

2009



Promoting Equal Treatment -
The Greek Ombudsman as National Equality Body



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Promoting Equal Treatment - The Greek Ombudsman as National Equality Body



1. INTRODUCTION

The present report aims at recording the Greek Ombudsman's activity, as a national body promoting the principle of equal treatment, for the fifth consecutive year, after the assignment of the relevant competence to the GO with regard to the public sector under the provisions of L.3304/2005.

- Although the total number of complaints filed in 2009 and which pertain to discrimination in the context of L.3304/2005, outnumber those of last year, they still fail to reflect the full extent of discriminatory practices in Greece. In fact, despite the relative increase in the number of complaints lodged, few finally fell within the protective scope of L.3304/2005. This can partly be explained by the persisting lack of information with regard to the GO's competencies, but more importantly,

indicate the inadequacy of the relevant existing legislation.

- The substantial increase in complaints lodged in 2009 concerning discrimination on the grounds of disability, is due, to a large extent, to the cooperation of the GO with the relevant organizations which are active in this field. It should be noted that a significant number of these complaints were referred to the GO by the National Confederation of Persons with Disability (ESAmA), illustrating the important role that such organizations can play in the dissemination of information concerning the GO's role and competencies. The GO will continue to seek cooperation with organizations which are active in fighting discrimination, in order to facilitate contact and establish a



relationship of trust between those affected by discriminatory practices and the institutional bodies responsible for promoting and upholding the principle of equal treatment.

- In the context of its mandate to promote the principle of equal treatment, in 2007 the GO set up a pilot communication and coordination network with regional civil society organizations which are active in the field of Roma protection and support, so as to overcome any obstacles in reaching this specific group. The GO aims to make use of this very positive experience by establishing similar networks for each ground of discrimination. These networks will hopefully lead to greater awareness of the role the GO can play in safeguarding equal treatment and also familiarize participating bodies and organizations with the existing institutional tools and legislation for combating discrimination.

- Setting up a communication and coordination network with civil society organizations active in the field of equal treatment, beyond the aforementioned benefits, may also contribute to the creation of a broader anti-discrimination culture, both with regard to the manner of exercising administrative action and the views of the wider public. The legislative level is the starting point of combating discrimination, yet combating discrimination is not limited to it. The law is a tool regulating social relations, safeguarding social peace and cohesion and restoring normality in these relations, even by means of repressive mechanisms. However, it cannot influence motives that engender behavior and views that breed racism. This particularly significant perspective constitutes a major concern of the GO, as a body promoting the principle of equal treatment, and systematically lays out in its interventions, the negative effects on citizens living close to groups discriminated against, eg groups with special racial or ethnic features (Roma, immigrants, refugees).

- Weaknesses in the regulatory scope of L.3304/2005 have been repeatedly pointed out in the GO's annual reports on discrimination. What is still causing great concern are the interpretative difficulties in specifying the notion of "provision of services", especially in those cases where a crucial act or omission, on the part of a public agency, falls within the scope of its authoritative rather than its public service jurisdiction and is therefore beyond the regulatory scope of L.3304/2005. This is very often the case in discrimination against people of Roma origin (see chapter 3). The aforementioned systematically attested weaknesses of the regulatory scope of L.3304/2005, often lead the GO to investigate discrimination complaints under its general mandate as a human rights institution and its specific mandate to promote the principle of equal treatment. The general competence of the GO, as laid out in L.3094/2003, often permits the Authority to intervene in discrimination areas in which L.3304/2005 is not applicable. The application of the GO's specific competence as a body promoting the principle of equal treatment together with its general competence as a body protecting individual rights, allows the extension of the protection finally provided to persons discriminated against; it also highlights the inextricable link between the principle of equality and the protection of human rights. An indicative case is a complaint concerning the curtailment of an erotic scene (a kiss between two men) in the official premiere of an opera in the National Opera House. The exclusion of the specific scene was attributed to homophobic censorship. The complaint in question could not be investigated in the context of L.3304/2005; however, it was possible to investigate it in the context of the GO's general competence (see in more detail, below 2.6.1).

- The GO pointed out in its first annual report as a national equality body (2005) the difficulties expected from the legislative choice of delegating

competencies for the protection of equal treatment to three separate bodies, two of which lack an independent character. In 2009 it was confirmed that the referral of complaints, due to competence, to the other two supervisory bodies (especially to the Equal Treatment Committee of the Ministry of Justice) does not appear to set in motion the legal mechanisms necessary for the

further investigation of cases (see below 2.4.1.8 και 2.4.1.9). These findings are systematically recorded in the Economic and Social Council's (ESC) annual reports and highlight the necessity for initiatives that will essentially activate the other two bodies entrusted with the protection of equal treatment. Otherwise, reassessing the legislative choice in question is rendered necessary.

¹ See http://www.oke.gr/opinion/op_183_07.pdf

2. PRESENTATION OF CASES

In 2009 the Greek Ombudsman investigated 54 cases indicating discriminatory treatment on grounds of race, nationality, religion or belief, disability, age, sexual orientation, as set out in L. 3304/2005.

If one excludes the cases that did not fall within the GO's competence (3), were unfounded (6), or their investigation was terminated due to the lack of sufficient information provided by the complainant (2), the rest are still under investigation, as the administration's final response is still pending. Especially in cases that concern the

housing of Roma (see chapter 3), due to the structural character of the relevant discrimination the GO has opted to keep these complaints open until the problem is definitely resolved. There was a positive outcome for the complainants in nine (9) of the cases that were investigated in 2009, whereas in one (1) case the Administration refused to act in compliance and in four (4) cases it was finally found that the administration acted in compliance with the law. The table below includes the cases investigated in 2009, classified according to the ground of discrimination:

COMPLAINTS FILED IN 2009 ON DISCRIMINATORY TREATMENT, ACCORDING TO THE GROUNDS OF DISCRIMINATION	Total No. of complaints on discrimination under L.3304/2005	Total No. of complaints (filed in 2009)	Discrimination in the workplace	Discrimination in vocational orientation, training, further training, internship	Non-compliance	Pending cases, recommendations, Authority suggestions
<i>Discrimination on grounds of ethnic origin</i>	2	2	1			1
<i>Discrimination on grounds of racial origin</i>	29	14				29
<i>Discrimination on grounds of disability – reasonable adjustment</i>	14	14	13	1		
<i>Discrimination on grounds of age</i>	7	4	5	2		
<i>Discrimination on grounds of sexual orientation</i>	2	2	1			1
<i>Discrimination on grounds of religious or other beliefs</i>						
<i>Total</i>	54	36	20	3		31

OUTCOME OF COMPLAINTS FILED ON DISCRIMINATION – 2009	Total No. of complaints on discrimination	Discrimination attested	Discrimination denied	Discrimination fell within the scope of application of L.3304/2005	Discrimination did not fall within the application scope of L.3304	Compliance, settlement	Non-compliance	Pending cases, recommendations, Authority suggestions
<i>Discrimination on grounds of ethnic origin</i>	2	1	1	1	1	1	1	
<i>Discrimination on grounds of racial origin</i>	29	29		6	23	1		27*
<i>Discrimination on grounds of disability – reasonable adjustment</i>	14	6	9	7	7	3		2
<i>Discrimination on grounds of age</i>	7	4	3	7		3	2	
<i>Discrimination on grounds of sexual orientation</i>	2		2	1	1			
<i>Discrimination on grounds of religious or other beliefs</i>								
<i>Total</i>	54	40	14	22	32	8	3	29

* Most of these cases reveal the structural character of ongoing discriminatory practices against citizens of Roma origin. These cases remain pending for long periods because the Greek Ombudsman has chosen to keep these cases open and intervene at such time as the housing problem of the Roma is finally resolved.

2.1. DISCRIMINATION ON GROUNDS OF ETHNIC ORIGIN


2.1.1. Employment

2.1.1.1 Rejection of the candidacy of a Pakistani origin lawyer in a competition for Military Justice Corps members

The application of a Greek lawyer for appointment in the Military Justice Corps, was rejected on the grounds that although “he has Greek nationality, his parents are not Greek by birth but Pakistani”; pursuant to article 14 § 3 of the Code of Military Justice Corps. (L. 2304/95): “an alien, who has acquired Greek citizenship, shall not be appointed as a member of the judiciary.” His appeal, in which he invoked L.3304/2005, was rejected by the Military Justice Directorate of the Ministry of National Defense on the grounds that “the provision of the Code of Military Justice Corps,

(KDSSED) is absolutely clear discrimination is still valid if it serves a legitimate purpose and the means employed are suitable and necessary in view of the nature, the special institutional mission and the objective of the Armed Forces the legislator can deem that the public interest necessitates that the profession of a military judge can be exercised only by Greek citizens who are Greek by birth”.

