2000 ANNUAL REPORT

Abridged English Language Version

The Greek Ombudsman

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ATHENS

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Acronyms

Most of the acronyms used in this book are transcriptions of the Greek acronyms

AHEPA	American Hellenic Educational Progressive Association
DEI	Dimosia Epiheirisi Ilektrismou (Public Power Corporation)
DIKATSA	Diapanepistimiako Kentro Anagnorisis Titlon Spoudon Allodapis (Inter-University Centre for the Recognition of Foreign Academic Titles)
EOT	Ellinikos Organismos Tourismou (National Tourism Organization)
ETEM	Epikouriko Tameio Ergaton Metallou (Supplementary Pension and Insurance Fund for Metalworkers)
ETHEL	Etaireia Thermikon Leoforeion (Company of Thermal Buses)
EU	European Union
EYDAP	Etaireia Ydrefsis kai Apohetefsis Proteuousis (Athens Public Water Supply and Sewage Company)
GGKA	Geniki Grammateia Koinonikon Asfaliseon (General Secretariat of Social Security)
IKA	Idryma Koinonikon Asfaliseon (Social Security Organization)
KEAN	Kanonismos Epikourikis Asfalisis Naftikon (Department for Regulating Supplementary Insurance for Merchant Seamen)
NAT	Naftiko Apomahiko Tameio (Merchant Marine Retirement Fund)
OAED	Organismos Apasholisis Ergatikou Dynamikou (Manpower Employment Organization)
OAEE	Organismos Asfalisis Eleftheron Epagelmation (Social Security Organization for the Self-Employed)
OASA	Organismos Astikon Sygkoinonion Athinas (Athens Urban Transport Organization)
OEK	Organismos Ergatikis Katoikias (Workers' Housing Organization)
OGA	Organismos Georgikon Asfaliseon (Agricultural Insurance Fund)
OSCE	Organization for Security and Cooperation in Europe
OTE	Organismos Tilepikoinonion Elladas (Greek Telecommunications Organization)
TAE	Tameio Asfalisis Emporon (Merchants' Insurance Fund)
TANPY	Tameio Asfalisis Naftiliakon Praktoron kai Ypallilon (Shipping Agents and Employees' Insurance Fund)
TEADY	Tameio Epikourikis Asfalisis Dimosion Ypallilon (Supplementary Pension and Insurance Fund for Civil Servants)
TEAYEK	Tameio Epikourikis Asfalisis Ypallilon Emporikon Katastimaton (Supplementary Insurance Fund for Retail Employees
TEE	Tehniko Epimelitirio Elladas (Technical Chamber of Greece)
TEVE	Tameio Epagelmation kai Viotehnon Elladas (Professionals and Craftsmen's Insurance Fund)
TSA	Tameio Syntaksis Aftokinitiston (Pension Fund for Professional Drivers)
TSMEDE	Tameio Syndakseos Mihanikon kai Ergolipton Dimosion Ergon (Engineers and Public Works Contractors' Pension Fund)

CONTENTS

A.

INTRODUCTION

The strategic choice to focus on efforts to approach the public administration in order to encourage it to become familiar both with the imperatives of the principle of legality and its link to the quality of democracy, has had encouraging results. Nevertheless, this basically positive development cannot allow for a relaxation of efforts. On the contrary, it serves as a reminder of the long and difficult road lying ahead, in order for these encouraging perspectives to gain momentum and become more widely accepted to the benefit of the citizens, public administration, and the quality of our democracy.

INTRODUCTION

IN THE PREVIOUS TWO ANNUAL REPORTS, I tried to link the newly-established institution of the Ombudsman to the requirements of a modern democracy (*1998 Annual Report*) and to stress the usefulness of the "logic of resolution" and of a "positive sum approach" as a more appropriate cultural paradigm that ought to govern the public administration's relations with citizens (*1999 Annual Report*).

At the time, the Office of the Greek Ombudsman was going through its initial two years of operation. Preoccupation with these issues was, as a result, a timely concern. The gradual transition from this first stage to what I call "the moment of consolidation" calls for a change in perspective which will serve as a guide in moving the institution forward and in properly assessing its future progress.

In this year's report I will, therefore, focus on the issue of the quality of democracy, a subject directly connected with the evaluation of the performance of our democracy and the effectiveness of our democratic system. Since democracy has been firmly consolidated in this country, improving its quality has now become the great challenge, as well as the major political and cultural venture of our society.

In recent years, as an ever-increasing number of states around the world are confronted with various problems relating to democratic performance, the issue of the quality of democracy has emerged as a subject of considerable international interest. The quality of democracy can be conceptualized in different ways. One fairly recent approach associates it with two factors. The existence of mechanisms of accountability – such as the Ombudsman and other independent authorities – through which the performance of the public administration and the legality of its actions are monitored on a daily basis and not on regular but widely spaced intervals (i.e. elections). Providing citizens with the right to choose between alternative mechanisms of redress, when dealing with public administration, is the second criterion linked to the quality of democracy.

The right to choose is fast becoming a yardstick of increasing importance in measuring the quality of a democracy. This right is directly associated with enabling citizens to exercise their fundamental right to freedom and with the existence of mechanisms promoting and strengthening pluralism. As far as the smooth operation of the state and of public administration is concerned, the right to choose implies the need to consolidate operating and behavioural rules geared to providing citizens with every possibility to make full use of their rights recognized by the democratic rule of law. In other words, the logical consequence of citizens' exercising their right to choose is the obligation of public administration to exhaust all available legal means in its efforts to serve the individual with whom comes into contact. As a public authority with a clear mandate to protect citizens' rights and to ensure adherence to legality, the Ombudsman is one such mechanism of control and accountability, strengthening

the rule of law. Accordingly, the logic governing his operations fully subscribes to the principles underlying this *problématique*.

Such an approach, however, raises the question of how the concept of legality is understood and applied within the context of the public administration's daily operations. The experience accumulated by the Office of the Ombudsman over its 27 months of operation provides a plethora of cases showing that the administration approaches the concept of legality in an extraordinarily narrow and formalistic manner, geared more to safeguarding actions taken by public officials, rather than to seeking ways of helping the citizens and of exhausting possibilities for "citizen friendly" solutions available within the limits of the law.

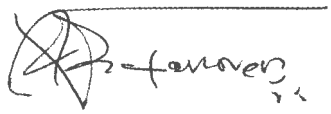
Such an approach, which focuses on formally safeguarding the actions of the public administration in its relations with citizens, clearly exemplifies the "zero-sum logic", described in my introduction to the *1999 Annual Report.* The basic principle governing the zero-sum logic is that, in case of a dispute, as for example between an individual and the state, one of the two parties necessarily has to lose. In order to defend the state and to protect it from "losing", it follows that the goal of the public official in dealing with citizens becomes to ensure conditions enabling the state to "win." In the context of the zero-sum logic, this means that the citizen has to "lose." In contrast, approaching disputes between individuals and the state from the perspective of a "positive-sum logic" and its complementary "logic of resolution", leaves open the possibility of finding a solution (even alternative solutions) satisfactory to both, i.e. a public administration operating within the boundaries of legality, and the citizen provided with a satisfactory (and citizen friendly) settlement of his case.

Conceptualizing legality in a manner consonant with the logic of resolution and of positive sum approaches entails understanding certain principles and rights critically important to the quality of democracy and to the consolidation of the rule of law. The most important of these are the principles of fair administration, equity, proportionality, transparency (and the associated right to information), protection of legitimate expectations, and good faith. The underlying common denominator, clearly embodied in the Greek Code of Administrative Procedure, of all these principles is that in arriving at a decision on a given case the administration should carefully weigh its specific particularities, seeking to interpret the rules within the limits of the law, and not merely to implement them in an inflexible and strict fashion.

To express this somewhat differently, failure by the public administration to take into account all these complementary principles when considering a case and insistence upon the narrow interpretation of legal provisions constitutes a clear violation of the principle of legality, for it touches directly upon the very core of citizens' rights and undermines the further consolidation of the rule of law. Such an approach entrenched behind formal legality, oblivious to the possible existence of a solution able to satisfy both the individual and the legal requirements, necessarily perpetuates a permanent state of confrontation between the citizen and the state. It also contributes decisively to the de-legitimization of the administration in the eyes of the citizen, greatly contracts the meaning of citizenship, and effectively undermines the quality of democracy.

With this in mind, the Ombudsman, an independent authority empowered by law to protect the rights of citizens and to promote adherence to legality, has, from his inception, striven to function as an alternative, extra-judicial mechanism of control and accountability of the public administration. He seeks to mediate between public officials and citizens finding themselves on the receiving end of the administration's actions in an effort to promote potentially alternative ways of settling their disagreements, based on a positive-sum logic, the logic of resolution, and a broad and substantive (as opposed to the narrow and formal) understanding of legality.

From this perspective, the experience of the Office of the Greek Ombudsman during 2000 was, in principle, satisfactory. The strategic choice to direct its energies to approaching the public administration in order to encourage it to become familiar both with the imperatives of the principle of legality, as described above, and its link to the quality of democracy, has had encouraging results, which are presented in chapter D, General Conclusions, of the present report, as well as in the reports submitted by the four Departments. However positive this development does not allow for a relaxation of efforts. On the contrary, it serves as a reminder of the long and difficult road lying ahead, in order for these promising perspectives to gain further momentum, to become more widely accepted and to benefit citizens, public administration, and the quality of our democracy.



PROF. NIKIFOROS DIAMANDOUROS
March 2001

B.

EXECUTIVE SUMMARY

The Ombudsman's founding law and the Rules of Internal Organization define the statutory powers of the Ombudsman, describing his activities and ensuring his effectiveness as an independent, extra-judicial mechanism for control and mediation.

EXECUTIVE SUMMARY

In accordance with article 3, par. 5 of Law 2477/1997 (Government Gazette A 59), which establishes the Independent Administrative Authority of the Greek Ombudsman, an annual report is submitted to the Prime Minister and the Speaker of Parliament. Copies of the report are also submitted to the Minister of the Interior, Public Administration, and Decentralization. Finally, the report is made available upon request to any person wanting to be informed about the work undertaken by the Ombudsman and the problems concerning public administration that have come to light through the Ombudsman's mediation.

The present report is an abridged English language version of the Ombudsman's annual report.

1. Structure of the Report

The abridged report consists of ten chapters:

Chapter A contains a general assessment of the work undertaken by the Ombudsman during the year 2000 and a brief description of his goals for 2001.

Chapter B, divided into three sections, contains a brief summary of the structure of the report, an overall assessment of the work undertaken by the Office of the Ombudsman in 2000, and a brief description of the activities of the Office's four Departments (Human Rights, Social Welfare, Quality of Life, State-Citizen Relations).

Chapter C describes the structure, staff, and operation of the Ombudsman in accordance with relevant legal provisions.

Chapter D contains a statistical presentation of the activities undertaken by the Ombudsman during 2000.

Chapter E presents the work undertaken, the conclusions reached, and the proposals submitted by the Office's four Departments with a presentation of the most important cases investigated during 2000.

Chapter F contains the proposals for legislative amendments and administrative reforms the Ombudsman considers necessary for the improvement of specific aspects of public administration. The proposals are grouped by administration authority involved.

Chapter G is concerned with the institutional means provided to the Ombudsman by law and how they are used to make the Office more effective as a mechanism for control and mediation.

Chapter H describes the outreach activities undertaken by the Ombudsman to better acquaint the public with the Office's mandate and mission and improve its operation through communication and cooperation with other authorities. This also includes participation of the Ombudsman's staff in seminars, conferences and other meetings.

Chapter I provides a description of the Ombudsman's participation in international activities during 2000.

Chapter J contains, as an appendix, the legislative provisions relevant to the Independent Administrative Authority of the Greek Ombudsman (Law 2477/1997) and

biographical information about the Greek Ombudsman, the four Deputy Ombudsmen and a list of the Office's personnel.

2. Synopsis

STRUCTURE, STAFFING AND OPERATION OF THE OMBUDSMAN

The Office of the Ombudsman's structure and scope of activities are established by its founding law (2477/1997) and by the Rules of Internal Organization of the Ombudsman (Presidential Decree 273/1999). These two documents define the statutory powers of the Ombudsman, describing his activities and ensuring his effectiveness as an independent, extra-judicial mechanism for control and mediation. These powers extend from simple intervention aiming at resolving disputes between citizens and public services, to publicizing the results of the Ombudsman's investigations.

Over the year 2000, the process of appointing the remaining staff foreseen by law was completed. This included senior and junior investigators, administrative staff and technical support personnel. Of these, a large number were seconded from other public services while the remaining were hired on a contract basis.

OVERALL ASSESSMENT FOR THE YEAR 2000

Since his inception, in October 1, 1998, through to December 31, 2000, the Ombudsman has received a total of 18,821 complaints. During the year 2000, the Ombudsman received 10,107 new complaints (a rise of 55.8% compared to 1999) and dealt with a total of 12,811 cases, as 2,704 complaints from the previous period were still pending. The 12,811 cases dealt with were distributed among the Departments as shown in Table B.1.

TABLE B.1 INTERDEPARTMENTAL DISTRIBUTION OF CASES

Department of	number of cases	% of the total
Human Rights	1,543	12.04
Social Welfare	3,799	29.66
Quality of Life	3,454	26.96
State-Citizen Relations	4,015	31.34

Of the 12,811 complaints, 9,298 cases (or 72.6% of the total) were investigated and settled by year's end, while the remaining 3,513 cases (or 27.4%) were still pending on December 31, 2000. The number of complaints shelved for being out of mandate increased by 29%, while the number of complaints resolved in the complainants' favour fell to 50.5%, registering a 10% decline compared to 1999.

USE OF STATUTORY POWERS

The Ombudsman, making use of the statutory powers foreseen in his founding law, issued in 2000 a special report on Local Authorities and his findings as regards the Supplementary Pension and Insurance Fund for Metalworkers. Additionally, he carried out two own-initiative investigations; the first concerned the Social Welfare Institution "Theometor" in

Ayiasos, on the island of Lesvos, and the second the Kea Port Authority and the services of the Ministry of Mercantile Marine.

The first special report on Local Authorities focused mainly on issues related to the urban and natural environment and the problems most often encountered between citizens and local authority services. It also dealt, though to a lesser extent, with issues regarding social welfare and human rights. The report presented characteristic cases of maladministration in local government services and identified their causes. The Ombudsman further submitted a series of proposals in an effort to assist the administration in taking specific measures to overcome the malfunctions identified.

The results of the investigation into the Supplementary Pension and Insurance Fund for Metalworkers revealed extended delays in providing retirement benefits to beneficiaries. The relevant report listed the areas where the fund's operation was below acceptable standards and presented the Ombudsman's reorganization proposals for addressing these problems.

The first own-initiative investigation carried out by the Ombudsman into the Social Welfare Institution "Theometor" in Ayiasos, Lesvos, brought to light a series of problems associated with the proper operation of public institutions and touched on the particularly sensitive issue of protecting the rights of people being cared for. The Ombudsman noted the malfunctions arising from the outdated legal framework within which the institution operates, the dilapidated building and material infrastructure, the lack of staff, and the insufficient sanitary control. The Ombudsman suggested specific improvement measures and will monitor their implementation.

The second own-initiative investigation, concerning the Kea Port Authority and the services provided there by the Ministry of Mercantile Marine, revealed that the port authorities had not taken the required safety measures, thereby causing inconvenience to passengers and exposing them to potential dangers. The Ombudsman proposed specific measures to rearrange and better organize the embarkation area in the harbour of Kea and suggested that the port authorities exercise greater control to ensure safer conditions for passenger transportation.

