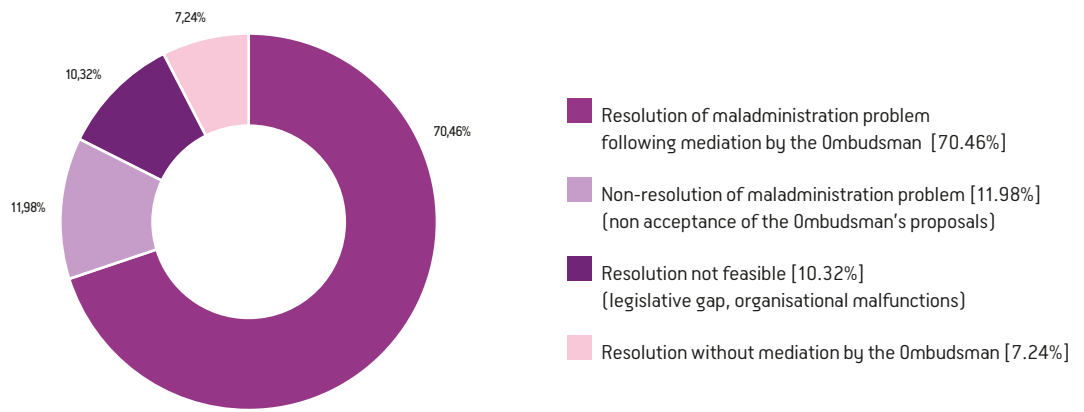
GRAPH 1 12 YEAR TREND OF COMPLAINTS RECEIVED 1998 - 2009



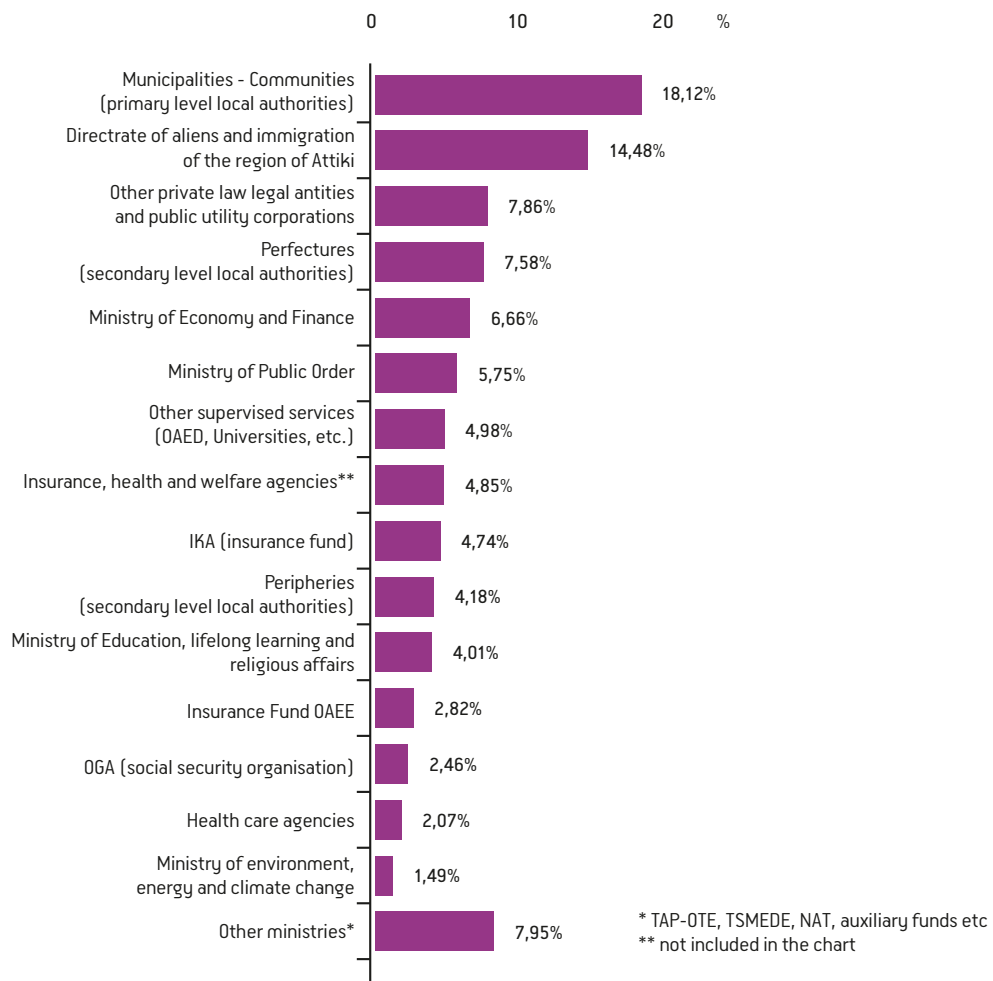
GRAPH 2 12 YEAR TREND OF COMPLAINTS FALLING WITHIN AND OUTSIDE THE OMBUDSMAN JURISDICTION 1998 - 2009



GRAPH 3 OUTCOME OF VALID COMPLAINTS INVESTIGATED IN 2009



GRAPH 4 DISTRIBUTION OF MALADMINISTRATION CASES BY AGENCY



COMPLAINANTS PER PREFECTURE
(per 10,000 inhabitants)



EASTERN MACEDONIA - THRACE	7,5
CENTRAL MACEDONIA	8,4
WESTERN MACEDONIA	9,9
EPIRUS	8,7
THESSALY	6,4
CENTRAL GREECE	8,5
WESTERN GREECE	7,9
ATTICA	19,4
IONIAN ISLANDS	11,8
PELOPONNESE	8,2
NORTH AEGEAN	8,0
SOUTH AEGEAN	10,4
CRETE	8,9

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

2. SPECIAL REPORTS

The Ombudsman draws up special reports on major and particularly important issues. These are submitted to the prime minister and the president of the parliament and are forwarded to the ministers concerned. In 2009, the Ombudsman drew up two special reports:

2.1 CIVIL REGISTRATION OF ROMA

Following examination of various cases on the civil registration of Roma, the Ombudsman noted that:

- the fact that Roma people are not being registered in municipal registrars has a negative effect on their relations with the public administration. This is particularly evident in their housing issue, which lies at the start of all Roma social support programme.

- the requirement of civil registration and of proof of permanent residence for granting a home loan constitutes an inherent contradiction which finally disqualifies from state support those who most urgently need it.

In order to register Roma people in the most rapid, decentralised and efficient way, the Ombudsman recommends that:

- a flexible procedure should be established by law to prove Greek citizenship on the prerequisites set by the Greek Citizenship Code in force - that is, by birth by two Greek parents or by birth on Greek soil by parents of undefined citizenship.
- decentralised regional committees should be set up to

carry out census, following which the General Secretary of the region may issue an order for municipal registration.

- all information should be entered correctly in the registrar and municipal civil registry.

2.2 EQUAL TREATMENT OF MEN AND WOMEN IN EMPLOYMENT AND LABOUR RELATIONS

The Ombudsman made a first evaluation of the implementation of the principle of equal treatment of men and women in employment and labour relations from May 2008 to end 2009, and elaborated a special report on the most important developments in the field in both the EU and Greece. Also, this report includes an evaluation of the implementation of the respective law 3488/2006, and references to policies and legislative initiatives, as well as legal issues that emerged during the examination of relevant preliminary questions by the European Court of Justice (ECJ). However, the report mainly underlines legal, procedural and practical problems that emerged during the implementation of law 3488/2006 through dozens of citizen cases in which the Greek Ombudsman was called upon to intervene either independently or in cooperation with the Greek Labour Inspectorate (SEPE). On the basis of these data, the Greek Ombudsman makes specific findings and proposals on harmonisation of national law to the EU legislation, information, prevention and recovery.

3. OWN-INITIATIVE INVESTIGATIONS

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

3.1 INTEGRATED WATER MANAGEMENT AND PROTECTION

The Ombudsman carried out an own-initiative investigation in the river Nestos basin, and had two working meetings in Kavala with representatives of NGOs, research institutes and competent state authorities at prefectural and regional level. Issues pertaining in the specific area were discussed in these meetings as well as the wider issue of implementation of law 3199/2003 incorporating directive 2000/60/EC (Water framework

directive). The conclusions of this own initiative investigation can be summarised as follows:

- The joint ministerial decision on the operation of Regional Water Councils is still pending as is the compilation of integrated management schemes for all water districts of the country, which, according to the directive, should have been completed by the end of 2009.

- Although a national network for the water qualitative and quantitative monitoring has been completed it is not yet in operation. The joint ministerial decision to set the position of measurement and the competent authorities for its operation has not been issued yet. This network should have been launched by 22 December 2006 and Greece has been brought to the Court of the European Commu-

nities for non transposing the relative articles in time.

- The national registry of protected areas is still pending, although the content of this registry has been defined in a relative presidential decree.

3.2 OWN-INITIATIVE INVESTIGATION ON THE ENCLOSURE OF RAVINE NEAR PETROU RALLI STREET

The Ombudsman carried out an own-initiative investigation on the enclosure of the Profiti Daniil [Prophet Daniel] ravine and the safeguard of life and physical integrity of passers by. This investigation was initiated after the death of three third country nationals who,

according to information provided by the Hellenic Police, fell into the ravine. It should be noted that this ravine is very close to the Athens Aliens Directorate, where large numbers of third country nationals are crowded every day in order to submit their asylum claims. Following an on-the-spot visit in the area and communication both orally and in writing with the co-competent Municipalities of Athens and of Taurus, safety rails have been placed and access to the ravine banks is prevented from Petrou Ralli, Prophiti Daniil and Salaminiás streets. The public prosecutor's office is investigating the death of the three third country nationals.

4. 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 2009, the Ombudsman referred two cases:

- staff members of the Prefecture of Ilia on systematic omissions, as well as refusal to cooperate with the Greek Ombudsman on the operation of two pickle factories and

one cheese factory in the area of Lakes in the Municipality of Amaliada (cf. 2008 Annual Report, p.27). Initial investigation is being carried out (complaint 3696/2001).

- Mayor of Kerkini on the construction of illegal building in the communal area on the shore of lake Kerkini (cf. 2007 Annual Report, p. 273). The Mayor has been prosecuted (complaint 9265/2005).

5. ON-THE-SPOT INSPECTIONS & WORKING MEETINGS

In 2009, the Ombudsman conducted approximately 30 on-the-spot inspections and 45 working meetings, some

of which are highlighted in specific chapters of the report.

6. CONFERENCES

6.1 CHILDREN WITH MENTAL HEALTH PROBLEMS: THE RIGHT TO PSYCHOSOCIAL REHABILITATION

On February 5, the Ombudsman organised a one day conference on mental health of children and adolescents with the participation of health care professionals and representatives of organisations in the field. The aim of this conference was to discuss the serious problems in emergency mental health care services for children as well as in psychosocial rehabilitation structures for children and adolescents.

6.2 ACCESS TO DOCUMENTS AND TRANSPARENCY IN ADMINISTRATIVE ACTION

On February 23, the Greek Ombudsman organised a conference on access to documents and transparency in administrative action. The conference took place in the Drakopoulos lecture room at the University of Athens. The General Inspector of Public Administration, the European Ombudsman, representatives from the Greek Ombudsman, the Legal Council of the State, the Hellenic Data Protection Authority and the Council of State participated in the conference.

6.3 MENTAL HEALTH REFORM IN GREECE: NEEDS, SUGGESTIONS, AND SOLUTIONS

On March 30, the Greek Ombudsman organised a conference on the mental health reform. Public and private mental health institutions participated, along with academics and researchers, Mental Health Europe (NGO), representatives from the ministry of Health and Social Solidarity, recipients of mental care services and their relatives. Topics discussed include the need to redefine the guiding policies and the need for initiatives from all involved organisations.

6.4 EQUAL TREATMENT OF MEN AND WOMEN IN EMPLOYMENT: IS THIS A PREREQUISITE TO EXIT THE CRISIS?

On November 10, the first special report on the implementation of the principle of equal treatment of men and women in employment and labour relations was presented in a special event organised in the National Hellenic Research Foundation with the collaboration of the representation of the European Commission in Athens. The work of the Greek Ombudsman and all agencies was presented in this event. Recent developments in the area of gender equality in Europe and in Greece were discussed, as well as pending gender equality problems and issues due to the current economic crisis.

7. THE OMBUDSMAN IN PARLIAMENT

In the framework of the responsibilities assigned to him by the Constitution, the Ombudsman appears before parliamentary committees in order to inform the parliament on specific issues.

The Greek Ombudsman appeared before the following committee:

- All-party Committee on the Examination of the Correctional System and the Living Conditions in Prisons. The Ombudsman informed the committee on the living

conditions in prisons (February 19, 2009).

The Deputy Ombudsman on Children's rights appeared before:

- The Standing Committee on Social Affairs and the Special Standing Committee on Equality, Youth and Human Rights. He informed these committees on the government bill ratifying the Hague Convention on Intercountry Adoption (May 7, 2009).

8. PARTICIPATION IN GOVERNMENTAL BODIES AND COMMISSIONS

The Ombudsman participates in governmental bodies aiming at making the best possible use of experience acquired on the protection of human rights and the fight

against maladministration. The Ombudsman is an ordinary member of the National Commission for Human Rights and the National Council for Administrative Reform.

9. REGIONAL CAMPAIGNS

Ombudsman delegations regularly visit the regions. The aim of these visits is to offer citizens of the region the opportunity to receive first hand information on the competences of the Ombudsman and to file complaints. In addition, the investigators meet with local media, local government agents and local administration in order to discuss issues of local interest.

In 2009, the Ombudsman visited the prefecture of

Kozani and the region of Western Macedonia (February 16-18, 2009). Discussions were held with local agents on the measures needed to face air pollution and the operation of the Public Power Cooperation (PPC) power plants and mines in the area of the prefecture. The investigators visited settlements close to the PPC premises and held discussions with citizens and local agents.

10. EDUCATIONAL ACTIVITIES

The Ombudsman investigators participated as trainers in capacity building seminars. Indicatively:

- training programme for newly employed staff in the Social Security Organisation - IKA,
- programmes by the Training Institute of the National Centre for Public administration and local government,
- training meetings organised by the Health Education

office at the Secondary Education on topics such as children violence, crisis management at school etc.

- training seminar on "Tax management at the citizen's service – the role of the Ombudsman in solving problems" organised in cooperation with the ministry of Economy and Finance training school (SEYYO).

11. COOPERATION WITH NON-GOVERNMENTAL ORGANISATIONS (NGOs)

The Greek Ombudsman cooperates with NGOs in order to reach vulnerable population groups who, for various reasons, cannot access the Ombudsman services. To this effect, the Ombudsman:

- maintained the operation of networks for exchange of information (2007 Annual Report, p. 274–275) on rights' protection and social support of vulnerable social groups such as Roma, asylum seekers and refugees. The aims of these networks are:
 - to facilitate access to the Ombudsman services.
 - to cover information gaps and to provide know-how on legal and case law developments.

In 2009 two working meetings were organised:

- on June 16, "Investigating standards and measures for making Roma institutionally visible"
- on December 7, "Discussing political asylum and people without travel documents -sans papier".

• the Ombudsman hosted on November 3 the inaugural meeting of the non-governmental organisations' network for monitoring the implementation of the International Convention on the Rights of the Child. Setting up this network was long due for Greece. The Ombudsman called to cooperation 47 field NGOs and facilitated their meetings throughout the year.

• the Ombudsman wrote and edited a legal guide on the environment, in a series of guide books published by WWF Hellas. The guide includes all environmental issues, the respective legislation and scope for action. The first section sets the framework for environmental protection, while the second section deals with environmental issues most often encountered. The guide was presented to environmental NGOs in four big cities (Athens, Thessaloniki, Patras, Heraklion).

12. PUBLICATIONS

In 2009, the Ombudsman published the following:

- Conference proceedings "Access to documents and transparency in administrative action" [in Greek] (Ant. N. Sakkoulas publishers, Athens).
- Conference proceedings "Mental health reform in Greece: needs, suggestions, and solutions" [in Greek] (Sakkoulas publishers, Athens/Thessaloniki).
- "A legal guide for the environment", with the cooperation of WWF Hellas" [in Greek]. This guide is distributed free of charge by WWF Hellas.

Also, the Ombudsman published and circulated:

- a 2010 calendar.
- posters on "International Day of the Rights of the Child" produced in a competition organised by the Children's Ombudsman in cooperation with Greek Graphic Designers Association under the framework of the action "Creative waves" [in Greek].
- a poster for the Council of Europe with the slogan "Your hands should nurture not punish. Say NO to smacking!" [in Greek].
- a postcard on "Smacking was banned from paradise..."

Let's ban it from our lives too!", an inspiration by Eugene Trivizas and designed by painter Lina Karanikolaou [in Greek].

- An electronic quarterly newsletter presenting in brief the work of the Ombudsman (finding papers, recom-

mendations, international relations etc) [in Greek].

Detailed information can be found at www.synigoros.gr

The quarterly newsletter can be found at

www.synigoros.gr/newsletter.htm

Human rights

- 22 **1. INTRODUCTORY REMARKS**
- 22 **2. STATE PROTECTIONISM IN THE FIELD OF PROFESSIONAL RIGHTS**
- 23 **3. SUFFOCATING CONDITIONS IN PENITENTIARY INSTITUTIONS**
 - 23 3.1 INHERENT PROBLEMS IN GRANTING LEAVE OF ABSENCE TO DETAINEES
 - 23 3.2 DETERIORATION OF IMPRISONMENT CONDITIONS IN PENITENTIARY INSTITUTIONS
- 24 **4. THE MIGRANTS' RIGHT TO FAMILY UNIFICATION**
 - 24 4.1 LEGAL STAY OF ALIENS, FAMILY MEMBERS OF IMMIGRANTS, GREEKS AND EU CITIZENS
 - 24 4.2 GRANTING VISAS BY GREEK CONSULATES ABROAD
 - 25 4.3 THE RIGHT OF ASYLUM SEEKERS AND REFUGEES TO MARRIAGE
- 25 **5. INACCESSIBLE ASYLUM**
- 26 **6. STATE INDIFFERENCE TOWARDS THE ROMA SITUATION**
 - 26 6.1 EDUCATION - EMPLOYMENT
 - 26 6.2 HOUSING



Human rights



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1. INTRODUCTORY REMARKS

It is possible to resolve occasional violations of rights in certain fields (e.g. police action) by using means already provided by law, such as disciplinary law of police. However, when in a certain field systematic violation of rights by state agents takes place, then social functions closely related to these rights are also severely affected. These violations take place, not necessarily through actions by state agents, but rather in the systematic long abstinence and unwillingness of the state to take measures for the protection of the rights. This chapter presents several topics with which the Ombudsman dealt this year. More specifically:

- Free movement of workers and entry of young people

in professional sectors, where there is a conscious and constant failure of the state to guarantee freedom of education and professional freedom.

- State policy concerning prisons, where dramatic cut of budget for detainees may generate explosive situations.
- Migrants' right to family reunification.
- Management of people illegally entering the country. A very important aspect of this issue is the total collapse of the mechanism examining asylum claims and the excessive concentration of totally marginalised populations of alien descent in towns and cities.
- Creating conditions of equity for Roma.

2. STATE PROTECTIONISM IN THE FIELD OF PROFESSIONAL RIGHTS

The academic and professional recognition of equivalence of diplomas issued by foreign education institutions constitutes a topic of major importance for the Greek society. It seems reasonable to expect that the state has organised, in an efficient way, all relevant bodies, so that the labour market benefits the most by the entrance of specialised professionals. Unfortunately, this is not the case. More specifically, DOATAP, the Cross-disciplinary organisation for the recognition of academic and information technology diplomas faces severe malfunctions, namely delays and lack of justification in cases of rejection. It has been noted that there is shortage in administrative and scientific personnel, resulting in long delays (complaints 4481/2008, 21120/2009). The

competent authorities also face similar problems on professional recognition of diplomas (complaints 4524/2009, 2345/2008).