In its intervention, following the lawyer’s complaint, the GO pointed out that article 14 § 3 KDSSED puts the alien naturalized citizens at a disadvantage in comparison to the expatriate naturalized Greeks or Greeks by birth, on grounds pertaining to their ethnic origin. Thus, aliens who became Greek citizens through the process of naturalisation are unfavorably treated compared to those who acquired the Greek citizenship either by birth,



as children of a Greek man or woman, or were naturalized as expatriates. The direct discrimination in question cannot be objectively justified as a proportionate means of achieving a legitimate goal; the special nature of the armed forces permits the exclusion of aliens, however it does not justify discriminating among Greek citizens.

The administration cannot invoke the special nature of a specific profession without specifying the reasons and the rationale whereby some citizens are deemed to be incompatible with the nature or purpose of the job in question. Furthermore, it would be illegal to invoke a difference in the degree of certainty and intensity of patriotic feeling, honesty and moral commitment to the country, between Greek citizens whether they acquired citizenship by birth, as expatriates or aliens who became Greek citizens through the naturalisation process. Such a classification cannot conceivably be interjected as regards Greek nationals. Even if an alien acquired Greek citizenship by means of naturalization, the State has irrevocably decided on issues of their "ethos and personality" pursuant to article 7§3 of the Greek Citizenship Code.

In its answer to the GO, the Ministry insisted on its views, citing in addition article 70 § 1 of the Operational Regulation of the Hellenic Military Academy (royal decree 312/68), according to which " those entitled to participate in entrance exami-

nations ... Greeks by origin who are also Greek citizens". The Greek Ombudsman questions the validity of the aforementioned royal decree, not only in view of L.3304/2005, but also pursuant to article 1 §1 of L.1351/83 "the admission of students to the 1st year of Studies ...of Military Academies ... is governed by the provisions of this Law."

2.1.2. Provision of services

2.1.2.2 Rejection of an Albanian citizen's request to participate in driving license examinations for the illiterate

An Albanian citizen filed a complaint because the Transports Directorate of the region of Voiotia refused to accept his request to participate in the special driving license examinations for the illiterate. It became clear from the investigation that on the basis of the provisions in force (Ministerial Decision No. 58930/480/1999, as replaced by article 1 of Ministerial Decision 24391/2987/20090), the right to participate in the examinations in question applies only to Greek citizens. The GO concluded that the Transports Directorate of Voiotia acted in accordance with the law since the issuing of driving licences falls within the scope of the State's authoritative rather than its public service role and is therefore beyond the regulatory scope of L.3304/2005 (case 11008/2009).

The GO concluded its investigation of this case when the complainant sought judicial remedy (according L.3094/2003 the GO does not have jurisdiction over cases pending before the Courts). (case 4806/2009)

2.2. DISCRIMINATION ON GROUNDS OF RACIAL ORIGIN

2.2.1. Provision of services

2.2.1.1. Racial stereotyping by Police authorities

An NGO filed a complaint with the GO, forwarding the correspondence of the Organization with the General Patrolling Division of the Greek Police Headquarters which included a request for access to information on illegal activities of Roma people in the Ano Liosia area. The aforementioned request was triggered by a press report, available on the internet, according to which the Chief of the Ano Liosia Police Department, was alleged to have made reference at a public event to “highly frequent delinquency instances in Roma neighborhoods”. The General Patrolling Division of the Greek Police Headquarters, in response to the NGO’s complaint, initiated an internal investigation. The GO requested to be informed of the results of this investigation, as well as the evidence that would be examined, in order to reach its conclusions. The GO stressed the non-negotiable obligation of all public authorities to contribute actively and consistently in combating stereotypes that associate negative social features with a specific group of people and the importance of a clear distinction being drawn between the individuals that are involved in illegal activities and their racial origin (case 11269/2009).


2.2.1.2 Refusal to issue family status certificates to citizens of Roma origin

The GO received a complaint concerning the insurmountable problems that have arisen as a result of the refusal of local authorities to issue family status certificates to citizens of Roma origin, due to their failure to declare a first name for their children. In the context of this complaint, the GO carried out an on site visit to the area of the Sofades Municipality of the Karditsa Prefecture in March 2009 and had meetings with members of

the relevant local authorities and regional Roma organizations. During the on site visit, the problems concerning the enrollment of the Roma people in the municipal registry were discussed. It was pointed out that this issue arises from the fact that, in many cases, citizens of Roma origin lack birth certificates, often because their parents had not been issued with relevant documents. There were also incidents that concerned the refusal to issue family status certificates to citizens of Roma origin because a first name had not been declared. A further problem concerned persons who changed their place of residence and were enrolled in the municipal registry of other municipalities or communities. However, the major problem facing Roma who request to be enrolled in the municipal registry is that, although they may have actually resided in the area for more than ten years, they often lack evidence verifying their place of residence (e.g. public utility bills) due to the fact that most of them reside in makeshift arbitrary buildings. Consequently, their applications are rejected. The results of the investigation of this complaint were included in the Special Report of the GO on the Roma, a summary of which can be found in the third chapter of the present report (case 11299/2008).

2.2.1.3 Procedure for establishing Greek nationality and enrollment of Greek Roma in the municipal registry

Citizens of Roma origin requested the GO’s intervention so that the procedure of establishing their Greek nationality and their enrollment in the municipal registry could be achieved. The specific problem they pointed out pertained to the fact that it was impossible for them to carry out transactions with the public services, due to the fact that they lack an identity card, and consequently, they cannot exercise a series of rights for which the possession of an identity card is necessary (tax registration number, health booklet



etc.). From the evidence brought to the GO's attention, it became clear that the complainants possessed certificates issued to them in the past by the then competent Greek Gendarmerie Service, in the context of the process of facilitating the establishment of their Greek nationality and their enrolment in the municipal registries. The procedure in question was provided for under the reference numbers 69468/212/20.10.1978 and 16701/81/12.03.1979 Directives of the Ministry of the Interior on "Settling nationality issues of the Roma living in our country" and "On enrolling unregistered Roma". According to this procedure, the possibility of enrolment in the municipal registry was provided for in deviation of the provisions of L. 344/1976 on "Birth certificates" and Presidential Decree 497/1991 of the Municipalities and Communities Code, as amended by L. 3013/2002. The provisions of the aforementioned Directives of the Ministry of the Interior concerned the terms and conditions necessary for the acquisition of Greek nationality by Roma living in the Greek territory, the procedure of their enrolment in the registry and the municipal registry (Decree-Law 570/1963, Presidential Decree 6/10/1951), as well as the procedure for establishing their age given the absence of the necessary documents certifying it (Legislative Decree 762/1970). However, this specific procedure for the enrollment of non-registered Roma in the municipal registry is no longer applicable, which results in the persons involved facing insurmountable difficulties in enrolling in the municipal registry. This affects a number of rights for which enrollment is necessary and poses obstacles to a whole range of transactions carried out between the specific population group and public services. This fact, although it does not fall *stricto sensu* within the regulatory scope of L.3304/2005 and specifically, the provision of article 4, par.1., section h which prohibits discrimination on grounds of racial origin in accessing goods and services, highlights the structural dimension of the problem and the

necessity for a special provision. The findings of these cases are also included in the Special Report on the Roma, a summary of which can be found in the third chapter of the present report (cases 1279/2009, 1280/2009, 1281/2009 and 1282/2009).