During 2000, the Ombudsman made considerable use of the right provided by law to make on-site inspections and carried out 26 such inspections of public services. Whenever investigation produced evidence of serious negligence or breach of law by the administrative officer concerned, the Ombudsman requested that internal administrative investigations under oath be carried out, while in a number of complaints, for which investigation produced substantial evidence of criminal acts, the Ombudsman referred the cases to the responsible public prosecutor.

OUTREACH ACTIVITIES

Outreach activities undertaken by the Ombudsman include visits to cities outside the metropolitan area of Attica, participation in conferences, seminars and meetings with representatives of various public authorities and service departments. The purpose of these actions is to better inform the public about the Ombudsman's mission, work and mandate; to promote and solidify areas of cooperation between the Ombudsman and public administration authorities; to expand the Ombudsman's mediation efforts, with the long-term goal of improving the quality of services provided to citizens by the public administration.

Thus, in 2000, the Greek Ombudsman, Prof. Nikiforos Diamandouros, accompanied by senior staff members, visited the city of Thessaloniki and the island of Lesvos, administrative centre of the Region of the Northern Aegean. During both these visits, the Greek Ombudsman held press conferences, made public speeches and met with state and local government officials. These visits attracted considerable publicity and attendance by citizens, while a significant number of new complaints were submitted to the Ombudsman's team.

In addition, the Ombudsman, Deputy Ombudsmen, and senior investigators participated in several conferences and seminars, making presentations at the invitation of various authorities.

Finally, the Department of State-Citizen Relations, in cooperation with the Ministry of Finance, organized a two-day meeting in Herakleion, Crete, which focused on the work and role of the Ombudsman and his contribution in enhancing the public administration's problem-solving capacity and improving its relations with citizens.

3. Activities by Department

DEPARTMENT OF HUMAN RIGHTS

The Department deals with complaints involving individual, social, or political rights foreseen by law, constitutional provisions, or international agreements.

During 2000, the Department of Human Rights received 1,144 complaints, which, together with the 399 pending cases carried over from 1999, brought the total number of complaints dealt with to 1,543. Of these complaints, 26% were shelved because they were found to be out of mandate, or did not meet formal requirements (such as providing addresses, being signed, etc.). Investigation in depth was completed for 54% of the cases, while investigation is carried into 2001 for 20% of the cases.

A significant number of the complaints still pending involve complex problems whose resolution requires a considerable amount of time, as a redrafting of pertinent procedures or the adoption of new legislation is necessitated (such as the case of the protection of professional rights). Of the complaints investigated, 35% were judged unfounded, since the administration had acted in accordance with the law. Some of these complaints dealt with naturalization cases, where the law leaves the administration with wide discretionary powers and does not put any time limits on its response or on the need to explain its decisions. Another 30% of all complaints were considered founded. For 77% of these, the administration accepted the proposals of the Ombudsman.

Over 35% of the complaints submitted were by non-Greek citizens. In addition to issues of discrimination on grounds of nationality, these complaints touch upon evident maladministration in the legal procedures applying to aliens entering, residing and working in the country, as well as naturalization procedures. Complaints touching on issues of economic and professional freedom are quite frequent. The Department of Human Rights also investigates infringements of personal freedom by the police and prison authorities, specific aspects of the obligation to perform military service, issues of equal treatment and fair administration in admitting students to universities and in the educational system in general, offences to human dignity, and violation of the principle of equality in making judgments based on race or religious belief.

A general assessment of the experience of the Department of Human Rights during the third year of the Office's operation can be summarized by pointing out the patterns, which can be observed in some forms of maladministration and breaches of the law.

The most serious infringements of rights continue to involve marginal social groups such as the Roma, prisoners in police detention centres and prisons, and religious minorities. The large increase in complaints submitted by aliens involving approval of applications for entrance, residence and work permits and other relevant issues is a clear sign of the maladministration economic immigrants encounter in their dealings with local consular authorities, state security authorities, or the Manpower Employment Organization when applying for permission to reside and work in the country. The services responsible for issuing the "green cards" are not well organized nor inter-coordinated and, as a result, thousands of aliens are severely harassed when trying to put together the required documents. The Ombudsman has issued a special report indicating the organizational conditions that need to be met and stressing that the prevailing policy goal should be the integration of those who wish to establish a firm relationship with Greek society.

Finally, infringements of the rights of the rest of the population are, as a rule, of a different nature. These infringements originate from the central administration, elected local government officials, as well as self-administered public organizations. In these cases, the central administration is responsible mainly for its failure to set in motion the mechanisms for control and oversight at its command. Unfortunately, there still are instances of public organizations and agencies not enforcing final court rulings.

DEPARTMENT OF SOCIAL WELFARE

The Department deals primarily with cases involving the exercise by individuals of social rights protected by national, European and international law. It focuses on the "social dimension" of the citizen, with a view to contributing to the establishment of a new administrative culture concerning these issues. The main responsibilities of the Department include social insurance, health and welfare, as well as social policy in general.

Greek citizens, aliens, immigrants, refugees, tourists, socially excluded or particularly vulnerable groups (such as the Roma, children, the elderly, the physically handicapped or psychologically impaired, people with special needs, etc.) have sought the Department's help.

During the year 2000, the number of complaints submitted increased substantially and the Department of Social Welfare investigated a total of 3,799 (29.6%) cases. This included 2,999 complaints submitted during 2000 and 800 complaints still pending as of December 31, 1999, for which investigations were continued and completed during the year 2000. Of all the complaints investigated during 2000, 906 (24%) were found to be outside the Ombudsman's mandate. Of the remaining 2,893 complaints received, 995 (53.5%) were judged to be founded and were resolved in favour of the complainants. 714 complaints (39.7%) were unfounded as the administration had acted in accordance with the law. Investigation of 1,095 (29%) complaints had not been completed as of December 31, 2000. In 35 of the founded complaints the administration did not accept the Ombudsman's recommendations.

The Department established that most of the problems arising out of administrative action are due to maladministration (69%). This mainly involves delays in issuing decisions about retirement benefits, provision of inadequate information to people who are entitled

to retirement benefits, and delays in answering citizens' queries. Investigations have revealed that outright breach of the law is involved in a significant number of cases (12%), as well as infringement of the principle of fair administration (19%).

The Department of Social Welfare drew up proposals for legislative amendments and administrative reforms intended to address the problems raised, and submitted them to the relevant ministries.

After three years of case investigations, the Department has come to the conclusion that most problems of public administration in addressing social issues stem from its poor organization, handling inflexibility, and the existence of legislative gaps. To address these problems effectively the following general guidelines need be to taken into consideration:

- Improved new regulations in the direction of safeguarding citizens' social rights and recognizing the individual's "social dimension."
- Systematic efforts need to be made with an eye to lessening the bureaucratic nature and improving the organization of public services and to protecting people from the harassment arising from having to cope with complicated, fragmented, and inconsistent legislation in their day-to-day dealings with the administration.
- Public administration authorities need to reconsider their understanding of legality and move away from strict interpretation of the letter of the law, seeking to implement its spirit.
- Better understanding of the role and mission of the Ombudsman by the administration will result in significant benefits to the citizens in the form of improved capacity for complaint resolution.

DEPARTMENT OF QUALITY OF LIFE

The Department investigates complaints involving the natural and urban environment. More specifically, it examines complaints concerning:

- environmental issues,
- noise and visual pollution,
- problems associated with urban planning and land use,
- violations of the Building Code and building regulations in general,
- public works,
- violation of operating licences and permits, and
- specific cultural issues.

The Department of Quality of Life further investigates allegations of administrative malpractice at all levels of central and local government activity, as well as problems involving public utility corporations.

In 2000, the Department received 2,470 new complaints, figure which represents 26.69% of all the complaints submitted to the Office of the Ombudsman over the same period. This figure constitutes an increase of 67% over the number of complaints received during the previous year and reflects the rising number of problems associated with the intensified use of resources.

Furthermore, the Department continued the investigation on 851 cases pending from 1998-1999 and reopened another 133 shelved cases because the administration failed to implement recommendations to which it had agreed.

Most cases (71%) concerned issues involving maladministration by local government authorities. A large number of cases (20%) concerned maladministration by ministry

officials – mainly in the Ministry of Culture, the Ministry of the Interior, Public Administration, and Decentralization and the Ministry for the Environment, Physical Planning, and Public Works. Of the 3,454 cases handled by the Department of Quality of Life during 2000, 1,036 (30%) were found to be outside the Ombudsman's mandate (as defined by the provisions of Law 2477/1997) and were shelved. Of the remaining cases, 1,120 (32%) were investigated and closed and 1,298 (38%) are still under investigation. Of the 1,120 cases investigated and closed, 576 were founded, out of which 499 were resolved in favour of the complainants, while for the remaining 77 the administration refused to accept the Ombudsman's recommendations; 423 cases were judged to be unfounded; 121 were shelved because they didn't meet formal requirements (i.e. unsigned or anonymous statements, no address, vague accusations, etc.).

Of the 1,298 cases pending from 1999, 243 cases were investigated, their final reports were submitted, but response from the administration is still awaited; 35 cases were in their final report stage, and 1,020 cases were still under investigation.

The Department handles complaints that often affect the property rights or legal interests of third parties, that frequently respond by raising counter complaints. This broadens the original scope of the Ombudsman's involvement and prolongs the average period of investigation.

From experience gained in handling the complaints submitted during 2000, the Department reached the following main conclusions:

- It is extremely difficult to overturn long-established, well-entrenched illegal practices, which often survive even after judicial decisions have been issued against them.
- Many local government authorities exhibit an attitude of arbitrariness, such as intentional illegal actions, non-compliance with court rulings and indifference to the rights of citizens. This attitude is assisted, if not encouraged, by the systematic failure of the supervising authorities to exercise the control required by law over the actions of regional and central administrative authorities.
- Cooperation proved difficult with several public services, resulting in unreasonably long investigation periods, while, in some cases, the Department reached a deadlock in its efforts to resolve complaints.

DEPARTMENT OF STATE-CITIZEN RELATIONS

The area of jurisdiction of the Department includes information and communication, the quality of services provided by the public sector, maladministration associated with Local Authorities, public utility corporations, authorities responsible for communications and transport, labour issues, industry, energy, taxation, customs, financial issues, trade, public procurements, agriculture, agricultural policy, and education.

The large number of complaints handled by the Department of State-Citizen Relations in 2000 clearly shows the wide scope of its jurisdiction. It received 4,015 of the 12,811 complaints handled in total by the Ombudsman (31.4% of the total). Of these, 2,563 (66.1%) were investigated in depth and 69.3% were resolved. Qualitative analysis of these complaints leads to useful conclusions concerning the extent of maladministration, the forms it takes, as well as the authorities with which the Department cooperates in its mediation role.

A principal cause of complaint concerned delays in responding or failure to respond to

applications or failure to provide information requested. There were instances of direct contravening of standard legislation, unconstitutional behaviour, and failure to take legally required actions. Failure to enforce judicial decisions remains a primary form of non-respect of the law.

Useful conclusions can be drawn from analysing data relating to specific forms of maladministration involving similar services. For example, no one can fail to notice the considerable effort being made by the Ministry of Finance to modernize and improve the services it provides to the public. Although problems remain, the steps taken towards resolving at least the everyday problems encountered by the public in their transactions with the Ministry of Finance constitute cause for restrained optimism. In contrast, local governments show more often than not inability to fulfil many of their obligations and act in an arbitrary manner.

In carrying out its mediating role, the Department relies on communication either through mail or telephone, depending on the urgency of the case. Experience shows that personal contact between the responsible official and the investigator handling the case can be decisive in bringing about a speedy resolution of a complaint. In this regard, visits to the relevant service or department have also proven to be very effective.

A major goal of the Department of State-Citizen Relations is to contribute to the modernization effort under way in the Greek public administration and the establishment of an administrative culture geared to serving the public.

C.

LEGAL FRAMEWORK AND OPERATION

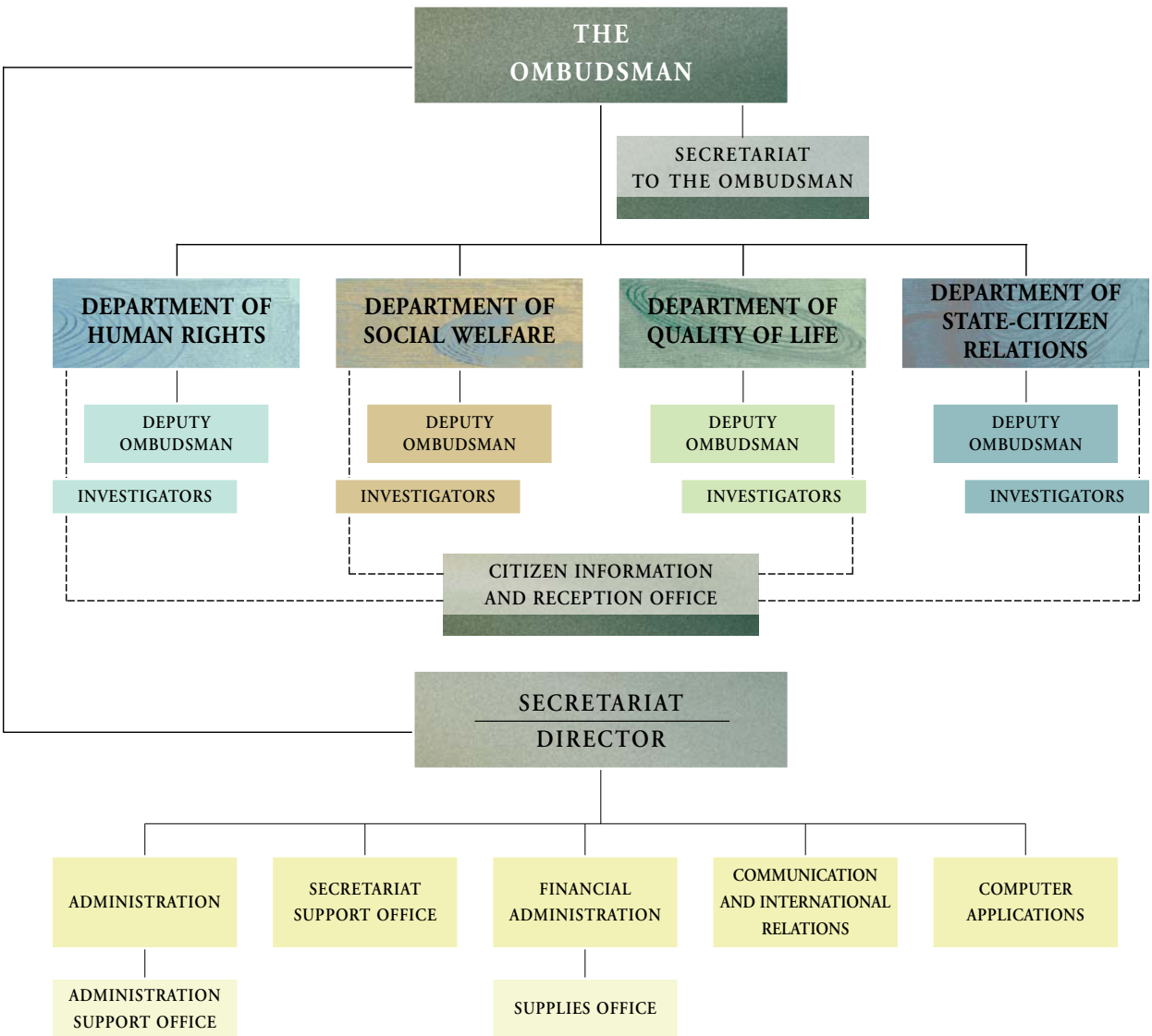
The effective operation of the Office of the Greek Ombudsman depends on an organizational structure that is capable of meeting the guidelines drawn up by legislation and provides the best possible conditions supporting its work.