As expected, the whole process is often brought before a dead end by administrative problems combined with the substantial difficulty to compare different educational systems (e.g. certain countries apply the Bologna Declaration criteria while Greece does not). Subsequently, feelings of anger of foreign university graduates, spending several years waiting the competent authorities to decide upon their qualifications, can be justified. Harmonising national legislation to the demands of community law also takes time. Structural rigidity by Greek

higher educational institutions and trade-union reactions by interest groups have put on hold the implementation of community law. In particular:

Although the provisions of directive 2005/36/EC on the recognition of professional qualifications were put into force on 20 October 2007, Greek legislation has not yet been harmonised. This directive includes provisions allowing the recognition of professional rights to holders of diplomas issued by foreign universities, which have branches in Greece by franchise agreements. Nevertheless, despite assurances from the ministry of Education, the adoption of the provisions of the aforementioned

directive in the state law is still pending. For this reason, Greece has been condemned by the Court of Justice of the European Communities (case C-465/08).

The need to establish more flexible decision making mechanisms is an imperative (especially for the recognition of diplomas from EU member states). Furthermore, there is a need to change the perception that the Greek higher education system is better to any other and to eliminate the fear that the Greek labour market will get flooded with foreign university graduates who will displace their Greek university counterparts.

3. SUFFOCATING CONDITIONS IN PENITENTIARY INSTITUTIONS

Today, more than ever before, the state must take immediate action in order to prevent an “outburst” in penitentiary institutions that would prove too difficult to control. The reported problems of the Greek penitentiary system (Annual Report 2005) caused in 2007 a massive and coordinated riot of the detainees all over the country. Although some serious attempts have been made for the improvement of prison conditions, such as the unhindered entry of the Ombudsman in prisons, there are still lingering problems.

In 2008 the Ombudsman faced two important issues:

3.1 INHERENT PROBLEMS IN GRANTING LEAVE OF ABSENCE TO DETAINEES

More specifically it is noted that:

- rejections of the relevant applications fail to provide the necessary reasoning or the reasoning provided is vague and not specific.
- mention to criteria not included in the Penitentiary Code, such as the gravity of crime, the duration of sentence, or the time spent in the specific prison, when taking decisions upon granting or not the leave of absence, when the only lawful criteria are those associated with the good use of the leave of absence.
- applications for leave of absence by foreign detainees are often rejected due to the lack of family residing in Greece.

The Ombudsman in the relative special report in 2008 proposed that:

- the substantial criteria set by the law should be specified and indices should be set that would be taken into account by councils when deciding upon respective claims.
- it should be clarified which information should not be taken into account while examining leave of absence claims (such as remaining period of sentence, repentance).
- sample control should be carried out on rejections in every penitentiary institution on a steady basis.

Unfortunately, in response to the observations and suggestions included in this report, the ministry of Justice finally just issued a circular to the Heads of penitentiary institutions, repeating the self-evident obligation to provide reasoning for all rejections.

3.2 DETERIORATION OF IMPRISONMENT CONDITIONS IN PENITENTIARY INSTITUTIONS

This deterioration is caused mainly by the aggravating overpopulation that is the number of detainees in relation to existing facilities. Detainees packed in wards, cells and corridors create a suffocating environment. In many cases, the quality and general condition of premises is evidently below any satisfactory level: worn doors, beds without mattresses, mattresses without beds, broken window panes, etc.

A characteristic case demanding immediate action is the notorious “corridor” in the Ioannina prison (complaint 20503/2008). The conditions are indeed intolerable as tens of detainees live under deplorable conditions in the building corridors, without even one square metre free space to stand on their feet.

A problem of all penitentiary institutions is the shortage of medical and nursing personnel. In many cases, prison personnel undertake the role of doctors or nurses, which gives rise to discontent to both, detainees and prison personnel, as well.

A standard request of both detainees and prison personnel is the increase of the budget allocated to operational costs of the penitentiary institutions. It is worth mention-

ing that the amount allocated to the daily feeding expenses of a detainee is extremely low while very often the money are not enough to buy basic personal hygiene items (for instance, toilet paper) and hence both detainees and prison personnel are obliged to pay on their own. The risk for a new outbreak of riots in prison is more than evident if these problems are not dealt with immediately in a responsible manner.

4. THE MIGRANTS' RIGHT TO FAMILY UNIFICATION

Family reunification constitutes a migrants' right, established by provisions in both community (directive 2003/86/EC) and national legislation (law 3386/2005, presidential decree 131/2006), while protected under European Convention of Human Rights (article 8). The right to family reunification is an inherent component of the strategy of Greece and the European Union, regarding the social integration of migrant population with legal residence, in Greece and subsequently, in European territory. More specifically, in 2009, the Ombudsman dealt with:

4.1 LEGAL STAY OF ALIENS, FAMILY MEMBERS OF IMMIGRANTS, GREEKS AND EU CITIZENS

The problem arises when the person who supports financially the family cannot demonstrate sufficiency of income, as relevant law demands, to cover the needs of the depending members of his/her family; as a result, his/her family members become illegally residing aliens and risk deportation. The person sustaining the family (usually the father) maintains legal residence in the country, covering also his underage children who were born in Greece, while the dependent family member (usually the mother), lives with the fear of getting arrested and deported. A favourable arrangement is provided only when the dependent family member had previously an independent legal residence permit and the marriage took place in Greece (complaint 5237/2009).

A legal issue also arises for third country nationals who are family members of a Greek or EU citizen, since law prescribes that aliens should have residence permit at the moment they apply for family member type residence permit. The Ombudsman, invoking relative case-law by

the Council of State and the Court of Justice of the European Communities, has noted this problematic practice (complaints 12872/2009 and 7723/2009).

4.2 GRANTING VISAS BY GREEK CONSULATES ABROAD

According to relative legislation, the role of consular authorities in the procedure of family reunification is, at first, to verify the family relation and to submit a relevant report to the decision taking institution (Aliens and immigration department in Prefectures / 'Periferia'). Then, when the approval is issued by relevant authority, the consulate either issues the required visa or rejects the application on certain grounds. However, due to delay of certain consulates, prefectures issue their approval on the basis of the remaining preconditions as set by the law. When the applicant appears before the consular authority in order to receive the necessary visa, his/her claim is rejected as there was not previous confirmation of the claimed family relation. Moreover, the rejection of the applications often lack the necessary reasoning (complaint 4906/2008).

The Ombudsman understands that the abovementioned dysfunctions are due mostly to problems consular authorities face because of workload or shortage in personnel, as well as because of adverse conditions in various countries. However, this does not retract consulates' obligation to operate abiding to legality and respecting the rights of migrants to family reunification, instead of aiming at restricting the number of migrants entering the country.

4.3 THE RIGHT OF ASYLUM SEEKERS AND REFUGEES TO MARRIAGE

An issue that still remains to be resolved is the difficulty that asylum seekers and refugees face when they want to get married, due to their inability to provide a “certificate of celibacy” issued at their country of origin. The Ombudsman, taking into consideration that such a certificate is impossible to be provided by persons who by definition have breached their relations with their country of origin, had made a suggestion to the ministry of Foreign Affairs which was initially adopted. It was suggested that, in such cases, instead of the abovementioned certificate a formal declaration on the inexistence of any hindrances to marriage on behalf of the interested party should be adequate. However, the problem arose again in the beginning of 2009, as the ministry of Interior accepted the opinion by the Legal Counsel of the State (78/2009), according to which, asylum seekers are not allowed to submit formal declarations as, in general,

their identity cannot not be verified. This opinion caused the false impression to many municipalities that marriage licence cannot be issued to an asylum seeker, not even to those who have already the required certificate. The Ombudsman emphasised that this interpretation leads to excluding asylum seekers from all procedures demanding proof of identity, thus leading ultimately to their complete social isolation. However, the ministry of Interior insisted on the view that in all cases a “certificate of celibacy” is required for a marriage to take place, as well as the existence of a passport submitted in the local police authority (complaints 10343/2008, 9455/2009, 14126/2007).

According to the above mentioned, it is clear that the EU policy in the field of family reunification has been violated. A large number of aliens is forced to search for illegal ways to bring their family to Greece, which results in raising the irregular migration flows.

5. INACCESSIBLE ASYLUM

The continuously increasing phenomenon of “mixed flows” migration, combined with the inability of competent authorities to distinguish between economic migrants entering the country illegally and those who have the right to international protection, has immeasurable repercussions to the asylum procedure. Massive number of applications submitted by persons who do not fulfil the requirements for international protection results in intolerable pressure in managing asylum in Greece. While investigating relative complaints, the Ombudsman noted problems in both the access to asylum and in examining asylum claims such as:

- defects at the stage of the conduct of interviews,
- general and indiscriminate examination of all claims through the fast track procedure, resulting in the extremely short deadline to appeal against rejections,
- delays in issuing the “special card of alien asylum seeker” and simultaneous delivery of the decision of rejection of the claim,
- lack of information of the interested parties due to insufficient interpretation (complaints: 5733/2007, 5913/2008 and http://www.synigoros.gr/allodapoi/pol_asilo.htm). The majority of asylum claims is still submitted in Athens,

mainly because of the discouraging practice taking place at the borders, of imposing temporary detention to asylum seekers submitting their claim there.

It is noted that the European Court of Human Rights (see S.D.v. Greece no 53541/07, 11.09.2009 and Tabesh v. Greece, no 8256/07, 26.11. 2009), has sentenced Greece, for the exciding duration of the detention and the conditions at the detention centres (see violation of articles 3 and 5, paragraph 1 and 4 of European Convention on human rights). These judgements confirm the opinion of the Ombudsman that it is not lawful to detain asylum seekers unless it is clearly dictated in the law in respect with the demands of international law.

Despite the abovementioned judgements, a recent amendment (law 3772/2009) increased the duration of detainment from three to six months. However, mainly due to the overcrowding detention centres and secondly due to accepting the findings of ECHR, the latest amendments have not been implemented and some reception centres have been shut down (the operation of the reception centre in Pagani, Mytilini has been suspended). It is ascertained that a radical restructuring is needed to all reception and processing services of asylum claims,

both at central and regional level.

The debasement of the asylum, combined with the absence of a legal framework on the status of aliens residing in the country for long “without [legal] papers”-“sans papiers”, has caused the phenomenon of overconcentration of aliens in large cities, living in squalid conditions. This phenomenon, combined with the systematic and uncontrolled drug trafficking, the organised networks of human trafficking and sexual exploitation of foreign women and the prospering of illegal trade has led to the degradation of the historical centre of the capital, Athens. The state has taken measures with only temporary effect, as there was no provision for substantial and long term solution to the problem. As for aliens residing illegally in the country, the law is clear imposing their deportation (see articles 76ff, law 3386/2005). The

enforcement of this law, nevertheless, in most cases, is impossible due to the operational deficiencies of competent authorities on one hand, and the lack of cooperation of the countries of origin of the aliens, on the other.

Therefore, it is crucial to attribute the status of temporary resident with restrictions to irregular aliens, until their deportation becomes possible. Even if it appears to be difficult, due to the large migration flows, the establishment of new reception centres, meeting the criteria of basic human living conditions, is necessary, at least as a first measure of crisis management. In any case, a fundamental condition for the success of an effort of this kind is to effectuate the measure of expulsion of irregular aliens, for whom there had been issued relevant expulsion decisions. Otherwise, the problem will constantly keep recurring.

6. STATE INDIFFERENCE TOWARDS THE ROMA SITUATION

A large number of the Roma population faces various problems, which extend far beyond bad living conditions. More specifically:

6.1 EDUCATION - EMPLOYMENT

The participation of Roma children in education remains an unattained goal, especially for children of aliens who almost totally eschew school. Several integration programmes (itinerant student card, school subsidy and vocational training programmes) aim at reinforcing schooling. They have managed to attract only a small number of children, mainly Greek Roma children (complaint 20489/2008).

As far as employment is regarded, the problem is that a large number of Roma either begs or is involved in illegal activities, such as selling recycling material, products of theft. There has been no measure to include this activity in the legal recycling procedure, as the Ombudsman has proposed (report 13986/2006).

6.2 HOUSING

All housing programmes (integrated programme for Roma inclusion, relocations of camps and housing loans) that are implemented by the government during the last seven years are directed to Greek Roma alone and are not deemed to have been successful in their results. The

most serious problems regarding the housing of Roma are identified, in terms of the utterly inappropriate and dangerous living conditions which exist in the established settlements, as well as, in terms of the unsuitability of the land selected for their relocation. A characteristic example for the latter is the case of Lefkada (complaint 16760/2009), where the land proposed for the relocation of the existing camp is part of, or adjacent to, the town's landfill site.

Moreover, relocation often creates tension and conflicts between Roma and other inhabitants (Agrinio - complaint 8410/2006, Aliartos - complaint 5083/2009). In such cases, it is necessary for competent authorities to intervene in order to establish bridges of understanding and communication among inhabitants, at least at a primary transitional stage. Unfortunately, the Greek state does not take initiatives or action towards this direction.

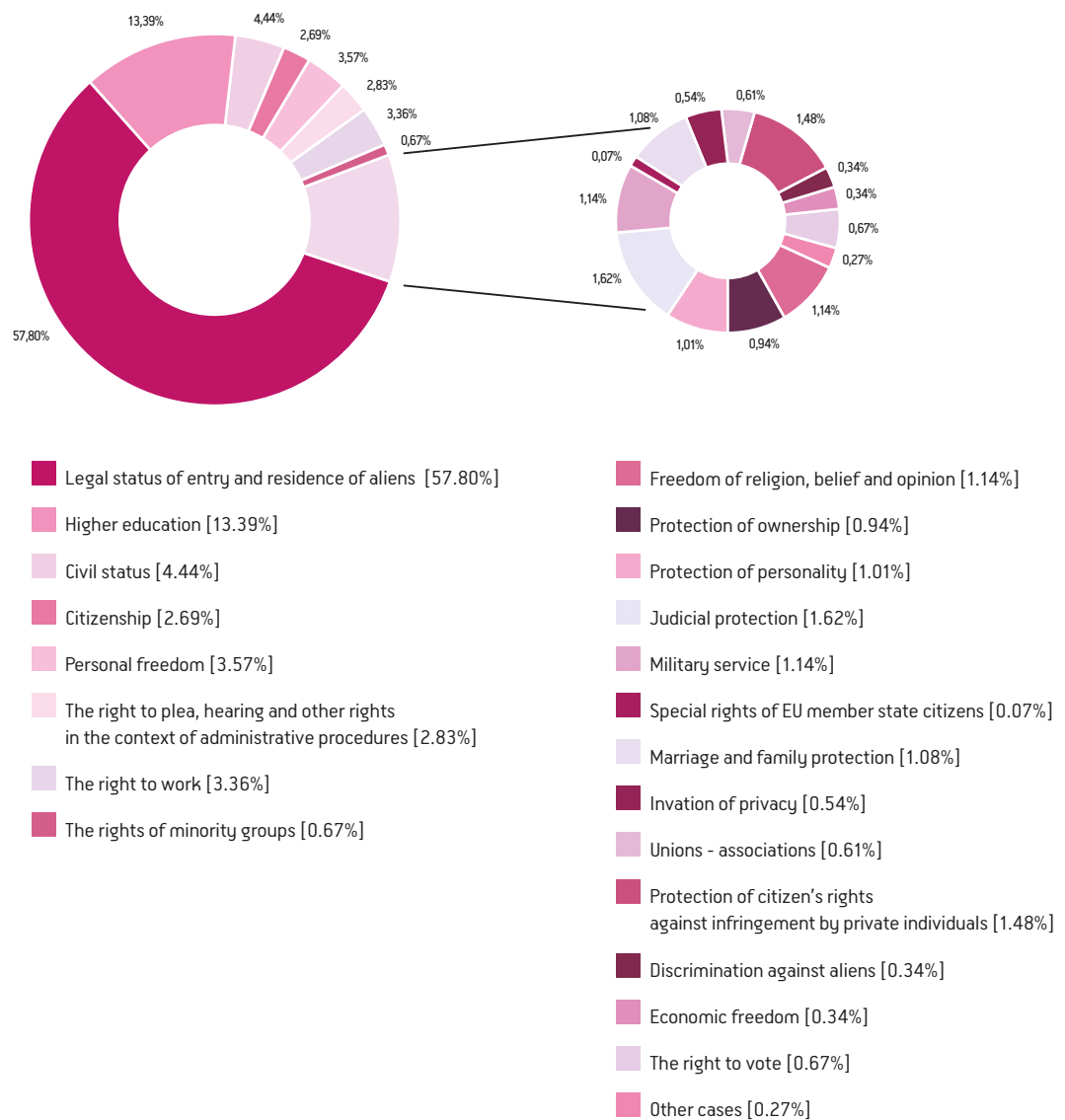
The housing loans programme which is implemented according to the joint ministerial decision 33165/2006, can be characterised as a positive state initiative. However, several problems are encountered in regards to the correct application of relevant legislation. Specifically, the Ombudsman pointed out that many loan beneficiaries encounter bureaucratic difficulties in accessing this programme. The formal grounds on which the Roma beneficiaries are usually rejected is primarily the fact

that they are not registered in the municipality rolls of the municipality in which they live. Additionally they fail to prove that they are permanent residents of the relevant municipality due to their frequent movement for work. Consequently they are not able to submit the necessary supporting documents. Furthermore, problems are identified in the coordination and cooperation of the necessary actions that must be assumed by the involved public agencies, banks and Roma beneficiaries. Finally, the fact that the law did not provide for a monitoring mechanism which would measure the success of these programmes has resulted in unsafe conclusions on their

effectiveness.

Following investigation of complaints, it is obvious that the state is not willing to act timely and efficiently to face the Roma housing issue and restrict their social exclusion. The role of the local government authorities is considered to be decisive for the success of this undertaking. Nevertheless, whatever solutions are adopted at the local level will be totally ineffective if they are not, beforehand, incorporated in a framework of central planning and of a systematic supervision and support by the state.

GRAPH 5 DEPARTMENT OF HUMAN RIGHTS - BREAKDOWN BY MAIN CATEGORIES OF COMPLAINT RECEIVED IN 2009



Social protection, health and social solidarity

29	INTRODUCTION
30	1. PAYMENT OF SOCIAL SECURITY BENEFITS
30	1.1 PAYMENT OF ALLOWANCE BY THE CIVIL SERVANTS WELFARE FUND (TPDY)
30	1.2 MERGING OF SOCIAL SECURITY FUNDS: THE CASE OF SECURITY FUNDS FOR PRIVATE SECTOR EMPLOYEES (TEAIT, TAPIT)
31	2. PROTECTION OF THE UNEMPLOYED
32	3. HEALTH
32	3.1 SOCIAL SECURITY ORGANISATION COVERING HOSPITALISATION COST AT NON AFFILIATED PRIVATE HOSPITAL
33	3.2 MENTAL HEALTH
34	4. SOCIAL SOLIDARITY
34	4.1 MEAL PROVISION CENTRE IN THE MUNICIPALITY OF ATHENS



Social protection, health and social solidarity



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INTRODUCTION

The serious deterioration of all basic social indices is reflected in the complaints filed with the Greek Ombudsman, with reference to social security, health and social solidarity. According to estimates by the National Statistics Service, in July 2009 unemployment amounted to 9.6% of the labour force compared to 7% in July 2008. A percentage of 20% of the households is still under the poverty limit, while the situation for the unemployed, reaching a poverty percentage of 35%, is even more difficult. The ageing of population and the increased rate of people with health problems are a further burden to the social security system and the health care section of social security organisations. Social expenditure, which includes health care expenditure, amounts for 24% of GNP and is steadily below the European average (27%). However, the most serious problem is that social expenditure in Greece has not been able to contribute effectively in preventing the deterioration of social indices, especially in fighting poverty.

Taking the above into consideration it is not a surprise that the number of relative complaints (on issues such as social security, welfare, unemployment, health) filed with the Ombudsman in 2009 has risen by 36.43% compared to 2008.

The Greek Ombudsman has observed violation of rights in the area of social security (employment and pension rights), health (rights of patients, health professionals, health services) and social solidarity (rights of vulnerable groups such as people with large families, people with disabilities). Indicatively:

- In the area of employment, the number of jobs is being

reduced and in many cases, as in the case of fixed term contracts, there is not even unemployment insurance. The unemployed remain without any insurance (employment programmes and allowances) due to institutional obstacles that arise in most cases.