2.2.2 Housing

2.2.2.1 *Granting mortgages to Greek Roma*

As has already been pointed out in the 2008 Annual Report, the difficulties faced by Greek Roma in being granted mortgages highlight not only the inherent weaknesses of relevant legislation [Joint Ministerial Decision, (Government Gazette B' 780-29.06.2006)], but also the limited regulatory scope of the existing anti-discrimination law (L.3304/2005). Thus, although L.3304/2005 includes in its regulatory scope discrimination on grounds of racial origin, it cannot deal effectively in those cases where a crucial act or omission on the part of a public agency falls within the scope of its authoritative rather than its public service jurisdiction. Specifically, the GO has noted that a large number of beneficiaries of Roma origin face insurmountable difficulties in their attempt to be included in the housing programs, mainly for reasons that have to do with their lack of necessary documents (e.g. certificate of family status) whose issuance depends on the authoritative power of the competent civil services. It is indicative that even if they have been enrolled in the municipal registry, the persons involved face several difficulties in being issued with a certificate of permanent address by the competent authorities. This is due either to their inability to submit the necessary certificates, even when they have a permanent address, or to their objective inability to certify that they reside permanently in an area when they are forced to leave the area temporarily for reasons relevant to finding temporary employment (e.g. itinerant trade, jobs in the agricultural sector, seasonal employment etc.) Furthermore,

the GO, has found additional problems regarding the examination of mortgage requests by the competent local authorities, as well as the coordination of the municipalities' services with the Ministry of Interior on the final approval of loans. Finally, an issue of great concern is that in the existing legislation no provision has been made for a supervisory and monitoring mechanism of

the program. Therefore, it is impossible to draw safe conclusions as to whether the program's objectives are being met. The relevant GO conclusions will be further processed and constitute the object of a separate Special Report to be published in 2010 (cases 18637/2005, 1853/2007, 9817/2008, 15366/2008, 1110/2009, 6736/2009).

2.3. THE EXCLUSION OF CITIZENSHIP

The clause excluding discrimination on grounds of nationality from the regulatory scope of L.3034/2005, in combination with the limitations set in the scope of the law's application, renders it especially difficult to investigate complaints of discrimination against aliens on grounds of racial or ethnic origin. The issue in question has been of great concern to the Greek Ombudsman ever since L.3304/2005 was put into effect and has repeatedly been pointed out in the GO's Annual Reports. The recently enacted L. 3838/2010 granting Greek nationality to foreign immigrants born in Greece is expected to ease, to a certain extent,

the aforementioned difficulty and to widen significantly the scope of protection in this category of persons in the future. However, it is still imperative to re-examine the provisions of L.3304/2005 that concern the exclusion of nationality from the regulatory scope of this law. This is especially important in instances involving aliens who have settled and have lived for a long time in Greece, as well as in cases which do not fall within the protective scope of this law, yet, give rise to serious suspicions of covert discriminatory treatment on grounds of racial or ethnic origin.

2.4. DISCRIMINATION ON GROUNDS OF DISABILITY

2.4.1. Employment

2.4.1.1 *Difficulties in commuting to the workplace*

A female employee with a 67% disability, working in a public hospital, filed a complaint due to the difficulties she faced daily while commuting to the workplace. Specifically, the hospital she worked for had subcontracted the daily transportation of its staff. The complainant due to her disability encountered problems boarding and getting off these buses. She was informed that no special provision could be made for employees with disability.

The GO contacted the hospital involved and pointed out that the relevant provisions of L.3304/2005 regarding discrimination on grounds of disability, clearly stipulate that the employer is obliged to ensure that all possible benefits are provided to all employees, including the disabled. The obligation of reasonable accommodation for the disabled does not apply if it results in a disproportionate burden for the employer. However, this burden is not deemed disproportionate when it is sufficiently remedied by measures existing within the framework of the state's disability policy (article 10 of L.3304/2005).



In this case, the GO stressed that facilitation measures, such as kneeling buses (a function that requires a special mechanism which is available in most modern buses, yet is not compulsory), or their approach to a raised pavement, do not imply exorbitant expenditure. On the basis of the specific rationale, the GO suggested that the complainant's demands be re-examined and the legislation in force be taken into account when drawing a new contract with a private contractor for the transportation of its staff. In response to the above, the hospital forwarded to the GO a reply from the contracting company wherein it was claimed that most of its buses have a kneeling system. At this point, the GO had to terminate further investigation as the complainant transferred to another hospital (case 473/2009).

2.4.1.2 Difficulties in accessing the workplace

A disabled employee of a Prefectural Administration filed a complaint with the GO concerning her transfer to a different department, which did not provide for easy access. In addition, this reassignment did not meet with her qualifications or the duties performed in her previous post.

The GO contacted the department involved and presented in detail the legal framework applicable in this case (with emphasis on the partial reversal of the burden of proof). At the same time, it tried to ascertain the reasons for which the transfer in question took place. The GO found the department's response unsatisfactory and concluded that the transfer in question constitutes discriminatory treatment on grounds of disability.

The GO then approached the Prefectural Administration involved, laid out the aforementioned findings and stressed the need of finding an immediate solution, which will be compatible both with the service needs of the department in which the complainant is employed and with the legislation against discrimination. The case is still pending (case 7159/2009).

2.4.1.3 Request of transfer for health reasons

A Citizens Service Center (KEP) employee filed a complaint with the GO alleging that due to a medical condition (deep vein thrombosis), she must avoid standing, sitting for long hours and stressful conditions at work. In this respect, she sought the GO's intervention, requesting that she be transferred to another service. The GO informed the complainant that the employer's obligation to take reasonable and appropriate measures for the disabled is limited to the specific department and cannot include a transfer to another service.

In response to the GO's intervention the head of the KEP in question advised that the claimant had already been allowed frequent breaks; that she had been assigned duties of a more administrative nature and that her working day had been reduced by one hour. According to the employer, these were reasonable and adequate measures of accommodation, complying with the provisions in force for disabled people employed in the public sector. The GO forwarded this response to the complainant and sought her views. However, as the complainant, did not respond to the GO's communication, the Authority had to terminate further investigation of the complaint (case 11734/2009).

2.4.1.4 Reasonable accommodation measures in the workplace

The National Confederation of Persons with Disability (ESAmEA) filed a complaint with the GO on behalf of a disabled nurse, requesting the Authority's mediation, so that reasonable adjustment measures in her workplace could be taken. Soon after the complaint was filed, and before the GO could take any action, the ESAmEA forwarded to the GO a document dispatched to ESAmEA by the Hospital's administration from which it became clear that reasonable adjustment measures had

already been taken. After this positive development, the GO took no further action (case 13087/2009).

2.4.1.5 Dismissal of a cadet police constable on grounds of disability

The ESAmEA filed a complaint with the GO protesting against the dismissal from the Police Constables School of a cadet Constable who, one year after his admission to the School, became disabled as a result of an off-duty accident. The dismissal decision was the result of an assessment of the Hellenic Police Higher Health Committee, whereby the person involved was deemed inadequate both as regards continuing his studies and continuing to be a member of the Hellenic Police. The GO wrote to the Hellenic Police Human Resources Director, presented the legal framework concerning discrimination, pointed out that after the enforcement of L.3304/2005 all previous provisions that infringe equal treatment are no longer applicable. It also stressed that the provision of Legislative Decree 935/1971 which imposes the dismissal from the Hellenic Police of those who are deemed inappropriate by the competent Health Committee, should be re-examined in light of the provisions of L.3304/2005. In this context, the GO requested information with regard to the treatment of policemen (cadets and in active employment) who become disabled off duty; whether in the case in question, prior to the cadet's dismissal, the possibility of the complainant remaining in the Police Academy was examined (eg readjustment of the curriculum in a way which affords the person involved the opportunity to subsequently assume duties, despite his disability). In this respect, the GO requested the re-examination of the dismissal decision and is awaiting the Police Constable School's response (case 19266/2009).

2.4.1.6 Reasonable accommodation measures for working hours

A disabled individual employed in a municipal entity sought the GO's mediation, so that he be permitted to work only during the afternoon shift, due to dizziness he suffers in the morning hours, caused by a old head injury. From a document furnished by the employee, it became clear that the municipal entity he works for has rotating shifts, allowing the complainant to work some days in the morning and some days in the afternoon within the same week period, provided that the other employees consent. The GO wrote to the municipal entity asking whether an attempt had been made to coordinate the working shifts of the other employees (performing similar tasks) in order to accommodate the complainant's request. The relevant department's response is still pending (case 24322/2009).

2.4.1.7 Change of duties assigned to a teacher

The ESAmEA filed a complaint with the GO, claiming discriminatory treatment of a Secondary school teacher who had undergone kidney transplant surgery. According to the ESAmEA, discriminatory treatment lay in the fact that the teacher in question was assigned to teach a second year class instead of a third year class (graduates) in the Lyceum-High School (where he taught the previous two years) on the grounds that he might have to be absent for long periods due to his serious medical condition. Assessing the case brought to the GO's attention, it concluded that there were no grounds for discrimination as the assignment of teaching duties in the 1st and 2nd Lyceum year classes could not be deemed as an affront nor did it question the teacher's professional capacity, to the extent that it constituted less favourable treatment when compared to teaching duties in the 3rd Lyceum year (case 22966/2009).