LEGAL FRAMEWORK AND OPERATION

1. Organization and Structure

The effective operation of the Office of the Greek Ombudsman depends on an organizational structure that is capable of meeting the guidelines drawn up by legislation and provides the best possible conditions supporting its work. This structure is defined by the Rules of Internal Organization of the Ombudsman and is reflected in the following graph.

GRAPH C.1 STRUCTURE OF THE OMBUDSMAN



2. The Ombudsman

The Ombudsman presides over the Office of the Ombudsman, determines its policy, directs and coordinates its work, and, together with the four Deputy Ombudsmen, carries out the Office's mission. Nikiforos Diamandouros, professor of Political Science at the University of Athens, was selected as the first Greek Ombudsman.

The Ombudsman's secretariat is responsible for providing administrative and financial support for the Office and for communicating with the public about the activities undertaken by the Ombudsman.

3. Departments

The work carried out by the Office of the Ombudsman is divided into the following four Departments, each of which is supervised by a Deputy Ombudsman:

- **Human Rights**, supervised by Deputy Ombudsman Yorgos Kaminis, assistant professor of Constitutional Law at the University of Athens. The Department undertakes cases involving the infringement of citizens' individual, political, or social rights that are protected by the Constitution or by international agreements incorporated into Greek law.
- **Social Welfare**, supervised by Deputy Ombudsman Maria Mitrosyli, lawyer, specializing in health and welfare issues and doctor of Law at the University Paris X. Most of the cases with which the Department is involved concern social policy, insurance, health, welfare, the protection of children, the elderly, people with special needs, and vulnerable groups.
- **Quality of Life**, supervised by Deputy Ombudsman Yannis Michail, architect and urban planner, doctor of the Technical University of Aachen. The Department undertakes cases involving the environment, urban planning, physical planning, public works, and culture.
- **State-Citizen Relations**, supervised by Deputy Ombudsman Aliki Koutsoumari, lawyer, former director general of the Ministry of the Interior, Public Administration, and Decentralization. The Department deals with issues of communication and information, transport, the quality of services provided and maladministration by local authorities, public utility corporations and services responsible for transport, communications, labour, industry, energy, taxes and, in general, financial issues such as customs, trade and government procurements, agriculture, agricultural policy, and education.

Each Department has a staff of approximately 15 senior and junior investigators of different scientific disciplines, and a secretariat. The first group carries out the investigation of complaints submitted, while the second covers the communications of the Deputy Ombudsmen and the administrative needs (i.e. distribution of cases to the investigators, archives, press releases, etc.) of the Department.

4. Secretariat

The Rules of Internal Organization of the Ombudsman provide for secretarial support at the administrative level. The Secretariat consists of the five offices listed below:

- **Administration and administration support office**, which deal with staff issues and general logistics.
- **Secretariat support office**, which is concerned with issuing protocol numbers, assigning complaints to the Departments, distributing correspondence, and a series of procedural issues.
- **Financial administration and supplies office**, which deal with the entire range of the Office's financial activities, including supplies.
- **Communication and international relations**, which is concerned with the communication policy and activities of the Ombudsman at both the national and international level. This section also maintains the Ombudsman's library.
- **Computer applications**, which is responsible for supporting and servicing the entire computer system.

The purpose of the above secretariat offices is to develop methods of organizing the Office, based on modern computer and electronic applications, capable of meeting the particular requirements conforming to the rules of best practice and the concept of a smoothly operating and competent administration.

D.

OVERALL ASSESSMENT FOR THE YEAR 2000

The present report provides several examples of specific public services that cooperated and responded positively and constructively, adopting the Ombudsman's proposals for legislative amendments and administrative reforms and, in general, taking advantage of the experience accumulated by the Ombudsman in order to improve the quality of services provided to the public.

OVERALL ASSESSMENT FOR THE YEAR 2000

1. Statistical Data

During the year 2000, the Office of the Ombudsman received 10,107 new complaints from citizens, and handled a total of 12,811 cases, as it also dealt with the unresolved cases from the 1998-1999 period. The total number of complaints the Office of the Ombudsman received since October 1, 1998 until December 31, 2000, is 18,821 (1,430 in 1998, 7,284 in 2000 and 10,107 in 2000). A breakdown of the combined statistics is given in Table D.1.

TABLE D.1 **COMBINED STATISTICS FOR THE YEAR 2000**

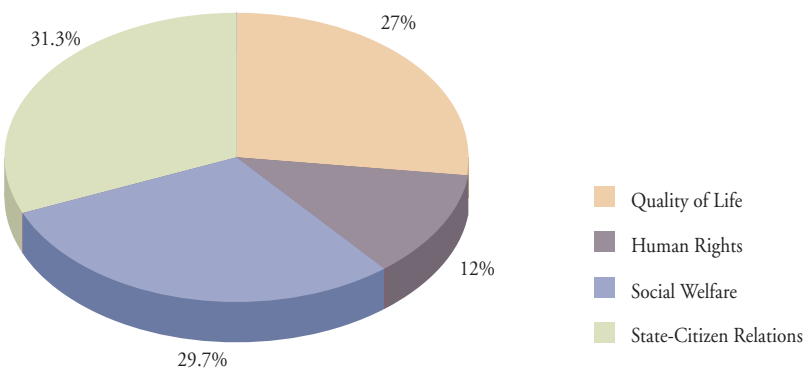
DEPARTMENT OF	NUMBER OF COMPLAINTS	% OF THE TOTAL	PROCESSED	% OF TOTAL BY DEPARTMENT	OUT OF MANDATE	% OF THE TOTAL BY DEPARTMENT	POSITIVE OUTCOME	% OF THE TOTAL BY DEPARTMENT
Human Rights	1,543	12.04	1,237	80.17	407	26.38	384	46.27
Social Welfare	3,799	29.66	2,704	71.18	906	23.85	960	53.39
Quality of Life	3,454	26.96	2,156	62.42	1,036	29.99	499	44.55
State-Citizen Relations	4,015	31.34	3,201	79.73	1,362	33.92	977	53.13
Overall total	**12,811**	**100**	**9,298**	**72.58**	**3,711**	**28.97**	**2,820**	**50.47**

1.1 DISTRIBUTION OF COMPLAINTS

The 12,811 complaints handled by the Office of the Ombudsman during 2000 were distributed among the four Departments according to their subject matter. As shown in Graph D.1, the Department of State-Citizen Relations received most complaints, i.e. 4,015 or 31.3% of the total.

The Department of Social Welfare handled 3,799 complaints or 29.7% of the total, and the Department of Quality of Life handled 3,454 complaints, 27% of the total. Finally, the Department of Human Rights handled the remaining 1,543 complaints, which is 12% of the total.

GRAPH D.1 **PERCENTAGE DISTRIBUTION OF COMPLAINTS BY DEPARTMENT FOR 2000**

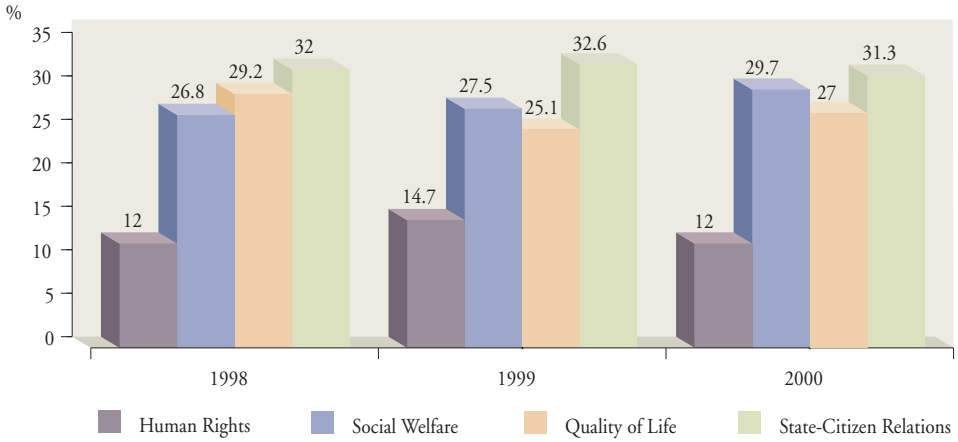


1.2 FLOW OF COMPLAINTS

Despite the monthly fluctuations in the flow of complaints and their percentage distribution by Department, the general tendency was a clear increase in relation to the respective figures of the previous two years. This rising trend is a clear indication that the Ombudsman is becoming better known and well accepted by the public.

Graph D.2 shows the number of complaints submitted to the four Departments of the Office of the Ombudsman, for the years 1998-2000.

GRAPH D.2 **PERCENTAGE DISTRIBUTION OF COMPLAINTS TO DEPARTMENTS FOR 1998, 1999 AND 2000**



The number of complaints submitted to the Office of the Ombudsman each month during 2000 varied from 505 (August 2000) to 1,349 (March 2000). The average number of complaints submitted each month was 842.

1.3 PROCESSING OF COMPLAINTS

Of the 12,811 complaints handled by the Ombudsman during the year 2000, 9,100 complaints (i.e. 71% of the total) were within the Ombudsman's mandate, while 3,711 complaints (29% of the total) were directly filed as they were found to be outside the mandate.

The processing of complaints submitted to the Office of the Ombudsman and investigated during 2000 is shown in Table D.2.

TABLE D.2 **PROCESSING OF COMPLAINTS**

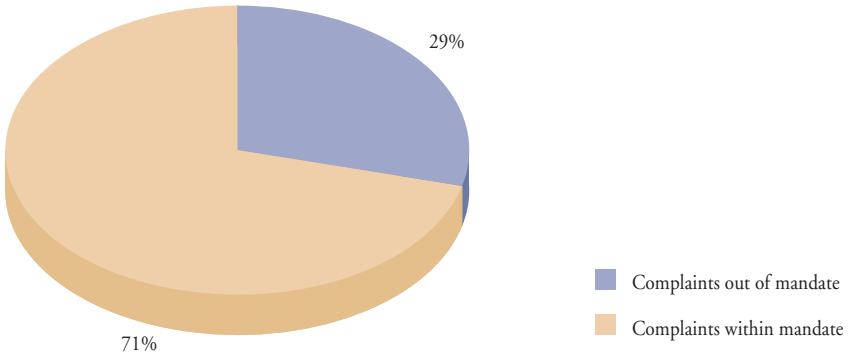
Pending complaints carried over from 1999*	2,704	
Complaints submitted during 2000	10,107	
Total number of complaints dealt with during 2000	**12,811**	
Out of mandate: not investigated	3,711	29%
Within mandate: investigated in depth	9,100	71%
Investigated complaints resolved	5,587	43.6%
Total of complaints filed	9,298	72.6%
Pending	3,513	27.4%

* This figure also includes complaints that appear to have been concluded in the *1999 Annual Report*, but their cases have since been reopened, following the presentation of new evidence by the interested parties.

1.4 COMPLAINTS NOT INVESTIGATED

Of the complaints received by the Office during 2000, 3,711 (29%) were shelved because they were found to be outside the Ombudsman's mandate or for other reasons. This percentage has increased in comparison with 1999 (23.9%). Graph D.3 shows the percentage distribution of the 12,811 complaints handled during 2000.

GRAPH D.3 **PERCENTAGE DISTRIBUTION OF COMPLAINTS HANDLED IN 2000**



The most frequent reason for which complaints were shelved was vagueness of statement (689 complaints), followed by those complaints that did not state a specific administrative omission of required act (617 complaints). A considerable number of complaints were also shelved because the six-month time limit set by law had elapsed since the last step taken by the administration (539 complaints). Other less frequent reasons for sending complaints to the archives were that they involved authorities outside the Ombudsman's mandate (388 complaints), the service status of civil servants (352 complaints), cases pending before the courts (339 complaints) or regarding personal differences between citizens (212 complaints).

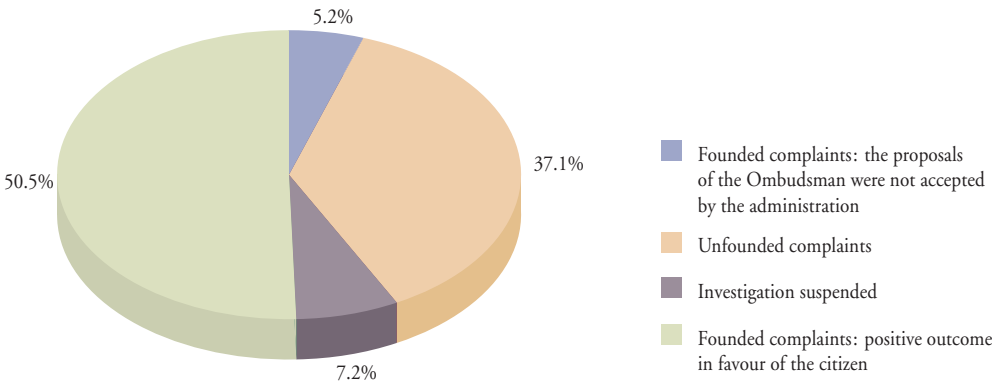
1.5 COMPLAINTS INVESTIGATED IN DEPTH

During the year 2000, 9,100 complaints (or 71% of the total) were investigated in depth. Of these, 5,587 were closed during the year, while 3,513 were still pending as of December 31, 2000.

The outcome of the complaints investigated in depth and closed is shown in Graph D.4. The graph presents the percentage distribution of these complaints, depending upon the conclusions reached and the results of both the investigation and the Ombudsman's intervention. The distribution of complaints shown in the graph is based on the total of the 5,587 complaints investigated in depth and resolved during 2000.

As is seen, 50.5% of the complaints investigated in depth and closed by the Office of the Ombudsman during 2000 had a positive outcome. On the other hand, the administration did not accept the Ombudsman's conclusions for 5.2% of the cases, while 37.1% of the complaints were deemed unfounded. Finally, investigations were suspended in 7.2% of the cases because the status of the complaint changed.

GRAPH D.4 **OUTCOME OF THE INVESTIGATED CASES**



1.6 COMPLAINANTS' PLACE OF RESIDENCE

As shown in Graph D.5, most of the people submitting complaints to the Office of the Ombudsman live in the metropolitan area of Attica (52.4%), 8.8% in Thessaloniki, while 36.7% come from the rest of the country, and the remaining 2.1% come from abroad. To a large extent, this distribution coincides with the geographical distribution of the country's population. Nevertheless, statistics show that, in relation to the previous two years, there is a trend indicating a small percentage increase of complaints submitted by people living outside the two major metropolitan areas.

GRAPH D.5 **DISTRIBUTION OF COMPLAINTS BY THE COMPLAINANTS' PLACE OF REDIDENCE**

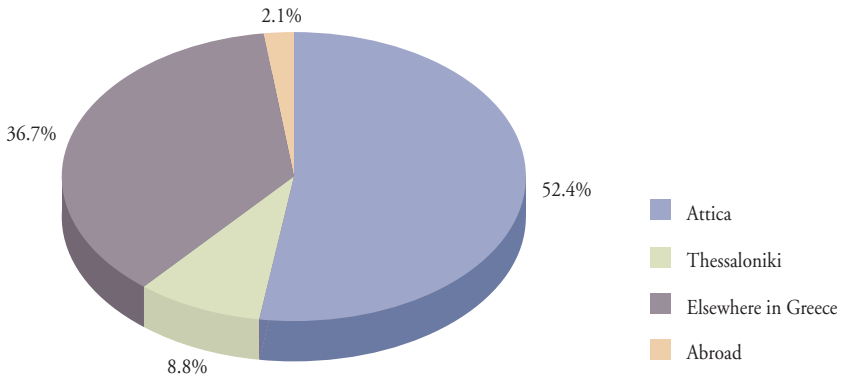


Table D.3 shows the percentages of complaints investigated by the Office of the Ombudsman during 2000 according to the areas where the complainants live.