- The rights of retirees are violated mainly due to the significant delays in issuing pension acts.
- The rights of patients are being violated due to shortages in personnel and infrastructure of the public health system. The quality of public health care services is downgraded. As a result, the insured people are burdened with additional health charges, in using private sector health services.
- Finally, the rights of vulnerable groups are violated due to the social solidarity system deficiencies.

The problems in the Greek public administration noted by the Greek Ombudsman can be summarised as follows:

- Insufficiently justified administrative acts.
- Inadequate information as to the legislation in force or bad enforcement of it.
- Procedural inflexibilities and delays in satisfying citizen claims (allowances allocation, timely issuance of pension acts, access to medical file).
- Not provided guaranteed social benefits (for instance, to people who have been dismissed from Phosphoric Fertilisers Industry SA).
- Non adaptation of legislation to the Constitution and the decisions of the Council of State for expansion of social benefits.
- Non application of medical or other objective criteria

with regard to the provision of sickness benefits and expansion of other social benefits to more groups of beneficiaries, as in the case of paraplegia benefit, or the

total disability benefit.

- Lack of infrastructure and personnel.

1. PAYMENT OF SOCIAL SECURITY BENEFITS

1.1 PAYMENT OF ALLOWANCE BY THE CIVIL SERVANTS WELFARE FUND (TPDY)

The Greek Ombudsman examined an important number of cases in which the citizens complained for the long delays - of almost a year- in the payment of the allowance by the Civil Servants Welfare Fund (for instance complaints 12999/2009, 12138/2009, 11678/2009). In substance, this long delay invalidates the social role of this allowance. The Ombudsman noted that the Fund on the one hand is not able to abide with the provided deadlines, and on the other hand omits to inform citizens on the estimated time of the payment of the allowance as to facilitate them in organising their expenses.

Working meeting

At a working meeting that took place with the Chairman and personnel of Civil Servants Welfare Fund, several fiscal and organisational problems were highlighted:

(a) The Fund estimated that available funds are sufficient for the payment of the allowance to only 600 beneficiaries on a monthly basis, while that number should be 1,000 – 1,200, in order to avoid the aforesaid delays.

(b) At present the number of employees in the Fund amount to 20, while the positions provided by law are 58. Hence, even if the fiscal problem was solved, the problem of the long delays would persist due to the lack of personnel. Consequently, a total of 15,000 claims per year remain to be processed.

The Ombudsman's recommendations

The Ombudsman believes that the Civil Servants Welfare Fund should issue the administrative acts (decisions for the payment of the allowance) within the provided time limits. The administrative act should mention the amount of due to the beneficiary, the time of payment set by law, the estimated by the Fund time of payment, as well as the rights of the beneficiary in case of delay.

Aiming at solving such problems permanently, the Ombudsman with a report addressed to the ministry of

Labour and Social Security, made, among others, the following recommendations:

Organisational structure and technical infrastructure of Civil Servants Welfare Fund

- Setting up a registry of insured people.
- Fill in the vacant positions.
- Setting up a computerised system for the electronic processing of the greatest part of the work flow.

Viability and growth of Civil Servants Welfare Fund

- The Fund's deficit should be accurately determined and an actuarial evaluation should be drafted aiming at the best possible use of all assets.
- Reserve funds should be managed in the most rational and professional way.
- The number of persons insured by the Fund should increase by incorporating new categories.

Legislation on the operation of Civil Servants Welfare Fund

It should be provided that in case that the Fund's financial management and the allocation of social security contributions are disrupted by legislative provisions, the state will contribute financially without prior agreement of the Fund.

1.2 MERGING OF SOCIAL SECURITY FUNDS: THE CASE OF SECURITY FUNDS FOR PRIVATE SECTOR EMPLOYEES (TEAIT, TAPIT)

The fragmentation of the social security system and its non coordinated and circumstantial growth constitute the basic reasons for the structural problems now faced. Recent decades have seen a number of efforts to reform the social security system in organisational and management terms. One of these reforms was brought about by law 3655/2008, which significantly decreased the number of main and supplementary pension funds as well as allowance funds. Under this reform, two funds were set

up: a) the Private Sector Supplementary Pension Fund (TEAIT), incorporating nine supplementary pension funds of private sector employees and b) the Private Sector Welfare Fund (TAPIT), incorporating twelve welfare organisations.

A year after the law was set in force, serious dysfunctions in both TEAIT and TAPIT were noted by the Ombudsman. Several of the incorporated funds delay seriously the processing of the beneficiaries claims. According to the Ombudsman this is due to the fact that the incorporated funds were not adequately prepared to harmonise their operation after their integration into new or pre-existing social security funds.

In a large number of complaints long delays were noted in issuing pension acts, in determining the time of insurance or in paying the lump sum allowance by the former funds TEAYEK, TEAYFE and TAPIT (such as complaints 19909/2008, 1839/2009, 5576/2009).

Indicative case

■ A citizen submitted an application for supplementary pension to the former TEAYEK in September 2007. The Fund began the examination of this claim in June 2009 initiating correspondence with former TEAYFE asking for the citizen's insurance time and the fund's participation percentage in the pension due. Former TEAYFE sent the requested data in November 2009. The pension was finally issued by former TEAYEK in December 2009, two years and a half after the relative claim had been submitted (complaint 16454/2008).

The Greek Ombudsman contacted the competent departments of TEAIT and noted that the organisational restructuring of the funds and the transfer of personnel aggravated the ratio of personnel to the work load. Former TEAYFE also attributes the long delays in the payment of benefits "to the extensive decrease of personnel in our department due to the integration of Funds (law 3655/2008)" (document of TEAYFE dated 18 March 2009).

The Greek Ombudsman, based on information collected while investigating complaints considers that the following issues are of high priority. More specifically:

- The number of pending applications in each department and the rate of processing such applications by the existing personnel should be recorded and the findings should be evaluated.
- The allocation of personnel among the head offices and the integrated funds/departments, as well as among the integrated funds/departments themselves should be examined in order to determine if it responds to existing needs and pending cases.
- Specialised personnel should organise and classify hard copy archives.
- A computerised system should be introduced for all funds/departments integrated in TEAIT and TAPIT, in close cooperation with General Secretariat of Social Security.
- Those insured for supplementary pension in TEAIT are insured for their main pension with Social Security Organisation - IKA. Therefore, the possibility to pay contributions for supplementary pension with those paid to IKA, should be examined.

The minister of Labour and Social Security has been informed on all aforementioned issues.

2. PROTECTION OF THE UNEMPLOYED

The Ombudsman often deals with cases where public organisations fail to pay benefits, on the grounds of lack of appropriated funds from the state budget. A typical example is the omission of the administration to pay the supplementary allowance provided by law 3526/2007 to the employees who had been dismissed by the Phosphoric Fertilisers Industry SA in Thessaloniki (such as complaints 14908/2008, 17517/2008, 18077/2008). The employees of this company whose contract had been denounced and did not meet the criteria for full

pension were given the possibility by the above law (a) to choose to join one of Manpower Employment Organisation - OAED's programmes, such as the subsidised programme for the unemployed and (b) to receive an additional allowance under relative legislative provisions. A joint ministerial decision determined the preconditions on which dismissed employees could, upon application/declaration, receive this additional allowance. These applications were submitted along with the necessary supporting documents but, although an adequate period of two

years have lapsed, beneficiaries have not received the amount due. OAED attributed this delay to the fact that the necessary procedure to enter this amount in the state budget had not been completed.

The Greek Ombudsman requested information on the action taken by OAED and the General Accounting Office (GLK) for the disbursement of the above amount and the payment of the allowance to beneficiaries (correspondence between the two organisations, credit transfer procedure from state budget to OAED 2007 budget). In addition, the Ombudsman requested that each application/declaration submitted by the dismissed employees be examined individually by OAED and the supplementary allowance be paid as provided.

The investigation showed that on the one hand, OAED waited for the required funds to be allocated by the GLK. On the other hand, the GLK supported that the 2008 budget of the ministry of Employment and Social Protection included credit increased by 11.0% compared to the previous year in order for OAED to cover expenses that

emerged by government intervention to increase employment and fight unemployment.

The Ombudsman noted that there is a significant issue of cooperation among all involved organisations and concluded that:

- non payment of the provided benefit to beneficiaries constitutes an omission of due action by the administration.
- this omission is considered illegal since the reasons of the delay put forward by the involved services do not constitute reasons of force majeure.
- omission to respond to a claim constitutes an issue of "civil liability of public authorities" (articles 105-106 of Introductory Act to the Civil Code).
- internal dysfunctions and lack of cooperation should not be invoked to justify delays in processing citizens' claims.

Based on the above, the Ombudsman requested that the violation of rights of the dismissed employees should be remedied.

3. HEALTH

3.1 SOCIAL SECURITY ORGANISATION COVERING HOSPITALISATION COST AT NON AFFILIATED PRIVATE HOSPITAL

Insured persons that resorted to the Greek Ombudsman had been hospitalised in non-affiliated private establishments due to the inadequacy of public or affiliated private hospitals to provide the necessary health care for their life and well-being. This is often the case in the medical act of embolism of brain aneurysm, which is not always held in public or affiliated private hospitals. It is also frequently noted that patients receive health care in the intensive care unit of a non-affiliated hospital due to the lack of bed availability in public hospitals.

3.1.1 MEDIATING WITH THE FUNDS

In the course of investigating relevant cases (such as complaints 7013/2008, 7929/2009, 12879/2009), the Greek Ombudsman promoted the claim of insured persons to be reimbursed the total amount of hospital charges, thus invoking decisions of the State Council (1187/2009, 1188/2009). According to these decisions, the provisions that dictate social security organisations

to attribute health care expenses –according to the state set rates - in non-affiliated private hospitals are considered inadequate with regards to cases when hospitalisation takes place due to the incapacity of the public health system to provide the necessary health care. The State Council decided that the social security organisation should reimburse the total amount of actual costs, even if it exceeds the state set rates.

Indicative case

■ A person insured at Welfare Fund for Employees at the Greek Telecommunications Organisation (TAP-OTE) was hospitalised in a private clinic for the realisation of an embolism because it could not be held in the public hospital where he was primarily admitted. After the treatment the patient returned to the public hospital. TAP - OTE compensated the insured patient with the amount of 8,804 Euros, which corresponded to the state set rate. Following the intervention of the Greek Ombudsman, the insured received from TAP-OTE the full amount of expenses, although it exceeded by far the provided by the state price list (39,225.76 Euros) (complaint 7013/2008).

Individuals insured at the Social Welfare Fund for Civil Servants (OPAD) faced a similar problem. Following an intervention by the Greek Ombudsman, the administrative board of OPAD decided not to examine each case separately but to request from all co-supervised Ministries to present the State Legal Council with relative queries and then to proceed with the legislative provisions that are necessary to comply with relevant court decisions and to form a cohesive basis with respect to all cases.

3.1.2 EXAMINING THE LEGALITY OF PRIVATE HOSPITALS' CHARGE

At the same time, the Greek Ombudsman appealed to all competent services (Athens Prefecture, Inspectors' body of Health and Welfare services) requesting them to verify whether the private hospitals had applied the state set rates as far as the specific cases were concerned. The Greek Ombudsman alleged that the circumstances when the necessary hospitalisation for the life or the health of the insured can solely take place in a non-affiliated private hospital, due to the lack of facilities or of adequate means of treatment in the public health system, should also come under the concept of emergency admission, at which an obligation of the private hospital to apply the state set rate is founded.

Recommendations of the Greek Ombudsman

The Ombudsman recommended the following:

1. The concept of emergency admission should be made clear and, furthermore, the case when the public health system fails to provide the health care service needed for the life or the health of the patient should come under this concept as well. In these cases, a statutory obligation of the private hospital to apply the state set rates should be provided.
2. It should be regulated that a) it is mandatory for social security organization to reimburse the total amount of expenditure, and not only the amount according to the state set rates, once the public health system fails to provide the health care service needed for the life or the health of the patient, b) the social security organisation is given the means to claim the excess amount, on the occasion that the private hospital has charged the patient far more than the state set rates.
3. Auditing mechanisms of the ministry of Health and Social Solidarity along with the competent departments

of the prefectures should be brought into action in order to monitor the application of the state set rates, as well as the overall legality.

4. The separate billing of embolism's special materials, which are not included in the anticipated by the relevant ministerial decree cost of 8.804 Euros, should be statutorily provided for. Through this provision the billed amount will become realistic and will correspond to the actual cost of hospitalization. It should be applied in private hospitals which are profitable businesses, as well as in health care providers.

3.2 MENTAL HEALTH

Problems in the operation of mental health units, established under the mental health reform programme "Psychargos", due to funding shortage, were investigated by the Greek Ombudsman (complaints 16887/2008, 19434/2008, 3980/2009). The Greek Ombudsman sustained that funding constitutes only one of the multiple facets of the quandary, which requires substantial administrative and institutional interventions in order to be resolved.

The Greek Ombudsman declared that the course of mental health reform needs to be assessed and possibly, after that, it would be necessary to redefine its aims and goals. To this effect, a meeting was organized on March 30th, 2009 under the title "The mental health reform in Greece: needs, suggestions, and solutions". This meeting concluded that mental health reform has not yet been consolidated in Greece and that inequalities in the provision of mental health services have not been eliminated. In spite of the essential steps that have been made, the following issues remain unresolved for over a decade:

- Setting up a quality assessment system for services provided by public and private entities.
- Correlating the funding of mental health units with the findings of quality assessment reports.
- Update and completion of the current statutory framework (law 2716/1999) with respect to the EU white paper, the contemporary approaches of World Health Organization and international associations for mental health patients, as well as with the current European and international criteria.
- Development and implementation of sectoring of mental health services. Assignment of a decisive part to mental health committees of sectors. Particular difficul-

ties are caused by the rudimentary networking - especially in the urban centers - between primary (out- of-hospital) health services and hospitalisation units, as well as by the inadequate horizontal communication between primary (out-of-hospital) services.

- Staffing of all units with adequate and appropriately qualified personnel, as well as securing regular and sufficient funding of all actions.

Under the framework of long term and distinct planning, it is necessary to:

- make mental health a top priority.
- review programme "Psychargos" following a needs analysis in the mental health area and an evaluation of all interventions made so far.
- set up an advisory body, staffed with professionals and scientists from various disciplines. Also set up an independent body to audit and assess mental health services.

- transfer funds from the asylum system to the formation and implementation of alternative, non restraining methods and services for the support and care of mental health patients.

- abolish mental hospitals and increase capacity of general hospitals in order to cope with mental health incidents.

- increase the nursing staff so that the current rate of 15 nurses to 40 patients is improved.

- improve employment rates among individuals with mental health problems.

A team was set up within the Greek Ombudsman to monitor the progress of mental health reform in cooperation with the Hellenic Psychiatric Association (HPA). This team is assigned with the task to contribute to the public debate on this high priority social issue.

4. SOCIAL SOLIDARITY

Social welfare aims at covering basic living needs and at integrating socially excluded individuals through a complex of allowances and benefit payments. The beneficial character of social welfare is supplemented by a rather fragmented system of services. Under the framework of reorganising the social welfare system on a decentralised model, transferring state operations to local government organisations facilitates in i) citizen access to social services, ii) recording and covering all arising needs for the provision of social care services, and iii) networking and cooperation among social care services with the purpose of, ultimately, preventing and handling social exclusion on a local level. While fulfilling its role in this sensitive area of social policy, local authority must operate according to the principles of transparency, legality, good governance and justified citizen's trust and it must also document its decisions with regards to the provision of social services.

4.1 MEAL PROVISION CENTRE IN THE MUNICIPALITY OF ATHENS

Indicative case

A homeless person, who used to have its meals at the Homeless Shelter of the municipality of Athens, filed a

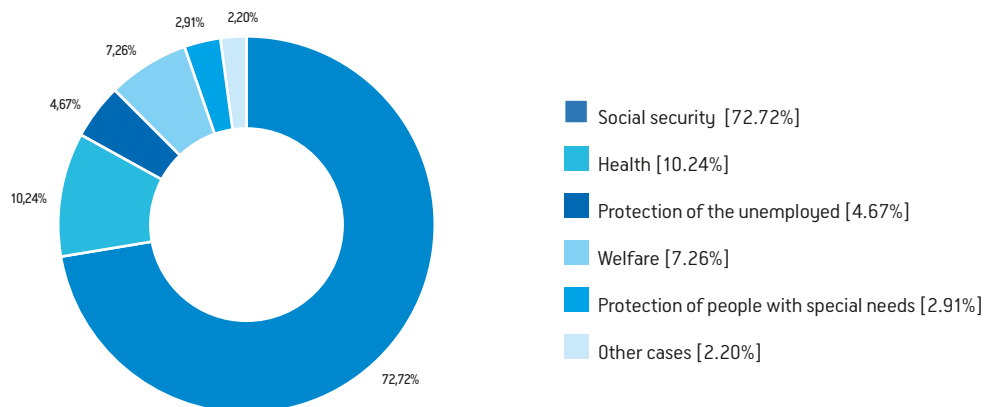
complaint with the Greek Ombudsman because the deputy mayor in charge had given an oral order to suspend its right to meals following a quarrel they had.

In order to investigate the case, echelon of the Greek Ombudsman visited the premises of the Homeless Shelter, the "Meal Provision Centre", the "Social Grocery", the "Athens market" and the "Social Pharmacy" and was informed by the responsible personnel of their activities as well as of the applied regulations. Still, throughout this visit, it was not clarified why the right to meals of the complainant had been suspended nor which was the procedure that should be followed in similar cases. Moreover, the Greek Ombudsman noted the lack of rules and regulations of the Meal Provision Centre similar to those set down for other welfare institutes of the municipality. As a result, information was requested in writing regarding the specific incident, on the one hand, and the competent body, the requisites for accession, the conditions of accession as well as the grounds for discontinuance of someone's participation in the Meal Provision Centre of the municipality of Athens, on the other hand. The need to lay aside a statutory framework, especially in the case of exclusion from provided services as means of punishment for inappropriate behavior, was

thoroughly underlined. Since the Homeless Shelter of the municipality of Athens did not respond to the above requests, the Greek Ombudsman let the mayor of Athens in on the facts of the complaint as well as of the defiance of the Center’s responsible staff to cooperate with the Greek Ombudsman. Following this, the person in charge of the Centre was orally bounded to take all necessary actions to solve the issue.

Despite the fact that the Greek Ombudsman praises the social part of local authority, and in this case of the municipality of Athens, in the relief of those living in poverty, he considers necessary to publicize this case since a considerable period of time has passed and no initiatives on behalf of the municipality regarding the drafting of rules and regulation of the “Meal Provision Centre” have been made known (complaint 3423/2009).

GRAPH 6 DEPARTMENT OF SOCIAL PROTECTION, HEALTH AND SOCIAL SOLIDARITY - BREAKDOWN BY MAIN CATEGORIES OF COMPLAINT RECEIVED IN 2009



Quality of life

- 37 1. OMBUDSMAN MEDIATION IN THE AREA OF QUALITY OF LIFE
- 38 2. DEGRADATION OF NATURAL ENVIRONMENT DUE TO THE OPERATION OF PRODUCTIVE ACTIVITIES
- 39 3. FOREST PROTECTION: INTERVENTIONS AND REGENERATION
- 40 4. WASTE DISPOSAL AND MANAGEMENT
- 40 5. SENSITIVE ECOSYSTEMS PROTECTION: WETLANDS AND COASTAL ZONE AND SEASHORE
- 42 6. ADMINISTRATIVE CONTROL AND URBAN ENVIRONMENT
- 43 7. LICENSING AND OPERATION OF FOOD PREMISES (INC. CLUBS, RESTAURANTS, CAFÉS, CATERINGS ETC.)



Quality of life



CHRYSSA HATZI
Deputy Ombudsman

1. OMBUDSMAN MEDIATION IN THE AREA OF QUALITY OF LIFE

In 2009 the Greek Ombudsman received an increased number of complaints related to the natural, residential and cultural environment. This year marks the first time that complaints on residential issues are less in number compared to those on natural environment: this can be considered a manifestation of a growing environmental awareness of the Greek society and thus can be seen as a consequence of the environmental crisis which we have been witnessing in recent years.

