2007

Promoting equal treatment
The Greek Ombudsman as national equality body

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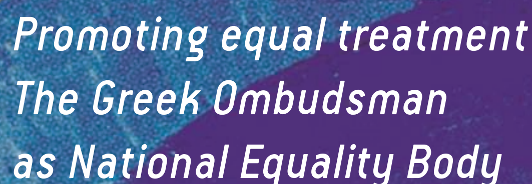

1. Introduction

The annual reports issued by the Independent Authority during the last two years have recorded and illuminated a series of assessments, conclusions and problems that still raise issues of public interest. The relatively small number of complaints filed with the Greek Ombudsman regarding discriminatory treatment, the limited mobilization of civil society as well as the decreased range of initiatives taken by statutorily appointed institutional bodies, such as the Labour Inspectorate (SEPE), still raise concerns about how to respond to challenges with respect to the promotion of equal treatment.

1.1 COORDINATION AND MOBILIZATION OF INSTITUTIONAL BODIES AND THE CIVIL SOCIETY IN THE FIGHT AGAINST DISCRIMINATION

In 2007, the total number of complaints filed with the GO outnumbered those of the previous year. However, frequency rates regarding complaints about discriminatory treatment are still low and by no means are these data a reliable indicator of cases of discrimination against individuals or groups in our country. As it had been noted in the *2006 Annual Report*, lack of complaints alleging discriminatory treatment, especially in sensitive domains such as sexual orientation, religion or sexual harassment, can not be taken as a presumption of lack of actual instances of discrimination. On the contrary, it denotes the reluctance of individuals who have been discriminated against to expose their personal or social life and seek recourse to institutions officially appointed for combating discrimination. As it shall become manifest below, this trend is evidenced by the fact that most complaints re-

fer to discrimination in terms of unequal wage payments or employment conditions on account of age or sex that is, cases in which publicizing discrimination does not incur any social cost upon the complainants.

The communication of victims of discriminatory treatment with the competent institutions is rather problematic but this could be offset by an active civil society and its intensified involvement in activities aiming at raising awareness or offering support to individuals who have been discriminated against.

It is no coincidence that the EU legislator expressly supports the enhancement of civil society network activities by enabling them to gain access to the administrative and judicial mechanisms, even though under specific conditions. The contribution of these social groups in consolidating the application of the principle of equal treatment may prove quite decisive, especially with regard to the elimination of discriminatory treatment of structural nature that is targeted against vulnerable groups (e.g. Roma natives). It is impossible to ignore the fact that that civil society groups have not been active enough in this direction; therefore it is imperative to seek ways to incite action. It has been a year already since the Greek Ombudsman planned and set into motion an open pilot network of communication with NGOs and other civil society organizations that are offering protection and support for Roma natives. The aim of this initiative was precisely to strengthen the mediation of civil society groups between this targeted special population group and the GO, to provide critical information on issues of institutional potentialities and know-how, and to gather information on the vital problems faced by this population group. Its principal aim was to coordinate the activities of all participants invited by the Greek Ombudsman.

Particularly with regard to the enforcement of Law 3488/2006 on gender equality, investigation of relevant complaints showed that what is most crucial is the way of proving a case of sexual harassment. Emphasis was also placed on the importance of providing sufficient evidence so that the GO and the Labour Inspectorate can exercise their mediating role. In general, it has been assessed that with regard to complaints about sexual harassment there is a grave danger of misinterpreting the relevant provision of Law 3488/2006 as some of the complainants were under the impression that a simple allegation would suffice to justify shifting of the burden of proof to the defendant the latter being called upon to disprove the accusation. However, it is obvious that it is not possible to apply this provision in cases where the accusation is founded on evidence that yields a less than fair probability that the alleged misconduct is sustainable.

After one year of applying Law 3488/2006, the GO has accumulated enough evidence suggesting that several statutory provisions leave critical questions unanswered regarding the way these provisions are to be implemented. Despite these difficulties, those who have been appointed with the enforcement of this law are called upon to make the best possible use of the potentialities offered therein.

Also, in order to mobilize sufficiently and render effective the complex institutional cooperation between the GO and the Labour Inspectorate (SEPE) it is necessary that inspectors and all parties involved assimilate the new regulations to a sufficient degree; all labour inspectors should fully comprehend their new responsibilities. The Labour Inspectorate –in virtue of Article 17 of Law 3488/2006 on the new evidentiary procedure– is called upon to re-examine its previous practice that prohibited the use of witness testimonies and documentary materials as well as to acknowledge that under the new provisions, SEPE's general competence has been significantly expanded beyond the purview of dependent employ-

ment. More specifically, the administration of the Labour Inspectorate should cope with the reasonable reticence of inspectors to implement novel evidentiary procedures without the necessary circular guidelines.

Up till this moment the Greek Commission for Human Rights has been substantially supportive of equal treatment promotion and in particular of the work of the GO as the competent body. Indicative of its contribution are the numerous decisions and directives on the incorporation of relative EC Directives and their implementation in the Greek legal order as well as its cooperation in a series of more general issues of equal treatment, in particular with respect to the social inclusion of the Roma populations (see below).

It should be noted that during the previous year, there has been an amendment regarding the concept of harassment as defined in Article 2, paragraph 2 of Law 3304/2005. More specifically, Article 7 of Law 3625/2007 on the "Ratification and application of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and other provisions" endeavours to disambiguate this concept by means of abolishing the morals clause as an interpretive criterion. This new statutory regulation abides to the EU guidelines, as these are laid out in the respective Directives, and a definition is introduced, identical with that included in Article 3, paragraph c of Law 3488/2006 on gender equality.

What follows below is a presentation of the cases investigated by the GO divided in thematic groups according to the type of discriminatory treatment.

2. Case Study

In 2007 the GO investigated eighty (80) complaints filed by citizens who have been reporting discriminatory treatment in violation of Law 3304/2005; the number of complaints has been significantly increased in comparison to 2006, but it is still far from being a large one. Twenty five (25) of these complaints referred to discriminatory treatment on account of sex and were examined pursuant to Law 3488/2006. These cases – with the exception of those that were deemed unfounded by the GO, five (5) in total– are still under investigation as the State's final position is pending. The outcome of thirteen (13) out of fifteen (15) cases that have been closed after investigation by the GO was in favour of the complainants. The following Table illustrates the complaints investigated ordered by the alleged ground of discrimination and the final outcome.

COMPLAINTS FILED IN 2007 REGARDING DISCRIMINATORY TREATMENT ACCORDING TO THE KIND OF DISCRIMINATION	Total of complaints on discriminatory treatment Law 3304/2005	Total of new complaints – (filed in 2007)	Discrimination in the workplace	Discrimination in vocational orientation, training, practice	Discriminati on in education	Discrimination in participation in trade unions or employers' associations	Discrimination in social protection -social security- health care	Discrimination in social welfare	Discrimination in goods/services provision-accommodation
Discrimination on account of racial-ethnic origins	41	9	3		4				34
Discrimination on account of disability – reasonable adjustments	1		1						
Discrimination on account of age	13	9	13						
Discrimination on account of sex	24	21	24						
Sexual harassment	1	1	1						
TOTAL	80	40	42	0	4	0	0	0	34

OUTCOME OF COMPLAINTS FILED IN 2007 REGARDING DISCRIMINATORY TREATMENT	Total of complaints on discriminatory treatment Law 3304/2005	Discrimination Attested	Discrimination Denied	Enforcement – settlement	Non Enforcement	Pending cases – GO's recommendations – suggestions	Exercise of disciplinary control	Referral to the Prosecutor	Resulting lack of competence
Discrimination on account of racial-ethnic origins	41	6	5	4	2	30			
Discrimination on account of disability – reasonable adjustments	1					1			
Discrimination on account of age	13	3		3		10			
Discrimination on account of sex	24	6		6		18			
Sexual harassment	1					1			
TOTAL	80	15	5	13	2	60	0	0	0

2.1 DISCRIMINATION ON ACCOUNT OF ETHNIC ORIGIN

2.1.1 EMPLOYMENT

Foreign- born naturalized Greek – employment as teaching staff

A Greek naturalized citizen applied for employment at the Non Commissioned Officers School of the Hellenic Army as an hourly remunerated teacher. Her application was rejected on the basis that she was not entitled to birthright Greek citizenship, a necessary precondition according to the employment advertisement. The GO addressed the department involved and remarked that this precondition was put into question by the very constitutional principle of equality of Greek citizens (Article 4, paragraph 1 of the Greek Constitution) as well as by the special provisions of Law 3304/2005 (*2006 Annual Report*, pp. 228-229). Following the GO intervention, the Training Department of the General Staff of the Ministry of National Defense replied in writing that the issue will be examined taking into consideration the opinion of the GO as well as the provisions of Law 3304/2005 so that all necessary amendments are made in the Non Commissioned Officers School employment advertisement for the period 2007-2008 (case 7599/2006).

2.1.2 EDUCATION

Aliens of Greek ethnic origin – Special provisions for admission to tertiary education

In 2006, the GO investigated complaints filed by Cypriot citizens and other EU citizens of Greek origin who were candidates for admission to Greek institutions of tertiary education, regarding the denial of the Greek education authorities to include candidates of the aforementioned category –that is, EU citizens of Greek origin– in the class of EU citizens for whom a specific admission quota is applied (*2006 Annual Report*, p. 230). The dismissal was grounded in the provision of section a, Article 13 paragraph 3 of Law 3404/2005 as well as in the executionary provisions included in the ministerial decision no. Φ 151/17104/Β6/17.2.2006 (published in the Government Gazette Β΄259/1.3.2006). According to these provisions EU citizens of Greek origin are excluded from the general class of EU citizens and fall exclusively under the category of expatriates.