2.4.1.8 Reasonable accommodation measures in private companies

The ESAmEA filed a complaint with the GO on the grounds that special software had not been installed for a blind employee of the Hellenic Organization of Telecommunications (OTE). The complainant's union had already addressed the Labour Inspectorate (SEPE), the competent authority for the private sector. Consequently, the GO filed this case as it did not fall within its mandate (case 2010/2009).

2.4.1.9 Inability of a justice clerk to access the venue of her disciplinary board hearing

The complainant, a disabled justice clerk (wheelchair user), complained about her inability to attend a disciplinary board session held on the 1st floor of a building without elevators. The case was referred to the Equal Treatment Committee of the Ministry of Justice, as judicial authorities do not fall within the GO's mandate (article 3 §2 of L. 3094/2003) (case 5253/2009).

2.4.1.10 Unfavourable treatment of a public prosecutor

A similar case concerns a complainant, a former Public Prosecutor of the First Instance Court, who alleged to have been discriminated against by the head of her department on grounds of disability in the assignment of duties. In this case, too, the GO had to file the complaint as judicial authorities do not fall within its mandate and referred it to the Equal Treatment Committee of the Ministry of Justice (case 9036/2009).

2.4.1.11 Reduced work schedule for parent of a disabled child

A primary education teacher and parent of a disabled child requested the GO's mediation with

the Ministry of Education, in order to be granted a reduced work schedule. The GO was obliged to terminate the investigation of this complaint as issues pertaining to the service status of civil servants are excluded from the Authority's general mandate. The GO's lack of competence in this case is not overridden by the GO's specific mandate as a body promoting the principle of equal treatment since the protective scope of L.3304/2005 only covers discrimination at the workplace on the grounds of one's own disability. However, the GO referred to a decision by the Court of Justice of the European Communities (ECC decision 17th July in case C-303/06), whereby it was accepted that the provisions of Directive 2000/79 can be applied to employees who are not disabled themselves, but provide care to disabled relatives, provided that discrimination against them is established on grounds relating to the disability of people they care for (case 13751/2009).

2.4.1.12 Reduced work schedule for a disabled person's spouse

The GO received a complaint concerning a state-owned company's request to have its own health committee assess the disability of an employee's spouse before granting him a reduced work schedule. The GO was obliged to file this case based on the aforementioned rationale (see above 2.4.1.10) (case 21365/2009).

2.4.1.13 Failure to benefit from a reduced work schedule due to not being informed of this right

A municipal employee requested the GO's intervention in order to be compensated for not being informed by her employer of her right, as a disabled person, to a reduced work schedule. This resulted in her being deprived of this benefit for a long period of time. The GO concluded that the

municipality's failure to inform the complainant of her right does not constitute a form of discriminatory treatment as stipulated by L.3304/2005. The case was filed, as issues pertaining to the service status of civil servants, unless they fall within the scope of L.3304/2005 and L.3488/2005, are excluded from the Authority's mandate (case 23315/2009).

2.4.1.14 Delay in reassignment to a different post

A teacher lodged a complaint with the GO concerning the delay in her reassignment to a different post, attributing this to discrimination based on disability. The GO's investigation concluded that the delay was unrelated to the complainant's disability and the case was filed (case 22165/2009).

2.5. DISCRIMINATION ON GROUNDS OF AGE

2.5.1 Access to vocational training

2.5.1.1 Deregistration of a student on grounds of exceeding the age limit

A student filed a complaint with the GO about his deregistration from the Non-Commissioned Officers School of the Hellenic Army (SMY) on the grounds that "he does not fulfill the necessary qualifications of admission to Higher Education Military Institutes (ASEI-ASSY), according to the accepted age limit". In accordance with legislation governing the Operational Regulations of the Non-Commissioned Officers School of the Hellenic Army, the School candidates "should not have exceeded their 21st year on December 31st of the year in which they participate in the examinations». The GO addressed the SMY pointing out that, pursuant to article 7, par. 1. section 7, of L.3304/2005, discrimination on the basis of age is prohibited in "access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience".

Specifically, as regards the armed forces or the security forces, exclusion from the application of the aforementioned provisions in principle is allowed only on condition that "it concerns discriminatory treatment on grounds of age or disability relevant to the Department" (article 8 par. 4 of L.3304/2005).

Furthermore, differential treatment on the grounds of age shall not constitute discrimination except when "by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate" (article 9 of L.3304/2005).

From the aforementioned provisions, the GO concluded that the exclusion of candidates, who have completed their 21st year, from studying in military academies, as well as from military professional activities, is not justified on grounds of the specific nature of the professional activities in question or the specific conditions governing their performance. Moreover, the GO pointed out that other military academies set the age limit for admission at a much older age. Following the GO's intervention the Hellenic Army's General Staff Office (GES) withdrew its decision concerning the complainant and allowed him to continue his studies in the SMY. However, beyond compliance with the GO's suggestions in this individual case, there continues to be a pressing need for a change in existing legislation in order for national law to be harmonized with the provisions of European Community law on equal treatment (case 18763/2009).

2.5.2 Employment

2.5.2.1 Recruitment of Air Traffic Controllers in the Civil Aviation Authority (YPA)

The issue of the lack of a special justification, as laid out in L.3304/2005, has been the subject of a GO's intervention in the past (see Annual Report on Discrimination 2008, p. 14). In 2009 the Minister of Infrastructure, Transport and Networks, in response to the GO, attributed the necessity of setting a 30 years age limit to the following reasons: a) the lengthy (between three to five years) and intensive training of the newly-recruited employees in the Air Traffic Control Services, b) the fact that Air Traffic Controllers in active employment are subjected every two years, until the age of 39, and annually after the completion of 40 years of age, to a series of medical examinations so as to establish their physical competency; this has already led to a drop in the number of active staff, as health issues (e.g. loss of visual – auditory acuity and other reflexes) become apparent, c) the aforementioned, in combination with arduous working conditions, lead to a reduction of the time period during which Air Traffic Controllers can be productively employed by the Civil Aviation Authority until their retirement. In addition to the above, the possibility of further reducing the retirement age of the personnel of this sector, which already comes on average to 55 years, is being debated on an international level. The GO deemed that, in contrast to the justification initially offered, which was neither sufficient nor in accordance with the law, the more recent justification outlined above, falls, in principle, within the allowed limits stipulated by article 11 of L.3304/2005 on substantiating differential treatment. In any case, the GO had to terminate further investigation of the complaint due to *lis pendens* (article 3, par. 4 of L.3094/03), as one of the complainants appealed to the Court (cases 3186/2008 and 3530/2008).

2.5.2.2 Refusal of placement to the post of security officer in a detention centre

A mother of more than two children (large-family status), who had been placed by the relevant Committee of the Ministry of Employment and Social Protection (in application of L.2643/1998) to a post as security officer in a detention centre, addressed the GO in April 2007, complaining about the refusal of the Ministry of Justice to accept her job placement because of her age. Following the GO's intervention, the placement in question was subsequently ratified by a second instance committee in November 2007. In March 2008 the Human Resources Office of the Ministry of Justice submitted to the State Legal Council (NSK) a question on whether it could refuse the placement, despite its ratification by a second instance committee. The NSK's plenary session, by means of an opinion issued in 2009, gave an affirmative answer to this question, upholding age limits on access to the post of security officer in detention centres.

Nevertheless, the GO addressed the Minister of Justice, insisting on its initial view that, in the case in question, the legislation in force on discrimination on grounds of age was breached. Compliance with the principle of proportionality, which would render differential treatment on grounds of age lawful, had not been sufficiently established since no special justification had been offered to substantiate the claim that the imposition of an upper age limit for the profession in question is reasonable and necessary, serves a legitimate purpose and constitutes a substantial condition attributable to the very nature of the relevant professional duties. In view of the above, the GO suggested that the complainant undergo medical examinations and fitness tests, as required for other candidates and, if the results do not indicate any health issues, to be hired. However, the Ministry of Justice, referring to the NSK's opinion, insisted on its original decision (case 5384/2007).