The mediatory role of the Greek Ombudsman on issues related to natural environment has been activated when there has been evidence that the citizens' quality of life as well as public health have been degraded as a consequence of production activities. While investigating complaints, on site visits were carried out and meetings were called with the participation of organisations and citizens, and open consultation days have been organised. In the area of forest protection, the Greek Ombudsman mediated in cases on interventions and works in forest areas, and reforestation issues.

Solid and liquid waste management and disposal is still a problematic in Greece. Despite the obligation of the country to abolish all illegal dumping sites by the end of 2008, some of them are still in operation. It is estimated that this will lead to the imposition of fines by the Court of the European Communities in the near future. Uncontrolled waste disposal imperils public health and systematically degrades citizens' quality of life. Hence, this is an area of mediation for the Greek Ombudsman.

The department of Quality of life has been called upon to identify existing actions or omissions of state authorities

on environmentally sensitive ecosystems, such as wetlands or coastal zones. The Ombudsman mediated in cases of land use disputes, where agricultural activity and residential development threaten sensitive ecosystems. The protected zone of coastline and seashore constitutes a natural resource in abundance in our country which, however, is threatened by various human interventions (residential development, economic activities). The lack of fiscal funds for demolishing illegal buildings or the technical difficulties in applying the legal procedure of defining coastline and seashore have often served as an excuse for the state administration inactivity in protection of these areas. Thus the Ombudsman mediated to the ministry of Finance so that funds for demolishing illegal buildings would be included in the annual state budget. The Ombudsman also asked for the ministry's contribution in activating competent services to impose fines and issue protocols of administrative ejection and demolition of illegal buildings.

In residential environment the majority of problematic issues are related to building permits and illegal constructions. This is the area where major structural deficiencies of town planning authorities are manifested as well as the lacking observance of legality and good governance. The reasons for the administration tolerance of illegal construction, as this has been noted by the Ombudsman, are not to be found only in the fragmentary legislation of urban planning, in administrative dysfunctions, in funds shortage for demolitions or in the state reluctance to carry out investigations and controls. In essence, the reasons are political and social and are related to the

dominant model for the country's economic growth in the post-war period which has been almost solely based on the land property and building construction system. Nowadays this model is being challenged for the first time on political terms, so that priority is given to a new development model of economic growth focused on sustainable development and on environment.

One of the major issues that have been examined by the Ombudsman is the operation and licensing of food premises. Re-examination of the legal framework governing this area becomes necessary as it is manifested by the

increase of relevant complaints submitted in 2009.

As to the cultural environment, in 2009 the Greek Ombudsman continued its cooperation with the ministry of Culture, especially on long term property liens for archaeological purposes. The ministry of Culture formed the criteria for settlement of pending cases and undertook the obligation to facilitate citizens' access to files of properties under liens. The Ombudsman insists that more funds should be allocated and more specialised permanent staff should be employed in ministry services so as to face the issue of long term property liens and effective protection of cultural heritage.

2. DEGRADATION OF NATURAL ENVIRONMENT DUE TO THE OPERATION OF PRODUCTIVE ACTIVITIES

Indicative cases

Air pollution

While investigating complaints on air pollution in the prefectures of Kozani and Florina, due to the operation of the steam power plant and the Public Power Corporation mines, a Greek Ombudsman team visited these areas and took part in meetings and open discussions. The Ombudsman suggested that 1) the region should indicate the place where the air pollution measurement stations should be placed and 2) all competent environment services should recruit staff to carry out effective controls. These recommendations are expected to be materialised; however, the Ombudsman believes that air pollution can be limited or prevented mainly through specific prevention measures. As to the more general issues of zoning (fixed parts of land where acceptable pollutants concentrations are exceeded) and the correctness of the relevant data sent by our country to the European Commission, the Ombudsman insists that the division of the country into two zones and two types of settlements, as explained by the ministry of Environment, Urban Planning and Public Works does not comply with the requirements set in article 7, of the Cabinet act 34/2002. In addition, the rationale of the under transposition EC directive 2008/50/EC is to define "zone" not on geographical criteria but on grounds of the necessity to assess and manage the air quality of a specific part of the land.

The case of Akrini in the prefecture of Kozani

Following complaints by a citizens' association on the environmental degradation of the settlement and restriction of the economic activity of the inhabitants due to the closeness to the Ptolemaida mine, two issues were brought to the center of public attention. First, the systematic violation of environmental terms set for the operation of the Ptolemaida mine, namely not taking measures for dust emissions, inexistence of green protection zones, solid waste management not abiding to environmental terms, non licensed management of liquid waste. Second, deposition of ash and solid material on the road surface from Akrini to Klitos and the gradual shrinkage of the settlement size. The northern Greece Mine inspectorate, following a document set by the Ombudsman, carried out on site investigation and found that the minimum 250m legal distance between the deposition of mining material and the settlement premises is not kept. Hence, recommendations were formulated and fines imposed. The Ombudsman team of investigators who visited the area noted that, among others, ash carrying trucks were not covered and recent ash depositions were found on the roadside. It was also noted that the settlements neighboring to the mines suffer from harsh environmental aggravation and that their proximity to the mine weakens economic and production activities. Hence, it has been purported that the claim of Akrini inhabitants for relocation is reasonable and it should be examined.

3. FOREST PROTECTION: INTERVENTIONS AND REGENERATION

During development activities, either the state or citizens at their own initiative may consider necessary to use a forest or forested area. However, the Constitution prohibits the alteration of the forest scope, allowing of very limited exceptions related to national economy and public interest. The relevant legislation requires a prior approval by the competent forest department for any relative intervention. The Ombudsman came across an intervention in a forest without prior approval by the competent forest department. On the contrary, in another case, presented below, a specific action by the state itself, although incorporated in the forest scope and more specifically in the use of forest products, resulted in causing forest and trees disease.

Indicative cases

The forest of Mavropigi in the prefecture of Kozani

An association filed a complaint on the illegal interventions of the Public Power Corporation (PPC) in a forest within the municipal area of Mavropigi in the prefecture of Kozani (complaint 3577/2009). PPC had submitted a request for prior approval for intervention and provision to the forest services and the Kozani prefectural authority respectively, in 2006, and received initially a negative answer. In March 2008, PPC repeated its claim on grounds of national interest and emergency. The forest services responded positively on conditional provision. However, until February 2009, when the Ombudsman begun its mediatory work, no final answer had been delivered by the prefectural authority of Kozani, because of delays in delivering opinion by other state services. A group of Ombudsman investigators carried an on site investigation in the forest and noted a large scale excavation to the side of the mine, the formation of a vertical incline of considerable height and large numbers of cut trees. A few days earlier a State environment quality control service had carried out an on-site visit and recorded the beginning of forest intervention works. The Ombudsman noted the illegal intervention of PPC in the forest and the dangerous incline but also noted the long state delay to reply to PPC as a contradiction to the principle of legal certainty. In addition, the Ombudsman noted an important lack of information to the inhabitants

on the provision claim. Then, further land cleaning occurred and the Ombudsman addressed in writing the prefecture noting also the need, following forest acquisition, to set the rules that would ensure offsets to the inhabitants of the area. In June, the prefect's decision was issued to provide the Mavropigi forest to PPC, on the condition that PPC creates within 5 years a new forest of 166 hectares in the wider region. Following this, the Ombudsman concluded its mediation noting however, the inertia exhibited by the forest service towards the illegal interventions by PPC.

Pine treatment causing spread of *Marshallina hellenica*

The degradation of the Kaissariani forest (included to Natura 2000 network of protected areas) had been examined previously by the Ombudsman due to the destruction of pines from the uncontrollable spread of the insect *Marshallina hellenica*, which a few years ago had been artificially infested following a pine treatment programme by the ministry of Rural Development and Food. Following many years of research, the Ombudsman noted that this programme had been carried out without the necessary environmental impact studies, and requested that this programme should stop on the basis of the precautionary principle, that special protection measures should be taken and that a rehabilitation study for the protected areas should be drafted. Also, the Ombudsman requested more data on the extent of the problem (complaint 5092/2006). The directorate for Forest Protection requested information from the regions' forest directorates. The problem is more intense in Chania - Crete, in the prefectures of Corinth and Argolida, in Thessaloniki, in Kassandra - Chalkidiki and in Attica. In August 2008 the competent ministry issued a decision on the prohibition of artificial infestation of this insect in the protected forest areas of the country (archaeological areas, Natura 2000 network, etc).

Following this, forest services issued relevant prohibiting orders. As for the drafting of a special environmental impact study, the ministry informed the Ombudsman in writing that they have started consultations with the National Institution for rural research to this effect.

4. WASTE DISPOSAL AND MANAGEMENT

Following the sentence of Greece at the European Court of Justice (case C-502/03) in October 2005, Greek authorities undertook the obligation to abolish the 1125 illegal waste disposal sites by 2007 and, upon the extension granted, by the end of 2008. Through the investigation of relative complaints, the Ombudsman noted that several such sites are still in operation. Many of these sites are at first used as sites for illegal dumping of construction waste and are then turned into illegal waste disposal sites. Issuing the relative presidential decree acquires great importance; this decree has been provided in 2001 to regulate the terms and conditions for alternative waste and other product management, among which, construction waste. Its delay has favoured the illegal dumping of construction and other waste and has contributed in the creation of new uncontrolled waste disposal sites.

Indicative cases

Solid waste burning in uncontrolled waste disposal sites

Uncontrolled dumping and burning of solid waste in the municipality of Aghios Konstantinos in Lokrida ("Mourtitsa" area) resulted in serious and systematic pollution of the environment and natural resources (complaint 7165/2006). The municipal council had taken a decision to approve the purchase of a land property for the dumping of construction waste, aggregate and waste, which, as noted by the Ombudsman violates legality and constitutes an erroneous attempt to solve the problem. Dump-

ing urban waste from the municipal refuse collection vehicles to this area begun in 2005, violating pertinent legislation. In the meantime the programme for the abolition of uncontrolled waste disposal sites was pending and it was supposed to be concluded by 2008. Burning waste at this site took place almost on an every day basis. The Ombudsman asked all competent services to conduct an on site investigation, to close down this site, to impose sanctions and to take measures for the site rehabilitation. The prefect of Fthiotida issued a decision for the closing down of the site, the premises rehabilitation and the disposal of waste to an approved landfill site. The Environment and Urban Planning directorate at the Sterea Ellada Region asked the municipality to conform to the closing down order and to submit a technical study for the site environmental rehabilitation. However, the municipality asked for permission to dispose waste in the approved landfill site of the municipality of Lamia until the Lokrida site, currently under construction, is in operation; this request has not been approved. This site is still in operation, despite the Prefect's decision to cease its operation and the obligation of the country to the EU to definitely abolish all illegal waste dumping sites by the end of 2008. The department for Environmental Protection of the prefectural authority of Fthiotida informed the Ombudsman recently that it is not possible to close down this site or to proceed to the site rehabilitation until the construction of the site serving the 3rd administrative unit of Fthiotida District.

5. SENSITIVE ECOSYSTEMS PROTECTION: WETLANDS AND COASTAL ZONE AND SEASHORE

Several complaints refer to the protection of wetlands. The Ombudsman has repeatedly noted the shortages of the legislation and relative administrative shortcomings. The wider picture is revealing fragmentary treatment of problems and not an integrated management approach. illegal embankments and waste dumping in wetlands are two rather frequent issues. Embankments are so extensive in certain cases that the original topography is altered and its demarcation is difficult. In an own initiative investigation carried out by the Ombudsman it was noted

that no measures are taken for protection and integrated water management in the basin of river Nestos.

WETLANDS

Indicative cases

The Greek Ombudsman noted extensive interventions causing serious difficulty in demarcating the wetland in the old marsh in the lake Chimaditida in Florina. Since the 1930s, owners of a land neighbouring to marshes, heaths and forest areas, expanded the cultivated area in the lake

marsh. The state services were hindered in taking action by the lack of demarcation of the shore and the littoral zone of the lake and also by the lack of clarity regarding the private property limits. Following intervention by the Greek Ombudsman, the Real Estate department of Florina, proceeded to the demarcation (complaint 6828/2008).

Following the findings paper on the demarcation of Porto Tinos wetland (2006 Annual Report, p.136), the Urban Planning and Environment department of the prefecture of Cyclades proceeded to registering building permits in the area. Additionally, the Urban Planning Directorate of the ministry of Environment, Urban Planning and Public Works asked the Environmental Planning department of the same ministry to issue an order suspending the issuance of all building permits, to demarcate the wetland boundaries and protection zones and to draft jointly with the municipality of Tinos, a study to modify the boundaries of the two settlements. The Environmental Planning directorate did not accept the suggestion to issue a building permit suspension order but asked for a special environmental study, so that a presidential decree may follow defining the boundaries of the wetland and measures for its protection (complaint 20671/2003).

The issuance of presidential decrees defining and regulating the management of protected areas constitutes a standing opinion for the Ombudsman. The Ombudsman opposes to regulating these issues through joint ministerial decisions in breach of the law (law 1650/1986). In a complaint investigated by the Ombudsman related to the protection of the delta of Axios-Loudias-Aliakmonas rivers and the Alyki Kitrous wetland, the issuance of a presidential decree was requested, according to the aforementioned argument, but in the end the state administration proceeded to creating a national park in the area on the basis of a joint ministerial decision.

COASTLINE – SEASHORE

The credit crunch is the most frequent excuse for delays in demolishing illegal buildings. The ministry of Finance, responding to a relative question, informed the Ombudsman that the 2009 state budget included appropriations for demolishing illegal buildings and that the possibility for additional ones was examined. Also, the ministry responded to the recommendation of the Ombudsman

that the central state service should provide aid to the public real estate services in every prefecture, through a set of guidelines on the procedures to be followed. In addition, it will provide technical support in demarcating the coastline, the seashore, the old coastline. These guidelines have been sent to all public real estate services in the country.

Indicative case

Demolishing illegal buildings on the coastline and the sea shore

During the last six years the Greek Ombudsman has been handling the case of buildings—constructions or camping vans—settled within the boundaries of the coastline and the seashore at the “Skorponeri” in Loukisia, in the municipality of Anthidona. The Ombudsman has addressed a total of 34 documents to competent state services (prefectural authority of Evia, prefectural authority of Viotia, Region of Sterea Ellada, Real Estate service of Viotia and of Evia, ministry of Environment, Urban Planning and Public Works/Urban Planning directorate and Central Port Authority of Chalkida). Despite the difficulties in the cooperation among state services and the occasional refusal to respond to the Ombudsman’s correspondence, the Ombudsman along with the competent authorities conducted on-site investigations, fines were imposed and protocols of administrative ejection and demolition of illegal buildings were issued. Almost all illegal buildings have been removed from the coastline and the seashore. The call for tenders for the demolition of concrete piers on the coastline and the sea has not been issued yet, according to the Region of Sterea Ellada/Public Works directorate. The expropriation of the sea shore has already begun with the cooperation of the prefectural authority of Viotia, of Evia and the municipality of Akrefnia (complaint 16961/2003).

6. ADMINISTRATIVE CONTROL AND URBAN ENVIRONMENT

Indicative cases

Administrative malfunctions in the urban planning state services

Lack of staff and organisation in town planning services of local authorities either hinder efficient exercise of jurisdiction or lead to the indirect refusal to undertake such jurisdiction, resulting in long delays in the issuance of administrative actions.

The Greek Ombudsman has received complaints on the excessive delay in issuing building permits by the town Planning Office of the municipality of Nafpaktos. While investigating this complaint, it came up that the competences of the town Planning Office of the municipality of Nafpaktos had been transferred to the prefectural authority of Aetoloakarnania.

The prefectural authority of Aetoloakarnania found recourse to the Council of State against the decrees of competences transfer. The Prefect claimed inability to exercise such competences due to inadequate staffing of the state service. In addition, the prefect forbade the new competent Urban Planning service of the prefecture to receive new applications and files of pending cases related to the area of competence of the abolished Urban Planning office of Nafpaktos, until the final decision of the Supreme Court has been issued.

The Ombudsman noted to the Prefect of Aetoloakarnania that the competent at the time Urban Planning service of the municipality of Nafpaktos had violated the procedure for issuing building permits and the pertinent urban planning provisions. Also the Ombudsman emphasised on the stalemate to which citizens of Nafpaktos had reached due to the inexistence of an urban planning service. In addition, the Ombudsman requested that the relevant Prefect's order is revoked, and the pending cases are processed. The Ombudsman's mediation resulted in activating the prefectural authority and the co-competent authorities for recruiting the necessary staff at the department of urban planning applications, and in the revocation of the aforementioned prefect's order. Once new members of staff were recruited, the department of urban planning application of the prefectural authority started receiving and processing cases of the spatial competence of the municipality of Nafpaktos (complaints 18361/2008 and 4542/2009).

URBAN PLANNING OF OLD BUILDING SOCIETIES

Applying town plans on areas of old building societies that had been approved in the past but have never being materialised causes several problems. Pertinent legislation as well as environmental conditions has changed dramatically since the initial approval of plans. It is necessary to review old town plans and adjust them to the needs of contemporary urban planning.

The Ombudsman investigated a complaint (9515/2005) on the possibility to issue building permits for settlements on the island of Kea, the town plans for which had been approved back in 1969. The Ombudsman tracked several important shortages in the existing town plans of these settlements, such as the non demarcation of existing ravines, the lack of an overall elevation study and a study of geological suitability. The Ombudsman stressed the necessity to carry out environmental impact assessment for the construction of infrastructure works and for the prevention of adverse consequences due to the neighbouring with a protected area of the Natura 2000 network. The Ombudsman concluded to the following observations and recommendations to the competent urban planning authorities and the ministry of Environment:

- Because of the deficiencies detected in the approved town plans, as well as the new legislation and the actual conditions, these plans should be reviewed before they can be applied.
- Materialising urban planning for settlements neighbouring to a special protection area of the Natura 2000 network requires an overall approach. The reviewed application of town plans should cater for sustainable residential, touristic and economic development of small islands.
- The review of old town plans should take into consideration the legally established expectations of property owners for the best possible use of their properties so that property rights are not affected.

7. LICENSING AND OPERATION OF FOOD PREMISES [INC. CLUBS, RESTAURANTS, CAFÉS, CATERINGS ETC.]

Indicative case

Open air facilities for cultural or social events

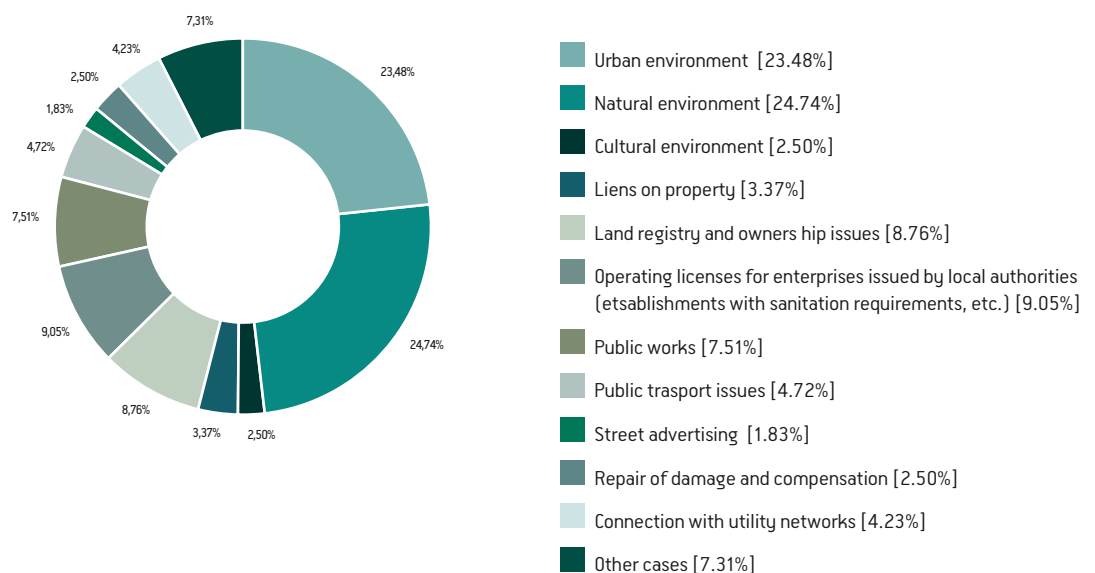
In 2009 the Greek Ombudsman investigated issues related either to cultural events taking place in the open air or to the operation of open air facilities hosting social events. Legal ambiguities were detected on the licensing status and on the operation of such activities.