As a result of the GO intervention a ministerial decision was published (Φ 151/20049/Β6/2007) according to which the selection quota of the special category 3 of Article 1 ("Greek graduates of foreign high schools of educational institutions operating abroad") vary as follows:

• 1.5% for candidates who have graduated from foreign secondary education institutions operating abroad (implementing a EU member state educational curriculum),

• 1.5% for candidates who have graduated from Cypriot schools operating in Cyprus (implementing the educational curriculum of the Cypriot Republic),

• 1% for candidates who have graduated from foreign secondary education institutions operating abroad (implementing a non EU member state educational curriculum).

Apparently these differentiations in selection quotas pertaining to the special category of Greek natives living abroad are in conformity with the remarks offered by the GO and in general they are deemed reasonable and functional as it can be inferred from the 2007 Pan-Hellenic Examinations for University Admission. In any case, it is expected that their efficiency and adaptability will sustain a thorough assessment in the future (cases 16371/2005, 4539/2006, 5314/2006, 9444/2006).

2.1.3 SERVICES – ACCOMMODATION

Recognized political refugees – Property transfer tax for first residence acquisition

In the recent past the GO has investigated complaints filed by recognized political refugees residing legally in Greece with regard to the refusal of Tax Authorities to exempt them from property transfer tax for first residence acquisition.

Despite the fact that the GO had attested the admissibility of the relevant complaints, the official services of the Ministry of Economy and Finance insisted on their initial refusal pleading a relevant clause in the Ministerial Decision n. 1080792/1428/0013/ΠΟΛ.1162/10.7.1989 which stipulates that only Greek and EU citizens residing in Greece as well as some specific categories of Greek expatriates are entitled to this exemption. However, apart from the fact that there has been a court decision stating that the relevant clause extended beyond the legislative authorization of Law 1078/1980, the same clause is not in conformity with the special obligation of care undertaken by the Greek Government towards recognized political refugees in virtue of the provisions of the Geneva Convention that prevail over any other provision.

Later the GO issued a fact-finding report that was communicated to the Minister of Economy, noting that, if the opinion of the ministry were accepted, the extension of the prop-

erty transfer tax exemption for first residence acquisition –besides Greek citizens– to foreign citizens of Greek origin (expatriates), would contravene the regulations stipulated by Law 3304/2005 for combating discrimination and promoting the principle of equal treatment. Granted that accommodation falls within the scope of the aforementioned law (Article 4, paragraph 1, section 8) and to the extent that the ministerial decision in question extends this exemption to “Greek expatriates from Turkey, North Epirus, Cyprus and the countries of the former Soviet Union living in Greece”, that is, to non Greek citizens of Greek origin, this regulation introduces an unacceptable discrimination not on account of nationality but on account of ethnic origin (cases 11575/2004, 8976/2005).

2.2 DISCRIMINATION ON ACCOUNT OF RACIAL ORIGIN

2.2.1 SERVICES – ACCOMMODATION: THE CASE OF ROMA PEOPLE

Investigation of cases of social exclusion regarding members of the Roma ethnic group, primarily with respect to their settlement and furthermore to the use of social services and municipal enrollment, as well as the intervention of the GO require a particularly complex strategy as explicated in unit 3.1 of the present chapter.

2.3 THE EXCLUSION OF CITIZENSHIP AS A CRITERION OF DISCRIMINATORY TREATMENT

The general clause excluding discrimination in matters of nationality from the regulatory scope of Law 3034/2005 seems, in many cases, to favor severe discrimination against foreigners on account of ethnic or racial origin. Relevant complaints have been filed with the GO that do not fall within the protective scope of the Law on discrimination on account of nationality. Nonetheless, investigation has yielded evidence of discriminatory treatment on account of racial or ethnic origin. Indicatively the following cases are presented.

Foreigners – Employment contract of an indefinite period of time

During 2006, third country nationals, employed in musical groups under work contracts or fixed-term contracts, filed a complaint with the GO protesting against the refusal of their employers (legal entities of public law, local government organizations and the Hellenic Broadcasting Company) to rank them in positions under private employment contracts of an indefinite period of time on the pretext that qualifying candidates for employment in such positions have to be either Greek or EU citizens. The GO found that, in this case, Law 3304/2005 had not been violated given the existing general clause excluding the criterion of nationality. However, during last year, after a series of appeals made by some of the musicians involved, final decisions were issued according to which their contracts were considered to be similar to employment agreements of an indefinite period of time. In addition, the Court’s opinion included an *obiter dictum* according to which these third country nationals, regardless of their nationality, may be employed in these permanent public sector positions (that is, the musical groups in question) because these positions are not related to the exercise of public office, in analogy with what applies to EU nationals. The persons involved addressed the GO anew claiming that the administrative authorities had deferred the implementation of the Court’s decision. The GO informed the competent administrative branch that since the judicial decisions were final and immediately executionable, they should take all necessary legal action to insure their due implementation regardless of their potential objections as to the legal basis of these decisions, the latter issue having been referred to the Supreme Court for proper examination. For the moment the Administration’s response is pending (cases 6892/2006, 8516/2006).

Minor children of migrants – Municipal Registries

Two Women's Non Governmental Organizations filed a complaint with the GO regarding the incapacity claimed by the competent authorities to issue birth certificates for migrants' children born in Greece. More specifically, they claimed that the Municipal Registry Offices cannot issue birth certificates for children of foreign nationals who were born within their boundaries. In the case of children who were born in Greece and whose parents are foreign citizens, birth certificates can be issued only by the competent Register Offices. This practice gives rise to various problems regarding preschool and elementary school enrolment as well as to a series of bureaucratic procedures until children reach the age of 18.

The GO investigated the complaint under the light of the anti-discrimination legislation and the principle of equal treatment and found that refusal to issue birth certificates for children of foreign citizenship who were born in Greece does not constitute by itself an act of discrimination according to Law 3304/2005. More specifically, this is a legitimate practice grounded in the fact that, according to the legislation in force, only Greek citizens can be included in the municipal and communal registries. This particular differentiation on account of nationality falls under Article 4.2 of Law 3304/2005 which excludes this case from the scope of application of the anti-discrimination legislation.

Nevertheless, this formally legal differentiation and the non-registration of foreign residents in municipal registries causes substantial harm to our harmonious coexistence with foreign people, minors and adults alike, who are living in the country. The GO has released a fact-finding report suggesting the following short term measures:

Firstly, the issuance of a Ministry of Interior circular clarifying that birth certificates issued by the Register Offices regarding foreign minors should be accepted by all competent authorities as equivalent with birth certificates issued by Municipal Registry Offices at least with respect to the procedures regarding to exercise of the child's rights as stipulated in the respective Convention.

Secondly, the creation of a special municipal registry designed for permanent foreign residents. The registration in this special registry shall be regarded as equivalent with the registration in municipal registries with the exception of rights related to the acquisition of Greek or European citizenship. In the long run and with respect to the implementation of the Directive on EU long-term resident status, the Greek legislature could examine the possibility of amending the Code of Municipalities and Communities so that the aforementioned "municipal registry for foreign permanent residents" can be incorporated to municipal registries.

Finally, the GO encouraged the State to proceed with the legislative regulation of the social inclusion of third country nationals who were born in Greece or have immigrated as minors and reach adulthood in the country after having concluded school education under the Greek educational system (case 2298/2006).

2.4 DISCRIMINATION ON ACCOUNT OF DISABILITY

2.4.1 EMPLOYMENT

Persons with Disabilities– Access to the Workplace

A citizen with disability complained that he could not access his workplace due to insufficient building infrastructure (lack of ramp and lift). During the investigation of this case (*2006 Annual Report*, p. 236) there arose an interpretive question regarding Article 28 of

Law 2831/2000, that is, whether industrial buildings and storehouses were among the premises that should undergo alterations so as to be accessible to people with disability. The complaint is under investigation (case 1955/2006).

The GO held the view that the necessary regulations should be incorporated into the General Building Code and addressed its suggestions to the Ministry of Environment and the Ministry of Interior asking for the enlargement of the premises list with special building arrangements for people with disability. Firstly, the GO's proposal is grounded in the Constitution (Article 21, paragraph 6) that stipulates the right of people with disability to measures ensuring their professional inclusion and their participation in the social and economic life of the country. Secondly, the aforementioned proposal is premised on Article 10, Law 3304/2005, of which imposes on employers the obligation to take all necessary measures according to the circumstances so that people with disability can enjoy unhindered access to workspace in a way that safeguards freedom of movement. The Ministry of Environment responded that the GO's proposals are under examination (case 1955/2006).

2.5 DISCRIMINATION ON ACCOUNT OF AGE

2.5.1 EMPLOYMENT

Upper Age Limit – Enrollment in Bar Associations

A trainee lawyer filed a complaint with the GO because his application for enrollment in the Trainee Lawyers' Registry of the Xanthi Bar Association was dismissed for not fulfilling the age requirement pursuant to Article 4 of Legislative Decree 3026/1954 ("on Lawyers' Code", Government Gazette A΄ 235). The GO informed the Bar Association's Administration that, since the enactment of Law 3304/2005 (incorporation of Directives 2004/43/EC and 2004/78/EC), the provision in question is *ipso jure* abolished (Article 26 of Law 3304/2005) to the extent that the age limit is not adequately justified, according to the conditions set in Article 7 ff. of the aforementioned Law. The response of the Xanthi Bar Association is still pending (case 7644/2007).