2.5.2.3 Refusal of enrollment in the Seamen's Registrar

A complaint was lodged with the GO concerning the denial to enroll a man over forty in the seamen's registrar ("seaman's book"). Indeed, under article 1, par. 1, of Presidential Decree 260/14-08-01 "Persons having the following special qualifications are registered in a special registry and, until they obtain a certificate of seaman's ability (diploma, degree or license), are regarded as "apprentice seamen"): A) have completed their 16th year of age and have not exceeded their 40th year, which is deemed to have been completed on 31st December of the year of inventory". The GO addressed the Ministry of Mercantile Marine and pointed out that setting legitimate age limits should be justified, in accordance with the necessary conditions established by L. 3304/05 on safeguarding the principle of equal treatment regardless of age. The Seamen's Employment Directorate of the Ministry noted in its response that setting an upper age limit in the enrolment of seamen in the registrar, applies uniformly and is associated with the commonly acknowledged specific conditions of the seaman's profession and the direct relevance to ensuring conditions of safety at sea, as well as the protection of marine environment. In addition, it was pointed out that the admission of people of higher age to the seaman's profession is problematic, not only because it gives rise to non-attainable prospects for a career, but also limits drastically the possibilities of fulfilling the legislation pre-requisites for obtaining a pension from the relevant social security body. The GO in its investigation of the case found that admission to the seaman's profession is effected by enrollment in the seamen's registrar. Therefore, enrollment in the registrar constitutes a pre-requisite for receiving a seaman's ability certificate and engage in a series of professional activities that require enhanced physical fitness. In fact, a pre-requisite for their enrollment in the special registrar is that they successfully complete a basic

course at the Life-Saving and Fire Extinction School. The European Court of Justice (ECJ), by means of its 12/01/2010 decision (case C-229/08), deemed that setting an age limit in the German national legislation when hiring personnel for the Fire Service was lawful. The Court assessed scientific evidence that was submitted to it, from which the gradual diminishing of respiratory functions, physical fitness, and the robustness of the muscular system as time passes, become apparent. On the basis of this evidence, it judged that persons participating in "fire extinction, provision of assistance to persons in need, activities concerning the protection of the environment and the management of damage due to disasters, provision of assistance to animals and the capture of dangerous animals, as well as in support activities such as the maintenance and check of emergency vehicle equipment" should have especially enhanced physical abilities. The abilities in question can be deemed a substantive and decisive pre-requisite in the sense of article 4, par. 1 of the Guideline, and sufficiently justify discrimination on grounds of age. Taking the above into consideration, the GO came to the conclusion that the introduction of an upper age limit with regard to the procedure of seamen's registration is in accordance to article 4, paragraph 1 of Directive 2000/78/EC and constitutes justified differential treatment on grounds of age, pursuant to article 11 of L.3304/2005 (case 3803/2009).



2.5.2.4 Age limit on recruitment for the Hellenic Aerospace Industry

A complaint was filed with the GO as a result of an age limit set on recruitment for a number of posts within the Hellenic Aerospace Industry (HAI). The GO addressed the HAI and requested the special justification of the age limit set on the recruitment. In its response to the GO, HAI pointed out that an age limit 45 years of age was imposed, for specific categories of posts in accordance with the relevant Ministerial Decision. To justify setting the age limit in question, the following reasons were cited: a) the nature of activities necessary for the specific posts, b) the fact that, in accordance to a decision issued by the Minister of Health and Social Protection in 1984, the HAI's staff is included under the category of arduous and unhealthy professions, and c) that a long and intensive period of

training is necessary for these posts. The GO concluded that the justification offered falls within the allowed limits stipulated by article 11 of L.3304/05 on justifying differential treatment and is in accordance with the aforementioned ECJ ruling (case 16193/2009).

.2.5.2.5 Age limit on employee transfers

Complainants addressed the GO opposing the age limit set by the General State Chemical Laboratory (GSCL) in a job advertisement concerning transfers to this service. An age limit had indeed been set for 24 out of the 305 posts advertised. The GSCL did not adequately justify to the GO this discriminatory age limit, however, it committed itself to abolishing it in subsequent calls for transfers (case 3093/2009).

2.6. DISCRIMINATION ON GROUNDS OF SEXUAL ORIENTATION

2.6.1. Censorship of artistic expression in the National Opera

The Greek Ombudsman received a complaint by an NGO concerning the curtailment of an erotic scene (a kiss between two men) in the official premiere, on March 2009, of the opera "Rusalka" by Anton n Dvořk, in the National Opera House. The NGO attributed the exclusion of the specific scene to homophobic censorship. According to the complaint and the attached documents, at the opera premiere, members of the orchestra handed out a statement issued by their trade union, in which they expressed their objection to the director's artistic interpretation of the opera with regard to the homosexual representation of the central character and the inclusion of "extreme scenes".

Since discrimination on the grounds of sexual orienta-

tion is only covered in the field of employment according to EU and national antidiscrimination legislation (Council Directive 2000/78/EC and L.3304/2005), the Greek Ombudsman investigated this complaint under its general mandate as a human rights institution (specifically as a violation of freedom of expression) and its specific mandate to promote the principle of equal treatment, contributing to the creation of a culture of acceptance and understanding of diversity.

The Greek Ombudsman's investigation found that the National Opera did not intervene in the director's artistic interpretation of the opera, nor did it seek the censorship of specific scenes. However, members of the Orchestra of the National Opera (which is a separate legal entity from the National Opera) asked the director to exclude the homoerotic kiss and implied that should she not agree to this demand, they would

not participate in the performance. In light of these reactions, the director and the opera singers that would have exchanged the kiss decided not to perform the contentious scene on opening night.

From the aforementioned it is obvious that, although the National Opera did not itself impose artistic restrictions, it failed to safeguard the director from the pressures that led to the censorship of her work. Thus, not only were the artist's freedom of expression and the right of the audience to enjoy an uncensored work of art undermined, but also the intolerance of homosexuality was promoted.

The Greek Ombudsman publicised the findings of this case – on its website, annual report 2009 (p. 21-23) and the media – stating that the artistic expression of homoerotic desire cannot be restricted and that the attribution of homoerotic feelings to a fictional character and the exchange of a kiss by two men neither constitute “extreme scenes”, nor can they be considered offensive. It called both the Chairman of the National Opera house and the Head of the Orchestra of the National Opera to denounce the censorship that was imposed on this occasion and express their commitment in safeguarding artists' freedom of expression in the future.(case 5027/2009)

2.6.2 Withdrawal of the license of an enclosed public place business

The GO received a complaint from a business proprietor whereby she protested against the withdrawal of the license of an enclosed public place business she kept on an Aegean island, on grounds which, according to her allegations, concerned her sexual orientation. Specifically, the complainant alleged that the competent municipal authority did not renew her license, invoking the existence and maintenance of an illegal building within it, which justification, however, concealed an indirect discrimination on account of her sexual orientation. In addition, the complainant protested about the granting of a license to another person by the municipal authority involved, without prior advertisement and abidance by the necessary legal conditions. Further to a GO document addressed to the municipality involved, the municipality rejected the allegations of the person involved and invoked specific violations of the existing legislation concerning the operation of enclosed public place businesses on the part of the complainant. However, the GO had to terminate further investigation of the case because the complainant failed to provide evidence so as to check the municipality claims (case 13202/2009).



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 SETTLEMENT

In the year 2009, no significant improvement was recorded at central or regional level planning concerning the issue of improving the living conditions of the Roma or the problems faced by this vulnerable population group.

It could be said, however, that the intervention of the GO was of vital importance in preventing the forced removal of Roma from land that they lived on. Nevertheless, despite the clear, continuous and persistent recommendations of the GO towards the regional and central administration, to undertake immediate measures against acute problems, to date, there seems to be no central planning with regard to these problems or at least individual regional planning.

As the GO specifically pointed out in the 2008 Report and continues to record in relevant reports submitted for 2009, the social tension caused by citizens' reactions, living close to Roma settlement areas, appears to be at a critical level.

The absence of a decisive and coordinated policy and social support for this population group, as well as for those of our fellow citizens who are probably affected by the absence of such measures, leads to tension; exacerbation of this tension can have unpredictable consequences.

Furthermore, the absence of mechanisms as well as services for public mediation and establishing of peace, exacerbates matters even further. The GO as a body for the promotion of the principle of equal treatment has repeatedly intervened, attempting to ease tension and mediate with the aim to establish social peace.