While investigating the cases of open air and catering facilities hosting social events and their respective licensing status, the Ombudsman noted that the majority of these businesses operate in private open air or semi-sheltered facilities that have been constructed for the purpose of hosting social events (wedding receptions and christening parties) especially during summer. In these events, food is being served that either has been prepared elsewhere or is being prepared on the spot. These events take place frequently in the afore mentioned premises. It is beyond any doubt that they are organised businesses and not casual entertainment events in private premises. Hence, these businesses can be categorised as

food and catering premises. The services of the ministry of Health and Social Solidarity purported that these facilities hosting social events are not included in the aforementioned category and there is no legal framework for setting the competent authority for issuing licences for their establishment and operation. As a result of this legal gap the suitability of these facilities is not examined as to public health protection and there is no licensing for music played on site. Local authorities cannot intervene as the relative jurisdiction has not been assigned to them. The Ombudsman asked the competent ministry to include these facilities in the category of food premises so that their operation is subjected to all pertinent provisions.

The competent minister, responded to the Ombudsman's recommendation and issued a decision that complemented the pertinent sanitary provision regulating the control and licensing status of these facilities, as sheltered or open air facilities dedicated to events (complaints 14176/2007 and 10055/2008).

GRAPH 7 DEPARTMENT OF QUALITY OF LIFE - BREAKDOWN BY MAIN CATEGORIES OF COMPLAINT RECEIVED IN 2009



State-citizen relations

- 45 **1. THE IMPORTANCE OF ADMINISTRATIVE PROCEDURES**
- 45 1.1 ACCESS TO DOCUMENTS
- 45 1.2 THE LOCALITY PREREQUISITE AND CERTIFICATE OF PERMANENT RESIDENCE
- 45 1.3 THE PROCEDURE FOR GRANTING FINANCIAL AID TO VICTIMS OF WILD FIRES IN 2007
- 46 **2. INEFFICIENT SUPERVISION**
- 46 2.1 FAILURE TO COMPLY WITHIN PROVIDED DEADLINES
- 47 2.2 FAILURE OF PREFECTURE TO IMPOSE ITS DECISIONS
- 47 **3. INABILITY OF LOCAL GOVERNMENT AUTHORITIES TO HONOUR THEIR FINANCIAL OBLIGATIONS**
- 47 3.1 MUNICIPAL AUTHORITIES NOT RECOGNISING THEIR PREDECESSORS' DEBTS
- 47 3.2 UNLAWFUL CONTRACTUAL BEHAVIOUR
- 48 3.3 FINANCIAL SHORTAGES
- 48 **4. TAX ADMINISTRATION AND POLICY**
- 48 4.1 NON APPLICATION OF FAVOURABLE REGULATIONS FOR CITIZENS
- 48 4.2 IMPOSING EXTRAORDINARY CONTRIBUTIONS AND UNDERMINING THE PRINCIPLE OF LEGAL SECURITY
- 49 4.3 SHIFTING RESPONSIBILITY FOR MISTAKES TO CITIZENS
- 49 4.4 FAVOURABLE REGULATIONS OUTSIDE TAX LEGISLATION
- 49 4.5 RELATIONS WITH TAX PAYERS



State-citizen relations



CALLIOPE SPANOU
Deputy Ombudsman

1. THE IMPORTANCE OF ADMINISTRATIVE PROCEDURES

Adherence to and the quality of administrative procedures are very important in safeguarding citizens' rights and promoting the administration's activities. The Ombudsman's mission is to guard the general principles binding the relationship between the state and its citizens as well as the internal operation of management; it is often called upon to assist citizens while exercising their rights, a process that promotes the administration's transparency and accountability.

1.1 ACCESS TO DOCUMENTS

An important part of these principles is specified and established in the Code of Administrative Procedure. The right to access administrative documents is crucial, as many other rights depend on this. The Ombudsman organised an event on February 23, 2009 where representatives of the Legal Council of State, the Council of State and the Hellenic Data Protection Authority participated, as well as the General Inspector of Public Administration and the European Ombudsman. During this one day conference, four issues were highlighted :

- how to make transparency a reality, when public administration still appears to be resisting it.
- judging the right to access administration documents against other rights.
- outlining the provisions of the Code of Administrative Procedure on the right to access, in relation to other provisions and with regard to independent authorities responsible for monitoring their application.
- the need to codify the relevant provisions.

1.2 THE LOCALITY PREREQUISITE AND CERTIFICATE OF PERMANENT RESIDENCE

Locality has been a prerequisite for exercising a series of rights (such as employment and recruitment, change of municipal registration, fire victims' relief, kiosk licence, etc). The procedure for acquiring a permanent residence certificate suffers from the discrepancy between actual and apparent residence based on supporting documents. Since it is not obligatory to declare a permanent residence, there is no safe way to certify the permanent residence of those residing in Greece, nor a specific number and/or type of supporting documentation from which to safely conclude one's permanent residence. As a result, certificates of questionable accuracy are issued which are then challenged either by the interested parties themselves or by the public administration. The Ombudsman compiled a special report on the subject and made the following recommendations: i) the justification for locality criteria and permanent residence during recruitment and ii) the compilation of a special registrar, where all residents would declare only one municipality of permanent residence.

1.3 THE PROCEDURE FOR GRANTING FINANCIAL AID TO VICTIMS OF WILD FIRES IN 2007

In the summer of 2007, Greece was devastated by wildfires that damaged large forest expanses, crops, animal stock, houses and human lives. Under pressure of this huge catastrophe, the government took measures to financially support those affected by the wildfires. This

was also a test of the administration's mechanism for providing this financial aid.

As was noted, a series of problems arose due to the limited time available for taking measures, the oversights or vagueness of procedures and the standard operational inefficiencies of public administration.

Due to faulty or insufficient information, citizens received in good faith financial support which they were later called upon to refund, because they were not permanent residents of the area affected by the wildfire, or owned two residences in this area (main and secondary).

In essence, when submitting their applications and receiving financial aid, citizens were called upon to evaluate the validity of their claims, whereas the final assessment would be formulated by the public administration at a later stage. The eligibility criteria for receiving this subsidy should have been clear from the beginning; information provided should have been comprehensive and concise and the documentation and procedures required for locating unduly paid funds should have been known in advance.

The Greek Ombudsman compiled a report wherein, apart from the issue of determining citizens' permanent

residence and ensuring that they were well informed, other problems were raised, on which special mention should be made. Problems arise from the frequent recourse of the public administration to third parties (banks) that mediate between the two; this is a desirable option in reducing the public administration's workload, overcoming tedious bureaucracy and making immediate payment of the amounts due. Nevertheless, competent state services are obliged to submit, at a later stage, all necessary documents for inspection. The role of banks was to facilitate the first stage, but problems arose due to the incorrect information they gave in certain cases; this resulted in beneficiaries not being able to receive the subsidy. The Ombudsman believes that when third parties are called upon to mediate, guarantees should be in place so that possible mistakes by this third party do not affect citizens' rights.

As for the procedure supporting people affected by similar catastrophes, an action plan should be drawn up to include the emergency measures. In this way, the risk of improvising ad hoc solutions in cases when the administration is called upon to act under pressure, would be minimised.

2. INEFFICIENT SUPERVISION

Maladministration, which often characterises local government authorities, is due, to a great extent, to the unwillingness or weakness of the regional prefecture in monitoring practices, to ensure legality and transparency. A general overview of this issue was included in the Ombudsman's 2004 annual report; however, despite the Ombudsman's recommendations and proposals, no progress has been recorded.

2.1 FAILURE TO COMPLY WITHIN PROVIDED DEADLINES

Due to lack of specialised personnel and extremely short deadlines set by the Municipality and Community Code, the regional prefectures are unable to act in time. Despite the recommendations made by the Ombudsman for extending these deadlines, these were shortened even further, with aggravating consequences. Indicatively:

- The municipality of Melissia imposed a duty on certain categories of private businesses for projects aimed at

upgrading the area (e.g. traffic improvement, etc). The Ombudsman noted that this duty is non contributory and is imposed illegally by a regulatory decision. Nevertheless, the duty was tacitly legalised as the deadline for verifying its legality by the Attica regional prefecture had expired. This case is pending before the court.

- A citizen contacted the General Secretary of the Region of Mainland Greece demanding that the decision of the Stira municipality, exempting his business from municipal fees, should be examined. The municipality of Stira did not send their views on this appeal in time and as a result, the one month time limit provided for audit, expired.

- The General Secretary of the region of Attica did not review the decisions of the community council of Saronida, on the adjustment of city cleaning and water supply fees, although the appeal was submitted within the prescribed time limit. According to the regional prefecture, this delay is due to understaffing.

■ The municipality of Perama established a special anti-pollution fee for businesses based on the Schisto Industrial Park, in order to finance projects upgrading the area. However, evidence of the benefits could not be seen. Despite the Ombudsman's efforts, it has not been ascertained whether relevant decisions were sent for audit to the regional prefecture or were legalised tacitly. The case is pending before the court.

2.2 FAILURE OF PREFECTURE TO IMPOSE ITS DECISIONS

The fact that the regional prefecture is not able to control acts and decisions taken by local government authorities is manifested also in its inability to impose its own decisions. Not imposing sanctions, in case of non conformity to the region's decisions, undermines the credibility of any inspection and in essence, their actions

remain uncontrolled. It is often the case that local government authorities execute illegal decisions, ignoring the fact that these have been invalidated by the regional prefecture. Indicatively:

■ The community of Anthousa illegally receives fees for municipal cleaning and lighting since 2003, by virtue of a decision which, in fact, has been invalidated by the Attica regional Prefecture and the Council of State. Nevertheless, the community has not returned the money unduly paid and citizens have initiated an audit procedure so that the community conforms to the Council of State's decision.

Monitoring local authority organisations' actions, although compensating for the autonomy they enjoy in accordance with article 102 of the Constitution, often proves to be illusory and thus must be vested with all appropriate guarantees so that it is not rendered ineffective.

3. INABILITY OF LOCAL GOVERNMENT AUTHORITIES TO HONOUR THEIR FINANCIAL OBLIGATIONS

During the last few years, the competences transferred to local government authorities, are being reinforced. However, the local authorities are not able to fulfill their economic obligations. Two basic issues have surfaced: a) insufficient funding and b) inefficient financial management.

3.1 MUNICIPAL AUTHORITIES NOT RECOGNISING THEIR PREDECESSORS' DEBTS

While investigating complaints, certain cases were found whereby municipal authorities do not recognise their predecessors' debts, deeming the originally agreed amount to be extremely high.

■ In 2006 an interpreter offered his services to the municipality of Ambelakia in Salamina. Municipal elections followed and the newly elected mayor refused to pay the amount due, claiming that the amount agreed by the former mayor was excessive. The Ombudsman repeatedly pointed out that the new municipal authority is bound by the decisions of the former; following continuous pressure, the municipality finally paid the amount due to the interpreter in 2009.

■ A citizen carried out refurbishment work in the sports grounds of the municipality of Arfares in Messinia;

however, the municipality did not pay for this work for two years. The new municipal authority, following continuous pressure by the Ombudsman, acknowledged the debt and although it undertook to pay the amount in installments, it failed to do so. As two more years elapsed, the citizen brought the matter before the courts.

3.2 UNLAWFUL CONTRACTUAL BEHAVIOUR

The following cases highlight the fact that economic obligations of the public administration lack legal foundation.

■ An artist who offered his services in 2006 to the municipality of Stira in Evia, filed a complaint with the Ombudsman because the new mayor claimed that the municipality had no obligation to pay the fee, as there was no outsourcing decision by the former municipal council in this respect. Claiming also that the artist's supporting documents were inadequate, the mayor awaited the conclusions of an administrative audit, carried out by the region of Mainland Greece, for all of fiscal year 2006. The mayor recently undertook to pay the full amount due (case 4025/2008).

■ In 2005, the municipality of Kalymnos assigned the provision and installation of spare parts for its vehicles to

a private company; it did not, however, make any payment on the grounds of funds shortages. The first part of the debt was eventually paid in 2008, following the Ombudsman's intervention; the balance, however, was not approved by the auditors, as the total amount for the contract had been exceeded.

■ The municipality of Mandra in Attica, purchased furniture in 2006 without a public tender but failed to settle the account for two years. Following correspondence from the Ombudsman, the mayor finally replied at the beginning of 2009 claiming that it "did not acknowledge the debt" of the previous municipal authority. Following persistent demands of the Ombudsman, the municipality paid the amount due, three years after the purchase of the furniture.

4. TAX ADMINISTRATION AND POLICY

The Ombudsman handles a large number of cases related to tax issues, where solutions chosen by the administration are governed by sterile budgetary appropriateness:

4.1 NON APPLICATION OF FAVOURABLE REGULATIONS FOR CITIZENS

■ In 2008 a citizen was late in submitting his income tax declaration for the year 2003. According to the tax return he received, he was entitled to a tax refund, however the Chaidari tax office refused to make the refund, claiming that this refund had been written off because three years had elapsed since the tax was withheld. The Ombudsman pointed out that there was no case for statutory limitation, as the relevant obligation of the municipality had not even been raised. Since, in this case, issuing of a tax refund arises from the issue of a tax return, the time for statutory limitation commences then. Both the tax office and the ministry of Economy and Finance refused to comply with this legislation.

■ Mothers of three children from more than one marriage, are not entitled to tax relief provided for tax paying fathers of three children (law 2238/1994, article 9, paragraph 2). The reason given for this being that children from previous marriages are the mothers' responsibility, while children from an existing marriage burden (tax-wise) the parent with the highest income; in most cases, this is the father. This is a case of indirect discrimination against women; a male is considered to be

3.3 FINANCIAL SHORTAGES

The problem of financial shortages prevailing in certain cases in municipalities is often passed on to citizens:

■ A private company provided electronic equipment to the municipality of Nikea in 2005. As the municipality did not pay the fee, the company applied to the courts and issued a payment order. However, the municipality still refused to make any payments. Responding to the Ombudsman's correspondence on the subject, the municipality claimed that it was awaiting the state subsidy for 2008. The Ombudsman has pursued this matter, but to no avail. The mayor of Nikea recently declared in press conferences that he is still unable to make any payments, even to his employees.

the father of three by the tax administration, regardless of whether the children derive from one or more marriages. In the case of a tax paying mother of three, however, her children should be from the same/one marriage. To date the ministry of Economy and Finance persists on this position.

4.2 IMPOSING EXTRAORDINARY CONTRIBUTIONS AND UNDERMINING THE PRINCIPLE OF LEGAL SECURITY

An extraordinary contribution was imposed on May 5, 2009 (law 3758/2009) on income above €60,000. In calculating this amount, the total net income mentioned in the income tax declaration for year 2008 is taken into account (for income acquired in 2007). A serious problem arises for tax-deductible income, as it was not compulsory for this to be included in the income tax declaration. Citizens who chose to include it in the declaration, had reason to believe, according to the law, that no additional taxation would be imposed on them. However, two years later, they were called on to pay an extraordinary contribution ranging from €1,000 to €25,000. Those, however, who chose not to include this in their income tax declaration, were not burdened with the extra contribution, even if their total income exceeded €60,000.

The Ombudsman pointed out this inequality to the ministry, reminding them that they were violating the consti-

tutional principle of tax equality for all citizens, whereby all citizens should be taxed according to their income. The Ombudsman noted also that the principle of equality is also violated when this is imposed only on individuals, while business enterprises are exempt. In other words, salaried employees, pensioners and the self-employed are being taxed, while more profitable business activities are exempted, e.g. commercial and industrial enterprises, insurance companies and banking institutions. Finally, the Ombudsman underlined the fact that the constitutional principle of limited retroactivity of taxation is being violated; according to this principle, it is possible to impose taxation on declared income up until the previous fiscal year, in this case, income acquired in 2008. Consequently, income acquired in 2007 should not be taxed. Retrospectively changing the rules for taxation, contradicts the principle of legal certainty and shakes citizens' confidence in the state. The ministry did not respond to this but maintained its position that this extraordinary contribution is legal in every aspect.

4.3 SHIFTING RESPONSIBILITY FOR MISTAKES TO CITIZENS

It is often the case that tax administration shifts responsibility for errors to citizens.

■ A citizen with a car for the disabled, received notices over four years asking him to pay a vehicle tax of €3. In good faith, he paid this amount each year, receiving the respective special sign in return. When in 2007, the 6th Customs Office in Pireaus noted that there had been an erroneous calculation of this tax, a notice was sent to the Ano Liossia tax office to collect the balance. However, this tax office did not notify the citizen in good time of the amount due, nor did it inform the General Secretariat of Information Systems so that future notices were sent, with the properly calculated tax amount. Thus, an erroneous notice was sent in 2008 too. That year, the competent tax office, following an audit, determined the properly calculated circulation taxes owed by the citizen for years 2005-2008, and imposed a fine for each year. The Ombudsman pointed out that no fine should be imposed to begin with, as the administration is equally responsible for this mistake; on the other hand, such a burden should not be put on a disabled person in need of special protection.

The ministry of Economy and Finance accepted the

Ombudsman's position, wrote off the fines and issued a relevant circular with instructions.

4.4 FAVOURABLE REGULATIONS OUTSIDE TAX LEGISLATION

In certain cases, fiscal administration is not aware of legislative adjustments passed by other sections of the administration, e.g. tax exemption incentives established in the public interest.

■ Civil servants serving in border areas filed a complaint with the Ombudsman's office claiming that no tax exemptions were applied, as provided for in legislation, for people living in these areas. The administration's refusal is based on the fact that these civil servants submitted their income tax declaration at the tax office of the area where they resided previously, not at the tax office of the border area. The ministry of Economy and Finance maintained that their actual presence and work in border areas were insufficient reasons (for exemption). The only acceptable proof is to declare their change of address with the tax office registry of their previous residence. The Ombudsman replied that civil servants reside in the place where they work, pointing out that legislation foresees for the imposition of a fine if one neglects to declare their change of address. Refusing tax exemptions is an unacceptable additional penalty which contradicts incentives granted for developing the region. The recommendations made by the Ombudsman were not accepted.

■ Another, similar case is the "allowance for service abroad" to which military personnel are entitled. The Ombudsman showed that, according to standard case law, this income is not taxable income but compensation for expenses incurred by these persons due to their travels abroad, at the state's request. However, both the Agrinio tax office and the ministry of Economy and Finance persist in the standard practice of taxing this allowance. They also notified the Ombudsman that citizens wishing to claim for tax exemption should take their case to court (complaint 5362/2009).