Age limit set in employment advertisement of the Public Power Corporation SA regarding new staff hiring

The complainants addressed themselves to the GO opposing to the enforcement of the age limit set in the abovementioned employment advertisement. The GO noted that age specifications are legally imposed in cases where specific physical capacities are required provided that a due justification is given. In the case in question it was found that upper age limits were set for positions in the administrative and financial sector without any justifiable reason. Moreover, no specific justification is given in respect to age limits set for other positions for which physical fitness has be to taken into consideration for obvious reasons as in the case of mine technicians.

PPC SA objected that its operation is based on private sector criteria and hence it does not fall within the scope of Law 3304/2005. As a result, it has the right to obviate this legal framework in its personnel selection procedures.

It should be noted that as to the legality of this advertisement a preemptive check has been carried out by the Independent Council for Personnel Selection which made no reference to age limits included therein.

The GO insists on its view that it is compulsory for PPC SA to implement the provisions of Law 3304/2005 in personnel selection. A working meeting is about to be scheduled with

representatives of the Company for further discussion of this issue (cases 803/2007, 1157/2007, 1835/2007, 8226/2007).

Employment advertisements posted by the Ministry of Public Order including age limit for the hiring of Special Guards and admission of general duty Police Warrant Officers in the Vocational Postsecondary Education Department

The complainants addressed themselves to the GO opposing to the inclusion of an upper age limit in the Ministry's advertisement for the hiring of special guards as well as lowest age limit in the advertisement announcing the entry examination for general duties police warrant officers at the Vocational Postsecondary Education Department. In both cases age limits were imposed with no special justification.

Taking into consideration the exclusion of armed forces and security forces from the application scope of Law 3304/2007 (Article 8, paragraph 4) with regard to the differential treatment due to age, the GO had never questioned the necessity and possibility of similar legal restrictions. However, the GO noted that any exclusion of persons on account of age should be properly justified (cases 6247/2007, 9668/2007).

Upper Age Limit – Qualification for Employment

The complainant addressed himself to the GO opposing to his rejection from grade C researcher's position at the Centre for Planning and Economic Research (KEPE-CPER) Although he was initially selected by the competent Selection Board, the Administration Board of the Centre refused to ratify the relevant minutes due to an upper age limit imposed for this particular grade as provided for in the Presidential Decree 94/200, Article 4, paragraph 3 which stipulates an age limit of 40. The GO highlighted the legislative developments following the enforcement of this Decree noting that, according to the principle of equal treatment, no age limit provisions seem to be permitted anymore. The case is still pending as GO awaits a response from the Centre for Planning and Economic Research (case 6533/2007).

Upper Age limit for Employment in the Public Sector – Employment Regime

A female citizen falling under the protective scope of Law 2643/1998 (category of large families) filed a complaint with the GO because the Ministry of Justice had refused to accept her compulsory employment in a position of Prison Guard Personnel of Secondary Education in the Corfu Penitentiary on the grounds that she had exceeded the age limit provided for in the advertisement. This job placement had been decided –pursuant to the aforementioned Law– by the competent committee of the Ministry of Employment and Social Protection and it was about to be re-examined by a second instance committee. In view of the re-examination and after a period of three months following the refusal of the Ministry of Justice to accept the placement, the GO addressed the second instance committee. The GO's suggestion to the Committee was to examine whether in this case an age limit is specially justified so as to ascertain that this regulation is reasonable and necessary, is dictated by a specific legal reason and constitutes a substantive and crucial requirement due to the nature of the specific post or due to the circumstances under which this is carried out, as imposed by Directive 2000/78. Indeed, taking into consideration the observations and notes offered by the GO, the second instance committee decided that in the case under consideration the age limit did not fulfil these requirements and the job placement of the complainant was ratified (case 5384/2007).

Age Limit – Employment in Permanent Positions

In 2006, the GO examined the case of including the age limit of 35 years in the advertisements for permanent positions at the introductory grade of the Communications and Information Technology Branch as well as of the scientific personnel of the Special Legal Service in the Ministry of Foreign Affairs. Moreover, the GO examined the issue of imposing an upper age limit for personnel appointment in the Diplomatic Corps (37 years) and the Administrative, Accounting and Secretarial Support Branch (35 years) that have already been renamed to University Education Branch (PE) and Technology Education Administrative Branch (TE) respectively. These age limits are not provided for in the Ministry of Foreign Affairs Organizational Statute.

While investigating the respective complaints (*2006 Annual Report*, pp. 239-240) the GO addressed in writing the competent Departments and noted that lack of special justification for provisions of age limit constitutes violation of the principle of equal treatment on account of age. Furthermore, the GO requested the harmonization of the provisions of the Ministry of Foreign Affairs Organizational Statute with the provisions of the relevant EC Directives and Law 3304/2005. The Ministry pleaded a previous decision of the Athens Administrative Court of Appeal according to which, due to the special status of all its employees (as set in the Organizational Statute) "the clauses of the Organizational Statute prevail against any other, even subsequent, general provision". Moreover, the Ministry of Foreign Affairs claimed that Law 3304/2005 does specifically regulate the process of permitting a justified discriminatory treatment based on age limits enforcement and added that the specific justification for the administrative branches under consideration was included in two documents addressed to the Ministry of Interior in virtue of which the aforementioned ministerial decision ΔΙΠΠ/Φ.ΗΛ/6436/2003 was issued. On the occasion of the submission on March 29, 2007 of draft law "Validation as Code of the Organizational Statute of the Ministry of Foreign Affairs" to the Greek Chamber of Deputies, the GO addressed the Minister of Interior and the Minister of Foreign Affairs requesting either the elimination of the common for all personnel branches of the Ministry of Foreign Affairs age limit of 35 years as provided for in the new Organizational Statute or the inclusion –if possible– of a special justification in the aforementioned clauses certifying that specific age limits are reasonable and necessary, serve a legitimate purpose and constitute a substantive requirement due to the nature of duties to be executed. The new Organizational Code of the Ministry of Foreign Affairs (Law 3566/07, GG A΄ 117/5-6-2007), however, includes the crucial clause unaltered in Article 66, paragraph 1, case b. The GO has drafted a relevant fact-finding report (cases 16814/2006, 17997/2006).

Age limit – retirement age for diplomats

Complainants belonging to the diplomatic personnel addressed themselves to the GO personnel opposing to a clause included in the Ministry of Foreign Affairs Organizational Statute (Article 83, paragraph 1, section b of Law 2594/1998, Foreign Affairs Ministry Organizational Statute) according to which the retirement age for diplomats is 60, whereas for those holding the Ambassador's rank the limit is raised to 65. While investigating these complaints (*2006 Annual Report*, p. 238) the GO addressed the competent service of the Ministry noting that, according to the provisions of the EC Directives that Greece had incorporated in its anti-discrimination legislation, every state has the right to plead the exigencies of general social or pension policy in order to permit age limit variations. The GO

asked for the Ministry's views on the reasons that impose a different retirement age for different diplomatic ranks. The Directorate in charge alleged that this clause does not give rise to an illegal discrimination since the differentiation in question was justified by the nature of the professional duties which called for a faster promotion to the ambassador's rank of highly qualified individuals of younger age thus excluding individuals who have reached the age limit without having attained promotion to these higher ranks. The GO emphasized that, according to the case-law of the European Court of Justice, a basic criterion according to which an indirect discrimination may be inferred is whether a measure puts a group of employees at disadvantage on the basis of a characteristic of this group which constitutes the grounds of discriminatory treatment. In the case under consideration, differential treatment does not entail the promotion or not of certain diplomatic employees but the compulsory retirement of those who are not promoted. The selective promotion of certain employees of the same rank does not mean that compulsory retirement of the rest of them does not imply indirect discrimination. The Ministry did not accede to the opinion of the GO. The new organizational statute, however, publicized in spring 2007, does not include a differentiation as to the retirement age limit between those employees who hold the ambassador rank and others (cases 13143/2006, 15556/2006).

2.6 DISCRIMINATION ON ACCOUNT OF SEX

2.6.1 ACCESS TO EMPLOYMENT ON EQUAL TERMS

Discrimination on account of sex – Employment of uniform personnel in municipal police

Female applicants had submitted applications for employment as special uniform personnel at the level of 1st Grade Local Government Organizations, by virtue of relevant employment advertisements in the Regions of South Aegean, East Macedonia and Thrace, and Central Macedonia, announced in 2006. They requested from the GO to launch an inquiry into whether the establishment of a common performance threshold for men and women regarding the physical tests provided for in the Presidential Decree 135/2006 – taking also into consideration the remarkable increase of the performance threshold for women throughout the years – constitutes an indirect discrimination on account of sex.

The GO addressed the Ministry of Interior Directorate of Organization and Operation of Local Government Organizations posing the question of whether increasing the performance standards for women initially set in the former Presidential Decree 23/2002 – in conjunction with the increase of height limit for women by two centimetres without a proportional increase for men– establishes reasonable and objective common qualifications that serve the principle of equal treatment, on account of sex, regarding access to the specific positions, or, on the contrary, whether these new requirements pose an essential obstacle to women. In particular, the GO noted that among the instances of indirect discrimination on account of sex there exist measures applicable regardless of sex but in essence affecting more women than men thus violating the principles of objectivity and necessary means-end analogy. Citing relevant decisions of the European Court of Justice, the GO requested an investigation into whether this clause produces unfavourable results for women as compared to those for men. The GO stressed that it should be also examined whether available statistical data can prove that a significantly greater percentage of women than men is affected unless taking this measure is justified by objective factors that are not in any way related to discrimination on account of sex. Finally, the GO asked the State to provide justification for the athletic performance standards set for each sport in connection

with the special nature of the duties of the vacant positions, by specifically accounting for the selected height and performance standards. The response by the State is awaited (cases 5874/2007, 8351/2007, 8352/2007, 8216/2007, 9196/2007).