All the cases submitted in 2009 which regard the living conditions of the Roma, their relocation requests and threats of expulsion are outlined below. These also include cases submitted in previous years which have been the object of investigation

or further development within 2009.

3.1.1 Protection from expulsion – mandatory relocation of homeless Roma settlers

3.1.1.1 Issuing administrative expulsion decisions in the area of Dendropotamos, Menemeni

Residents of the area of Dendropotamos in the Municipality of Menemeni appealed to the GO complaining about their imminent expulsion from the settlement due to public works underway (road construction) in the area. In its intervention to the Municipality, the GO highlighted that, in accordance with the existing legal framework, the competent local government authority had an obligation not only to abstain from any violent expulsion acts against the people living in the settlement, but at the same time, and as part of its legal responsibilities, to adopt all the necessary measures so as to deal with the housing problems of socially vulnerable groups residing within its administrative region. The GO further noted, as it consistently does in similar cases, that the main principle governing any attempt to remove Roma people from areas where they have been living for a long time, must only aim at two alternatives: either conclusively resolving the issue of their permanent residence or finding a temporary solution, by providing a suitable area for their immediate relocation until their permanent settlement is deemed possible. These actions resulted in the following: the administrative expulsion decisions for Roma living in the aforementioned area were not issued; however, no other measures have been adopted to date for their relocation (case 13545/2009).

3.1.1.2 Interim measures adopted by the Municipality of Kos to remove Roma settlers from the area

No progress has been achieved on the issue of relocating a small number of Roma families that have settled in the old Aviko factory (refer to the 2008 Annual Report). The Roma people settled there in 2008, after their expulsion from and the demolition of their dwellings at the entrance of Kos town, with the excuse of impending public works for the construction of a road and park. Their living conditions are dreadful and pose extreme threats to their safety. In fact, Kos' municipal authority invoked these threats in order to file interim measures to the Kos Court of First Instance requesting the removal of these people. However, the request was dismissed by the Court. Furthermore, despite the fact that the GO had recommended specific measures to the Municipality for improving the living conditions of these people, as well as commencing their relocation process, those proposals were not supported. In fact, the municipal authority has not submitted a counterproposal for an alternative solution (case 1464/2008).

3.1.2 Living conditions – Settlement and relocation issues


3.1.2.1 Koropi facilities – near Attiki Odos

The absence of an intervention to deal with the issue of the Roma settlement in the Municipality of Kropia, next to Attiki Odos, has led to uncontrolled and atrocious conditions for a significant number of Roma people in the area. The environmental pollution, the destruction of highly-productive arable land, the undignified living conditions, the deprivation of education for a large number of children and the illegal subsistence activities of certain members of the group is continuously exacerbating the problem and making the need for immediate activation of all stake

holders imperative. A document prepared by the 1st Department of the General Police Directorate, dated 8 October 2009, basically confirms the aforementioned findings issued by the GO following a field visit. With regard to the long-term Greek Roma settlers in the Municipality of Kropia (in the neighbourhood located at the NE end of the Koropi settlement, close to the Ring Road), the municipal authority submitted an action plan in July 2005, which, however, has not been approved yet by the Interior Ministry's Directorate of Development Programmes. The GO was recently notified of the Commission's decision with regard to Article 2, Paragraph 1 of Joint Ministerial Decision (JMD) GP/23641/3.1.03 for the Region of Attica, whereby the majority of the Roma population living in the area are not subject to the conditions mentioned in said JMD, since they are no longer considered a mobile population. It is further remarked that the encampment is not subject to the provisions for illegally-constructed dwellings, without noting any actions or plans indicating the competent authorities' intentions with regard to dealing with the existing problem (case 18454/2007).

3.1.2.2 Relocation of Roma to an unsuitable area in the Municipality of Lefkada

In the town of Lefkada, an issue regarding the relocation of a small number of Greek Roma families (approx.10) is still pending. This is because, on the suggestion of the municipal authorities, the Roma people have settled in a highly unsuitable area, at the town's former sanitary landfill site in the area of Alykes, a fact that once again raises the issue of lawful and effective actions by the local government authorities. A regeneration project is currently underway in the area where the Roma people are living, with the aim of creating a park. In addition, large-scale earthworks are also taking place in the area for sanitary waste burial. Despite the fact that this project is funded by the EU, it



was planned at a time when the Roma people were already living there. However, no timely consideration was made to relocate or provide shelter to the Roma people at another more suitable area. It should be noted that only a small number of families is living in the settlement and they demonstrate a significant level of social integration, a fact that would make finding a solution to their housing issues easier. The Municipality of Lefkada has recently suggested an area for their temporary settlement, without, however, the area being deemed suitable for the following reasons:

a) It neighbours with an active sanitary landfill site; b) A drainage ditch with waste from the dump site circles the area; c) It is in close proximity to the town's sewage treatment plant; d) The aforementioned reasons render the area unsuitable from a sanitary point of view even for temporary settlement. To date, there has been no positive development on this issue, despite the fact that the GO has already notified the Municipality, as well as the complainant organisation (Amnesty International) of its proposals. However, the fact that the violent expulsion of the Roma people from the area they had settled in did not take place is, in itself, a particularly positive development. It should also be noted that the Municipality has been providing aid to the Roma living in the area in the form of food, clothing and other consumables. Without trying to underestimate the value of this assistance, it is evident that it cannot substitute the Municipality's duty for permanent and long-term improvement of Roma living conditions. The GO's intervention aims at maintaining this line of thought (case 16760/2009).

3.1.2.3 The relocation of Roma to Kranidi is still pending

The GO has sent two official documents to the Municipality of Kranidi requesting information concerning a) the number of individuals residing in the settlement, b) specific evidence as to changes

that may have occurred regarding their living conditions and c) a detailed briefing with regard to the action that the Municipal authority has already taken or is willing to take, with the purpose of improving the inappropriate living conditions of the Roma that reside in this area and whose illegal bread-winning activities aggravates the already existing tension with the rest of the local population.

No written response has been provided so far to the above mentioned official documents, nevertheless, the GO will continue its persistent efforts in order to mobilise the competent local authorities to take appropriate measures (case 20489/08)

3.1.3 Risk to the social peace due to citizens' reactions against the settlement or non removal of the existing settlement of Roma from their area of residence

3.1.3.1 Aggravated problem in Votanikos

Although the GO has interrupted further investigation of reports (13986/06 and 12036/07) pertaining to the issue of the Roma in Votanikos, following the relevant investigation outcome. However, the inhabitants of the area have filed a new complaint to the GO. This is due to the fact that the problem they face continues to exist and in fact is exacerbated due to the increase in Roma population gathered in the area. Recently, the GO was informed of an investigation financed by the Ministry of Interior which is going to be conducted seeking appropriate space in the region of Attiki for the relocation of the foreign Roma people. Nevertheless, so far the GO has not been officially informed about the progress of the above mentioned investigation or any conclusions that may have been drawn.

Consequently, the living conditions of the Roma continue to be problematic and social tension is aggravated as the inhabitants neighbouring the Roma settlements continue to suffer the conse-

quences of an uncontrollable situation and continuing illegal bread-winning activities. The GO, considering the risk involved in such uncontrollable situations, has recently sent an official document regarding these issues to the competent Directorate of the Ministry of Interior (case 7611/2009).

3.1.3.2 Consistently critical situation in Aspropyrgos

The long-term problems in the area, due to the arbitrary settlement of a great number of Roma and the competent authorities' systematic failure to implement appropriate measures regarding their settlement, have been a regular issue of concern for the GO when examining the relevant complaints, the majority of which were actually filed by inhabitants of the area. To date, there have been no concrete developments on the case, a fact which is perpetuating the already existing problems and is further aggravating relations between the Roma and other inhabitants of the area. The Aspropyrgos case is quite peculiar in that, due to the great number of Roma living in the area, the municipal authorities seem to have shifted responsibility to the central government, believing that the issue demands to be handled comprehensively and centrally. Without underestimating the peculiarity of the Aspropyrgos case, as well as the central government's responsibility to take this into account, the local government is not exonerated from bearing part of the blame or responsibility, or from trying to systematically pressure the central government into adopting its own specific proposals. The recent complaint is expected to prompt a new central intervention by the GO (case 23808/2009).