4.5 RELATIONS WITH TAX PAYERS

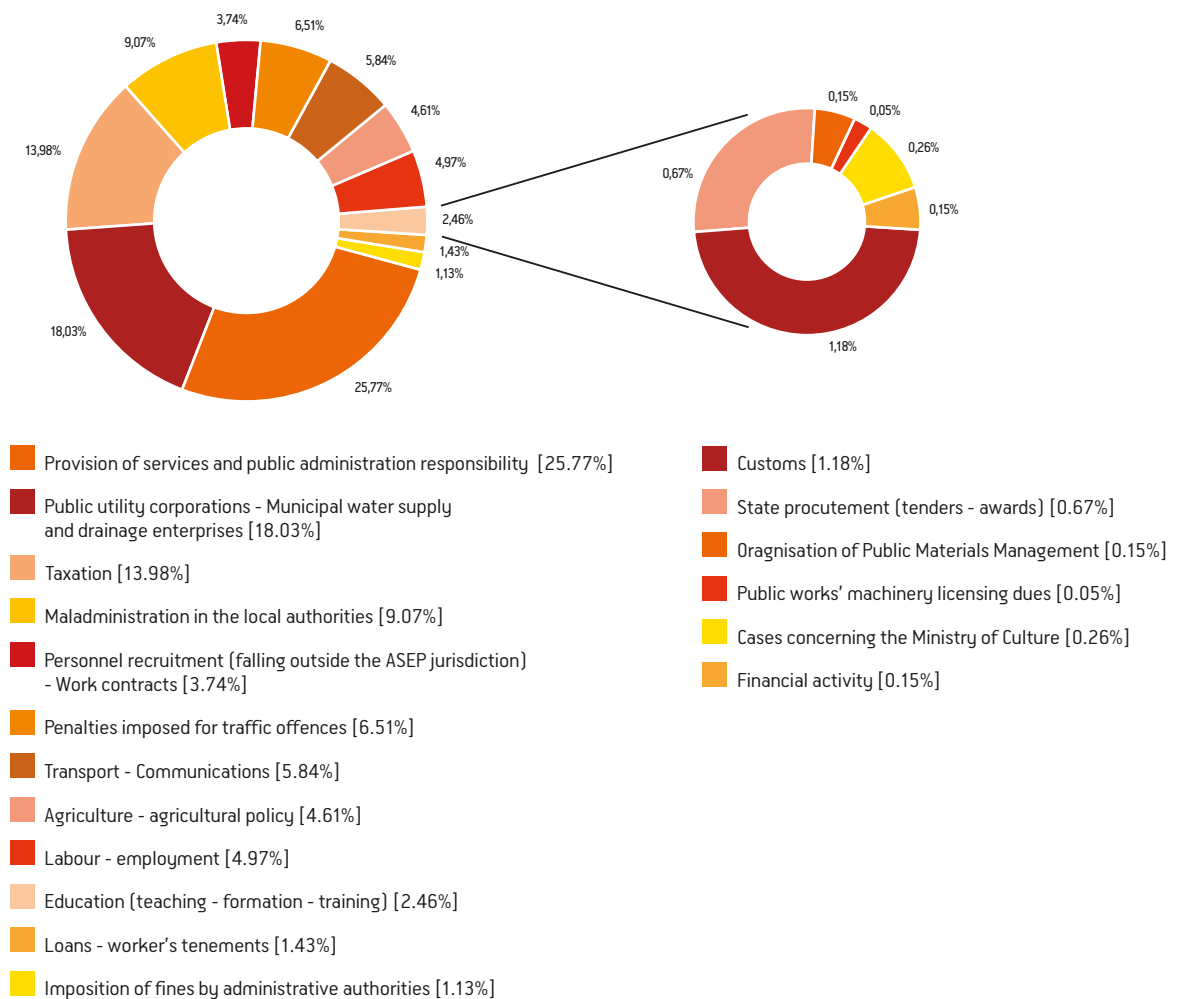
Relations with tax administration include procedures without any direct financial objective; essential, however, for those involved. Tax offices often manifest inflexibility in recognising a problem and implementing an appropriate solution.

The declassification of tax confidentiality presents problems in relations between citizens and fiscal administration, especially when citizens ask for information pertaining to the assets of other individuals, so as to use this in alimony court cases.

■ A mother of underage children requested information pertaining to the assets of her ex-husband's parents, so that the court could set the alimony amount for her children. On the reverse side, citizens against whom alimony suits are filed by the children or the separated spouse, ask for information pertaining to the assets of the latter in order to prove that they have adequate funds and are not entitled to alimony. The competent tax offices and the ministry of Economy and Finance invoked tax confidentiality, applying strict interpretation of the

pertinent legislation. According to this interpretation, information is provided only for an ex-spouse's alimony under two conditions: a) the court issued a final judgement on the divorce, and b) the relevant application is submitted through the competent prosecutor. Thus, no information is given to separated spouses or for determining alimony for children, brothers, grandchildren etc. The Ombudsman claimed that in cases of alimony suits, tax offices should provide useful information, when a request is submitted by the citizen through the prosecutor. The Ombudsman also suggested that the relevant legislation be amended. The ministry maintained its position; however, a pertinent question has been sent to the Legal Council of State.

GRAPH 8 DEPARTMENT OF CITIZEN-STATE RELATIONS – BREAKDOWN BY MAIN CATEGORIES OF COMPLAINT RECEIVED IN 2009



Children's rights

52	1. THE OMBUDSMAN AND CHILDREN'S RIGHTS IN GREECE
53	2. PROMOTING CHILDREN'S RIGHTS
53	2.1 COMMUNICATING WITH CHILDREN:
53	• YOUTH ADVISORY PANEL
54	• "DIALOGUE DAY" IN KATERINI
54	2.2 CO-OPERATING WITH NGOS
54	2.3 PREVENTING AND COMBATING CORPORAL PUNISHMENT OF CHILDREN
54	2.4 OPEN DIALOGUE AND SUGGESTIONS ON INTERNET CAFÉS
55	2.5 EUROPEAN POSTER COMPETITION "DRAW ME A RIGHT"
55	3. SPECIAL TOPICS
55	3.1 EDUCATION
55	SCHOOL REGULATIONS AND DEMOCRATIC GOVERNANCE
55	EDUCATION SUPPORT TO STUDENTS WITH DISABILITY
55	3.2 SOCIAL PROTECTION
55	MUNICIPAL NURSERY CENTRES
56	CARE AND REHABILITATION OF CHILDREN WITH MENTAL HEALTH PROBLEMS
56	CARE OF CHILDREN WITH CHRONIC DISORDERS AND DISABILITIES
57	CARE TO MINORS WHO ARE TAKEN FROM THEIR FAMILIES
57	UNACCOMPANIED MINORS' CARE



Children's rights



GEORGE MOSCHOS
Deputy Ombudsman

1. THE OMBUDSMAN AND CHILDREN'S RIGHTS IN GREECE

The year 2009 was the 20th anniversary of the UN Convention of the rights of the child. This convention has been instrumental in handling children's rights from an institutional point of view and facing children as bearers of rights worldwide. The Greek Ombudsman, as Ombudsman for Children, follows closely the harmonisation of the national legislation through the investigation of complaints, the cooperation with institutions and the communication with professionals and children. More than 2,000 complaints of child rights violation have been investigated until now and the Ombudsman has been in contact with numerous state services and departments. Based on this experience, the Ombudsman has formed an overall opinion on the progress made and on the shortages still to be covered in implementing and defending the rights of the child in Greece.

As far as legislation is concerned, important steps have been taken in establishing children's rights in regard to i) access to education, health and care services, and ii) protection from violence, abuse and discrimination. Unfortunately, despite these provisions, relative departments in state services have not been organised and staffed adequately yet. Social exclusion and marginalisation is still a threat to a large number of children of vulnerable social groups such as children with learning difficulties or special needs, immigrants' and refugees' children, Roma children and children belonging to families facing extreme poverty or other social problems.

In order to carry out its mission and activate students in an attractive, high quality, participatory educational process, the educational system, as a mirror of present

day social problems, demands new tools and support.

In the present harsh economic circumstances, in order to support the most weak departments addressing children, radical re-organisation is necessary so as to render education, care and protection mechanisms more efficient and to fulfil the state's obligations.

The Ombudsman has noted that state services and non-governmental organisations (NGOs) addressing children face serious organisational shortages and shortfalls especially in relation to staff specialisation, appropriate training and number, as well as their own networking. To this effect, a national action plan on the rights of the child should be elaborated (as one has been already announced by the ministry of Health and Social Solidarity, but yet remains to be materialised) under the continuous cooperation of competent ministries and the appropriate coordination of central and decentralised departments and services, with the participation of local government organisations and NGOs.

Indicatively, legislative measures that should be taken include:

- implementation of appropriate education and awareness raising programmes for children and adults.
- guidance to professionals on children protection.
- establishment of procedure for hearing the children's view and their participation in the decision making process in regard to issues affecting them.
- support to psychiatric and social services in relation to diagnosing the children's needs and offering support to children and their families.
- regional development of public sector health services.

- improvement of the education quality and development of intercultural character of education, so as to prevent exclusion and school drop out.
- development of specialised support mechanism for population groups in danger of social exclusion.
- modernisation of state services so as to respond to real needs (such as family court, adoption, day care centres for children and disabilities and mental health issues, special care units for abused children).
- systematic quality control of services provided and infrastructure for minors and adolescents.
- establishment of a code of practice for all institutions and professionals working with children.
- regional networking of all services and institutions working with children so as to facilitate indictment for violation of children's rights.
- research and organising documentation on issues related to minors and adolescents.

2. PROMOTING CHILDREN'S RIGHTS

An important part of the work carried out by the Ombudsman for Children is focused on actions for the promotion, publicise and dissemination of the rights of children.

In 2009, the Deputy Ombudsman responsible for the children's rights department and the members of staff:

- visited 24 cities in the country
- gave 47 lectures in conferences and 15 in seminars;
- visited 11 minors protection and housing units, 3 reception centres for unaccompanied minors and 2 correctional institutions.
- participated in 21 meetings with representatives of institutions and associations.

In addition, the Ombudsman circulated information material in printed and electronic form and redesigned its webpage for minors and adults (www.0-18.gr).

The Ombudsman has been active abroad. The deputy Ombudsman and members of staff participated, among others,

- in the Council of Europe conferences on the participation of minors in justice,
- in an event organised by the Ombudsmen for Children and the Austrian Parliament for the 20th anniversary of the UN Convention of the rights of the child,
- in the 4th European Forum on the rights of the child (European Commission),
- in an international conference held in Istanbul on "Equality and respect for diversity in early childhood education in the context of children's rights".

2.1 COMMUNICATING WITH CHILDREN

Similarly to previous years, in 2009 the Ombudsman placed special emphasis in listening to children and promoting their views. To this effect, discussions were

held with 55 groups in schools, institutions, reception centres for migrant minors. A total of 4 meetings of the youth advisory panel were held, an open discussion with students and a third "Dialogue day with children".

Youth Advisory Panel

The Youth Advisory Panel was set up according to European standards including 30 adolescents of 14-17 years of age chosen by draw out of 410 applications. Through this group the Ombudsman was given for the first time the opportunity to communicate regularly throughout the year with youths who are interested in being informed, active and in expressing their views regarding the work and activities of the Ombudsman.

In the four meetings that took place this year, the members of the Youth Advisory Panel received training on their mission and expressed their views and suggestions on the right to participation and expression, discrimination and protection from violence. At the same time, during the year, the Ombudsman and the youths, who were chosen by draw or participated in the draw, exchanged views on various topics of their interest through an electronic forum of restricted access set up for this purpose.

The Ombudsman visited several of the panel members at their schools or institutions and offered support to youths so as to investigate issues related to their school or undertake other similar activities.

In November 2009, during the fourth meeting, the members of the panel invited the minister of Education, Ms Anna Diamantopoulou, and discussed with her on "School regulations and democratic governance in secondary education". The discussion was articulated

around a students' suggestion list which had been produced in an open discussion, held in March 2009 in Thessaloniki among 130 students from 60 high schools from Central Macedonia and 20 members of the panel.

A summary of the main suggestions by students and a video from the event can be found at the Ombudsman of Children webpage (www.0-18.gr).

The first assessment of the Youth Advisory Panel is positive. It offered to the Ombudsman information on the youths' point of view through the continuous cooperation with them. At the same time, it has helped to circulate to the wider public how important it is to systematically listen to the children's views. The Ombudsman exchanges views with other European Ombudsman offices where similar groups have been set up so as to improve their efficiency.

"Dialogue Day" in Katerini

Following similar events in Athens and Thessaloniki in 2008, a "Dialogue day with children" took place on 10th of April, 2009 in Katerini organised by the Ombudsman and the Pieria Secondary Education and Health department. 44 students from local high schools took part and discussed issues around the relations between students and teachers, the school organisation, preventing and combating any kind of violence and discrimination at school and children's ability to express themselves. On May 6, an event took place in a pedestrian street in Katerini, where students presented their suggestions in public. These suggestions are available in the webpage www.0-18.gr.

2.2 WORKING WITH NGOS

On November 3, 2009 the Ombudsman held the first general assembly of the NGOs network for the monitoring of the implementation of the UN Convention of the rights of the child (CRC).

This network comprises 47 associations involved with the rights of the child and aims at improving the position of children and facilitating the most efficient cooperation between civil society and the state. Among others, this network:

- compiles an alternative report on the implementation of CRC in Greece, to be sent to the UN Committee on the rights of the child, given that the Greek government sent the 2nd and 3rd periodic national report on the implementation of CRC in July 2009.

- monitors the implementation of CRC and of national legislation related to children.

- promotes the cooperation and exchange between organisations working for and with children.

- intervenes to the state for the more comprehensive implementation of CRC and for taking the necessary legislative and institutional measures.

- undertakes awareness raising action aiming at securing the rights of the child.

- supports the establishment of standards for NGOs working for children.

Additional information for the network is available on www.0-18.gr/gia-megalouys/mko.

2.3 PREVENTING AND COMBATING CORPORAL PUNISHMENT OF CHILDREN

The network for prevention and combating of corporal punishment of children was organised on April 30, the international day against corporal punishment. The Ombudsman is a coordinator of this network. The relevant campaign of the Council of Europe was presented. A television spot "Raise your hand against corporal punishment of children!" was launched and set on national broadcast. Students presented their claim to prevent any kind of violence from grown ups to minors through art work, texts and research.

2.4 OPEN DIALOGUE AND SUGGESTIONS ON INTERNET CAFÉS

An open dialogue initiated by the Ombudsman on "the protection of the children's rights at internet cafés" was concluded in October 2009. The Ombudsman took into consideration suggestions by institutions that participated in the dialogue and then addressed a proposal to co-competent ministries. The Ombudsman suggested:

- criteria and certification procedure should be established for children friendly internet cafés. Relevant legislation should be developed especially for minors and guidelines for protection from possible dangers should be available inside these cafés.

- a letter of consent by the parent/guardian should be necessary to permit access to younger children.

- regional administrative departments should supervise the implementation of law provisions in these cafés.

- an awareness raising campaign should be designed on the protection from internet dangers as well as from extended exposure of minors to the internet.

2.5 EUROPEAN POSTER COMPETITION “DRAW ME A RIGHT”

On the occasion of the international day of the rights of the child, the Ombudsman and the Greek Graphic Designers association called artists to create thematic posters. The selected posters, 13 out of the 79 participating in the contest, were presented in the premises of the Greek

Ombudsman and at the association. With the help of the ministry of Infrastructure, Transport and Networks, these posters were also presented in Athens metro stations, on public transport as well as in premises of the municipality of Athens. Several were selected by the youth advisory panel and were sent to schools in the country.

3. SPECIAL TOPICS

3.1 EDUCATION

School regulations and democratic governance

Through complaints and communication with students, it came to the attention of the Ombudsman that imposing punishment to secondary education students reveals a severe democratic deficit in school governance. So the Ombudsman stressed the need to introduce in school everyday life a set of institutions to promote the participation of students and hearing their opinion on issues affecting them. The Ombudsman addressed the ministry of Education, Lifelong Learning and Religious Affairs in writing and communicated their views and suggestions. More specifically, the Ombudsman:

- Noted that it is necessary to include in the relative legislation that all schools should have a regulation, drafted with the participation of all members of school community.
- Suggested that the ministry should publish guidelines on the philosophy and possible content of these school regulations.
- Suggested that training seminars to teachers should take place on the topic of school regulation.
- Suggested that the Ombudsman should cooperate with all competent agents and the ministry as to the school regulation documentation.

Education support to students with disability

The Ombudsman has noted long term and serious problems in the application of the special education support to students with disability or special education needs in the school classroom. Hence, the Ombudsman addressed a findings paper to the ministry of Education, Lifelong Learning and Religious Affairs with all relevant findings and suggestions. The Ombudsman noted that in many cases the ministry:

- Declares it is not possible to materialise this measure despite the opinion expressed in public institutions diagnosis, attributing this to shortage of funds or teachers.
- Considers opinions by public diagnosis centres as improper or does not take these into account.
- Does not guarantee that the state responsibility to offer individual support to students with autistic disorders is not transferred to the student family, and hence does not endure that the students are able to attend school. Suggestions on organisation and legislation to the ministry of Education are included in this annual report under the respective chapter.

3.2 SOCIAL PROTECTION

Municipal nursery centres

State nursery and infant centres fall under the responsibility of local government organisation and operate as legal entities of public law according to joint ministerial decision 16065/2002 on issues related to administration, organisation and operation of these centres.

The Ombudsman receives every year a large number of complaints on the lack of transparency and on not abiding with the registration criteria set in the joint ministerial decision. Also, several complaints refer to fees, devices and instruments.

As to the registration criteria: In practice, many municipalities restrict registrations only to members of the municipality or circumvent the criteria. In the complaints investigated, the Ombudsman notes the socio-economic criteria which are taken into account when assessing an application. In cases of social grounds, the outcome is usually favourable. In cases of economic criteria, when the case is judged or proved to be not transparent, if the answer has not been properly justified, the Ombudsman examines the approved applications in relation to the

complainant's application, in which case, it is often the case that the complainant is justified.

As to fees: although local government organisations receive funds from the national budget, they also impose fees to parents. Often, fees are imposed without the set improvements. Also, increase in fees it is often without prior information sent to parents timely, by derogation of the joint ministerial decision, and the level of these fees is not calculated in a clear manner. The Ombudsman addresses the legal entity of public law, the region or the ministry of Interior, in order to check the legality of relevant acts.

Care and rehabilitation of children with mental health problems

The Ombudsman has noted repeatedly that a large number of children and youths with mental disorders or serious psycho-social problems are not covered under the provisions of psychiatric reform. Through on-site investigations and continuous cooperation with health and care professionals, the Ombudsman has noted that these minors are often kept within their family milieu without the necessary support or are placed in welfare infrastructure which are incompatible to the children's needs. As a result these minors are abused by the system which fails to take care of them.

On February 5, 2009, the Ombudsman organised a conference under the title "Children with mental health problems: the right to psycho-social rehabilitation". A large number of professionals and representatives of institutions participated in this event and raised various issues such as:

- the lack of emergency care units for minors.
- the lack of psycho-social rehabilitation units for children and adolescents with mental disorders or other grave problems demanding special treatment.
- the severe dysfunction of the existing private non-profit institutions, due to lack of funding and consequent insecurity as to its future operation.

Rounding up these conclusions, the Ombudsman addressed the ministry of Health with an appeal for all necessary measures to be adopted, in order to establish all latest reformative measures in psychiatry, to guarantee that the reform will carry on and that the services will continue their operation.

Care of children with chronic disorders and disabilities

A group of members of staff visited social care units for children with chronic diseases and disabilities. Minors are admitted in such units following application by their parents, on socioeconomic grounds or following a prosecutor's order for removal from the family. More specifically, the following problems have been noted in social care units for children with chronic diseases and disabilities:

- 1) These units host minors with various chronic diseases and disabilities. Services offered and the available personnel are not adequate, especially for children who require particular individual medical supervision. In addition, children remain there for all their life, violating the operation regulations. Hence these units are overcrowded.
- 2) Specialised scientific personnel is not available in many of these units. Since there is also shortage of nursing staff, the required personal care is not offered to guests, entailing risks for their health and safety.
- 3) In certain cases there was also shortage in infrastructure and equipment.
- 4) Members of personnel working in such units for many years without the necessary support were noted as professionally exhausted.

Through the visits it became clear that in general minors with chronic diseases and disabilities live in extremely difficult conditions. In some cases, due to the inability of personnel to attend to them individually, minors are sedated, tied in their beds, kept in wooded cubicles for many hours a day, or monitored through cameras. Also, they are not offered continuous and adequate medical and dental care, and often, the therapeutic, educational and recreational programmes that are offered, as well as creative and socialisation activities, do not correspond to their real needs.

However, during these visits, the Ombudsman investigators recorded important efforts put forth by the administration and employees in these units to improve the aforementioned conditions with the help and support of local communities.

The Ombudsman plans future visits so as to be able to submit a special report to the Hellenic Parliament and the competent ministry.