Discrimination on account of sex – Employment of special guards at the Ministry of Public Order

A female complainant who participated in a special guard hiring competition of the former Ministry of Public Order asked the GO to investigate whether including as a prerequisite the fulfilment of military service constitutes discrimination on account of sex. The provisions in question (Article 9, paragraph 6, Law 2734/99 and Ministerial Decision 7002/12/1ι / Government Gazette B΄ 419/26.3.2007) provide that four credits are added to the grades of candidates who have served as reserve officers or members of the special forces whereas only one credit is added to those who have served as Volunteers of 5-year Military Service in the armed forces. The GO addressed the Directorates of Police Personnel and Organization and Legislation of the Ministry of Public Order, emphasizing that since women –according to national military legislation– do not have the obligation to serve in the military, it is impossible to be accorded these additional credits as qualified examinees. Female candidates could have acquired added credits in case they had served as Volunteers of 5-year military service. However, even in that case, they would be in an inferior position compared to the male candidates. More specifically, provided that there are two candidates, one man and one woman, who had the same total of credits in virtue of the other typical qualifications enumerated in the relevant provisions, it is only the male candidates who can benefit from the additional credits due to the fact that they have obtained this additional qualification –that is, having served either in the special forces or as a reserve officer– given that women do not bear any such obligation according to the national military legislation. Finally, the GO asked the competent authorities to consider the possibility of amending this clause to the extent that, according to the provisions of Article 2, paragraph 3 of Law 3181/2003, (that have replaced the former provisions of article 9, Law 2734/99) it is possible to employ women as special guards, positions exclusively reserved for Greek male citizens until that moment. The Directorate of Police Personnel, in its response to the GO, defended this clause by highlighting the nature and the working conditions of special guards that render sex a determining factor for gaining access to these positions. The case is still under investigation (case 10201/2007).

Pregnant candidate in Municipal Police competition – Legitimate deviation

A candidate in a competition of Municipal Police in the Municipality of Leros, living on the island of Leros, refused to travel to Rhodes in order to have her height measured and take the required sports tests because she was pregnant. The Selection Committee of the Region informed her that she would be excluded from the competition. The GO, after receiving the relevant complaint, informed the Committee that in virtue of a decision of the Larissa Administrative Court of Appeal (No. 56/2006) a candidate who pleads incapacity to take part in the sports tests due to pregnancy should be granted a right of deferment, otherwise her exclusion is illicit. The court had permitted this deviation from the constitutional and EU provisions on sex equality insofar as it concerns the protection of pregnant women and mothers. Following this intervention, the South Aegean Region informed the GO that, according to a relevant document delivered by the Ministry of Interior, the candidate's ap-

plication had been accepted. Hence, the applicant shall take part in the height measurement procedure and the sports tests requested according to the employment advertisement of the Municipality of Leros after she has given birth and during childbed as a consequence of obvious force majeure (case 5056/2007).

2.6.2 EQUAL PAYMENT

Discrimination on account of sex – special financial bonus

A female employee filed a complaint with the GO claiming that she has been experiencing discriminatory treatment at the company where she works (*2006 Annual Report*, p. 241). According to the evidence she presented, her employer has taken the initiative of giving a bonus for computer use to all male employees –who appear to carry out exactly the same duties as she does– but not to her. The employer claimed that this bonus is rightfully not granted to the complainant since she performs completely different tasks than those undertaken by the recipient employees. Two reconciliatory interventions took place at the premises of the Piraeus Social Inspectorate. As the issue remained unresolved, an on site investigation took place in order to verify the kind of duties carried out by the complainant. The investigation concluded that the work carried out by the complainant was exactly the same as that of her male colleagues, and the employer paid her also the bonus for computer use (case 16460/2006).

2.6.3 EQUAL TERMS AND CONDITIONS AT WORKPLACE

Female teacher – parental leave of absence

In 2006 a complaint was filed with the GO by a female teacher employed in the private sector claiming that the Western Thessaloniki Directorate for Secondary Education declined her reappointment in a director's position on the ground that she had been absent from work with a nine months parental leave. The GO informed the competent directorate of the Ministry of Education that in this case the State had allowed an indirect discrimination on account of sex which contravened the relevant clauses for the protection of maternity. The Directorate for Private Education of the Ministry of Education acceded to the opinion of the GO and granted the nine (9) month parental leave of absence with the regular working hours remuneration. In addition, the Western Thessaloniki Directorate for Secondary Education reappointed the complainant as director on the first day she returned to school –after the completion of the aforementioned nine month leave of absence– until the end of school year 2006-2007 (case 17852/2006).

Working fathers – parental leave of absence or reduced working timetable for child rearing

In 2006, male public sector employees filed a complaint with the GO asking for assistance in order to be accorded a nine (9) month parental leave of absence or a reduced working schedule for child rearing (*2006 Annual Report*, p. 242). The GO informed the complainants about the legislation in force and the forthcoming new Public Service Code, according to Article 53 of which fathers are also entitled to parental leave of absence. They were also advised to submit an application to their employment service the soonest possible. Later on their claims were satisfied (cases 17858/2006 and 14395/2006).

However, during 2007, there has been an increase in number of similar complaints and the cases are still pending. While investigating these complains, several issues have been

brought to the GO's attention as to the implementation of the new Public Sector Code in relation to the nine month leave of absence or the reduced working schedule accorded to male public servants with children. Among the thorny issues that have arisen with regard to the dealings of the employees with the services involved special attention has been paid to cases such as the fact that the mother of the family may not employed or may be self-employed, the inception of the exercise of this right, the calculation of the duration of this leave of absence or the compensation of the absence time in case a second child is born. It should be noted that EC Directive 2002/73 in accordance to which Law 3488/2006 was enacted, is not binding for member states as to the recognition of this independent right of working fathers. It is confined to providing protection to parents –mothers and fathers– who avail themselves of the absence of leave in question without further examining in detail the terms and conditions for establishing such a right. However, some of the aforementioned issues that have arisen from the investigation of these complaints can be regarded as causing indirect discrimination on account of sex. It is for this reason that a series of remarks and suggestions pertaining to these problems is going to be submitted to the Ministry of Interior (cases 8893/2007, 12873/2007, 6197/2007, 13047/2007, 5975/2007, 7051/2007, 14923/2007, 15032/2007, 14763/2007, 15096/2007).

Working father – time off to monitor childrens' school performance

Last year a male employee at the Athens Trolley Company (ILPAP) addressed himself to the GO claiming that the rejection of his request to be granted time off in order to monitor his child's school performance constitutes discrimination on account of sex. The GO investigated the complaint (*2006 Annual Report*, p. 242) without initially confirming such an instance of discrimination. Following a communication with the Department of Personnel of the Athens Trolley Company and after a thorough study of the relative legislation, it was found that, on the basis of relative ministerial decisions, employees –men and women– working an evening shift are not entitled to such a time off as they can visit the school in non working hours. However, the issue is to be further investigated in the near future as this right has been recently established for part-time employees (case 18643/2006).

Female teacher dispatched abroad – Special Bonus

A female teacher dispatched to a school abroad filed a complaint with the GO complaining that the bonus accorded to teachers dispatched abroad has been deducted from her salary because she was not in the country where she had been appointed during the time of her pregnancy and maternity leave. According to the Joint Ministerial Decision 2/24595/0022/28.3.2000, paragraph 3, case d, "in case of teachers dispatched to schools abroad who have spent the pregnancy, childbed and maternity leave in the country of their appointment, payment of the special bonus is not justified during the official school vacation insofar as it is not spent in the country of appointment". While investigating the case the GO addressed all competent authorities, namely the Ministry of Education and the General Accounting Office and noted that this regulation constitutes indirect discrimination on account of sex and contravenes Article 5 of Law 3488/2006 against discrimination on account of sex with respect to the terms and conditions of employment as well as to the rights of working pregnant women but also to the rights of working parents who make use of parental leave. The competent Directorate of the Ministry of Education has acceded to the opinion of the GO expressing its intention to immediately promote a draft Joint

Ministerial Decision that would amend the relevant clause thus allowing the payment of the bonus in the aforementioned cases. Updating on the case is awaited (case 9642/2007).

Municipal employee – Travel allowance during pregnancy, childbed and maternity leave

An employee of the Municipality of Drama filed a complaint with the GO complaining that during her maternity leave there has been a deduction of her travel expenses during her pregnancy, childbed and maternity leave. Following a thorough study of the relative legislation and the evidence contained in the case file, it has been concluded that this administrative act constitutes an indirect discrimination on account of sex, since it violates Law 3488/2006 on maternity protection. The GO intends to address the competent Department in the near future in order to convey its remarks (case 16615/2007).

Fixed-term employee – Duration of previous employment, duration of pregnancy and childbed leave

A veterinary doctor was employed under a fixed term contract at the Ministry of Rural Development. During this contract the employee got pregnant and left at the time provided for by the law. Upon her leaving she was given a certificate of previous employment in which it was stipulated that the maternity leave has not been paid. As a result, by the time she was hired by the Prefecture of Athens, her time absence did not count as previous employment time on the ground that the duration of an unpaid leave cannot be treated as time of previous employment.