TABLE D.3 **PERCENTAGE DISTRIBUTION BY THE COMPLAINANTS' AREA OF RESIDENCE**

Attica	52.4%
Central Macedonia	12.8%
Peloponnese	4.4%
Thessaly	3.8%
Western Greece	3.7%
Crete	3.6%
Central Greece	3.5%
Eastern Macedonia and Thrace	2.9%
South Aegean islands	2.6%
Epirus	2.4%
Western Macedonia	2.1%
North Aegean islands	2.0%
Ionian islands	1.7%
Abroad	2.1%

1.7 PUBLIC ADMINISTRATION AUTHORITIES INVOLVED IN MALADMINISTRATION CASES

Table D.4 shows the public administration authorities involved in maladministration cases, as concluded after the investigation of complaints submitted to the Office of the Ombudsman. Social insurance institutions are involved in 22.2% of the maladministration cases, municipalities and prefectures in 18.9% and 15% of the cases respectively, while smaller percentages involve the Ministry of Finance (10.4%) and the Ministry of Education (6.2%).

TABLE D.4 **PERCENTAGE DISTRIBUTION OF MALADMINISTRATION CASES BY PUBLIC ADMINISTRATION AUTHORITIES INVOLVED**

Social insurance institutions	22.2%
Municipalities and communities	18.9%
Prefectures	15.0%
Ministry of Finance	10.4%
Ministry of Education and Religious Affairs	6.2%
Ministry of the Interior, Public Administration, and Decentralization	4.1%
Ministry of Health and Welfare	4.0%
Ministry for the Environment, Physical Planning, and Public Works	3.5%
Ministry of Public Order	3.4%
Ministry of Culture	3.1%
Ministry of Labour and Social Affairs	2.8%
Ministry of Defence	1.4%
Other ministries and supervised authorities	5.0%

2. General Conclusions

Assessing the work of the Ombudsman for the year 2000 makes it possible to draw conclusions as to up-to-date results and help reorient and fine-tune the policy to be followed in the future. The conclusions are based both on the nature of the complaints submitted during this past year, as well as on the cumulative overall experience of the Office.

Over this past year, it became apparent that the Ombudsman was in the process of leaving behind the "founding moment" period and was now gradually moving into the "moment of consolidation" phase. This gradual transition made it imperative for the Office to improve its procedures and to start implementing new strategies. Inevitably, problems associated with the operation of a complex and growing organization became evident.

The goals set by the Ombudsman for the year 2000 have largely been met. These goals were more or less an extension or integration of previous-year goals and included:

- Completing the Office's operational and organizational development,
- activating its control and mediation mechanisms in order to improve the services provided to the public,
- gaining wider acceptance and support by all levels of public administration,
- developing a more effective communication strategy,
- providing technical know-how designed to support the establishment of Ombudsman institutions in the Balkan countries.

The completion of the staffing of the Ombudsman's secretariat by the end of 2000 provided a sense of independence, as it made possible his full-scale operation. This development is expected to make the Ombudsman's operation more effective, widen the scope of his overall activities and cover pertinent administrative needs. At the same time, the further staffing of the Office with senior and junior investigators filled the remaining gaps. Hence, the number of personnel (including the four Deputy Ombudsmen and the Greek Ombudsman) reached a total of 104 people.

During the year 2000, the Office of the Ombudsman investigated 12,811 cases. The number of new complaints submitted rose to 10,107. This rise indicates an increase of acceptance of the new institution by the public. At the same time, mass media coverage of the Ombudsman's activities has been both extensive and positive, as it has publicized extensive excerpts of the previous annual and special reports, as well as the outcome of several investigations concerning particular cases of public interest. This publicity has further encouraged more people to seek the services of the Office, increasing the number of complaints submitted. To a certain extent, the noted relative percentage reduction of cases positively resolved was a consequence of the dramatically increased flow of new complaints received in 2000 (+55.8%).

On the other hand, the also increased percentage of out-of-mandate complaints clearly shows that a more effective communication campaign is necessary to clarify the nature, role and responsibilities of the Ombudsman. This will enable the Ombudsman to increase his effectiveness as an alternative mediating mechanism for resolving disputes.

Given the considerable increase in the flow of complaints submitted, the primary motive underlying the Ombudsman's decision to shift attention towards the public administration was the potential benefits in the efficiency of the institution. These would result both from administrative authorities becoming more aware of the Ombudsman's nature

and purpose, and from improving the quality of services provided by the public agencies to citizens. From this viewpoint, the turn towards the administration falls squarely within the "logic of resolution" and "positive sum" approaches to problem solving, which constitute basic operating principles for the Ombudsman.

The turn towards the public administration assumed two main lines:

- Closer communication on a regular basis between the Ombudsman's staff and public administration officials of all levels, including the political leadership,
- organizing full-day meetings with ministerial departments in an effort to systematically familiarize public officials with the nature and scope of activities of the Ombudsman, i.e. a mediating institution able to operate as an alternative, extra-judicial mechanism providing fast and flexible resolutions for disputes arising between individuals and the administration. The common goal of both is to search for ways to simplify the administration's operating procedures, and to help enhance their rationality.

The implementation period of this initiative has only been a short one. Yet, progress has been made already and cooperation between the public administration and the Ombudsman has improved, as there is better understanding of the Ombudsman's mission, both at the level of the public services and the political leadership. This development is particularly welcome and should be further encouraged as much as possible. The present report provides several examples of specific public services which cooperated and responded positively and constructively, adopting the Ombudsman's proposals for legislative amendments and administrative reforms and, in general, taking advantage of the experience accumulated by the Ombudsman in order to improve the quality of services provided to the public.

However, this generally positive image is modified at two levels. The first regards the quality of cooperation established between the Ombudsman, the public administration and its political leadership. Reactions by the public administration cover a wide scope of behaviour, ranging from well-disposed acceptance of the Ombudsman's proposals, to extreme indifference, procrastination, obstruction or even fundamental refusal to cooperate.

The second concerns the more complex but equally important issue of indirect but clear questioning of the role of the Ombudsman as an alternative, extra-judicial mechanism for resolving disputes arising between citizens and the administration. Certain public services have insisted that citizens dissatisfied with actions taken by the administration can resort to the courts. This negative attitude hits at the very core of the concept of the Ombudsman as a mechanism authorized by law to seek and to promote extra-judicial, flexible, fast solutions to citizens' problems with no cost being entailed. It should be noted that it is mostly these reactions that cause investigation delays or standstills, making it virtually impossible to reach fair solutions for citizens facing problems with the administration.

In either case, these practices undermine the rule of law and the quality of modern democracy, of which one basic expression is to provide citizens with the ability to select between alternative legal means in attaining their goals. Instead, insistence upon only the court (which is time - and resource-consuming for the citizen), in addition to being inflexible and severe, leads to an outdated and deficient sense of our system.

All these issues will obviously become the topics of future proposals of the Ombudsman to the political leadership of the country. Their goal will be to assist the

public administration to appropriately coordinate, organize and simplify its procedures of operation, thereby combating maladministration.

The investigation of complaints submitted to the Office of the Ombudsman has shown that fragmentation and overlapping of responsibilities between central and regional administration authorities is one of the main underlying conditions creating a series of problems in delivering good administration. The decision to allocate and assign specific areas of administrative activity to one or more authorities falls unquestionably within the political leadership's realm of discretion and lies beyond the Ombudsman's mandate. The implementation of these choices, however, and their effects upon the day-to-day operation of the public administration clearly fall within the area of his jurisdiction. In this sense then, the Ombudsman is justified in undertaking cases that, because of overlapping responsibilities between different authorities, are extremely difficult to resolve and result in extensive maladministration. A characteristic example of overlapping responsibility leading directly to such a form of extreme maladministration is provided by the operation of the various forestry offices for which the Secretary General of Regional Administration, the Ministry of the Interior, Public Administration, and Decentralization, the Ministry of Agriculture, and the Ministry for the Environment, Physical Planning, and Public Works have joint competence.

The investigation of complaints during 2000 has brought one more problem to light. This does not involve acts of maladministration *per se*, since the action taken by the administration is legal, but it does affect the imposition of unfair legal regulations with many, particularly harsh, effects upon citizens. A characteristic example of this is demonstrated in the cases where the law provides a procedural advantage in favour of the state, freeing it from the legal burden of providing its property entitlement. This results in often having cases where, though it is the state that contests the ownership of a particular property (and should therefore produce its legal titles), it is the citizen that has to prove his ownership rights. The establishment of entitlement in favour of the state, however, usually functions not merely as a procedural privilege, but also as a legal shield covering many administrative acts against property ownership rights of citizens. The perpetuation of this state of affairs results in a form of inequity.

The "moment of consolidation" is associated with undertaking initiatives as well as activating mechanisms of control capable of expanding the range of the Ombudsman's activities, contributing to the further acceptability of the Ombudsman institution and promoting the realization of its mission. During 2000, the Ombudsman undertook a series of interventions based on this rationale. The most important of these was the activation of the relevant provisions in his founding law to prepare and send to the competent ministers two special reports. The need for these reports sprang from the frequency of appearance and seriousness of specific administrative pathogenies noted in the complaints that had been submitted, or from the investigation of a case of public interest undertaken at the Ombudsman's own initiative. The first special report exposed the maladministration practices associated with the operation of local and regional government authorities. The second regarded the Social Welfare Institution "Theometor" in Ayiasos, Lesvos. These reports gave the Ombudsman the opportunity to provide tangible evidence of his strict adherence to the principle of legality and stress that criticism directed against those who violate legality is meant to increase respect for institutions and demonstrate that their proper operation helps consolidate the rule of law and improve the quality of democracy.

Effective communication with citizens and the public administration is also promoted by the Ombudsman's periodic visits to areas outside the capital and by meetings held between the Ombudsman, his accompanying staff and senior public officials. This practice of direct communication has already borne fruit and will be intensified during 2001.

An important project initiated during 2000 was a self-evaluation two-day meeting attended by the staff of the Office and the Ombudsman himself for discussing progress to date of practices and changes necessary to improve effectiveness.

At the international level, the Ombudsman responded to the invitation of the Minister of Foreign Affairs to promote the institution of the Ombudsman in the member states of the Stability Pact for Southeastern Europe, within the framework of the First Table regarding democratization and human rights. In close cooperation with the European Council, this initiative provides technical know-how and advice to newly established Ombudsman institutions in the Balkan countries. This activity constitutes a major undertaking for the Office of the Greek Ombudsman, whose scope is meant to enlarge through further networking in other European countries.

During 2000, the Ombudsman was formally invited to participate in two bodies that advise the country's political leadership in formulating public policy. The first is the Greek National Commission for Human Rights, which advises the Prime Minister. The second is the National Council on Public Administration Reform, an advisory body for the Minister of the Interior, Public Administration, and Decentralization.

The overall assessment of the work performed by the Ombudsman during this past year presents a complex and ambiguous picture. On the one hand, there is a feeling of satisfaction for achievements and success. On the other, real challenges lie ahead, prohibiting relaxation of efforts and requiring the continuous development of new or improved operating practices aimed at consolidating the rule of law and combating maladministration. Obviously, progress towards the eventual realization of these goals requires active support from the country's political leadership, the mass media and, above all, the public.

E.

EVALUATION OF ACTIVITIES BY DEPARTMENT

The overall assessment of the work performed by the Ombudsman during this past year presents a complex and ambiguous picture. On the one hand, there is a feeling of satisfaction for achievements and success. On the other, real challenges lie ahead, prohibiting relaxation of efforts and requiring the continuous development of new or improved operating practices aimed at consolidating the rule of law and combating maladministration.

E.1 DEPARTMENT OF HUMAN RIGHTS

Given that the new legislation that is radically changing the procedures for legalizing the residence and work of aliens is still pending in Parliament, the Ombudsman pointed out in a special report the need to adopt the organizational measures required before the new regulations are implemented. In any case, and despite the reservations he has expressed about the suitability of some provisions of the legislation under consideration, the Ombudsman hails the state's new effort to deal with the great social and humanitarian problems caused by the illegal status of hundreds of thousands of economic immigrants in the country.

E.1 DEPARTMENT OF HUMAN RIGHTS

CONTENTS

DEPARTMENT OF HUMAN RIGHTS

1. Area of Jurisdiction and Responsibilities of the Department

The Department of Human Rights handles complaints connected to the infringement of individual, social, and political rights (article 2, par. 1, Presidential Decree 273/1999) established by the Constitution or the general legal principles.

More specifically, the complaints handled by the Department involve issues such as protecting the personality and privacy of an individual; violations of personal freedom rights by police or prison authorities; freedom of religious belief and worship; discrimination on grounds of nationality, race, or gender; violations of the rights of immigrants; equal access to public education; protection of professional rights; infringements of the right to appeal to the administrative authorities and the effectiveness of judicial protection caused by court rulings not being implemented by the public administration.

A remarkable number of complaints handled by the Department involve naturalization issues and regulations governing the entry, residence, and employment of aliens in the country. Complaints about higher education and professional rights are also quite frequent.

2. General Assessment of the Department's Activities

2.1 GENERAL REMARKS AND CONCLUSIONS

After 27 months of operation, the Ombudsman has identified specific patterns of maladministration and illegality in the human-rights sector. As a rule, the most severe infringements concern marginal population groups (such as the foreign economic immigrants, religious or ethnic minorities, people in custody), while the continuing unconstitutional practice of stating religion on public administration documents (see 3.2.1) carries a constant risk of discrimination against religious minorities (see 3.1.3). In addition, there are other minor groups (such as drug addicts, people with special needs, etc.) within the population whose rights are also seriously threatened either by the traditional central administration or by self-administered public organizations.

The number of complaints submitted by aliens to the Office of the Ombudsman is constantly increasing. The main thrust of these complaints revolves around the problems economic immigrants face during the procedures for legalizing their residence and employment in the country. The Ombudsman has established the considerable physical and psychological harassment undergone by thousands of people during the process of acquiring their work permits ("green cards"), the most extreme example of this being a case of unjustified detention in a police station of an economic immigrant for two and a half months due to the excessive indifference and inaction displayed by the central and regional services of the Ministry of Labour (see 3.4.1.3).

As regards the green-card procedure, it has become obvious that public administration has embarked on a vast undertaking without adequate preparation, i.e. without first

securing proper coordination among the services involved (hospitals, social insurance institutions, police authorities, etc.) or sufficiently restructuring and staffing the Manpower Employment Organization's local offices, which have to carry out the main bulk of the work.

Given that the new legislation that is radically changing the procedures for legalizing the residence and work of aliens is still pending in Parliament, the Ombudsman pointed out in a special report the need to adopt the organizational measures required before the new regulations are implemented (see chapter G, 2.2). In any case, and despite the reservations he has expressed about the suitability of some provisions of the legislation under consideration, the Ombudsman hails the state's new effort to deal with the great social and humanitarian problems caused by the illegal status of hundreds of thousands of economic immigrants in the country. The scope of the effort, however, must go beyond a mere formal legalization of the status of immigrants. Tolerance and employment are just the first steps. Social integration – at least for those who have created firm and legal bonds with Greek society and desire to stay permanently – should become the medium-range administrative target. Creating a feeling of security and stability among legal immigrants – by providing residence and work permits for gradually longer periods, depending on the length of time an alien has been in the country (see 3.4.1.2) – will have beneficial effects on naturalization procedures. It will reduce the vast number of applications and relieve applicants from a long and slow bureaucratic procedure that usually results in rejection (see 3.4.1.5).