3.1.3.3 Tension in Aitoliko, Aitoloakarnania

Despite the fact that the Authority has been dealing with the issue of the Roma's settling in the Municipality of Aitoliko on a long-term basis,

no developments have been recorded on the matter of relocating the Roma people, a fact that has been aggravating the already tense relations with the inhabitants of the area. The GO has had no recent updates on progress for building a settlement in the area to relocate the homeless Roma. Nevertheless, the complaints for the continuing sabotages and daily annoyance from the illegal bread-winning activities of the Roma at the expense of the inhabitants continue to disrupt the social peace and cohesion (cases 12807/06 and 9901/06).

3.1.3.4 GO field visit to Nea Artaki, Evoia

Following an official document sent to the General Secretary of the Region of Sterea Ellada, the Prefect of Evoia and the Mayor of Nea Artaki in June 2009, a GO unit conducted a field visit to the aforementioned area in October 2009. After the onsite inspection, it was concluded that, contrary to the complaints filed with the GO, there was no grave problem in the area of Nea Artaki from the short-term temporary settlement of the beach area during the summer months by Roma passing through town. The same applies for the area Fyties, where the Roma have constructed a temporary settlement on a lot they own (totalling an area of 500 sq.m.), where they are currently living. Additionally, the Mayor, who was present during the field visit to said area, responding to the complaints of the residents for the lack of waste containers, offered to immediately cover this need and to proceed with regular garbage collection rounds. However, the Roma who have settled in the area of Papagou are facing grave problems regarding their living conditions. In this area, foreign Roma have settled in an abandoned old building, which was being used as a poultry farm in the past. The building is unsuitable and poses a threat, which calls for the immediate relocation of these people. It should be noted that the dwellers pay the owners of the building



the sum of 100 to 150 euros per family in order to use the premises. The overall conclusions of the GO are expected to form the subject of a new intervention within 2010 (case 20485/2008).

3.1.3.5 Charavgi Area – Chalkida, Evoia

In the Municipality of Chalkida, and specifically in the area Charavgi, which is outside the urban plan limits and where intense illegal building activities are taking place, owners of illegally-constructed dwellings, through the local Cultural Association, asked the GO to intervene. Their primary aim was to exert pressure on the competent authorities in order to successfully include their area in Chalkida's urban plan, in addition to removing the sanitary landfill site and the dwellings of the Roma people from the area. The GO mediation focused on recommendations to the Municipality to avoid actions which contravene the laws with regard to equal treatment and protection of vulnerable groups. At the same time, understanding that a significant part of the problem lies in perpetuating the status of illegal building activities in the area, the GO asked the competent authorities to work with the Ministry of Environment to examine the possibility of immediately approving a local town plan for the area of Charavgi, thus reaping the benefits of the provisions regarding the housing rehabilitation project for the Roma people (Article 6, Law 2790/2000). To this end, the Environment Ministry's response was encouraging. In a letter to the General Directorate of Urban Planning in early 2010, it adopted the GO's aforementioned views. The GO is monitoring the implementation of the plan for including the area of Charavgi in Chalkida's urban plan, as well as further improvement of the relationships between the area's inhabitants, by maintaining regular contact both with the local stakeholders and the inhabitants (cases 15676/2009 and 19469/2009).

3.1.3.6 Voidolimano, Agrinio

Despite the Authority's intervention to the Mayor of Agrinio and the on-site visit conducted in February 2009, no positive developments have been recorded either in the expropriation of a private lot where Roma people have settled, or in the creation of a new settlement as part of the comprehensive project for the social inclusion of the Roma people. In this case, it seems that there has been no fruitful collaboration between the Municipality and the Ministry of Interior, since the Municipality claims that the Ministry is refusing or delaying funding the actions proposed by the Municipality. On the other hand, the Ministry claims that it is waiting for the Municipality to send the necessary information in order to assess it and proceed with approving those actions (cases 8410/06 and 1970/07).

3.1.3.7 Drosero, Xanthi

The response of the Prefecture of Xanthi to the Authority's intervention for including the aforementioned settlement into the city's urban plan has been encouraging. Following this intervention, the Municipality of Xanthi requested in writing that public land be conferred to the Municipality by the Hellenic Public Real Estate Cooperation (KED), with the aim of building a school and a pre-school in the settlement of Drosero in Xanthi. The request was forwarded from the Xanthi Real Estate Cooperation to the Finance Ministry's Public Property Directorate. This inclusion to the urban plan will facilitate the creation of a basic infrastructure to improve living conditions in the area. The GO has already written to the Finance Ministry addressing the issue of handling the Municipality's request to confer the public land DK BK 2060 promptly, in order for the Municipality to develop it by building a new school in the settlement of Drosero and incorporate said land in the National Strategic Reference Framework (NSRF) (cases 16576/2008 and 4639/2007).

3.1.3.8 *Avantos, Alexandroupoli*

To date, no significant improvement has been noted in the living conditions, the ownership status of private land/residences, the operation of schools and pre-schools, and the health and social services centre. The inclusion of the whole settlement into the city's urban plan is continuing, without, however, having been completed (case 6174/2007).

3.1.4 Special initiative as part of the action plan for the Roma people

During 2009, the GO compiled a special report for the municipal enrolment of the Greek Roma people. The report was prepared because enrolment was considered timely and necessary, due to the problems this population group has been systematically facing during administrative processes and especially in the case of housing rehabilitation. The problem relates to the fact that the administrative services strictly adhere to recognising and acknowledging only people with permanent residences; for the rest, the lack of/uncertainty with regard to permanent housing results in failure to access one or the other social service, or exercising one's rights. Thus, the recent wide-scale funding programme for housing through bank loans, with the government as a guarantor, is in effect addressed only to those who are already enrolled in the municipal registers and can show proof of permanent residence. However, this constitutes an inherent weakness of/contradiction to the system, which denies government support to those who need it most.

In practice, the only Roma people concerned with updating their relevant documents are also the ones exhibiting the highest indicators of integration to and participation in the country's social life, while at the same time, owning permanent residences. In addition, factors associated with social features such as periodical mobility and

illiteracy cancel to a great extent any efforts to conclude the registration process. So, today, many Greek Roma do not have proof of citizenship and have in effect a status similar to foreigners. Furthermore, given the relevant institutional framework in each case, the competent municipalities practically have almost unlimited discretion in assessing the relevant conditions for enrolling someone in the municipal registries and issuing a permanent residence certificate, which results in a potential risk of abuse.

In its report, the GO recommended three alternatives for a fast, safe and effective municipal enrolment programme, drawing on the experiences of previous en masse attempts to enrol members of vulnerable groups in the municipal registries. The first such attempt concerned the Greek Roma people who were enrolled in the municipal registries through Interior Ministry circulars (1978-79), in accordance with the provisions of the Greek Citizenship Code regarding children born in Greece from foreign parents. The second attempt concerned repatriated expatriates from the former USSR who were enrolled in the municipal registries through ministerial decisions (1990-93), based on the international mid-war conditions regarding the citizenship of expatriates. It is considered a given in the alternatives of the proposed programme that the Greek Roma people, even those who are not enrolled in the municipal registries, already have Greek citizenship by birth, based on the relevant provisions of the Code, so there is no issue of naturalisation.

The simplest alternative is to simply apply the legislative framework in force governing the determination of citizenship. Therefore, those with proof of citizenship by descent will invoke it as they are unregistered, while the rest will claim foreign citizenship and birth in Greece. If birth cannot be proven, a relevant birth registration act must be first drawn up by court ruling, or one of the alternative supporting documents must be submitted. Following the determination of citizenship,



interested parties will then be enrolled in the municipal registries. The aforementioned process can be implemented easily, since it does not require any new regulations. However, it is extremely time-consuming due to the accumulation of successive stages, while it seems doubtful whether it will be able to enrol a significant number of actual entitled citizens in the registries if the existing restrictive list of alternative supporting documents is kept.

The second alternative recommends bypassing determination of citizenship and municipal enrolment through registration acts. This process requires a legislative regulation whereby the typical determination of citizenship process would be replaced by a brief and large-scale citizenship recognition process through a special census. A competent body would register the Greek Roma population by arbitrarily evaluating their documentation. Then, the Regional General Secretary would issue a registration certificate, which would at the same time serve as a citizenship determination act and an order for municipal enrolment. For the actual enrolment, interested parties would have to submit a birth registration certificate. If one is not available, a court ruling would have to be issued or another of the alternative supporting documents would have to be submitted. This process is faster than the previous one. The main concern in this case, though, is that the registration process has to precede everything, since it requires drawing up detailed registration acts from the beginning to fully certify the sequence of parentage, based on erroneous or uncertain personal details. Furthermore, the whole process is extremely time-consuming.