Following the GO's recommendations, the complainant asked the service involved to retract the term "unpaid leave" since, according to Article 5, paragraph 2 of Law 3488/2006, no discrimination on account of family status or application of criteria that lead to direct or indirect discrimination is permitted. Moreover, according to the Ministry of Labour, pregnancy leave does not interrupt the employment relation but is taken to count as real employment time. The department of the Ministry of Rural Development accepted this claim and issued a new certificate of previous employment wherein this period is mentioned as "pregnancy and maternity leave".

The Prefecture of Athens, following the positive response of the General Accounting Office to a question of the former, accorded to the complainant a year of previous employment and approved her inclusion in the respective salary rank. Furthermore, it recognized her right to a previous employment allowance to be effective retrospectively from the date the application was originally submitted. The complainant submitted also an application to the Social Security Foundation (SSF-IKA) for retrospective payment of the pregnancy and maternity allowance but the response of SSF is still pending (case 642/2007).

2.6.4 APPLYING THE MEASURE OF REASONABLE ADJUSTMENT

A female employee addressed herself to the Ministry of Labour and Social Protection complaining that she was not given the opportunity of availing herself of the reduced working schedule for child rearing that she was entitled to. The complaint was forwarded to the competent Social Inspectorate of Thiva and to the GO office. Given that the complainant's working place was far away from her residence, she and some other colleagues have been using a company car leased for commuting at commonly scheduled hours. Hence, the only way the complainant was able to make use of a reduced working schedule which her em-

ployer was obliged to agree upon was to stop using this company car and commute by herself. Nonetheless such an option was hardly affordable and consequently she was looking for another alternative solution. A three parties meeting took place between the employee, the head of the Social Inspectorate of Thiva and the GO. It was decided to make the following suggestion to the employer: the daily time off work to which the employee was entitled–a right she was not in a position to exercise– should be summed so that she could gain a daily leave every time she collected the amount of working hours due. Given the particular circumstances this suggestion was considered to be the best practical measure of reasonable adjustment. The accruing burden on the employer was considered at first as manageable given the number of employees performing similar duties to those of the complainant. Labor inspectors of the aforementioned department carried out an inspection at the company, followed by the abovementioned suggestion to the employer. The employer accepted this suggestion and was committed in writing to grant a daily leave per week to the complainant. This obligation has been fulfilled ever since. The positive outcome of this case is to be attributed to the constructive cooperation of the Labour Inspectorate of Thiva and the GO. Furthermore the employer's acceptance of the suggestion was also of crucial importance (case 7827/2007).

2.6.5 SEXUAL HARASSMENT

The GO in cooperation with the Labour Inspectorate investigated in 2007 two new complaints for sexual harassment (cases 14546/2007, 16814/2007). In the meanwhile the investigation of a complaint filed the previous year (case 17357/2006) has been concluded. It is worth noting –although no safe conclusions are yet to be drawn– that the aforementioned complaints about sexual harassment were presented to the competent Inspectorate as of minor importance since the complainants have focused on other work problems. More specifically, female employees had claimed violation of labour law and hence the allegations of sexual harassment have been mentioned only in passing while the inspectors were already investigating the conditions of labour law violation. In two of the aforementioned cases, no sufficient evidence was brought forward to support the allegations (cases 17357/2006, 14546/2007), and consequently the complaints were dismissed and placed in the GO archive. Only one complaint is still under investigation (case 16814/2007).

There has also been a complaint filed by a fixed-term employee at the 19th Ephorate of Ancient Monuments of Komotini claiming that she has been a victim of sexual harassment by one of her colleagues who was sentenced to imprisonment for that cause. The complainant sought recourse to the Social Inspectorate of Rodopi, situated in the city of Komotini, as well as to the GO, claiming that the Ephorate involved had not followed the formal disciplinary procedure. The Ephorate, responding to the GO's accusations, reported that after the complaint had been filed and in virtue of a the relative written order by the Ministry of Culture, a preliminary investigation took place according to Article 125 of Law 3528/2007, on the "Ratification of the Public Employee Status Code". According to the clarifications offered by the head of the Ephorate, there has been no confirmation of the alleged harassment during the preliminary investigation as there were no witnesses to verify the incident apart from the opposing arguments of the two parties. However, it was noticed that the accused public servant has been displaying an inordinate degree of intimacy marked by jests and jocular remarks that constitute inappropriate workplace behaviour amounting to a disciplinary offense. It is for this reason that according to Articles 109, 116, 117, 118 and 140 of

Law 3528/2007, a written reprimand was issued to the accused employee. However, this decision seems not to have taken into account a previous conviction of the same person. The GO asked in writing for additional information on the preliminary investigation that had been conducted. The response of the competent Ephorate is pending (case 16371/2007).

3. Making the best possible use of the GO's institutional capacities for the implementation and promotion of the principle of equal treatment

3.1 Coordinated strategic initiative for the Roma settlements

In virtue of its role as a National Body for the promotion of equal treatment the GO dedicates an important part of its activities to the settlement and housing of Roma communities considering this issue the source of various problems of social exclusion faced by these people (see *2005 Annual Report*, pp. 202-203 and *2006 Annual Report*, pp. 243-248). Specific attention is attached to the factors of structural exclusion over a large period of time, such as, par excellence, education, municipal enrolment and infrastructure for public utility services. In 2007, apart from investigating the relevant complaints, the GO continued its strategic plan on these issues by initiating investigations and inspecting the settlements across the country. Groups of GO investigators visited a number of settlements, especially in the area of Votanikos (in Eleonas, Municipality of Athens and Municipality of Egaleo), in the area of the Municipality of Patras and in the region of Thrace. The specific local problems recorded during these visits and the particular action plans undertaken by the GO for each case are presented below.

a. Roma settlement in the area of Votanikos

Since 2006 the GO has been examining the specific aspects of the Roma settlement problem in the area of Votanikos as these have come to light during investigations of the relevant complaints. More specifically:

Living conditions – Relocation

While investigating a complaint related to the living conditions of Roma people in the area of Votanikos (*2006 Annual Report*, p. 231), the GO launched in 2007 a series of initiatives aimed at motivating and coordinating the competent authorities so as to ensure appropriate living conditions for this vulnerable population group and at the same time to prevent their forced removal from this occupied land without the guarantees provided for by the Constitution and relevant legislation. In particular, the GO asked the General Directorate for Development Programmes of the Ministry of Interior to undertake the role of coordinator within the framework of the "Integrated Action Plan for the social inclusion of Greek Roma", so that the competent authorities can take specific measures to improve the living conditions of this vulnerable population group. A worrying incident was the unexpected removal of Roma families from a land property in the area of Votanikos (on Aghiou Polykarpou street), which seems to have been carried out at the expense of a third party businessman. Following this event, the GO stressed the compelling need to find a long term solution for the housing issue of Roma people of this area remarking that a possible "purchase" of their relocation tolerated by the municipal authorities or by means of initiatives of other parties acting on the Municipality's behalf constitutes violation of the Municipality's duty to take all necessary measures for the relocation of this population group since in such a way the existing problem would merely be postponed.

The GO suggested that the committee provided for in the Joint Ministerial Decision GP/2 3641/2003, article 2 be immediately established on the initiative of the General Secretary of the Region of Attica so as to track down the appropriate location and the relocation process for the wandering Roma group. Following the establishment of this committee, the GO asked for expediency and requested from the Municipality of Athens an immediate report on this issue. Furthermore the GO requested the intervention of the Minister of Interior so that a viable solution is found regarding the delimitation of the relocation area of the Roma population groups living in Attica (case 13986/2006). Nevertheless, public authorities and the Municipality of Athens in particular are still displaying unjustified inertness or indolence.

Relocation – Violations of third party rights

A private company filed a complaint opposing to the occupation of a property by a Roma group in the Municipality of Egaleo and asked for their removal. This case is a typical example of the repercussions resulting from attempts to force Roma out of their settlement areas without previous state action in order to find appropriate spaces for their relocation. Regarding this incident it seems that Roma people had occupied this private property after having been removed from Aghiou Polykarpou street in the area of Votanikos (see case right above). In this case, the GO explained in writing to the representatives of the private company that, due to their special social characteristics, the Roma people need special state care and protection and that the private company could address the competent state services with the request to expedite the search for an appropriate relocation site for the Roma group. In addition, the GO noted that, due to the special social characteristics of the vulnerable social group of Roma, there are certain restrictions in executing court decisions for their removal from the specific property, until the competent authorities identify an appropriate place for their relocation. Apparently, due to the damage resulting from the restriction of the free use of their property, the private company is entitled to seek compensation from the competent authorities (case12036/2007).

Protection of public health – Environmental implications

The GO investigated a complaint filed by a citizen of the Municipality of Taurus regarding the environmental and public health impact of burning cable cords and waste accumulation in the Roma settlement on 115, Orfeos street in the area of Votanikos. The GO, once again, emphasized to the competent authorities the need to find an appropriate municipal or expropriated site for the immediate relocation of Roma people. Also, for as long as they remain in this settlement, the GO suggested that specific measures be taken for protecting the health of both Roma settlers and their neighbours such as the regular collection of garbage, placing litter bins nearby and installing chemical lavatories within the settlement. Also, the GO asked the Directorate for Health of the Prefecture of Athens to inspect the implementation of these measures by the Municipality. In addition, it was suggested that special groups be formed in cooperation with the municipality and the Directorate for Health of the Prefecture of Athens to inform Roma people on public health protection and the harmful impact of burning cable cords. Finally, on the occasion of the recent decision of the Municipality of Tavros to close down the scrap metal businesses operating illegally within its administrative boundaries the GO noted that the issue of Roma settlements in the area of Votanikos is linked with the operation of such businesses (trade of scrap iron and old metal) and asked the competent services of the Prefecture of Athens to assist the Municipali-

ty of Taurus in this initiative. Furthermore, the GO called the Municipality of Athens to proceed to a legality test for relevant businesses operating within its administrative boundaries (case 12136/2007).

b. Living conditions of Roma people in settlements in Thrace

On the occasion of a number of relevant complaints a GO unit carried out an on site investigation on 26-29 June in four settlements in Thrace, including the settlement on Avantos street in Alexandroupoli, and the Drosero settlement in Xanthi.