The social integration of foreign economic immigrants depends not only on legislative enactment, but also on public administration practices, as is clear in cases where public administration illegally discriminates on the basis of nationality, even against foreigners who are legally staying in the country. This practice appears not just at the level of central administration (see 3.1.1.1), but is also adopted by the elected representatives of organized professional associations, such as the Technical Chamber of Greece and the Thessaloniki Dentists' Association (see 3.1.1.2 and 3.6.1.1 respectively).

Moreover, there have also been serious cases of racial discrimination against minority groups within the local population by elected local government officials. The Ombudsman was called upon to intervene before a municipal council in the Prefecture of Argolida, pointing out that inciting citizens to take the law into their own hands and commit acts of racial hatred, notably against the Roma camps in Argolida, is a criminal offence (see 3.1.2).

The Greek state, unfortunately, continues to treat offensively inmates of correctional institutions and police detention centres. During an investigation at the prison of the city of Ioannina, the Ombudsman discovered that overcrowding of inmates had created unbearable conditions, incompatible with human dignity. In his previous annual report, the Ombudsman had noted that similar, if not worse, conditions exist at police detention facilities (see 3.4.2).

Finally, the Ombudsman has not been convinced of the effectiveness of the internal investigations carried out at his instigation by the Greek police. These investigations intend to ascertain whether or not an offence has been committed by police officers during arrests, arraignments, and detention of suspects in police stations. It is extremely difficult for the Office of the Ombudsman itself to investigate these cases, as the victims usually are members of marginal groups, often on bad terms with the police (see 3.8.2).

Instances of maladministration and illegality affecting the rights of the rest of the

population are, as a rule, of a different nature, since extreme offences against human dignity are rare. Given, however, that they affect the vast majority of Greek citizens, they are highly indicative of the state of human rights in our country.

One form of maladministration becoming widespread is the administration's omission to carry out acts required by the Constitution. This failure to act appears mainly in the administration's negligence in protecting citizens from illegal behaviour by their fellow citizens and its failure to carry out inspection and control provided for by law over self-administered public organizations. In some cases the central administration fails to act because of pressures exerted by private-interest lobbies.

During a recent reorganization act, named the "Kapodistrias Plan", the Greek government rearranged the municipal map of the country. Several communities and municipalities were thus abolished as separate entities and were unified to others, forming larger, but fewer in number, administrative local-authority units. Some citizens reacted negatively to this and "occupied" certain former municipal or communal establishments as a form of protest. A side effect to this was that other citizens could not have access to the files and registers kept in the occupied buildings.

Some self-administered public organizations defend the interests of their members by illegally questioning decisions taken by the central administration. Whether it is the Technical Chamber of Greece impeding citizens from practising their professions (see 3.6.1.1) or university institutions not implementing the procedures required for certifying the academic and professional qualifications of applicants (see 3.5.3.1), in both cases these organizations are in fact challenging decisions taken by the Inter-University Centre for the Recognition of Foreign Academic Titles, which has by law exclusive competence on the matter.

A typical example of maladministration was the sudden abolition of the special rules governing admission to higher education for students from Greek schools abroad (see 3.5.1.1), including the delay in informing these students of the changes in the admissions system (see 3.5.2.1).

2.2 GROUPING OF CASES BY SUBJECT

Case investigations during 1999 demonstrated that vulnerable social subgroups had submitted most complaints. The year 2000 confirmed once again this trend. From this it follows that more than 30% of the complaints handled by the Department of Human Rights during 2000 involve issues of legal entry and residence of aliens in the country, freedom of religion and belief (e.g. conscientious objectors), minority rights, gender equality, and discrimination against aliens in general. Should issues of citizenship (12.3%), mainly involving the naturalization of repatriates and persons of Greek descent, be included, the percentage of complaints coming from vulnerable social groups reaches an impressive 43%. The percentage of complaints involving higher education (access to technological education institutes and universities, admission and transfer procedures) is considerable (11.6%), as is the percentage of complaints involving the safeguarding of professional rights, already a major issue in 1999. Finally, many complaints continue to involve the administration's failure to implement court decisions (8.1%) and violations of rights in the course of administrative procedures (6.8%).

TABLE E.1.1 **GROUPING OF CASES BY SUBJECT**

Legal entry and residence of aliens	21.1%
Citizenship	12.3%
Higher education institutions	11.6%
Right to work	10.2%
Judicial protection	8.1%
Rights within public administration procedures	6.8%
Civil status	5.3%
Freedom of religion and belief	5.2%
Personal freedom	3.2%
Military service	2.9%
Respect of personal dignity	2.1%
Discrimination against aliens	1.8%
Protection of private property	1.4%
Minority groups rights	1.3%
Economic freedom	1.2%
Associations and unions	0.8%
Banning departure from the country	0.8%
Violation of privacy	0.8%
Special rights of EU nationals	0.7%
Protection against infringement of rights by individuals	0.7%
Freedom of the press	0.6%
Gender equality	0.6%
Right to vote	0.4%
Professional associations	0.4%
Scientific research	0.3%

2.3 PLACE OF ORIGIN OF NON-GREEK COMPLAINANTS

Table E.1.1 shows that more than 35% of the complaints submitted to the Department during the year 2000 concerned aliens, while Table E.1.2, presenting the place of origin of these aliens, shows that the overwhelming majority come from either the former Soviet Union and other East European countries or from Third World countries in Asia and Africa. Of the complaints submitted, 36% were by aliens from the Balkans (particularly Albania), 13% from the former USSR, 10% from other non-EU European countries and 15% from African and Asian states (mostly Arab countries).

TABLE E.1.2 **PLACE OF ORIGIN OF NON-GREEK COMPLAINANTS**

Balkan countries and Turkey	36%
Former USSR	13%
Asia	10%
Other European countries	10%
European Union	5%
Africa	5%
America	4%
Stateless	1%
Nationality not specified	16%

3. Presentation of the Most Important Cases

3.1 EQUALITY AND NON-DISCRIMINATION

The principles of equality and non-discrimination, as established in the Constitution and international conventions binding Greece, provide a safety net of entrenched protection for individuals dealing with public administration. The following cases of unlawful discrimination on grounds of nationality (see 3.1.1), race (see 3.1.2), and religion (see 3.1.3) vary in intensity and cover a broad spectrum, extending from the silent refusal of public administration to implement a law provision favourable to people of Greek descent, to the overt hostility of a municipal authority against a particular racial minority.

3.1.1 DISCRIMINATION ON GROUNDS OF NATIONALITY

Two instances of unlawful discrimination are worth mentioning under this category. In the first, the public administration violated its legal obligation to extend social benefits to categories of foreign nationals of Greek descent (see 3.1.1.1), and in the second it prohibited aliens from exercising their individual rights by making Greek nationality a prerequisite despite the fact that the rights in question are enshrined in the Constitution regardless of nationality (see 3.1.1.2).

3.1.1.1 REFUSAL TO SUPPORT PEOPLE OF GREEK DESCENT FROM NORTHERN EPIRUS SUFFERING FROM SERIOUS ILLNESSES

Article 21, par. 2 of the Constitution foresees that the state provides health care to people suffering from incurable diseases. This is a guiding principle and has a binding regulatory effect. Particularly, when constitutional social rights are specified through legislative enactment, public administration is bound by respective legal obligations that cannot be evaded on grounds of budgetary impediments.

After the welfare divisions of the prefectures involved refused to make benefit payments to disabled people of Greek descent from Northern Epirus (Albania), the Ombudsman turned to the Division for Disabled People of the Ministry of Health and Welfare. This division also refused, on the grounds that such benefit payments are not provided for in the provisions concerning people of Greek descent from Albania. Investigation by the Office of the Ombudsman concluded that this argument was unfounded. Ministerial decisions implementing article 5 of Law Decree 57/1973 include people of Greek descent from Albania among the beneficiaries. More specifically, article 1.1 of Ministerial Decision Δια/Οικ/7828/3.8.73 expressly mentions people of Greek descent "from Northern Epirus." Article 3β of Ministerial Decision Γ4Α/Φ.225/161/3.2.89 names as beneficiaries "repatriated people of Greek descent, even if they have lost their Greek nationality." The Ombudsman pointed out that paying welfare benefits to people of Greek descent suffering from severe illnesses is not just a humanitarian gesture but a binding legal obligation of the administration based on existing legislation. The Ombudsman has not yet received a reply to his May 30, 2000, letter to the Minister and Deputy Minister of Health and Welfare (case 11474/1999).

3.1.1.2 REFUSAL TO ENTER AN ALIEN IN THE QUALIFIED CONSTRUCTORS' REGISTER OF THE TECHNICAL CHAMBER OF GREECE

Keeping aliens from exercising a particular profession by the indirect method of requiring

certificates only Greek citizens can possess constitutes illegal discrimination against the right to professional freedom enshrined in the Constitution (article 5, par. 1) regardless of nationality.

An American citizen and member of the Technical Chamber of Greece (TEE) applied to the relevant service of the Ministry for the Environment, Physical Planning, and Public Works for registration in category A of the Qualified Constructors' Register. Among the documents he was required to submit were a photocopy of his Greek identity card or a municipal birth certificate, documents which presuppose Greek nationality. This made it impossible for him to enter the register. The relevant legislation (article 7 of Law 1418/1984) does not require people wanting to be listed in the Qualified Constructors' Register to present a copy of their Greek identity card. Since the law states nothing specifically to the contrary, as a member of the TEE, the applicant has all the rights and responsibilities as other members, regardless of nationality.

The Ombudsman recommended to the Ministry for the Environment, Physical Planning, and Public Works to include the complainant immediately on the register and dispel any remaining doubts through legislative amendments that would explicitly recognize the right of foreign members of the TEE to register with the Qualified Constructors' Register. The ministry followed the Ombudsman's advice but only for this particular complainant (case 6632/2000).

3.1.2 DISCRIMINATION ON RACIAL GROUNDS

The Ombudsman has recently dealt with cases of unlawful discrimination against members of the Roma community. A substantial share of the responsibility for such discrimination lies with local government authorities on whose territory there are many large Roma camps.

During the spring, tension was created between citizens of the town of Nea Kios and a large number of Roma living permanently in a camp within the municipality's boundaries. Instances of physical violence among citizens and certain activities by the local government authorities exacerbating the racially charged atmosphere came to the attention of the Office of the Ombudsman. More specifically, the head of local schools expelled all Roma children and local authorities and public utility corporations were put under considerable pressure to act against the Roma community. The municipal council of Nea Kios announced a pack of "measures to deal with the problem" caused by the presence of the Roma community in the area. The council minutes for May 20, 2000, record a unanimous declaration that members do not wish "the presence, transit, and residence of gypsies within the municipality", denounce "all those who have sold plots to gypsies", request that "municipal shopkeepers each assume responsibility for the area's future", and conclude with the announcement that they will "assemble a posse to defend municipality residents."

In a letter to the municipal council, the Ombudsman pointed out the following:

- The above actions constitute criminal and disciplinary offences, as the relevant documents do not refer to specific individuals who may be acting illegally but, instead, to an entire category of people defined on purely racial grounds,
- these declarations constitute bigoted speech inciting others to racial discrimination and acts of racial hatred,

- any powerful stance that could take the form of vigilante actions and civil disobedience, such as the measure to call posses to protect residents, carries considerable dangers for the individual safety of the Roma, as well as the social peace of the entire local population. In conclusion, the Ombudsman called upon the municipality and citizens of Nea Kios to negotiate in good faith and cooperate both with the authorities responsible for dealing with the various problems and with the opposite side (case 8267/2000).

3.1.3 DISCRIMINATION BASED ON RELIGIOUS BELIEFS

The Ombudsman maintains the stance that municipal cemetery regulations that increase the costs of burial and exhumation according to the deceased's religion (and not based on reasonable objective criteria) introduce a form of constitutionally unacceptable discrimination. Furthermore, in that they offend the memory of the deceased and the reputation of the living family members, these regulations violate the principles of equality (article 4, par. 1 of the Constitution), freedom of religious conscience (article 13, par. 1 of the Constitution), free development of personality (article 5, par. 1 of the Constitution), and the protection of human dignity (article 2, par. 1 of the Constitution).

In a particular case, the complainant was called to pay for the exhumation of her mother's bones and was informed of the Ilioupoli municipal cemetery regulations, according to which burial and exhumation charges for aliens, suicides, and Jehovah's Witnesses are much higher than standard prices charged by the same cemetery for "normal-case" services. The Ombudsman called on the mayor and the municipal council of Ilioupoli to reconsider the issue. The deputy mayor attributed the controversial regulations to "error" and committed himself to abolish them without delay (case 13815/1999).

3.2 FREEDOM OF RELIGION AND BELIEF

In the Ombudsman's *1999 Annual Report*, issued before the controversy over the reference to religion on police-issued identity cards, it had been stated that "listing citizens' religion in registers and documents kept or issued by the administration is an anachronism, making the citizens' innermost beliefs the object of public administrative acts." Perpetuation of this anachronism is a perennial source of infringements against the constitutionally protected right of freedom of religious beliefs (see 3.2.1). The general freedom of belief, as it derives from human dignity (article 2 of the Constitution) and the right to free development of personality (article 5 of the Constitution), imposes upon the state the obligation to allow those who desire it, regardless of religion, the possibility of postmortem cremation (see 3.2.2).

3.2.1 DECLARATION, CERTIFICATION, AND CHANGE OF RELIGION

Register offices accustomed to recording events that can be proven through traditional means (such as marriage, divorce, christening, nationality, birth, death), are perplexed when presented with the issue of registering innermost religious convictions, which cannot be verified by such means. In any case, the reference to religious convictions on public documents of compulsory character that must be shown on demand violates the fundamental right not to reveal one's religious convictions. Even when such a declaration is optional, in a legal system like the Greek one, which recognises a "dominant religion", serious dangers of discrimination against religious minorities can be foreseen.

3.2.1.1 REGISTRATION OF THE WORD ATHEIST IN THE MUNICIPAL MALES' REGISTER RECORDS

A resident of the Municipality of Paravola Trihonidos filed an application to change the religion in his file at the Males' Register records from Christian Orthodox to atheist. The local prefect approved a change, not to atheist as requested, but to "no religion", claiming that the register entries could be changed only by reference to specific and known religions.

Even if it is not accepted that any attribute or worldview can be entered instead of religion, atheism in particular (which is an academically cultivated answer to fundamental metaphysical questions) has a clear, if negative, reference to the divine and cannot be equated with religious indifference or the denial of any religious quest. Following the Ombudsman's intervention, the Prefecture of Aitoloakarnania finally approved the change according to the complainant's wish (case 5979/2000).

3.2.1.2 REGISTER CONDITIONS FOR LISTING RELIGION

Parents asked the Register Office of Tripoli to register their children as Christians of the Free Pentecostal Apostolic Church. The register delayed entering the children, claiming that the specific religious community had neither officially notified the register of their minister's name nor provided a copy of his signature. Notification of the minister's name, however, is required only when registering weddings, since article 1367 of the Civil Code, in recognizing the right of religious ministers to perform marriages, requires legal safeguards about the authenticity of such marriages. In contrast, for registering religion, a declaration from the interested party himself (or his parents, if the individual is a minor) is sufficient. Only in exceptional cases, in order to rule out any doubt, is certification from the religious community useful. Even in such cases, the issue is not that a valid baptism or other such ceremony (which is an internal matter for every religious community) has been performed, but simply the will of the interested party to be registered as a follower of a particular religion. Therefore, all that is needed is certification from the religious community of its true name and no certification of a particular minister's identity is necessary. Following the Ombudsman's intervention, the register recorded the children as the parents wished (case 16488/2000).