Care to minors who are removed from their families

The Ombudsman gives great emphasis to the rights of children who do not live within their families. During 2009, the Ombudsman visited public children care units, where he met and discussed with guests and personnel. Once again, the efforts put forth by the administration in each case to improve the quality of services provided was recorded, along with the major problems faced that are due mainly to understaffing. An attempt was made to employ persons on fixed term contracts or to use the option of the traineeship programmes. However, these two options mean frequent change of personnel for each post which generates insecurity to employees as well as to guests.

Following these visits to children care institutions, either public or NGOs, the Ombudsman noted that:

- no system for certification and quality control for children care institutions is applied at the moment.
- several institutions face problems in specialised care and handling of minors, specifically adolescents with mental disorders.
- there is lack of specialised structures for adolescents with mental disorders, delinquent behaviour or need for special therapeutic treatment.
- many children remain for long in these institutions instead of returning to their families or being placed within foster families.

- the concept of foster parents has not been developed adequately, due to the inefficiency of competent social departments and services that undertake the task to select, train, and support foster families, but also due to non allocation of funds by the state.

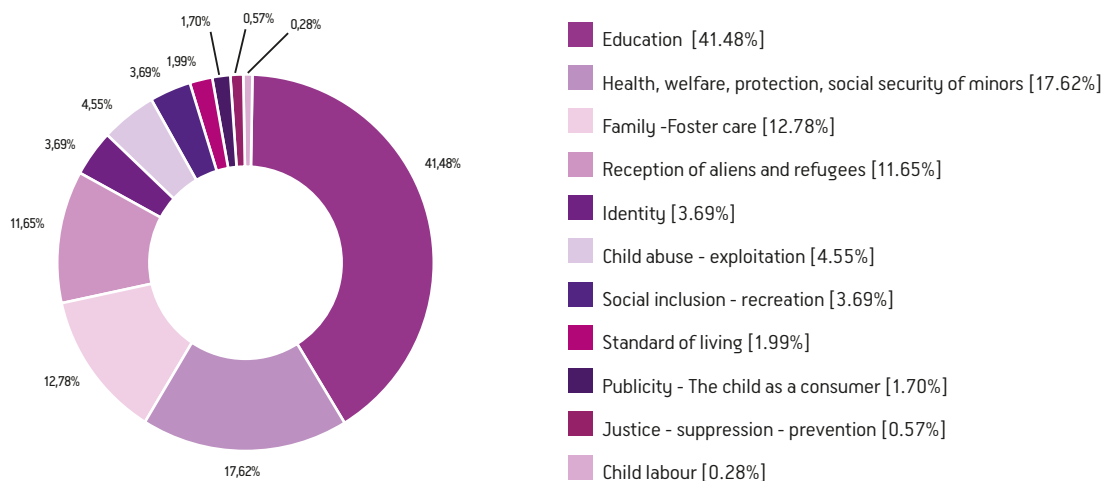
Unaccompanied minors' care

Recently there has been a dramatic increase of alien minors who enter the country illegally; most of them are unaccompanied and originate from Asia and Africa. A small number of them apply for asylum, as their expectation is to move to countries in Western and Northern Europe, where they consider it more probable to receive the asylum status along with substantial protection.

In order to respond to this increase and to the obligation for protection, the state provides for reception of unaccompanied minors in Konitsa and Mytilini. 200 persons can be housed at these entry spots to the country.

The Ombudsman visited these facilities and held discussions with the administration, the personnel and the children living there. The Ombudsman believes that establishing these centres is a positive measure; however, it is necessary to build a legal base for those centres so that their continuous operation is ensured with appropriate personnel under clearly delineated operation framework. The Ombudsman presented this view in a letter to the competent ministry of Health and Social Solidarity but has not received any feedback yet.

GRAPH 9 DEPARTMENT OF CHILDREN'S RIGHTS - BREAKDOWN BY MAIN CATEGORIES OF COMPLAINT RECEIVED IN 2009



Gender equality

- 59 **1. INTRODUCTORY REMARKS**
- 62 **2. SELECTED CASES**
 - 62 2.1 EMPLOYER'S REFUSAL TO HIRE A PREGNANT WORKER
 UNDER AN OPEN-ENDED EMPLOYMENT CONTRACT
 - 62 2.2 PARENTAL LEAVE FOR FATHERS, UNIVERSITY FACULTY MEMBERS
 - 63 2.3 POSITIVE ACTION IN FAVOUR OF FEMALE ARMY OFFICERS,
 MOTHERS OF THREE CHILDREN
- 63 **3. PARTICIPATION IN THE EUROPEAN NETWORK
 OF GENDER EQUALITY BODIES**



Gender equality



STAMATINA YANNAKOUROU
Deputy Ombudsman

1. INTRODUCTORY REMARKS

In September 2006, law 3488/2006, assigned to the Greek Ombudsman, the monitoring and support of the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. Moreover, it extended his field of intervention in the private sector. In three years, citizens' complaints on gender-based discrimination in work exceeded 400. These complaints highlight the amplitude of legal and other issues that are related to the implementation of legislation on the equal treatment, but also the gender-based inequalities faced on one hand by citizens in their transactions with the public administration and on the other hand by workers in their relations with their employers in both the private and public sector. In a large number of complaints, the public administration took into consideration the recommendations of the Greek Ombudsman for the elimination of discrimination; indeed, in three cases, the legislation has been modified according to recommendations by the Ombudsman. In addition, employers in the private sector have shown change of attitude when it was pointed out to them that their behaviour towards the employees constitutes gender-based discrimination.

In July 2009 the special competence of the Greek Ombudsman as Gender Equality Body was extended in implementing the principle of equal treatment between men and women in the access to and supply of goods and services in the public sector (law 3769/2009). The operation of the special department of Gender Equality since May 2008, facilitates the development of these

particular issues, through a smooth osmosis with the general mission and the established operations of the Ombudsman.

In 2009 the Ombudsman received more than 200 complaints on gender-based discrimination in employment. 85% of these complaints were filed by women and a remarkable 15% by men. The majority of complaints (83%) concerns the public sector and an approximate 17% the private sector.

In 2008 complaints regarding the private sector were up to 10%.

With regard to the public sector, the most important form of discrimination appears to be the unfavourable treatment of employees applying for parental leave, but also the duration of said leave (10.45%), while in the private sector, unfavourable treatment due to pregnancy (28.36%) and maternity leave (10.45%).

In several cases, the Ombudsman's mediation between the citizens and the public administration was successful. Moreover, in three cases (see below) the acceptance of the Ombudsman's recommendations, led to legislative amendment to the benefit of a large number of citizens.

Positive outcome

After the Ombudsman's intervention, ministerial decisions were issued, stating that:

- Employees of local government organisations will still be entitled to transportation allowance during parental leave.
- The special bonus paid to teachers detached abroad will not be interrupted during vacation periods, if they coincide

with maternity or parental leave, even if these periods are spent outside the country of detachment.

- The additional maternity protection leave and benefit is extended to members of the Hotel Employees Insurance Fund.

Positive results were achieved by the Greek Ombudsman mediation between workers and employers of the private sector, in spite of the difficulties to find points of convergence in conditions of acute economic crisis. Differences were resolved in a conciliative spirit before reaching court, pregnant workers dismissals were revoked, pregnant workers were hired despite the employer's initial refusal. In addition, there were remarkable cases at which a legislative or explanatory void emerged (e.g. male university professors' parental leaves, maternity leave for temporary school teachers paid by hourly rates), which was covered by the administration's acceptance of the Ombudsman's recommendation. The Ombudsman recommended an interpretation of the controversial legislative provisions (Civil Servants Code, university by-laws, health insurance provisions) in conformity with the Constitution (article 21) and the European principles of equal treatment between men and women and reconciliation of private and the professional life. In most cases these recommendations were adopted following positive consultation from the competent legal services. On other issues, such as whether a private school teacher can be fired during parental leave, the Ombudsman located the legislative void and urged the administration to file a question with the Legal Council of the State.

The main problems that the Greek Ombudsman noted, through the complaints that were filed in 2009, are the following:

- *Lack of proper knowledge of the legislation on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.* This ignorance spreads over the employees, the candidates for employment, the public administration and the people in charge of human resources of enterprises. In addition, insufficient familiarisation with the legislation on gender-based discrimination was diagnosed concerning labour inspectors. By law, labour inspectors

are obliged to collaborate with the Ombudsman when the complaints concern employers of the private sector, in order to achieve conciliatory resolution of the difference or to examine the imposition of administrative fine on the employer.

- *Pregnancy is treated as sickness and maternity as an economic burden that impedes the operation of the enterprise.*

The cases of refusal to sign an employment contract and hire a chosen employee, as soon as they announced their pregnancy, that are presented below, but also the cases of pregnant workers dismissal that were reported to the Ombudsman, highlight the particular and deeply rooted bias of private sector, as well as the public administration towards maternity. In these cases, maternity is not faced as a social event, but it is connected with the woman's participation in the labour market and her professional development.

- *Public administration implements provisions (e.g. in proclamations for admission in military schools) that include indirect gender-based discrimination.*

The appeal to reasons of public safety, operational readiness etc. does not constitute by itself sufficient justification for discrimination. There is complete absence of statistical data regarding the number and sex of people affected by the specific regulation, and the data provided is general and unreliable. The lack of statistical data does not allow the Ombudsman to establish whether the criteria used by the public administration and lead to exclusion of women candidates are justified by legitimate aim. Also it does not allow assessing the means used for the achievement of this aim, as required by law 3488/2006 in the definition of indirect discrimination.

- *Public administration erroneously considers as positive measures for women, certain provisions which, according to their opinion, aim at the protection of maternity, support of family and reconciliation of private and professional life; therefore they exclude men from them.*

The Ombudsman's position in this type of cases is that the specific purpose of the measures must be examined. If the purpose of the measures is the support of the family, then

it cannot be considered as legitimate deviation from the principle of equal treatment between men and women. According to the case-law of European Court of Justice (ECJ), special rights or privileges which were granted exclusively to women, based on capacities that also the men can have, as e.g. the capacity of a parent, are contrary to the principle of equal treatment on the grounds of gender. According to the ECJ, in order not to be contrary to the principle of equal treatment, regulations that grant special advantages for women, as the least represented sex, should, in any case, improve the ability of women to compete with men in the labour market and to have a professional life in conditions of equality.

■ *The unjustifiable exclusion of workers categories from the additional maternity protection benefit perpetuates the inequalities in work and afflict the right for protection of maternity.*

The enactment of the six-monthly additional maternity protection leave and benefit aimed at the protection of maternity. It specifically aimed at protecting women working in the private sector, who have less benefits in comparison to those working in the public sector. At the same time, this particular leave and benefit aims at assisting the family and dealing with the demographic problem. The provision law [article 142, law 3655/2008] should be interpreted so that it ensures the most favourable and more effective protection of maternity. Through the investigation of a large number of complaints, the Ombudsman noted that the administration uses interpretations of doubtful constitutionality and unjustifiably excludes entire categories of working mothers insured with the IKA Social Insurance Institute. The Ombudsman considers that the handling of this subject by the ministry of Employment and Social Protection (later, ministry of Employment and Social Insurance) and the Manpower Employment Service (OAED) was erroneous and damaging.

■ The obstacles in the extra judicial confrontation of complaints for sexual harassment remain due to lack of reliable evidence. Also it is difficult to implement the measure of shifting the burden of proof, according to which, when the complainant presents facts which could result in violation of the principle of equal treatment, the employer needs to prove that this violation has not taken place. Based on the above findings, the Ombudsman acting in

its capacity of Gender Equality Body will seek in the immediate future:

- To raise citizen awareness with regard to their rights for equal access of men and women in goods and services in the public sector (within the frame of law 3488/2006 and law 3769/2009), and encourage them to file complaints for cases of violation.
- To organise and enhance cooperation with the Body of Labour Inspectors [SEPE], aiming at the improvement of application of law 3488/2006.
- To undertake preventive action jointly with the social partners and enterprises, aiming at the elaboration of a code of deontology for the promotion of equal opportunity in the labour market.
- To strengthen networking with respective institutions in the EU, aiming at the exchange of experience and the uniform interpretation of European law on equal treatment.

In November 2009 the Ombudsman, in collaboration with the delegation of European Commission in Greece, organised the presentation of the special report on the evaluation of the implementation of the principle of equal treatment of men and women in employment and labour relations. In this event it was pointed out that the respect of rights that emanate from the principle of equal treatment of men and women in the employment does not arise simply from a legal or moral obligation, but constitutes an investment for the future. In the short run, tolerance of inequalities in the workplace will undermine the competitiveness and the viability of enterprises and economy; in the long run it will affect the development and cohesion of society against the prospect of the country's recovery from the crisis. The Ombudsman expects that these actions will help integrate a mentality of equality in the workplace and society.

2. SELECTED CASES

2.1 EMPLOYER'S REFUSAL TO HIRE A PREGNANT WORKER UNDER AN OPEN-ENDED EMPLOYMENT CONTRACT

A complainant was selected for hiring at a public limited company (customer service) under an open-ended employment contract. Before signing the contract, she informed her future employer that she was pregnant. The company's representatives assured her that this fact would not influence her engagement in any way and that they would let her know the exact date she would start working. Later they informed her orally and in writing that hiring would be postponed, because of her pregnancy, and would be re-examined in due course.

The Greek Ombudsman informed the employer that, according to the legislation (law 3488/2006), refusal to hire an employee that has already been selected through a formal procedure, by reason of pregnancy, constitutes direct gender-based discrimination in access to employment. On these grounds, the Ombudsman requested immediate hiring of the selected employee.

The employer explained that he did not proceed with the hiring procedure, because the employee was selected to contribute to a specific project, and due to her pregnancy, she would have been unable to fulfil her duties according to the project timeplan. The employer failed to mention that the selection procedure regarded an open-ended employment contract, and that when the employee was selected, duly notified and accepted the position, this contract began producing legal effects.

As a result of the Ombudsman's mediation, however, the employer expressed its intention to resolve the issue and invited the complainant to sign the open-ended employment contract, which she did, and started working (complaint 14195/2009).

2.2 PARENTAL LEAVE FOR FATHERS, UNIVERSITY FACULTY MEMBERS

A father, tenured professor at the state university of Ioannina, married to a self-employed professional, filed an application for parental leave provided by the Civil Servants Code for parents of minor children. The university's administration and legal department responded that the Civil Servants Code does not apply to university professors and that the applicable university by-laws restrict the

right to parental leave to mothers faculty members. The faculty member filed a complaint with the Ombudsman. The Ombudsman informed the university administration that the right to parental leave, as stipulated in the Civil Servants Code, has been extended to several categories of state employees that do not directly fall within the competence of the code, such as fathers members of the judiciary. In addition, it dispatched the relevant circular of the ministry for the Interior issued with regard to parental leaves for civil servants (complaint 10483/2009).

Positive outcome:

Following the Ombudsman's mediation, the university administration filed a request for legal opinion with its legal department. The legal department interpreted the internal by-laws according to the Constitution and the European law (especially the principle of reconciliation of private and professional life) and maintained that the father faculty member was entitled to the 9-month parental leave, which was granted to him.

Another faculty member at the Aristotle University of Thessaloniki, father of six, filed for a three-month fully paid parental leave, which is an additional leave granted to parents that have more than three children, provided that the child is younger than 6 years old.

Initially the university responded that such a leave is not provided in the law that ratifies the university by-laws. The faculty member requested pro rata implementation of the Civil Servants Code. The university administration asked the ministry of Education whether granting such leave to the faculty member would be legally possible, and got a negative answer. The father's application was rejected and he filed a complaint with the Ombudsman.

The Ombudsman informed the university that, according to its opinion, the rejection constituted a violation of the European principles of equal treatment of men and women at work and reconciliation of private and professional life. Furthermore, it passed on the development of the similar complaint from the university of Ioannina mentioned above (complaint 3467/2009).

Positive outcome:

The university administration adopted the Ombudsman's

views and provisionally relieved the faculty member of his teaching duties, while awaiting the legal department's formal opinion. The legal department gave a positive opinion, and the requested parental leave was officially granted to the faculty member.

2.3 POSITIVE ACTION IN FAVOUR OF FEMALE ARMY OFFICERS, MOTHERS OF THREE CHILDREN

A male army officer filed a complaint with the Ombudsman stating that, whilst female army officers, mothers of three children, one of whom is a minor, are entitled to a day off, after having remained on duty for 24 consecutive hours during week days, male officers are not entitled to the same time off.

The Ombudsman addressed the ministry of Defence and the General Army Staff, stating that such a treatment in favour of female officers constitutes a deviation from the principle of equal treatment that cannot be considered as legitimate on the grounds of motherhood protection. The European Court of Justice has stated that special rights or privileges granted exclusively to women, on the grounds of capacities that belong to men as well, such as the capacity of a parent, are seen as unlawful violation of the principle of equal treatment. The only case, in which such a treatment can be justified, is in case it is considered positive action for the specific category of women. In order to sustain such an approach, however, the Ombudsman

required more information on behalf of the competent services.

Once the information had been provided, the Ombudsman was able to maintain that the specific time off restricted only to female officers, did in fact comply with the requirements for positive action. The measure intends to counterbalance the limited opportunities that female officers in the specific category have, to follow a career under the same conditions with their male colleagues and undertake positions of responsibility in the army. In support of this opinion, the Ombudsman took into consideration the general guidelines of European and national policy for employment, as well as the statistical evidence presented, which prove that women are still the main carers in the family, with the duty to provide for the minor children, as well as the elderly members. Moreover, gender stereotyping and uneven family duties at the expense of women, constitute a barrier that women face in the development of their careers and their promotion to decision-making positions.

The Ombudsman remarked that the justifications for this positive action were not included in the decision establishing the measure, which was an omission on behalf of the administration. However, it added that this is understandable, due to the fact that the administration is not yet adequately familiar with the concepts of gender equality, nor with the concept of positive action, which depends on the socioeconomic conditions (complaint 14801/2009).

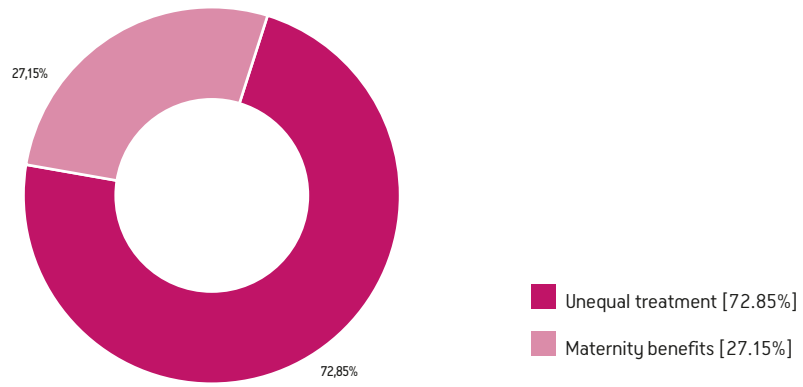
3. PARTICIPATION IN THE EUROPEAN NETWORK OF GENDER EQUALITY BODIES

Since 2008, the Ombudsman (department of Gender Equality) participates in the European Network of Gender Equality Bodies, operating under the auspices of the European Commission. In 2009 the Ombudsman participated in both meetings of the network held in Brussels, in March and in October. In these meetings the network members exchanged opinions and best practices with regard to the application of directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services. Moreover, the representatives of national equality bodies were informed by the EC on the course of their legislative projects with regard to: 1. amendment of directive 92/85/EC (health and safety

pregnant workers), 2. proposal for amendment of council directive 86/613/EEC of 11 December 1986 (application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood) and 3. proposal for directive implementing the revised framework agreement on parental leave (repealing council directive 96/34/EC).

In addition, the Ombudsman took part in an EU seminar on discrimination in the access to goods and services, where various issues were examined with regard to the transposition of directive 2004/113/EC in national legislations. Case-law was analysed, especially concerning problems arising from the implementation of the directive by member states.

GRAPH 10 DEPARTMENT OF GENDER EQUALITY - BREAKDOWN BY MAIN CATEGORIES OF COMPLAINT RECEIVED IN 2009



Legislative and organisational proposals

- 66 1. LEGISLATIVE RECOMMENDATIONS
- 68 2. ORGANISATIONAL RECOMMENDATIONS
- 69 3. PREVIOUSLY SUBMITTED RECOMMENDATIONS



Legislative and organisational proposals



The Ombudsman submits legislative and organisational proposals for the amendment of pertinent legislation or the restructuring of the organisation and operation of the administrative services concerned. A selection of recommendations made in 2009 can be found here.