Living conditions in a Roma settlement in Alexandroupoli

The GO received a complaint from inhabitants of Alexandroupoli regarding the delay in the inclusion of the settlement camp on Avantos street in the city's urban plan. This delay caused various other problems related to the settlement's infrastructure and the operation of regular and nursery schools as well as the health and social services centre of the settlement.

The GO contacted the local authorities and gathered information on the time schedule for the settlement's inclusion in the city's urban plan and the implementation of the respective urban planning study. Moreover, it received an update on the overall approach to the issue of educating the children living in the settlement as well as on ways of optimizing the operation of the social and health services centre. The GO is closely monitoring the progress of integrating the settlement in the social network (case 6174/2007).

Living conditions in the Drossero Roma settlement in Xanthi

The Drossero Women's Association filed a complaint with the GO commenting on the lack of infrastructure (e.g. water supply, sewage, drainage, asphalt paving), the ownership status of the Roma settlement as well as on the operation of regular and nursery schools and the social and health services centre in the area.

The GO contacted the competent services of the Municipality of Xanthi and during an on site investigation found out that the difficulty in solving the aforementioned problems is linked to the fact that Drossero is not a recognized settlement but consists of illegal constructions. Nonetheless, the Municipality of Xanthi has allegedly carried out a series of works and has submitted a proposal for the inclusion of this area in the General Urban Plan and the recognition of the settlement. The GO has suggested alternative ways in order to expedite the process of including the area in the General Urban Plan, to promote the construction of schools as well as to ensure the proper operation of nursery schools and the health centre as a link between the settlement and the wider social context. The GO is keeping track of the developments in this case (case 4639/2007).

iii. Living conditions of Roma population in the area of Aspropyrgos – Housing rehabilitation – Social inclusion

Since the beginning of its operation the GO has intervened in many ways in order to seek solutions for the improvement of the living conditions for the Roma population in the area of Aspropyros (including the areas of Nea Zoi, Psari, Neoktista Aspropygou, etc.) given the amplitude of complaints among which many have been received from a) property owners whose properties have been trespassed or exposed to the negative consequences of their neighbouring with the Sinti settlements, b) Sinti complaining about their living conditions,

c) Associations of Sinti or non Sinti citizens who aim at improving the living conditions of all inhabitants and the protection of the environment, d) the Municipality of Aspropyrgos, e) Non-Governmental Organizations and f) human rights international organizations. During the course of its investigations the GO has carried out on site inspections in the area and has issued a relevant fact-finding report calling for the public prosecutor's intervention. In addition, the GO has attended a meeting of the municipal council of Aspropyrgos and has supported all positive efforts aiming at improving the living conditions of the settlement inhabitants, establishing peace among the various social groups and providing education to Roma children without, however, having any remarkable results. The GO, understanding the importance and complexity of the housing rehabilitation and social inclusion of Roma population in the area has suggested to the competent services that the most appropriate solution is to launch a long term comprehensive project with a detailed intervention plan which, as the GO remarks, has been impermissibly delayed. In early 2008 the GO shall inform the authorities involved on the content of these specific actions. This project should be implemented along with provisional measures for improving their living conditions such as garbage collection, water and electricity supply in combination with transitional inclusion programmes such as vocational training, relocation incentives (cases 15891/2007, 16048/2006, 14062/2006, 1919/2006, 13301/2001, 14902/2001, 13399/2001, 11128/2000).

d. Living conditions of Roma in Apolpena on the island of Lefkada - Neighbours' reactions
In Apolpena on the island of Lefkada, citizens had reacted because of the unwholesome conditions in a Sinti property. Following the citizens' recourse to the GO (*2006 Annual Report*, pp. 231–232) the Urban Planning Directorate of the Prefecture of Lefkada acceded to the suggestions put forth by the GO for the reduction of the extremely high fines imposed for illegal constructions. In addition, the aforementioned Directorate, following the GO's suggestions, asked in writing the technical service of the Municipality of Lefkada to submit a study for the issuance of a construction permit for prefabricated or permanent constructions noting that it aims at assisting the Roma group even by violating the General Building Code under the provision of the Joint Ministerial Decision GP/23641/3.7.2003 on organized settlements. Moreover, the Health and Welfare Directorate of the Prefecture of Lefkada carried out an on site inspection in the area and observed that Roma people had already implemented some of its suggestions regarding the construction of lavatories and that they had agreed to a relocation to an appropriate site undertaken by the Municipality as the GO had suggested. As to this last issue, the GO is still in contact with the Municipality of Lefkada so that the local authority takes the necessary positive measures (Law 3463/2006, Article 75 on "Municipalities and Communities Code") for the full integration of the Roma people in the social network (e.g. inclusion in a subsidized loan programme for the housing rehabilitation of the Roma population). In this case, the municipality has informed the GO on the placement of litter bins the number of which is considered insufficient by the GO. Finally, the municipal authority is allegedly looking for a location for the permanent settlement of Roma. The GO awaits information from the Municipality of Lefkada on the accomplishment of this objective (case 2864/2006).

e. Relocation of Roma people (Lefkada)
On the occasion of the GO's mediation caused by the reaction of inhabitants of the Apolpena settlement on Lefkada against the Roma settlement near a statutorily preserved Church, the competent services (22nd Ephorate of Byzantine Antiquities, the Municipality

of Lefkada, Health Directorate of the Prefecture of Lefkada) were informed on the need to take positive measures for the Roma housing and social rehabilitation (Directive 2000/43/EC, Law 3304/2005) and the protection of public health in the area without resorting to sanctions or coercive measures. Pursuant to the new Municipalities and Communities Code (Article 75, Law 3463/2006) the Municipality was also asked to support the members of this Roma group as homeless and impoverished citizens, to proceed with their municipal enrolment and assist them in improving their living conditions. It has been found that the 22nd Ephorate of Byzantine Antiquities responded positively to the GO's suggestions by revoking its original request for removing the Roma group from the area of the church and asking the Prefecture and Municipality services to provide assistance and undertake the reconstruction of their lodgings to light ground floor constructions with sanitary facilities.

Moving towards this direction, the Urban Planning Directorate addressed in writing the technical service of the Municipality ordering a study for the issuance of a construction permit for prefabricated or permanent constructions declaring its intention to assist the Roma group despite the violation of the General Building Code under the provision of the Joint Ministerial Decision ΓΠ/23641/3.7.2003 on organized settlement of wandering populations. The cooperation between the GO and the Health Directorate of the Prefecture of Lefkada has been fruitful. The Health Directorate carried out successive on site investigations and informed the Roma people on the necessity of personal hygiene encouraging them to build a lavatory. Indeed, this Directorate found out that they built a lavatory and a cesspool. Still, though, keeping the surrounding area clean remains an issue. An on site investigation in Apolpena carried out by the Health Directorate of the Prefecture of Lefkada was attended by representatives of the Municipality. A special crew employed by the latter was assigned with the terrain arrangement in the Roma settlement area. Following a request of the 22nd Ephorate and the Health Directorate litter bins were placed across this area despite the fact that there are still few of them. The GO has sent a written memorandum to the Municipality calling for the implementation of the aforementioned provisions of the EC Directive 2000/43 as well as of the provisions of the Municipalities and Communities Code. Moreover, it requested the enrollment of all group members in the municipal registry and further initiatives so that their lodgings are reconstructed according to the conditions put forth by the 22nd Ephorate. Since then the GO awaits information from the Municipality. Ever since, the GO awaits an update from the Municipality. The rehabilitation of this specific group remains an acute problem. The GO was informed by the 22nd Ephorate that a fire broke out in the Roma settlement area. The case is pending as further steps are expected to be taken by the competent services (case 13770/2006).

f. Unwholesome living conditions for Roma population in the Municipality of Lechena – Neighbours' reactions

The GO investigated a complaint regarding the threat posed to public health and the neighbours' security due to the garbage accumulation in an apartment block inhabited by Albanian Roma. The Roma in question live in squalor in large groups without the necessary facilities (lavatories, drainage etc.); this results in a significant deterioration of their own and their neighbours' quality of life. Residents of the area have repeatedly addressed the Municipality of Lechena and the Prefecture of Ilia so as to receive information on the relevant actions of all competent services, without, however, receiving any response.

The GO addressed the Municipality of Lechena, the Prefecture of Ilia and the local police

authorities stressing the need for intervention of all parties involved so that a viable solution can be found for the proper housing of Roma without compromising public health.