3.2.1.3 ENTERING THE NAME OF A RELIGION ON REGISTER DOCUMENTS

The Prefecture of Athens notified the municipalities within its jurisdiction of a Church of Greece Holy Synod document requesting that register entries for Christian Jehovah's Witnesses drop the word Christian. The same document refers to the legal obligation of the public administration to ask the Church of Greece about any matters relating to the description of a religion that may arise.

The religious non-profit legal entity named Christian Jehovah's Witnesses considered that official communication of this document to the municipalities could be taken as an instruction to implement its directives, which would be a violation of religious freedom. In fact, listing religion in a way contrary to the principle of self-determination is a violation of religious freedom. The Constitution's reference to a "dominant religion" does not mandate the Church of Greece to decide the names of other religions nor does it give public administration the right to take a position in a theological discussion about who is and who is not a Christian. In addition, the listing of the full name of the particular religion rules out the danger of confusion between it and other denominations, given that according to irrevocable

court rulings (see *Kriti* 354/1987, *inter alia*) the name of the association of Christian Jehovah's Witnesses is not "false."

The Ombudsman asked the Prefecture of Athens to clarify that the document sent to the municipalities was simply informing them of the views of the Holy Synod and was not meant as a directive. The prefecture submitted the question to the Ministry of the Interior. Soon thereafter, the General Division for Religions at the Ministry of Education and Religious Affairs intervened in favour of the Ombudsman's position. Finally, the Ministry of the Interior accepted the Ombudsman's proposals, and instructed all the country's registers to list the religion in question with the name its followers wish (case 12597/2000).

3.2.1.4 REMOVING THE REFERENCE TO RELIGION FROM HIGH SCHOOL DIPLOMAS

A complainant, being of the opinion that the obligation to indicate religious beliefs on a public administration document violated his religious freedom, requested that his religion be removed from his high school diploma, which had been issued many years previously.

Declaring one's religion at school and entering it on an individual's school record is not unconstitutional because it serves as a necessary precondition for enabling the student to exercise his right to choose taking religion classes or to be excused from them. In contrast, listing an individual's religion on his high school diploma, which accompanies its holder and is shown throughout an individual's life, does raise the issue of legality. The issue can, of course, only be raised for future diplomas because those already issued (such as that of the complainant) are permanent records reflecting the situation on the day they were issued and may not be changed (article 10, par. 3 of Presidential Decree 104/1979). The Ombudsman, not being able under the law to request that religion be struck from a high school diploma that has been already issued, shelved the complaint and submitted the issue of compatibility between the relevant legislation (Royal Decree 20.6.1955) and the provisions of Law 2472/1997 to the Hellenic Data Protection Authority (case 7652/2000).

3.2.2 CONSTITUTIONAL PROVISION FOR CREMATION

The freedom to choose the way to dispose of one's body after death, for example by cremation, is an individual's right deriving from article 5, par. 1 of the Constitution concerning the free development of personality, and from article 4, par. 1 of the Constitution which establishes equality before the law. In any case, the current situation in which disposal of the body after death is governed exclusively by the dogma and sacred traditions of the Eastern Orthodox Church clearly violates the principle of freedom of belief. It denies the interested parties the right to choose how to dispose of their dead body in a manner that does not offend public order and that reflects their basic ideological principles or, even more, the core of their conception of the metaphysical questions of life and death.

After such a request was rejected by the Municipality of Nea Smyrni, the Ombudsman pointed out to the complainants, who maintain that the inability to cremate violates a series of constitutional provisions and international law, the absence of a regulatory framework governing cremation for those who have expressed their wish that this be carried out after their death. The Ombudsman is empowered to investigate whether or not public authorities within his jurisdiction apply the law properly, but is not empowered to call upon the authorities involved to apply solutions that would presuppose the legislative enactment of their general framework, even when such solutions are useful or

constitutionally required. In his role of proposing necessary legislative amendments (see chapter F), however, the Ombudsman considers that optional cremation, carried out in accordance with the clearly expressed will of the deceased, is not in conflict with the principles of protecting human rights as established in the Constitution and international treaties, or with the fundamental values of social life and public order. Cremation of the dead, permitted and widespread in other European countries, is already being debated in this country on the basis of widely known and appreciable arguments, such as the acute shortage of space in cemeteries and the usually high cost of burial, as well as the need to protect the environment and public health.

In any case, assuming that optional cremation of the dead is necessarily connected with the express rejection of the Christian Orthodox dogma, is erroneous. The legislator may not prejudge the opposition of the Christian Orthodox dogma to cremation or accept it as the basis for his regulatory intervention, by allowing only the followers of other religions to cremate their dead. Such a judgment would, among other things, violate the right not to reveal one's religious beliefs that is enshrined in article 13, par. 1 of the Constitution (case 13189/1999).

3.3 PROTECTION OF PERSONALITY

The administration's inability to guarantee the confidentiality of information about a citizen's private life infringes upon the protection of personality.

3.3.1 PROTECTING PRIVACY AND THE CONFIDENTIALITY OF CORRESPONDENCE

The illegal use or exposure to public view of private data (on mail envelopes the administration sends to citizens), which may fall within the scope of Law 2472/1997 "re: Protecting the individual from the processing of personal data" is the subject of complaints submitted to the Office of the Ombudsman, which is working together with the Hellenic Data Protection Authority on this issue (see 3.3.1.1). It is exceptional, however, to establish cases of breach of confidentiality by public officials, since it is impossible to keep track of every non-registered letter.

3.3.1.1 PUBLIC DISCLOSURE OF TAXES OWED

A taxpayer received a personal notification of his outstanding taxes from the Aiyio Tax Office, with the amount he owed and the notification "due" printed on the outside of the envelope along with his name and address. Since the letter was not registered, the taxpayer's neighbours in the same building were informed about the overdue amounts and the exact sums owed. Public disclosure of a citizen's tax record contravenes general as well as specific legal rules (article 85, pars 2 and 3 of Law 2238/1994) concerning confidentiality and also the constitutional protection of privacy. The tax office attributed this practice to the poor quality of the "carbon" copies of the relevant documents, which obliges it to print the whole contents of the notification just once and use the document itself as an envelope. Since the tax office did not provide the Ombudsman with any assurance that it would end this practice, the Ombudsman asked the Ministry of Finance to intervene and notified the relevant correspondence to the Hellenic Data Protection Authority because of the possibility of a generalized violation of article 10, par. 1 of Law 2472/1997. The authority made additional recommendations to the tax office, which committed itself to abolish the practice immediately (case 11673/2000).

3.4 PERSONAL FREEDOM

Issues involving the entry, residence, and employment of aliens have been a major concern for the Office of the Ombudsman since its establishment. The problems identified by the Ombudsman in the two previous annual reports, however, seem to have remained unchanged as the legal framework, when not overwhelmed by the rapid changes in immigration patterns over the past decade, is often found to be deficient and contradictory (see 3.4.1).

The Office of the Ombudsman also faced the special problem of long periods of detention for aliens facing deportation, as well as the inexcusably lasting problem of inadequate detention facilities (see 3.4.2). Further, it is also worth noting the problem of respect for personal freedom by private organizations entrusted with the provision of public services and the side effects of the ban on emigration.

3.4.1 IMMIGRANTS IN GREECE

The legal framework governing the entry and residence of aliens in the country is marked by fragmentary and often inequitable procedures aggravating the administration's uncertain, unstable and contradictory practices when dealing with aliens. Transparency, reasonableness and fairness constitute the triptych of reforms required in the administration's treatment of aliens, as shown by the Ombudsman's experience.

The examples below involve problems of legality and transparency in the granting of entry visas by Greek consulates (3.4.1.1), the inequitable effects of the legislation on residence and permit procedures as regards the applicants' insurance coverage and the right of residence of their adult children in Greece (3.4.1.2), as well as the irregularities observed in the issuing of green cards (3.4.1.3). Cases involving problems of access to the asylum procedure (3.4.1.4) and cases of administrative bureaucracy when examining applications for naturalization are also presented (3.4.1.5).

3.4.1.1 ENTRY VISAS

In addition to the continuing contradictory practice followed when issuing student visas (see *1999 Annual Report*, chapter E.1, 3.4.3.2), a general problem identified by the Ombudsman in the procedure for issuing visas at some Greek consulates is the absence of justification for rejections. The Greek consulates in Sofia and Costanza are two typical examples.

The Ombudsman observed that the verbal justifications offered in these consulates, besides being inconsistent with the Schengen Treaty, the circulars of the Ministry of Foreign Affairs implementing the treaty, and the Code of Administrative Procedure (article 16, par. 1), could not convince the applicants of the rejections' legality on the one hand and could not be controlled by the competent authorities on the other. Both consulates responded positively to the Ombudsman's proposal that visa rejections be supported by written justifications, but the Costanza Consulate, despite having assured the Ombudsman in writing of its intention to do so, did not send a specific answer to the complainant (cases 4282/2000, 13443/2000).

3.4.1.2 RESIDENCE PERMITS

The Office of the Ombudsman observed certain inequitable conditions resulting from inflexible bureaucratic practices, as well as gaps in the existing legislation governing the issuance and renewal of residence permits. There are two major groups of cases worth mentioning here.

The first concerns the children of foreign nationals that – as foreseen by existing regulations – are required to be deported when they come of age (despite having long since broken their ties with their mother countries, being integrated into Greek society, and having their families and homes in Greece). The second group regards the unfair conditions governing the insurance status of aliens whose residence permits are pending with the administration.

Legal ties with the country of origin can be severed by a change in regime. This was the case with a complaint involving the children of a political refugee of Greek descent from Yugoslavia. His children lived in Greece and had applied for naturalization. After the Former Yugoslav Republic of Macedonia (FYROM) declared its independence, however, their passports were no longer valid, making it impossible for them to renew their residence permits and delaying the processing of their applications for naturalization. Under normal circumstances, the applicants should have returned to their place of birth. However, their father's activities against the regime made it highly unlikely they would be issued new passports.

Following recommendation of the Ombudsman, the Ministry of Public Order issued them residence permits under the "exceptional circumstances" provided in article 13 of Law 2713/1999 (case 9888/1999).

Ties with the country of origin often die off as a result of the family's permanently moving to Greece and the children having grown up in this country. Such children have been integrated into Greek society. Yet, they live under a constant stress as their residence permits are annulled when they come of age. A typical case involved the daughter of a foreign couple from the former Soviet Union. When the daughter was three years old her mother married a Greek, automatically gaining Greek citizenship in accordance with the Code of Greek Citizenship then in effect. The daughter grew up and studied in Greece. When she came of age she was given a residence permit in order to apply for naturalization. Her application for renewing her residence permit, however, was rejected. The police told her that she would have to move to Russia and apply for a visa from the Greek consulate, which would only allow her to pay short visits to her family in Greece. Following the Ombudsman's mediation, the urgent problem of legalizing her residence in Greece was temporarily resolved by granting her a short-period residence permit on humanitarian grounds under article 12 of Law 1975/1991 (case 8749/1999).

This case shows the unfair consequences of gaps in the existing legal provisions concerning "family reunion." These consequences affect the adult children of naturalized aliens, the children of Greek men and foreign women whose civil weddings were not recognized by Greek law before 1982, and the children of Greek women and foreign men, in accordance with the law previously in force. In other words, current legislation does not provide the right of residence to an adult who is not a citizen of a European Union member state, even though one of the parents is a Greek national. The Ombudsman proposed the amendment of the currently existing legislation as it is incompatible with article 9 of the Constitution and with article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which protect family life.

The administration's literal application of law provisions requires intervention by the legislator to protect the insurance coverage of people who apply to have their residence permits renewed.

A foreigner who has lived and worked in Greece for 27 years has been, with his family, insured at the Aigaleo branch office of the Social Security Organization (IKA) since 1972. He applied on time for renewal of his and his family's annual residence permits, which

expired on 31.12.1999. Although his insurance contributions were paid up to date, the IKA informed him that the family's coverage would be suspended until their residence permits were renewed.

This extremely unfair practice is repeated every year. The IKA has recognized the severity of the problem, which affects a large number of insured aliens whose insurance benefits are completely cut off until their residence permits are renewed, in other words often for the first half of the year, despite the fact that the insured continue to pay their contributions. The officials of the IKA, however, who are responsible for the disbursement of public monies, were reluctant in this particular case to deviate from the above practice without explicit instructions (case 3425/2000). In another case (6733/1999), however, the Nea Filadelfeia branch office of the Social Security Organization proposed that a temporary health booklet be issued to a foreigner who had filed for her residence permit to be renewed on time.

The Ombudsman proposed that a circular should be issued so that the treatment of aliens waiting for the renewal of their residence permits could be standardized along the lines of IKA circular 58/4.5.1999 under which the organization's departments can receive applications lawfully and grant benefits to immigrants who can show that they have properly filed all documents for getting a green card with the Manpower Employment Organization. This proposal, which was submitted to the Ministry of Labour and Social Affairs on October 20, 2000, had not been answered as of December 31, 2000.

The principle of fair administration prohibits equating those aliens who are trying to renew their residence permits and whose applications are pending with aliens staying in the country illegally. The provision that does not allow public services to deal with people who do not have a valid residence permit (article 31, par. 2 of Law 1975/1991) must be applied in light of this distinction, in accordance with the Code of Administrative Procedure (article 10, par. 4), which states that an individual does not bear the consequences of failing to produce a document when it can be proven that the responsibility lies with the issuing authority.

3.4.1.3 GREEN CARD

A draft bill submitted to Parliament in the fall of 2000 provides for a new system of issuing work permits. The Manpower Employment Organization's (OAED) experience from the implementation of the previous green-card scheme ("limited duration residence card", Presidential Decrees 358 and 359/1997) can provide valuable feedback. The green-card procedure was transitional in nature and was intended to legalize the residence and employment of aliens who had entered the country illegally before 28.11.1997. The inadequate infrastructure of the OAED for such a large-scale undertaking and the lack of coordination among the authorities involved led to many months of delay and legal uncertainty about how the various legal provisions were applied and what were their consequences. In the *1999 Annual Report* the Ombudsman had pointed out the verbal refusal on the part of the OAED's services to accept supporting documents they considered incomplete, despite the fact that the responsibility for this lay not with the applicants but with the issuing authorities.

A plethora of complaints led the Ombudsman to conclude that the OAED's committees had been applying the legal conditions for issuing a green card with extreme severity, which, in turn, resulted in being flooded with applications. The delays marking the operations of the Special Committee (an average of 12 months during 2000), coupled with

the fact that submission of an application does not automatically legalize residence in the country, meant that applicants were under the constant risk of arrest and deportation.

In particular, illegally employed aliens cannot prove their employment except by having pressed charges to the IKA against their employer. Thus, they are required to follow a lengthy process during which they risk missing their green-card deadlines as the OAED neither suspends deadlines nor accepts charges to the IKA (against their employer) as an excuse. Furthermore, the usual practice of the OAED in such cases is to reject the application.

If the applicant does not win his case with the IKA, he can then appeal to the Manpower Employment Organization's second-instance Special Committee. The results of this practice, however, are particularly burdensome because initial rejection entails the loss of legal residence and, therefore, activates the provisions of article 31 of Law 1975/1991, which forbid any kind of transaction between public services and aliens staying in the country illegally. In the Ombudsman's view, since the issuing or renewal of residence and work permits pre-requires proof of insurance contributions' payments, and since the state attaches great significance to eliminating black economy, the application should initially be approved upon submission of a certificate of complaint against the employer to the IKA. If the IKA rejects the complaint, then the permit can be revoked.