The third alternative recommends direct municipi-

pal enrolment, thus bypassing both the determination of citizenship and the registration act. This process also requires a legislative regulation, where by the typical citizenship determination process would be replaced by a brief and large-scale citizenship recognition process through a special census. In addition, municipal enrolment would be made possible by exception, even without prior issuing of birth registration certificates. A competent body would register the Greek Roma population and freely allow their municipal enrolment based on the special census data, i.e. without a separate citizenship determination act or even the usually required full details. This process is simpler and faster than the two previous ones. It only requires drawing up one official act per person, without a relevant court ruling, even if the details are incomplete and are proven through conventional methods. In juxtaposition to being fast, simple and offering mass enrolments, the main drawback of this alternative is that incomplete or unverified details may possibly be entered into the system. This drawback, however, could be overcome later with subsequent corrections, since an institutional visibility status of enrolled citizens will have already been ensured.

However, even the most comprehensive legislative planning is not sufficient over time if it is accompanied by long-term strategic communication plans. By suitably preparing the whole process, especially by introducing it to the younger generation through the educational system, any relative hesitation or prejudice would be overcome, while it will provide a foundation for social inclusion and a way for Greek Roma people to exercise their individual and group rights unhindered.

3.2. ACTIONS FOR RAISING PUBLIC AWARENESS, TRAINING AND IMPROVING TECHNICAL KNOW-HOW

3.2.1. GO staff training and educational services

In 2009, the GO continued to work closely and exchange technical know-how with other institutions, both in Greece and abroad, to implement and promote the principle of equal treatment. At the same time, drawing on knowledge and experience acquired so far, the GO participated in a series of training seminars aimed at informing and raising public awareness on issues relating to combating discrimination in the workplace. In June 2009, in the context of the Eunomia project, the GO organised a capacity-building seminar, entitled "Exploring standards and measures addressing Roma institutional visibility". The seminar aimed at promoting dialogue and interactive communication between specialised national bodies promoting the principle of equal treatment and competent international organisations dealing with Roma issues. The objective of the meeting was to identify priorities for policies concerning the protection and promotion of the rights of Roma people in Europe, as arising from: a) practices or strategies adopted by national bodies promoting the principle of equal treatment; b) administrative practices; c) initiatives and recommendations of the Council of Europe, mainly through the case-law of the European Court of Human Rights and the Office of the High Commissioner for Human Rights, the Organization for Security and Co-operation in Europe (High Commissioner on National Minorities and Office for Democratic Institutions and Human Rights) and the European Union (European Commission, Fundamental Rights Agency and European Parliament). The conclusions of the seminar are posted on the following link:


http://www.synigoros.gr/eunomia/gr_news.htm.

3.2.2 GO action for promoting the principle of equal treatment irrespective of sexual orientation

In the context of its responsibilities as an authority for promoting the principle of equal treatment, in accordance with Law 3304/2005 (EC Directive 78/2000), the GO published a brochure regarding protection against discrimination due to sexual orientation. The brochure was distributed during the Athens Pride Festival in Klathmonos Square on 13 June 2009.

3.2.3 Participation in national and international networks for combating discrimination

2009 was the fifth consecutive year that the GO had been actively participating in the European Network Equinet, which brings together and coordinates designated bodies in implementing EC Directives against discrimination in the EU member and accession states. The GO is now actively participating in all of Equinet's working groups (Dynamic Interpretation, Policy Formation, Promotion of Equality and Strategic Enforcement) and is regularly represented in annual meetings for coordinating tasks and exchanging information on discrimination issues, as part of actions selected by each group. In 2009, a GO staff member was elected to the Equinet's Board, a fact which is expected to foster relationships with Equinet, provide representation of the GO within Equinet and contribute toward jointly assessing national particularities in planning and implementing Equinet's strategic actions and initiatives. It should also be noted that in 2009, while participating in Equinet, the GO undertook the initiative, as well as coordinated the necessary actions, in order to assess discrimination against the Roma in Europe and the effectiveness of protection



measures outlined in the relevant EC Directive. Following two meetings held in Athens (June 2009) and Paris (October 2009), the initiative concluded with an opinion statement, which was presented during a Summit for the Roma people held in Cordoba, in March 2010 (refer to <http://www.equineteurope.org/435.html>). In addition, the GO is participating in the national working group "For Diversity/Against Discrimination" campaign. The campaign was launched in

2005 as an initiative of the European Commission's Directorate-General for Employment, Social Affairs and Equal Opportunities. It aims at coordinating the activities of national bodies assigned to monitor and promote the principle of equal treatment. As part of the campaign, special attention is paid to motivating organisations representing groups vulnerable to discrimination, to actively participate in receiving updates on developments at a legislative level and promote implementation practices.

4. ISSUES ARISING FROM THE APPLICATION OF THE NEW LEGAL FRAMEWORK & PROPOSALS

Two international reports were released this year on the situation regarding discrimination in Greece. At the end of the 75th session (Geneva, 3-28 August 2009), the UN Committee on the Elimination of Racial Discrimination (CERD) released its conclusions for Greece (refer to <http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD.C.GRC.CO.19.doc>). In its extensive report, after taking into consideration the reports submitted by international bodies, the official Greek delegation and NGOs, as well as the detailed discussion held on those reports, it listed a series of concerns and recommendations, including the following issues:

- the treatment of vulnerable groups (asylum seekers, immigrants, unaccompanied children, Roma and Greek citizens belonging to minorities);
- the safeguarding of fundamental rights for minorities (education, freedom of association and freedom of religion);
- criminal punishment of racism and intolerance acts and stereotypes;
- social discussion on the issue of combating racism;

- the effectiveness of social inclusion projects and processes for providing lawful protection. Specifically, with regard to the processes for providing lawful protection, the Commission summarised its observations and recommendations as follows: "The Committee welcomes the adoption of Law 3304/2005 [...] the new responsibilities assumed by the Greek Ombudsman for the promotion of the principle of equal treatment in the public sector [...] notes the sharing of competence between the Office of the Ombudsman, the Committee for Equal Treatment and the Labour Inspectorate [...] As the Office of the Ombudsman is the only independent body, the Committee recommends that the State party consider giving it overall powers to receive complaints of racial discrimination, while cooperating with the other bodies when examining them."

The European Commission against Racism and Intolerance (ECRI), an independent monitoring body of the Council of Europe, made similar observations in a report released on 15 September 2009 (<http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Greece/GRC-CbC-IV-2009-031-GRC.pdf>). Among others, the Commis-

sion “notes with satisfaction that the Greek Ombudsman’s powers and work in relation to anti-discrimination are broadly in keeping with the basic principles laid out in its General Policy Recommendation No. 2 on specialised bodies for combating racism, xenophobia, antisemitism and intolerance at national level.” However, it also highlighted some lacunae in the current legislation against discrimination, recommending the following:

- extending from six months to at least a year the time between the complainants’ initially learning of the public administration’s illegal action or failure to act, and them bringing their complaints to the GO;
- introducing a provision of aid and assistance to discrimination victims, including legal aid;
- opening GO branches outside Athens;
- informing the public of the GO’s enforcement role regarding discrimination.

The GO believes that the recommendations made by the aforementioned Commissions are a gesture

of approval for its efforts so far and a motivation for further decisive actions in the field combating discrimination. Furthermore, it can be concluded from all of the above that, under the existing legal framework, the field of discrimination, and especially the protection provided, can only be rendered easier and more effective when combined with the application of the entire legal framework with regard to human rights. As part of its responsibilities, the GO is an institution which enjoys the freedom to combine the aforementioned roles both when investigating independent complaints and when establishing existing legal framework. This freedom allows for the broadest possible protection of persons discriminated against in administrative action fields which the national legislator did not include in the specific protection framework of Law 3304/2005. Until further legislative initiatives are taken to further expand the protection scope of Law 3304/2005, the GO will continue this combined approach for combating discrimination. However, at every opportunity, it will continue highlighting the need to expand the regulatory scope of Law 3304/2005 and further develop the methodology tools it introduces.



5 Hadjiyanni Mexi St., 115 28 Athens

Tel: 210 7289600, Fax: 210 7292129

www.synigoros.gr