The Municipality of Lechena informed in writing the GO on the measures it had taken from time to time as well as on the initiatives of the Prefecture of Ilia which, nevertheless, did not have the expected outcome due to the fact that the building was owned by a private party. The Ilia Police Directorate informed the GO that the *Misdemeanours Prosecutor* of Amaliada has already prepared a criminal brief that the service is being kept updated on the issue and that it will enforce the law against offenders. The GO suggested a series of measures so as to immediately avert any threat to public health, such as the construction of chemical toilets, due to the provisional plan of the settlement. In addition, the GO noted that imposing sanctions on Roma people without making steps for safeguarding public health could not be a plausible solution the problem. The case is pending (case 9760/2007).

g. Demolition of Roma dwellings in the city of Patras – Evictions – Housing rehabilitation

The GO has been following the developments regarding the initiatives taken by the local authorities to solve the problems stemming from the Roma settlements in the areas of Makriyanni and Righanokambos in the Municipality of Patras (see *2006 Annual Report*, pp. 230-231). The GO visited again the city of Patras requesting an update from the competent authorities (Municipality of Patras and Region of Western Greece) on the relocation of Roma living in this settlement and the housing rehabilitation of Roma residing in Patras as well as of wandering groups. During this visit, the GO noted an at least partial failure of the accommodation subsidy program for the families of confirmed residents of Patras since at least half of them have been evicted for different reasons –that had not been dealt with in time by the Municipality– from the lodgings that had been rented for this purpose and returned to the old "non operating" settlement. Some of these families, however, are eligible for a housing loan. Despite the repeated recommendations of the GO, no action has been taken by local authorities to locate the population groups that may have been indirectly forced to move out (that is, by pulling down their lodgings unbeknowst to them). This measure is necessary so that it can be confirmed whether they are permanent residents of the area thus being eligible for state support. It is estimated that people belonging to this group may have gathered in the so called industrial area. The Western Peloponisos Region seems to share the view of GO regarding the urgent need to provide social support to the Roma people who despite their being unregistered residents of the Municipality having been living for a long time in the area. Moreover, there has been a common understanding regarding the need to create a permanent suitable facility where seasonal workers could seek short term accommodation. However, despite its positive stance, the Region avoids taking any further steps despite its being obliged to do so given the circumstances – especially the inertness displayed by the Municipality (cases 2532/2005, 2880/2005, 9555/2006).

h. Roma settlement in the protected wetland of the lagoon of Messolonghi

Since 2000 the GO has been investigating a number of complaints referring to the environmental impact and the catastrophic interventions in the wetland of the Messolonghi lagoon which has been accorded protection status zone A of the Ramsar Convention on Wetlands. The GO has confirmed numerous illegal backfills. In one of these areas container type lodgings have been installed for the accommodation of Roma people without offering suitable living conditions thus increasing the risk for public health. The GO has sent an important

number of documents to the services involved and has carried out three meetings and on site investigations in the area. Its purpose is threefold including a) the immediate relocation of the Roma group, b) the protection of the health of the Roma population for as long as they keep on living in this settlement until their final relocation, and c) the immediate materialization of all necessary projects to eliminate the detrimental impact on the lagoon and the protection of the environment in this sensitive area. Within this framework, the GO asked all services involved to provide a specific time schedule for the application of the suggested final solution for the relocation of Roma, to warrant the conditions of a decent relocation of Roma from the area –even if this means their temporary accommodation in hotels, for instance– and to restore the environmental damage by immediately removing all backfill materials.

The Western Greece Region informed in writing the GO that it has asked for funding for demolitions in Tourlida, Messolonghi. Recently, the Municipality of Messolonghi informed the GO that it is searching for a relocation site and is taking measures to protect public health. As regards the rest of the public services involved no substantial response has been offered to the GO's comments. Because of the importance of these issues and the particular delay in their solution, it is expected that all public services involved will contribute effectively and further their cooperation with the GO (cases 14116/2000, 14178/2000, 8332/2001, 11158/2006).

i. Living conditions of Roma people in the city of Agninio – Compensation for expropriation of a land property occupied by Roma

Residents in the area of Voidolivano in Agrinio conveyed to the GO their complaints about the public health risk posed by the living standards in the Roma settlement. Furthermore complaints have been made about the long delayed compensation payment for the expropriation of a land property occupied by Roma families.

As to the protection of public health, the GO was informed that an on site examination had been carried out in the area by the competent prefectural medical officer who confirmed lack of proper sanitary conditions and asked the Municipality of Agrinio to provide information on its actions in relation to a) the materialization of the existing relocation plan for Roma, b) the immediate improvement of living conditions in the area of their provisional relocation, and c) the safeguarding of social peace between Roma and other residents of the area. As to the payment of compensation, no response has been received despite the fact that the GO has asked the state to provide official information on the matter (cases 8410/2006, 1970/2007).

j. Relocation of Roma people in Teghea

A local cultural association and Roma citizens who have applied for housing loans addressed the GO who was informed in writing by the Development Programmes Department of the General Directorate of Development Programmes of the Ministry of Interior that this Ministry has approved the purchase of a land property in the area of Arseneika for the relocation of Roma living in the area of Tourkodendri Tziva. Moreover, the Ministry issued a decision to finance the Municipality of Tripoli for the purchase of the aforementioned piece of land. The GO has asked the Municipality of Tripoli to provide information on the living conditions of Roma people and the progress of the relocation project for the Roma population of this area (cases 17561/2005, 12372/2005, 13625/2005).

k. Living conditions of Roma people in the prefecture of Argolida – Relocation

On the occasion of a complaint filed with the GO by residents of the Municipality of Ermioni, requesting the removal of Sinti from this area, the GO addressed in writing the parties involved as well as the Mayor of Ermioni. A GO group visited the Roma settlements in the wider region of Argolida and confirmed the squalid living conditions in the majority of cases. The GO noted to the Mayor of Ermioni that certain actions should be taken including the relocation of the Roma population living in the area of Midea. The issue of imposing fines on Roma for constructions on self-owned land properties was also raised. In addition, due to the police operations in the area of Midea and Nea Tiryntha, that have been brought to light by the local press, the GO noted in writing to the Police Director of the Region that the peculiarity of these cases "not only does it not provide a reason for loosening but rather it accentuates the obligation to fulfill all guarantees provided for by the law that limit the exercise of measures of coercion or of restriction of civil liberties such as checks, investigations, apprehensions, and other usual police actions or procedures of preliminary interrogation. It has been advised that special care be given for investigations inside the shacks that, in virtue of their being used as lodgings, enjoy special protection by the Constitution. The GO is following the developments on this issue (case 13625/2005).

l. Relocation of Roma people in the area of Kalamata

During the investigation of this case the GO dealt with the encroachment on private property by Roma people and their relocation to the area of Kalamata. The GO carried out an on site investigation in the Industrial Area and the area of Aghia Triada. As to the Roma relocation, the GO was informed on the materialization of the relocation project in the area of Birbita in the Municipality of Kalamata. The GO has been watching closely over the relocation project (case 19775/2005).

m. Living conditions of Roma – access to goods and services available to the public

The GO carried out an on site investigation in the Roma settlement in Aghia Sophia at the outskirts of the Municipality of Echedoros, in Thessaloniki, where serious infrastructure problems were noticed causing pollution sources that put public health at risk. Following the intervention of GO the drainage system of the settlement has been improved.

In addition, the GO has dealt with the implementation by the Organization of Urban Transportation of Thessaloniki (OASTH) of a decision of the Thessaloniki Urban Transport Authority (SASTH), according to which a bus itinerary ceased to pass by the Roma settlement of Aghia Sophia and the terminal station was relocated outside the settlement. This bus line was the only mass transport service linking the settlement with the residential network of the city. The NGO that filed the complaint with the GO had repeatedly reported this fact to the SASTH requesting that the bus line pass again through the settlement so as to be reachable by its inhabitants. SASTH refused to change the new itinerary invoking safety reasons without supporting the allegations about serious acts of vandalism and threats against passengers and OASTH personnel.

The GO addressed SASTH in writing, stressing that it is a constitutional right of all people living in the area to use the means of mass transportation and that there is a possibility of thus violating the provisions of Article 3, Law 3304/2005. SASTH, in its written reply, emphasized its sensitivity towards vulnerable social groups and repeated the allegation that

this decision was taken for reasons of personnel and passengers safety taking into consideration the compelling requests made by the OASTH workers union. Finally it agreed to make efforts so as to find a suitable solution for the people living in the settlement.

Recently, the GO was informed by the chairman of SASTH that an official meeting had taken place in which neither representatives of the Roma settlement nor the GO had been invited to participate. During this meeting it was decided to improve the new terminal which is outside the settlement as well as the planning of measures that SASTH will propose to the Municipality of Echedoros aiming at securing the access of the people living in the settlement to the aforementioned terminal. The case is still pending (case 14021/2007).

n. Enrollment of Roma people in the municipal registry

A Roma citizen filed a complaint with the GO because he could not get enrolled in the registry of the municipality where he was residing thus being unable to have an identity card issued. His enrollment in the municipal registry was impossible because he was not in a position to present a birth certificate since such a document had never been issued. Moreover, his financial situation did not allow him to seek for legal assistance so as to achieve the issuance of this certificate by means of an *ex parte* procedure. The GO suggested that the procedure stipulated in Law 3226/2004 on the provision of legal aid to low income citizens be applied in order to solve the problem. Nevertheless, this procedure does not seem to be effective in similar cases regarding the enrollment of Roma people in municipal registries due to the malfunction of the charge-free legal aid system in Greece as well as due to the estimated size of the Roma population facing such a problem. It does not seem to be possible to solve this issue without the regulatory intervention of the competent Ministry of Interior towards the establishment of a special enrollment procedure reliable enough so as to prevent abuse incidents (case 433/2007).