The Ombudsman dealt with the case of a foreign woman in danger of losing the right to renew her card (despite the fact that the IKA had decided in her favour in the first instance) because her employer's appeal was still pending. The Ombudsman mediated for her with IKA, which agreed to re-examine the appeal on a priority basis (case 5695/2000).

The right to appeal to the OAED's second-instance Special Committee is provided by a special regulation. According to the highly dubious interpretation of the OAED, however, submission of an appeal does not legalize the alien's presence in the country temporarily, that is until his case is heard. At any time such an alien can be arrested and deported, making a mockery of his right to appeal to the Special Committee. This situation clearly is in conflict with the principle of the rule of law because it cancels in substance the constitutional right to appeal.

The Special Committee's inordinate delays in processing appeals increase the danger of arrest and deportation. The case presented below is an extreme example of unfairness and maladministration. The Manpower Employment Organization's first-instance committee rejected an alien's application in Rhodes on illegal grounds. He appealed to the Special Committee and was arrested seven months later for being in the country without a valid residence permit. Intervention by the Ombudsman prevented him from being deported to Albania. In the meantime the Special Committee, after trying without success to reach the chairman of the first-instance committee by telephone, instead of considering the merits of the case, returned the file mentioning the provision which should be applied. This referral took nearly a month to complete. The first-instance committee rejected the application once again on illegal grounds and the applicant – a prisoner at this point – appealed anew. The Special Committee postponed its decision and sent a new document to the first-instance committee, which finally revoked its decision. After constant pressure from the Ombudsman and newspaper articles on the subject, the alien finally was issued his green card, but this was achieved only after he had unjustly spent two and a half months in police custody (case 14824/2000).

3.4.1.4 ASYLUM AND DEPORTATION

An officially recognized political refugee living in Greece over the past four years appealed to the Ombudsman in an effort to avert the imminent deportation to Turkey of his Kurdish-descent wife and his six-year-old son.

Despite the extremely tight time margins, the difficulties in locating the interested parties and the initial reluctance of the police authorities involved, the Ombudsman's intervention, assisted by the cooperation of the Alexandroupoli Police Department, resulted in resolving this case positively. The Ombudsman brought to the attention of the Greek authorities the rights asylum seekers have and the obligation to facilitate access to the asylum procedure for people who express that request (Presidential Decree 61/1999). The interested parties were released (case 8626/2000).

3.4.1.5 NATURALIZATION

In the two previous annual reports, the Ombudsman had noted significant malfunctions in the naturalization process (extreme delays, lack of regular written updates to applicants, etc.). A multitude of complaints clearly demonstrate the extensive difficulties experienced by foreign nationals applying for naturalization, as they are constantly required to submit additional supporting documents, as well as certificates they already have submitted but which have expired by the time the responsible service finally gets around to examining the case (certification that the applicant does not have any criminal record being a typical example). The extreme delays are thus borne by the applicants, who have to reissue and submit the same certificates, often at substantial expense (certificates issued abroad, for example), which further delays the examination of their application.

The Ombudsman submitted proposals for the improvement of the procedure to the Ministry of the Interior. These include, among others, the provision of an information brochure, attached to the application form, listing all the supporting documents needed, and the issuing of new certificates when these have expired by request of the naturalization service itself to the relevant authorities. To make the procedure efficient, information could be verified during the last stage, after all other conditions have been met, and by use of technological means (for example, fax machines) that can ensure quick responses. In spite of the general willingness of the Division for Civil Status to cooperate with the Office of the Ombudsman, these recommendations have not been endorsed (cases 13372/2000, 14783/2000, and others).

3.4.2 DETENTION AND IMPRISONMENT

Conditions in police detention centres and in prisons where once again an issue in 2000. The Ombudsman submitted proposals about their improvement, which met with limited acceptance (see 3.4.2.2). The Ombudsman also examined the problem of extended imprisonment of aliens waiting to be deported on court order (see 3.4.2.1).

3.4.2.1 LENGTH OF CUSTODY FOR ALIENS UNDER JUDICIAL DEPORTATION

Following complaints from foreign prisoners in the Korydallos and Ioannina prisons, the Office of the Ombudsman began to investigate the issue of people under court deportation orders being held for many months even though they have served their sentences. Investigation found that the indefinite detention of aliens awaiting deportation was the

practical result of the amendment (by Law 2721/1999) of par. 4, article 74 of the Penal Code on the court's power to order deportation.

The new provision states that "the alien, until his deportation, will continue to be detained in special areas of the prisons or hospitals." In practice, this means that aliens under deportation orders serve their sentences and then remain in prison, whereas before this new provision came into effect they were held at police stations awaiting deportation.

For this reason, the Supreme Civil Court Prosecutor issued an opinion (6/2000) that proportional implementation of the joint ministerial decision on administrative deportation (Joint Ministerial Decision 4803/13/7-α/18.6.92 Foreign Affairs, Justice, Public Order), which allows the Minister of Public Order the discretion to replace detention at police stations with alternative restrictive measures, does not apply to judicial deportation. This, however, makes the time period of detention uncertain and overtly extended, for deportation usually meets serious obstacles (such as the lack of a consular authority willing to provide travel documents) or is impossible (for example due to the embargo on Iraq, as in the case of prisoners in the Ioannina prison). This creates the conflicting situation in which the alien is sentenced to a few days in prison for illegally entering the country and then spends months in detention awaiting deportation.

The Ombudsman observed that the purpose of detention in par. 4, article 74 of the Penal Code was to facilitate "immediate" deportation (article 74, par. 1 of the Penal Code). Therefore, as already established by the Supreme Civil Court Prosecutor's opinion 2/1993, this period of detention must be short. Furthermore, the interpretation of this provision in accordance with the Constitution imposes a reasonable limit upon the time to be spent in detention after the sentence has been served, since long-term loss of freedom is acceptable only as a punishment (article 7, par. 1, and article 96, par. 1 of the Constitution) and should, moreover, be proportional to the offence, otherwise being an infringement of human dignity (article 2, par. 1 of the Constitution). The Ombudsman proposed that par. 4, article 74 of the Penal Code should be amended to establish an upper time limit for the detention of aliens waiting to be deported once they have served their sentences and to explicitly empower the relevant criminal court of first instance to replace detention with restrictive measures at the end of this period. The Ministry of Justice did not respond to this proposal. Joint Ministerial Decision 137954/12.10.00, however, issued after the Ombudsman's report, allows restrictive measures to be imposed by the criminal court of first instance in cases where deportation is not possible (cases 1382/1999, 12213/2000, and others).

3.4.2.2 LIVING CONDITIONS IN PRISONS AND POLICE DETENTION FACILITIES

During 2000, the Office of the Ombudsman continued its practice of visiting police detention facilities (see *1999 Annual Report*, chapter E.1, 3.4.5.1) in order to form a first-hand opinion on existing conditions.

The Ombudsman ascertained the inadequacies of space of the old building housing the Herakleion 2nd police station cells in Crete. Until the cells could be transferred to new building facilities, short-term interim improvements were proposed to the Ministry of Public Order in an effort to better the living conditions of the inmates (such as increasing the food allowance and cleaning the building on a regular basis), to which the ministry responded positively (case 12580/1999).

Following complaints from three foreign prisoners protesting about the conditions in

the Ioannina prison, particularly the lack of medical care, absence of heating, poor food, and overcrowding, the Ombudsman carried out an on-site inspection to verify these claims. On the day of the visit, the food rations and the heating were adequate. In addition, the investigators found that a doctor was permanently assigned to the institution and that medical records showed that the complainants had visited the infirmary and been issued with medicines. However, being informed that there had been instances of contagious diseases, the Ombudsman recommended that the inmates should be vaccinated and proposed that a visiting psychiatrist should be assigned to the prison to handle on the spot these instances, which were frequent as he was told.

The basic findings of the inspection at the Ioannina prison was that overcrowding was so great that it could be considered as inhuman and degrading treatment of prisoners, in the sense of article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The building, designed to carry 80 prisoners, currently houses more than 240. As there were not enough cells, the corridors were used as dormitories. Bunk beds were placed along both sides of the corridors leaving a throughway so narrow that one has to move sideways.

The Ombudsman pressed the Ministry of Justice to take immediate steps to reduce overcrowding and increase the custodial staff in order to improve the safety of the inmates during the night. He also stressed the need for strict application of the provisions of the Penitentiary Code (article 15, par. 1 of Law 2776/1999) regarding the need for separate detention of remand prisoners and equal treatment of all prisoners pertaining to work and training assignments (article 40, pars 4 and 6 of Law 2776/1999). The Ministry of Justice and the Ioannina prison authorities have not responded so far to these findings, which were submitted on September 25, 2000 (cases 11583/1999, 11585/1999, and others).

Yet, there have been some instances of cooperation between the Office of the Ombudsman and the prison authorities. Such was the case for a prisoner who was transferred, after going on hunger strike and a consequent medical diagnosis at the psychiatric wing of the Korydallos prison. At the prisoner's request, the Ombudsman asked to be informed whether, after two and a half months in the psychiatric wing, the medical reasons for holding him there still applied and whether he could be moved to another prison closer to his home in order to facilitate family visits, as the prisoner himself desired. The Ombudsman's position was that if the prisoner, according, to the doctors no longer needed psychiatric treatment, then his continued stay at the psychiatric wing infringed his right to serve out the remainder of his sentence under normal detention conditions. The prisoner's request was accepted (case 7740/1999).

3.4.3 FREEDOM OF MOVEMENT

Freedom of movement without obstruction from state agents (see 3.4.3.1) is a basic expression of the natural freedom of the individual (article 5, par. 3 of the Constitution).

3.4.3.1 ACCESS TO PUBLIC SPACES THAT ARE NOT OWNED BY THE STATE

The serious issue of safeguarding the rights of citizens against private organizations that are commissioned to provide public services was examined by the Ombudsman in a case involving freedom of movement and the right to carry out economic activity unimpeded in the new Athens metro-system, which formally does not belong to the state but which, nevertheless, is for public use.

An itinerant lottery seller operating in Omonoia Square protested for being repeatedly arrested by the police security guards in the square's below-ground areas (owned by Attiko Metro S.A.) and being thrown out with the threat that next time he would be charged for taking the law into his own hands and disturbing the peace. The Ombudsman considered that the case falls within his competence since the Attiko Metro S.A., although a company exempted (Law 1955/1991) from regulations governing public-sector corporations, is expressly recognized as a "public utility corporation subject to the laws and regulations governing such entities" (article 2). In view of its status and given the fact that its main purpose is to transport people, it is included in the category of public utility corporations as defined by article 3, par. 1 of Law 2477/1997 that fall within the Ombudsman's mandate.

Though the Attiko Metro S.A. owns the facilities and grounds, this does not imply that they are private property. To the contrary, within the framework of modern public administration, their intended purpose defines them as public objects and, specifically, as privately owned property open to general public use. In other words, they belong to that category of objects that have been assigned to a public service (in this case, underground urban transport), which determines their lawful use by the general public. Restricting the use by the public is, of course, both legal and necessary for the company to carry out its role as a public utility corporation. To the extent, however, that these restrictions – such as policing the area – affect the constitutional rights of the users of the service, they must originate from (or at least have been approved by) the public authority responsible for overseeing the public utility corporation and comply of course with the relevant legislation. In any case, regulating the uses to which the area is put and its implementation are expressions of public authority and not private arrangements deriving from the company's property rights. On that basis, the Ombudsman sought the cooperation of the company's legal department and finally requested the company's board of directors to clarify the legal basis (law provision or regulation issued by the company's management on the basis of a special legal authorization) for prohibiting this particular use in the metro's underground stations. As of December 31, 2000, no answer on this subject had been received from Attiko Metro S.A. (case 2817/2000).

3.5 EDUCATION

The Ombudsman dealt with a number of cases concerning higher education on subjects ranging from admission procedures to higher education institutions (special admission categories, examination procedures), the various rights of students (scholarships, transfers), or graduates (recognition of foreign academic titles). There also were cases touching upon the limits of the university community's academic freedom against the supervisory authority of the Ministry of Education. As indicated in the following cases, the main demand of applicants and students who complained to the Office of the Ombudsman was that they be informed in time of their rights and that they be treated fairly and equally by the Ministry of Education and the educational institutions.

3.5.1 SPECIAL REGULATIONS GOVERNING ACCESS TO HIGHER EDUCATION

Regulations issued occasionally about access to higher education are intended to respond to the demand for treating applicants equally since education is established in the Constitution (article 16) as a basic commodity available to all. In accordance with its long-

standing interpretation, however, the constitutional principle of equality imposes equal treatment for similar situations and different treatment for different situations. The provision of special examination procedures for some categories of university candidates (see 3.5.1.1) revealed the difficulty in seeking equality in practice and confirmed the impression that a uniform system providing access to education is finally judged also on the rationality of its exemptions.

3.5.1.1 SPECIAL CATEGORIES OF CANDIDATES

Equality for students who wish to be admitted to higher education was the rationale behind the Comprehensive School of Law 2525/1997 and the abolishment of regulations for separate examinations. This abolition, however, did not take into account certain peculiarities of the school system (Greek schools abroad, foreign schools in Greece) or of the subject material (admission to the University Department of Foreign Languages, Translation and Interpreting), leaving some candidates at a disadvantage because of the inflexible implementation of the new system.

More specifically, the extreme delay in abolishing the special regime governing pupils in Greek high schools abroad just three months before the end of the school year, did not allow the slightest margin for the affected students to adapt to the new conditions (major fields of study, optional courses, subject material, separate examinations, quotas). Final-year students in some high schools in Germany, for instance, were informed of the new regulations only one month before the exams. While the relevant ministerial decision was being prepared, the Ombudsman pointed out that immediate implementation of these changes, to the extent that they affected students who might otherwise have made different choices had they known the Ministry of Education's intentions, was an unfavourable retroactive regulation that departs from legislative authorization. On the basis of this reasoning the Ombudsman proposed on time specific alternatives to the Ministry of Education that could improve harsh situations, but he encountered a complete absence of understanding on the part of the Ministry's responsible department for organizing and holding examinations. After the period of examinations for all candidate categories began, the Ombudsman had no further room for mediation and clearly pointed out to the interested parties that any further questioning of the legality of the entire examination system would be possible only through administrative court intervention (cases 10547/1999, 2100/2000, 5870/2000, and others).

3.5.2 EXAMINATION PROCEDURE

The Ombudsman received many complaints from students who took the general exams about the lack of adequate information on the procedure (3.5.2.1).

3.5.2.1 INSUFFICIENT INFORMATION PROVIDED TO CANDIDATES FROM ABROAD

The Ministry of Education was four months late in informing Greek schools abroad that 4th-"division" candidates could not be admitted to the Police Officers' Academy. A 4th-"division" student from Stuttgart in Germany had declared this school as his first choice two months after the Ministry of Public Order had issued the decision, but was informed that he was not eligible for this school only on the first day of examinations, when the exam prefect told him to withdraw from this choice in writing or be banned from taking

the examinations. The Ministry of Education did not consider this a problem because the candidate had also declared a second preference.

On the contrary, the Ombudsman pointed out to the Ministry of Education that this extreme delay in proper information, regardless of the existence of a second preference, caused obvious moral prejudice to candidates from abroad for the specific school, overturning their study orientation and professional aspirations, as well as possible material damage in terms of their travel expenses from abroad and the cost of staying near the examination venue. On the basis of this reasoning, the Ombudsman recommended to the Ministry of Education that, in the future, it provide information on time to candidates from abroad (case 14083/1999).