1. LEGISLATIVE RECOMMENDATIONS

The Greek Ombudsman suggested:

MINISTRY OF JUSTICE, TRANSPARENCY AND HUMAN RIGHTS

On parental care:

- Establishment of the rule of joint parental care regardless of the existence, maintaining or not of legal bond between parents.

On paternity dispute:

- Establishment of court procedure for cases of paternity dispute similar to that of amicable divorce, that is, without a second hearing in case all parties acknowledge who is the biological father of the child, and a DNA test is submitted.

On issues of communication between the child and the non-custodial parent:

- Explicit protection of the right of communication as a right of the child according to the International Convention on the Rights of the Child.
- Explicit mention of the obligation of the non-custodial parent to keep in close contact with the child in order to remain actively present in the child's life.

MINISTRY OF LABOUR AND SOCIAL SECURITY

- Amendment of the ministerial decision 33891/606/7-5-2008 on the starting date of the six-month leave of absence and the period of special maternity protection leave, so as to set as common starting date for both the following date after the expiry of their confinement leave and the reduced working hours. Additionally, interested mothers should be able to submit relevant applications even 60 days before the expiry of the confinement leave or their reduced working hours' period.
- Extending the right to maternity protection special leave to hotel employees and to mothers working at family businesses. *This recommendation has been adopted. Ministerial decision 2637/1050/4-9-2009 has been issued pertaining to hotel employees.*
- Correct interpretation and application of arrangements on buying out remaining social security time in order to establish pension rights (article 5, law 3385/2005),

so that these are implemented to all insured individuals, regardless of their entry in the social security system (since 1-1-1993). *This recommendation has been adopted by the administration following a relevant opinion by the Legal Council of State.*

**MINISTRY OF INTERIOR,
DECENTRALISATION
AND E-GOVERNMENT**

(Directorate of
Migration Policy)

On the legal entry and stay of third country nationals in Greece:

- Abolishing the prerequisite for previous legal entry in the country or previous legal stay in order to issue a residence permit to a family member of Greek or EU citizens.
- Restructuring and rationalising the legislation on residence permits for independent economic activity.

As to the legal entry and stay of third country nationals in Greece, the Ombudsman has formulated his legislative recommendations in previous annual reports.

**MINISTRY OF INTERIOR,
DECENTRALISATION
AND E-GOVERNMENT**

(Directorate of Civil
and Municipal status,
Section of Records
and Registrar - Directorate
of Development Projects)

On the municipal status of Greek Roma:

- The direct recording of Greek Roma in the municipal record, bypassing both citizenship acquiring procedures and entry in the registrar. This can be achieved through a short procedure of citizenship recognition, following a special census and without the prerequisite of a birth certificate.

On recognition of children born out of wedlock:

- In case the child's parents are not married or under a cohabitation pact, paternal affiliation can be established by a simple declaration of the father at the registrar (in presence and agreement of the mother) without a notarial agreement.

On the name declaration of a child:

- Imposing a deadline for the declaration of a child's name, as is the case for registering the child's birth, baptism, etc.

On the criterion of locality and the certificate of permanent residence:

- Re-examining the locality and domicile criteria in personnel recruitment, and eliminating them as credit earning preconditions.
- Setting up a registry where all residents will declare one single municipality of permanent residence.

**MINISTRY OF INTERIOR,
DECENTRALISATION
AND E-GOVERNMENT**

- Justification of municipal decisions regulating the number of brothel establishment licence, housing use (especially listed buildings) and the definition of areas for which such licences are not issued. Clear definition of criteria on which municipal councils can issue licences for such activity.

MINISTRY OF FINANCE

- Tax relief and exemptions for frontier zone residents should be granted on the sole prerequisite of the tax payer's professional location and activity. Proposed amendment of articles 8 and 118 of the Code of Income Tax.

**MINISTRY OF EDUCATION,
LIFELONG LEARNING
AND RELIGIOUS AFFAIRS**

- Immediate harmonisation with directive 2005/36/EC on the recognition of professional qualifications.
- The ability of recognised refugees to enrol at public/private Institute of Vocational Training (IEK, supervised by the Organisation of Vocational Education

and Training] without the obligation to submit a high school certificate since this is not possible. *This recommendation has been adopted. Legal refugees can enrol at IEK by submitting a formal declaration (law 1599/1986).*

- The abolition of health conditions restrictive list allowing for university student transfer. Also, the addition of criteria that will ensure the validity of the health condition evoked, as well as its relation to the reason for transfer. *This recommendation has not been adopted, but a number of health conditions have been added to the existing list.*

On the parallel educational support to students with autistic disorders offered by a person who has been selected by the student's family:

- Payment of the guide fee to student's families, especially when, the student is not able to be properly integrated to the class, due to delayed or non provided parallel educational support.

**MINISTRY OF ENVIRONMENT,
ENERGY AND CLIMATE CHANGE**

- Issuance of the presidential decree which is provided for in law 2939/2001 on integrated waste management (construction and excavation material).

Issuance of presidential decree for the characterisation of protected areas, setting the terms of protection and management.

Dealing with the regulatory gap related to the operation of liquid fuel stations next to natural gas meters.

**MINISTRY OF HEALTH
AND SOCIAL SOLIDARITY**

- Open air premises hosting social activities should be included in the provisions on catering facilities so that relative licences are issued by municipal authorities and operation conditions are monitored. *This recommendation has been adopted by ministerial decision 28529 (B' 2077/25-09-2009).*

**MINISTRY OF HEALTH
AND SOCIAL SOLIDARITY
- MINISTRY OF CULTURE
AND TOURISM**

- The provisions on cinemas, shows, performances etc. should also apply on open air music/theater events. The fulfilment of the specific criteria should be audited by the competent authorities.

2. ORGANISATIONAL RECOMMENDATIONS

The Ombudsman recommended:

On parental care of children in case of separation or divorce, as also in the case of children born out of wedlock:

- The operation of family courts (provided in law 2447/1996) implementing fast track procedures in order to avoid delays in decision taking on issues of upbringing children.
- Setting up decentralised social services on family mediation. These services shall monitor the application of court decisions on parental care and communication of minors with their parents and shall mediate in amicable solution of all disputes between parents exercising jointly parental care of their child.

**MINISTRY OF JUSTICE,
TRANSPARENCY
AND HUMAN RIGHTS**

**MINISTRY OF INTERIOR,
DECENTRALISATION
AND E-GOVERNMENT**

On declaring religion in the birth certificate of a child:

- Modification of registrar printed forms and software so that the interested parties will have the option to declare freely their religion as that of their child.

**MINISTRY OF EDUCATION,
LIFELONG LEARNING
AND RELIGIOUS AFFAIRS**

On parallel educational support to students with special educational needs in ordinary schools:

- Entrants to specialised teachers' faculties should increase, in order to increase the available special education teachers.
- Hiring of teachers specialised in different types of impediments (e.g. hearing or sight impediments).

**MINISTRY OF ENVIRONMENT,
ENERGY AND CLIMATE CHANGE**

- Re-examination of previously approved urban planning schemes which have not yet been applied, on the basis of new legal or real data, in order to confirm whether they can be applied or should be modified.
- Granting interest free loans for the reconstruction of fire-stricken houses on preconditions similar to the interest free loans granted for earthquake-stricken houses.
- Additional staffing of urban planning services and introduction of advanced software in order to handle delays in verifying fines for unauthorised building.

3. PREVIOUSLY SUBMITTED RECOMMENDATIONS

The following recommendations have been adopted by the state:

**MINISTRY OF
NATIONAL DEFENCE**

- Draftees whose one parent is deceased and the other is not able to work are eligible for reduced term of military service.

**MINISTRY OF INTERIOR,
DECENTRALISATION
AND E-GOVERNMENT**

The following two recommendations have been adopted with law 3812/2009:

- Establishment of a control mechanism/organisation (ASEP) for the contracts characterised as "work contracts" (article 10, paragraph 2).
- Compilation of a Personnel Recruitment Code (article 13, Committee for the compilation of a Personnel Recruitment Code).

**(DIRECTORARE
OF MIGRATION POLICY)**

On the legal entry and stay of third country nationals:

The following three recommendations have been adopted by law 3731/2008:

- The time limit for passport renewal and birth declaration have been extended up until the date of application for residence permit renewal for the interested third party national.
- Granting the long term resident status to individuals who were born in Greece, are over 18 and have attended elementary and secondary education in Greece and whose parents are still regular residents of the country. *(partial adoption of Ombudsman recommendation)*.
- Inclusion under the transitional provision of law 3386/2005 by issuing a special residence permit to individuals who have been deprived of their status of person of Greek origin from Albania.

MINISTRY OF FINANCE

- Granting Tax Registry Number (AFM) to political asylum claimants, by virtue of a relative circular.
- No fine is imposed in case of payment of erroneous motor vehicle tax, in case that the state service is responsible for the error (e.g. erroneous mention on the notice sent).
- Clarifying procedures and making appropriate provisions so that technical provisions are taken into account on determining the coast line, the beach and the older coast line.

**MINISTRY OF EDUCATION,
LIFELONG LEARNING AND
RELIGIOUS AFFAIRS**

- Access to exam papers for university entry examination candidates by virtue of provisions included in law 3748/2009.

**MINISTRY OF HEALTH
AND SOCIAL SOLIDARITY**

- Handling deceased newborns according the statutory principle of respect and protection of human value.

International activities

- 72 1. INTERNATIONAL ACTIVITY AT A GLIMPSE
- 72 2. CONFERENCES
- 73 3. THE ASSOCIATION OF MEDITERRANEAN OMBUDSMEN
- 74 4. TWINNING PROJECT WITH THE SERBIAN OMBUDSMAN
- 74 5. EUNOMIA PROGRAMME
 - 74 5.1 CELEBRATION OF THE 10TH ANNIVERSARY OF THE PUBLIC DEFENDER OF GEORGIA
 - 74 5.2 INTERNATIONAL WORKSHOP OF OMBUDSMEN IN TIRANA
 - 74 5.3 CROSS BORDER COOPERATION OF ENVIRONMENTAL ISSUES
 - 74 5.4 CONFERENCE ON THE RIGHTS OF THE CHILD IN CROATIA
 - 75 5.5 ROMA EXPERT MEETING IN ATHENS
 - 75 5.6 SEMINAR IN ATHENS: "OMBUDSMAN AND ENVIRONMENTAL PROTECTION"



International activities



1. INTERNATIONAL ACTIVITY AT A GLIMPSE

The Greek Ombudsman is active in building bridges with counterpart institutions in other EU member states or candidate countries and with the European Ombudsman. The Ombudsman, the Deputy Ombudsmen, as well the investigators participate in international conferences, events, seminars and workshops.

Since 2001 the Ombudsman is responsible for the EUNOMIA programme which contributes in setting up and offering medium term support to Ombudsman institutions in south eastern European countries.

In 2009, the Greek Ombudsman initiated a twinning project with the Serbian Ombudsman, in cooperation with the Dutch Ombudsman.

The Greek Ombudsman participates in the Network of Ombudsmen of the Mediterranean area and in the Peer-to-Peer project, which is funded by the European Union and the Council of Europe and implemented by the Office of

the Commissioner for Human Rights. The Peer-to-Peer project aims at setting up an active network of independent non-judicial National Human Rights Structures (NHRS), with special focus on candidate countries.

The Greek Ombudsman held the following meetings:

- Delegation of the UN High Commission on Refugees, headed by Erika Feller, Assistant High Commissioner on asylum seekers' issues (April, 2).
- Jacques Barrot, Vice President of the European Commission (June, 28) during his official visit in Greece on migration issues and applications of asylum claims.
- Delegation of the European Committee for the Prevention of Torture (CPT), during their official visit in Greece (September, 17) to discuss detention conditions in prisons, police detention facilities and reception areas for asylum seekers, as well as the legal framework for police inspection and accountability.

2. CONFERENCES

The Ombudsman, Yorgos Kaminis, participated in international conferences, workshops and meetings in Greece and abroad. Indicatively:

- "7th seminar of the National Ombudsmen of EU Member States and Candidate Countries" Cyprus 5-7 April organised by the Commissioner for Administration (Ombudsman) in Cyprus and the European Ombudsman. The Greek Ombudsman addressed the topic of "Third country nationals' migration and asylum: reception, integration, regularisation of migrants".
- "9th International Ombudsmen Institute World Conference" held in Stockholm (9-12 June). The Greek Ombudsman derived the speech "Without a residence permit:

Protection of asylum seekers and illegal immigrants". Yorgos Kaminis also participated in the celebration for the 200th anniversary of the Parliamentary Ombudsman of Sweden.

- Conference of the European Union Agency for Fundamental Rights on "Making rights a reality for all", held in Stockholm (10-11 December). The Greek Ombudsman, Yorgos Kaminis, chaired a session on "Access to basic rights for everyone".

The Greek Ombudsman has been particularly active in the area of protecting and promoting the rights of the child. The Deputy Ombudsman for children's rights, George Moschos, participated in:

- A meeting of Ombudsmen for Children from south eastern European countries on "Children in conflict situations" held in Dubrovnik, on 18-21 May.
- The inaugural meeting for the presentation of the Council of Europe strategy on "Building a Europe for and with children" for 2009-2011 held in Strasbourg on 1-3 June.
- The annual meeting of the European Network of Ombudspeople for Children (ENOC) held in Paris on 22-26 September.

In addition, George Moschos represented the Greek Ombudsman in the international meeting held in Tirana on 9-10 December for the 10th anniversary of the establishment of the Ombudsman of Albania.

The Greek Ombudsman cooperated and exchanged know how with institutions responsible for equal treatment and fight against discrimination. Within this framework:

Deputy Ombudsman Andreas Takis participated in:

- The work group of the 2nd Equinet group (Policy Formation) held in Brussels on March 17.
- High Level Meeting Heads of National Equality Bodies on "Future contribution, priorities and needs of equality bodies within Equinet" held in Brussels on March 18.
- A round table on "Roma and Housing" organised by the European Commission in Brussels on October 20.

Deputy Ombudsman Stamatina Yannakourou participated in:

- Equinet seminar on "European concepts of equality. Role of the European Court of Justice" in Brussels on June 30.
- A conference on "The legal gaps which lead to constitutional conflicts" organised by the European Public Law Organisation in Athens on November 13.

Finally, on issues of transparency and human rights, Deputy Ombudsman Calliope Spanou, participated in the following:

- International conference on "Transparency and reform of the administrative procedures, especially through e-government initiatives for a better public administration" organised by the European Public Law Organisation in Athens on 30-31 January. Calliope Spanou presented a paper entitled "Transparency and public administration".
- Conference on "Universality of human rights and the role of the Ombudsman and the National Human Rights Institutions", organised by Human Rights Office of Turkey in Ankara on 21-23 May. Calliope Spanou presented a paper entitled "Ombudsman: An Institution for the realisation of rights".

3. THE ASSOCIATION OF MEDITERRANEAN OMBUDSMEN

The Greek Ombudsman organised the 3rd Meeting of the Association of Mediterranean Ombudsmen in Zappeion Megaron in Athens on 14-15 December, on "Transparency in public services: What role for the Ombudsman". More particularly, this meeting included three thematic sessions:

- "Access to administrative documents",
- "Access to places of deprivation of liberty",
- "Transparency and fight against corruption".

Participation was wide, including the Ombudsmen from all Mediterranean countries, representatives from the

National Committees for Human Rights from Mediterranean countries, representatives of European institutions and international organisations, such as the Council of Europe, the European Ombudsman and UN.

The Association of Mediterranean Ombudsmen was established in 2007 as an initiative of the Ombudsmen of France, Spain and Morocco. Its aim is to develop open dialogue and cooperation among institutions of Mediterranean countries, as well as to promote democratic governance principles and respect to human rights.

4. TWINNING PROJECT WITH THE SERBIAN OMBUDSMAN

The Greek Ombudsman and the Ombudsman of the Netherlands formed a consortium in a European Commission twinning project, aiming at strengthening the Serbian Ombudsman in its first years of operation. European Public Law Organisation also participates in the consortium of this project. The project started in January 2009 and its duration is set to 24 months. The Greek Ombudsman is responsible

for the project coordination. A senior investigator has been relocated in Belgrade to serve as resident twinning advisor. A European pool of experts had been set up for the purposes of the project, while collaboration and visits between members of staff in Serbia, Netherlands and Greece will take place.

The EUNOMIA programme started officially in January 2001, funded through an extraordinary financial contribution by the Greek government to the General Directorate of Human Rights of the Council of Europe. The aim of the project is to contribute to the creation and medium-term support for newly founded mediation institutions in the countries of South-eastern



Europe. Actions undertaken until now focus on the training of Ombudsmen personnel and the setting up of unofficial international networks for the long term support of these institutions.

Since early 2004 the EUNOMIA programme is run under the auspices of the Council of Europe Commissioner for Human Rights, to whom the Greek Government entrusts the necessary funds on a yearly basis. The planning unit of the project is housed in the Greek Ombudsman premises and the Steering Board consists of the Greek Ombudsman, the European Ombudsman, and the Council of Europe Commissioner for Human Rights.

5.1 CELEBRATION OF THE 10th ANNIVERSARY OF THE PUBLIC DEFENDER OF GEORGIA

The Greek Ombudsman in cooperation with its counterpart of Georgia organised an international conference on "Freedom of expression: Striking the difficult balances for the Ombudsman". The conference was due in September 2008, but it was postponed because of the war in Georgia. The conference was rescheduled on 11-12 February, on the occasion of the 10th anniversary of the Public Defender of Georgia. It took place in Tbilisi.

5.2 INTERNATIONAL WORKSHOP OF OMBUDSMEN IN TIRANA

On March 8 and 9, the Albanian and the Greek Ombudsman organised a European workshop in Tirana, Albania, entitled "Access to information: what can the Ombudsman do". The European Ombudsman, the Ombudsmen of the Former Yugoslav Republic of Macedonia, of Serbia, of Sweden, the Hungarian Parliamentary Commissioner for Data, as well as the Police Ombudsman of Northern Ireland participated in the workshop. Delegations from the Ombudsman of the Czech Republic, Poland, Montenegro and Vojvodina (Serbia) also attended the workshop.

5.3 CROSS BORDER COOPERATION OF ENVIRONMENTAL ISSUES

Study visits were carried out by Greek Ombudsman delegations to counterpart institutions in FYROM (25-26 February) and Bulgaria (25 February). The aim of the visits was to promote good practices in handling environmental complaints.

5.4 CONFERENCE ON THE RIGHTS OF THE CHILD IN CROATIA

Eunomia programme, the European Network of Ombudspersons for Children and Save the Children – Norway, supported the organisation of the 4th annual conference of South Eastern Europe Children's Ombudspersons' Network. The conference took place in Dubrovnik, it was hosted and organised by the Ombudsman for Children of the Republic of Croatia on May 19 and 20. Eunomia project organised a workshop entitled "International justice for children: How can children's Ombudspersons disseminate information and assist children".

5.5 ROMA EXPERT MEETING IN ATHENS

Eunomia programme organised a capacity building seminar in Athens entitled “Exploring standards and measures addressing Roma institutional visibility” on June 16-17. Delegations from the European Union, OSCE and the Council of Europe as well as counterpart institutions from Council of Europe member states participated in the seminar.

5.6 SEMINAR IN ATHENS: “OMBUDSMAN AND ENVIRONMENTAL PROTECTION”

Eunomia programme organised a seminar comprising two round tables on “Control mechanisms and environmental protection” and “Ombudsman and environmental protection: non judicial control, mediation and awareness”. A good practices’ exchange session followed. Delegations from Albania, Armenia, Austria, Bulgaria, Croatia, FYROM, Slovenia, Spain and Vojvodina (Serbia) participated in all sessions. Among the speakers were representatives from the Greek Council of State, the Hellenic Parliament, the European Commission and NGOs. The seminar took place in Athens on June 22-23.



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