All the abovementioned cases bear witness to the national dimensions of the Roma issue as well as to the compelling need to immediately implement multiple targeted programmes of rehabilitation and social support at a local and regional level. Such actions will prove successful only as long as they are mutually combined, coordinated and monitored by a national coordination centre. Given the shared responsibility of many ministries (primarily the Ministries of Interior, Environment, Health and Social Solidarity) and the practical inertness of the relevant interministerial committee on Roma issues, it seems necessary to institute a special public body (a special secretariat or an independent institution, for instance) to undertake planning implementation at a national level, and above all, the necessary coordination of regional state services and Local Government Organizations within a context of clear and targeted local partnerships indicatively aiming at

1. Creating conditions for permanent accommodation of Roma people in combination with altering the legal status of ownership and promoting the implementation of street plans;
2. Attaining a regulation so that Roma settlements are connected with the water and electricity supply and drainage networks as soon as the framework stipulated in Law 3304/2005 on positive action has been precisified;
3. Providing infrastructure in settlements for wandering population groups;
4. Securing access for all Roma minors to education;
5. Continuously providing health care services as well as the relevant information on disease prevention and public health dangers;

6. Averting illegal and detrimental income-earning activities by offering alternative ways of securing sustenance,
7. Guaranteeing that before any violent eviction or removal by other means of Roma people from their settlements a specific relocation destination has been suggested with the appropriate infrastructure ensuring a decent living.

These specific guidelines were emphatically pinpointed by the GO with respect to the case of the Roma people living in the Votanikos area by means of a document addressed to the Minister of Interior (ref.number 2552/23.10.2007) noting also that the developments on the matter of Roma settlements in the area have taken a precipitous turn thus causing a deterioration of the living conditions of Sinti living in tents as well as of their neighbouring residents in the Municipality of Tavros.

The GO shares the aforementioned suggestions with the National Commission for Human Rights within the framework of a special group aiming at the cooperation between public authorities and those agencies that have undertaken the responsibility for tackling with the problems and protecting the rights of Roma people and the representatives of the Roma organizations.

Actions taken by GO in 2007 include the planning and activation of an open pilot communication network with NGOs and other civil society institutions for the protection of Roma people. One of the main goals was to disseminate and draw information on vital problems faced by these population groups as well as to coordinate the activities undertaken by the participating agencies that are active in the field of protecting the rights and offering social support to Roma living in Greece. In addition, within the framework of the EUNOMIA project the GO organized in cooperation with the Council of Europe a European workshop in Nafplion (7-8 December 2007). The members of the aforementioned network took part in this workshop and focused on the regulatory and legislative developments in Europe with respect to Roma populations. The issues of education and accommodation as well as the issues pertaining to the contact of Roma people with public services were particularly emphasized.

3.2 ACTIONS FOR RAISING PUBLIC AWARENESS, TRAINING AND IMPROVEMENT OF KNOW-HOW

3.2.1 GO STAFF TRAINING AND EDUCATIONAL SERVICES

In 2007 the GO carried on the intensive cooperation and exchange of know-how with other institutions in Greece and abroad that are engaged in implementing and promoting the principle of equal treatment. At the same time availing itself of the knowledge and experience so far acquired the GO participated in a series of training seminars aiming at informing and raising awareness on how to combat discrimination at the workplace.
More specifically, the GO participated in:
• In a one-day seminar entitled “The application of the principle of equal treatment in the workplace and occupation” organized by the Directorate for Social Protection of the Ministry of Employment within the framework of the EU “Action Programme Against Discrimination (2001-2006”) in Thessaloniki.
• In a conference on the “Fifty years of gender equality” organized by the European Commission in Brussels.

• In a conference entitled «Age discrimination in European Law» organized by the European Women Lawyers Association in Zurich.
• In a conference on discrimination organized by the Academy of European Law in Luxembourg.
• In a seminar on the "Application of EC Directives against discrimination" organized by the Hellenic Union for Human Rights at the Aristotle University of Thessaloniki.
• In the 6th National Round Table on "Discrimination problems pertaining to the labour market and the access to health care and social welfare" organized by the NGO 'Antigone' at the General Confederation of Greek Workers (GCGW-GSSE).
• In a plenary meeting of the Economic and Social Committee of Greece on the "Implementation of the principle of equal treatment regardless of national or ethnic origin, religion or other beliefs, disability, age or sexual orientation".
• In two one-day seminars on a) the "Exclusion of Roma in Greece and Inclusion Perspectives" and b) "Access by citizens of Sinta origin to the labour market and the Social Security system" organized by the NGO "Oikokoinonia" in Thessaloniki.
• In a seminar on "Anti-discrimination legislation and e-learning" organized by the IOL-Finnish League for Human Rights in Helnsinki.
• In a one-day seminar on "Equal participation of Greek Sinti in employment and society. Stereotypes-Prejudice-Attitudes" organized by the Prefecture of Athens in Athens, Greece.
• In a conference on "Combating discrimination and promoting mutual respect and understanding" organized by the Organisation for Security and Cooperation in Europe (OSCE) in Bucharest.
• In a conference on "Equal opportunities for all-multiple discrimination matters" organized by the European Commission and the Danish Institute for Human Rights in Elsinore, Denmark.
• In a seminar on the "Application of the EC Directive 2000/43" organized by the European Commission in Brussels.

3.2.2 PARTICIPATION IN NATIONAL AND INTERNATIONAL NETWORKS FOR COMBATING DISCRIMINATION

This has been the third year that the GO has been participating actively in the European network Equinet which brings together and coordinates designated Equality Bodies in applying EC Directives against discrimination in the EU member and accession states. More specifically, the GO participates in the second round table of the network that deals with information exchange on the means and strategies applied by Equality Bodies for the effective and comprehensive competence exercise apart from grappling with individual cases. Furthermore, in 2007 the GO undertook a similar role in the third round table group of the network that deals with interpretive questions arising within the context of applying the legislation in force to individual cases of equal treatment violations and aims at filling legal lacunae in the most effective way possible. Continuous exchange of information on cases and recommended investigative practices are sought for by means of electronically exchanged questionnaires and regular meetings.

Moreover, the GO participates in the National Working Group of the project "For Diversity. Against Discrimination" created in 2005 as an initiative taken by the Directorate-General for Employment, Social Affairs and Equal Opportunities of the European Commission. This program coordinates the actions taken by national agencies which have been assigned

with the monitoring and promotion of the principle of equal treatment as well as with the motivation of organizations representing groups vulnerable to discrimination to receive update on the developments that have taken place at a legislative level and on recommended implementation practices.

In 2007, the GO has also participated in:

• The annual meeting of the European network "Equinet" on discrimination that was hold in Amsterdam.

• In training seminars entitled "Equal legal training on solving equal treatment/non discrimination cases from a comparative law perspective: solutions from national and European law" and "Promoting equal treatment-training as a tool to promote equality" in Bucharest and Ghent respectively.

• In a conference on the "Promotion of the principle of equal treatment in Central Europe" hold in Bucharest.

4. Issues Arising from the Application of the New Legal Framework & Suggestions

After three years of applying the new legislation against discrimination and promoting the principle of equal treatment it is an opportune moment to make the following observations and suggestions aiming at facing institutional challenges and elucidating certain clauses of the regulatory framework:

• As the GO has already noted, the relatively small number of complaints filed with the GO is an indication of the unwillingness of individuals who have been discriminated against, especially in sensitive personal domains, to publicize the offense sustained. Moreover it is an indication of the mistrust of these people in the institutional mechanisms. In this case, what should be sought for is to cover the communication gap between the victims of differential treatment and the institutions which are competent for their protection. This gap is to be filled in by civil society groups. It is now imperative more than ever to undertake institutional initiatives for invigorating civil society participation, especially in the regional parts of the country, in order to promote the principle of equal treatment in fields other than raising awareness and public motivation. Hence it is necessary to fund specific and targeted activities of approach or/and reception as well as to provide social and legal support to the victims of discriminatory treatment. The GO in its effort to contribute to this movement has created a pilot communication and coordination network with regional civil society organizations working for the protection and assistance of the Roma people (see above, 3.1).

The new institutional framework assigns an active and important role to the Labour Inspectorate. The new evidential procedure stipulated in Article 17 of Law 3488/2006 clearly includes the Labour Inspectorate that is being called upon to re-examine its prior approach according to which no witness testimony or documentary materials were being accepted. It is therefore important to make the best possible use of the clause pertaining to the shift of burden of proof, provided that the evidence collected is deemed sufficient. However, should a contrary situation arise, that is, when the evidence available is not sufficient, the relevant legislation explicitly stipulates that the Labour Inspectorate should necessarily issue its opinion after investigating in detail all complaints received. However, Law 3488/2006 remains rather unclear with regard to the the practical application of this evidential procedure. Especially in cases of indirect discrimination and harassment, which

touch upon extremely sensitive issues, investigation is usually not only a complex but also a difficult task. Hence, as it has been noted in the communication between the GO and the Labour Inspectorate, relevant circular guidelines are indispensable so as labour inspectors can deal with the new tasks arising from the expansion of their field of professional activity. This opinion has been formulated in the *2006 Annual Report* (pp. 227 and 250). More specifically, it is necessary to clarify the way in which the new competence framework of the Labour Inspectorate is employed during on site investigations in the private sector as well as during conciliatory interventions at local Departments of Social Inspections primarily with respect to incidents of indirect discrimination and harassment.

All departments of the Greek Ombudsman have contributed to the preparation of the Ombudsman's annual report as a specialized body for the promotion of the principle of equal treatment.

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