3.5.3 RIGHTS OF STUDENTS AND GRADUATES

The Ombudsman is concerned with the omission to recognize foreign academic degrees (see 3.5.3.1), revealing instances of maladministration on the part, mostly, of the university authorities involved.

3.5.3.1 RECOGNITION OF FOREIGN ACADEMIC TITLES

Various university institutions directly or indirectly dispute the judgement of the Inter-University Centre for the Recognition of Foreign Academic Titles (DIKATSA). More specifically, they refuse to accept the degrees that the centre recognized as enabling candidates to be admitted to a particular semester in order to be examined in specific courses – which also have been determined by the DIKATSA. The result is particularly harsh on applicants and creates a conflict with the legal order, given that the DIKATSA has sole responsibility under Law 741/1977 for recognizing the equivalence and correspondence of foreign academic degrees with degrees issued by Greek educational institutions. The following examples are typical.

A graduate from a British university, whose degree had been recognized by the DIKATSA, applied for admission to the Department of English Language and Literature of the University of Athens. This department rejected her application on the grounds that her degree may be equivalent but not entirely corresponding to those issued by Greek universities, even though, in accordance with Law 1865/1989, which determines the prerequisites for taking graduate exams, correspondence is not a prerequisite.

As the competent authority according to the provisions of article 4 of Law 741/1977, the Inter-University Centre for Recognition of Foreign Academic Titles responded to another graduate's application for recognition of the equivalence and correspondence of her degree from an American university by requiring her to pass ten specified courses at any Greek university offering them. Accordingly, the complainant applied to several Greek universities (the universities of the Aegean, Macedonia, Piraeus, and the Athens University of Economics and Business) that have departments of business administration. All her applications were rejected, however, on various grounds, all of them illegal. Some departments, referring to the applicant's "level of studies", essentially questioned the DIKATSA's judgment as the competent authority on matters of equivalence and correspondence.

In another case, the DIKATSA decided to enrol a graduate from a British university at the seventh semester in the Civil Engineering Department of the National Technical University of Athens. Despite this decision, however, the department rejected the application.

In all three cases above, it is clear that even though the Inter-University Centre for the Recognition of Foreign Academic Titles, the sole authority competent for recognizing the equivalence and correspondence of foreign academic degrees with degrees issued by Greek institutions, had taken decisions, these decisions were disputed by Greek university departments and not implemented. The Ombudsman pointed out to the university departments involved that they are obliged to conform to decisions taken by the DIKATSA, adding that, in accordance with the established legal precedents of the Council of State, this obligation is not reduced by the academic freedom on matters of organization and operation, which Greek universities enjoy under Law 1268/1982.

Despite these precedents, the competent division at the Ministry of Education (Division of Studies and Student Support), although having supervisory authority, did not instruct the university departments to follow the law, citing the autonomy of Greek universities in administrative and organizational matters. In the second case it referred the matter to the Inter-University Centre for the Recognition of Foreign Academic Titles, wrongly thinking it fell within its competence. The Ombudsman advised the Ministry of Education to exercise its supervisory power over the university departments' actions, but the Ministry did not respond (cases 1170/2000, 3957/2000, and 10703/2000).

3.6 RIGHT TO WORK

The right to work and the corresponding freedom to choose and exercise a profession are enshrined in the Constitution (article 5). Professional freedom often is constrained by regulations, but these constraints need to be well justified and in accordance with the principle of proportionality.

3.6.1 PROFESSIONAL FREEDOM

The Office of the Ombudsman received complaints involving the disproportionately oppressive constraints imposed by the legislator, which restrict the right of citizens to participate in the economic life of the country, while other cases highlight organized professional interests that obstruct the registration of scientists with professional associations (see 3.6.1.1).

3.6.1.1 ISSUING OF PROFESSIONAL LICENCES AND REGISTRATION WITH PROFESSIONAL ASSOCIATIONS

Engineers with degrees from abroad, that had been recognized by the DIKATSA as equivalent to degrees given by Greek universities, applied to the Technical Chamber of Greece (TEE) to take licence exams so they could practise their profession (cases 10430/2000 and 15038/2000). The TEE informed them orally, however, that they could not take the exams because there were doubts about the duration of their studies abroad. This refusal was not based on an official decision of its governing board while, in violation of article 4 of Law 2690/1999, the candidates were not informed in writing about the reasons for the refusal. At the same time, the DIKATSA, which the TEE had consulted as the sole competent authority for academic recognition of foreign degrees, had already issued a decision on the equivalence of the candidates' degrees and justifiably persisted in its decision.

The Ombudsman pointed out to the TEE that, in accordance with their own

announcement of the exams, they were obliged to accept candidates who presented certification of equivalence of their degrees from the DIKATSA. The Office of the Ombudsman also requested that the applicants be informed in writing of the reasons why they were being excluded from taking the exams as soon as possible, or else they should be allowed to take the exams.

Nevertheless, the TEE not only breached its obligation to respond in writing to the complainants and to the Ombudsman, but also persisted in its illegal practice by barring, for a second time, one of the two candidates in question who attempted to take the exam.

The Ombudsman submitted his findings to the supervising Minister for the Environment, Physical Planning, and Public Works, stressing that the illegal and unjustified exclusion of candidates from exams for engineers' licence denied them their constitutional right of professional freedom. Estimating that there were indications of particularly severe infractions of the law, the Ombudsman submitted his findings to the competent public prosecutor so it could be determined whether or not the Technical Chamber of Greece's actions consisted a criminal offence (breach of duty).

The Ombudsman also dealt with the refusal by the Thessaloniki Dentists' Association to enrol, as a member, a Syrian national who has a degree in dentistry from a Greek university and a legal licence to practise his profession (case 15573/2000). The arbitrary persistence of this association in its initial refusal, in violation of the law and of Greece's international obligations under mutual agreements, is typical. The Ombudsman requested that the association enrol the complainant because all legal requirements were met. The association refused, on the grounds that reciprocity in the issuance of licences to practise a profession equates foreign and Greek dentists only as to the essential prerequisites and not as to procedure. The association even maintained that, since it appeared that in Syria the consenting opinion of the professional association is required for the issuance of professional licences, the principle of reciprocity implies that Greek professional associations should be consulted about Syrian nationals. In responding to the association, the Ombudsman pointed out that reciprocity requires full equality between foreigners and Greeks both for the essential prerequisites and the procedures for issuing licences to practise a profession. Otherwise, reciprocity would bring into the procedure an arrangement based on foreign legislation completely unknown to Greek law. The association, however, persisted in its original refusal.

3.7 RIGHT OF ASSOCIATION

The right to form associations (right of association, article 12 of the Constitution) has been brought before the Ombudsman, mainly in its negative form, i.e. as the right not to participate in an association (see 3.7.1).

3.7.1 RIGHT NOT TO JOIN OR LEAVE AN ASSOCIATION

Obligatory membership in a professional association, which has the legal form of a legal entity of public law, is not considered an infringement upon the right of association because it is intended to help establish professional practices and standards. Nevertheless, joining or leaving a particular profession is a matter of free choice deriving from the protection of economic freedom (article 5, par. 1 of the Constitution). Obligatory participation in the professional association applies to those wishing to practise the particular profession but not,

however, to those who choose another profession. In refusing to accept resignation of their members, professional associations disregard the fact that the individual choice to cease practising a profession also means withdrawal from the relevant association, as in the examples below, about which the Ombudsman recommended a legislative amendment (see chapter F).

3.7.1.1 REFUSAL TO REMOVE AN ENGINEER FROM THE TECHNICAL CHAMBER OF GREECE'S REGISTER

A qualified mining engineer-metallurgist requested to have her name removed from the Technical Chamber of Greece's (TEE) register and from the register of the Engineers and Public Works Contractors' Pension Fund as she had not practised and had no intention of practising in the future the profession of engineer (case 8525/2000). The TEE, in violation of the Code of Administrative Procedure and Practice, did not reply to her application. When the Office of the Ombudsman drew attention to this omission, the TEE rejected the complainant's request on the grounds that the chamber's rules and regulations include no provision for a member resigning or being removed from membership (Presidential Decree 27/1926 and Law 1486/1984).

The Office of the Ombudsman, having received in the past other complaints concerning discontinuation of membership in the Technical Chamber of Greece as a requirement for ceasing to be affiliated to the Engineers and Public Works Contractors' Pension Fund, and having already submitted its findings on the subject (case 4080/1999), addressed the TEE again. In his letter, the Ombudsman pointed out that refusal to discontinue membership violates the constitutional rights to freedom of joining associations or other collective organizations of the individual's choice and the freedom to resign from these associations or organizations (article 12 of the Constitution, Council of State 2540/1999). In the meantime, the complainant applied to the Council of State to have the rejection of her request nullified, obliging the Office of the Ombudsman to interrupt the investigation because a court decision was pending (article 3, par. 3 of Law 2477/1997).

3.7.1.2 OBLIGATORY REGISTRATION OF CHEMISTRY GRADUATES IN THE UNION OF GREEK CHEMISTS

The Union of Greek Chemists rejected the request of some of its members to resign their membership and continued to charge them annual subscriptions. According to Law 1804/1988, the Union of Greek Chemists, as a legal entity of public law and a professional association, registers all university chemistry graduates, granting them the exclusive right, in accordance with article 5, par. 1 of the Constitution, to practise the profession of a chemist. The law does not, however, contain any specific provisions on cancellation or suspension of membership following the member's decision not to practise this profession. The Ombudsman pointed out that specific provisions concerning resigning or deferring membership are not necessary in such cases. The fact that someone obtains a chemistry degree does not automatically mean that he chooses to practise the profession of a chemist. As long as registration is obligatory for the graduates in question, regardless of their profession, the issue of the provision's constitutionality is raised in terms of the (negative) freedom of association and the right to education and scientific research (articles 12 and 16 of the Constitution).

The Union of Greek Chemists replied that they were examining the possibility of

recommending a law provision for individuals who wish to resign or defer their membership. They added, however, that they disagreed with the Ombudsman's questioning of the constitutionality of compulsory registration of chemistry graduates. The Ombudsman addressed his findings to the Ministry of Development and persisted in his original position. The responsible deputy minister responded by asking the Union of Greek Chemists to propose an amendment of its statutory articles (cases 4157/2000, 13786/2000).

3.8 RIGHT TO APPEAL

Article 10 of the Constitution establishes the right to appeal to the public authorities against administrative acts or decisions by submitting written petitions. Public administration activities must follow the principle of transparency, an essential element of which is that transactions between individuals and public authorities be carried out in writing. Furthermore, in close link with the principles of the rule of law, transparency and fair administration, there is the administration's obligation to provide individuals with a reasoned response within specific time limits, as determined by Law 2690/1999.

The Ombudsman undertook to resolve complaints involving the noncompliance on the part of public authorities with the above obligations. This noncompliance affects the public's trust in the administration and effectively obstructs control of its actions' legality. In particular, the Ombudsman found that the administration attributed its failure to provide a reasoned response and lack of transparency either to reasons of national security (see 3.8.1.1) or to the confidentiality of the documents (see 3.8.1.2). Finally, the Ombudsman was concerned with the effectiveness of disciplinary control over police officers whenever they allegedly violated citizens' rights (see 3.8.2).

3.8.1 FAILURE TO PROVIDE JUSTIFICATION AND LACK OF TRANSPARENCY

3.8.1.1 ABSENCE OF JUSTIFICATION AND TRANSPARENCY BY INVOKING REASONS OF NATIONAL SECURITY

A permanent resident of the Prefecture of Rodopi, working as a journalist for the local press and a member of a non-governmental organization, had her Greek citizenship revoked in the past in accordance with article 19 (now abolished) of the Greek Citizenship Code. She submitted a complaint to the Ombudsman regarding the exhaustive examination imposed on her by a man (in civilian clothes) at the Kipoi border crossing in the Prefecture of Evros. Her examination lasted three full hours, after which she was allowed to enter the country freely, but she was not told who it was who had examined her or why she was examined (case 13859/1999). The Office of the Ombudsman found that this incident involved the activity of state officials connected with the protection of national security.

Restricted by article 3, par. 1 of Law 2477/1997, according to which the activity of the National Intelligence Service and of the administration in general when connected with matters of national defence, state security, or international relations are beyond his jurisdiction, the Ombudsman stopped the investigation of this case. He did, however, request that the National Intelligence Service write a letter verifying that the incident in question was part of its activities and also pointed out that, within the context of democratic rule of law, it would be inconceivable for a person to be submitted to such restrictions of individual rights without being informed of

the legal reasons why this was happening. The National Intelligence Service did, in fact, write a letter of reply to the Ombudsman, which was then notified to the complainant.

3.8.1.2 REFUSAL TO PROVIDE A PUBLIC DOCUMENT CLAIMING IT WAS CLASSIFIED

According to article 5 of the Code of Administrative Procedure (Law 2690/1999), citizens have the right of access to public documents.

The Ombudsman pointed out that refusal by the public administration to provide information to an interested party (case 1497/2000) by claiming that the documents in question are classified, without justifying what public interest imposes such classification and what provision provides for it, as required by article 5, par. 6 of Law 2690/1999, directly contravenes the principle of fair administration. The case in question involved an individual who had a specific legal interest in certain documents because they concerned a change in his service status after he appealed to the courts and a court decision was issued. Since the documents included a table of the organizational structure of the police, which the administration insisted in claiming classified, the Ombudsman suggested that an extract of the documents, not including the table, should be provided. The responsible department accepted the Ombudsman's proposal and provided the complainant with copies of the relevant documents (case 1497/2000).

3.8.2 EFFECTIVENESS OF INTERNAL ADMINISTRATIVE INVESTIGATION

A complaint was submitted regarding the refusal of a police officer to verify the authenticity of the complainant's signature and to reveal his name when asked to do so (case 1424/2000). The Ombudsman requested that an internal investigation be held in accordance with article 21, par. 1 of the Disciplinary Law for Police Personnel (Presidential Decree 22/1996). It was found that a disciplinary infraction had been committed and a fine was imposed.

The above case is the only one in which a police officer has been fined after intervention by the Office of the Ombudsman. It was an isolated incident and a matter of minor importance compared to more significant complaints against police officers put forward by the public, for which disciplinary investigations have been carried out, usually resulting in the stereotype, laconic conclusion that, "the actions and behaviour of police officers . . . were impeccable and in accordance [sic] with the rules and regulations of the Force."

More specifically, the Ombudsman, upon investigating a significant number of complaints, had requested that administrative investigations be carried out for cases involving the violation of fundamental individual rights, mainly when people were being arrested, arraigned, and detained in police stations. Since exceptional reluctance has been the norm in assigning disciplinary responsibility in these cases, it still remains unclear whether the fine imposed in the above case indicates a decisive turn in the Ministry of Public Order 's general position regarding more substantial and effective investigation of complaints.

4. Follow-up on the Proposals for Legislative Amendments and Administrative Reforms Presented in the 1999 Annual Report

The *1999 Annual Report* contains a number of proposals from the Department of Human Rights concerning legislative amendments and administrative reforms. These proposals revealed infringements of constitutional rights and operational malfunctions requiring the legislator's intervention or the adoption of administrative regulations, or, at least, specific

organization measures. The administration accepted 39% of these proposals as follows: 50% of the proposals concerning the status of aliens and refugees; 42% of the proposals concerning professional rights; 50% of the proposals concerning education. In some cases the competent public authorities adopted the Ombudsman's recommendations in full:

- The Ministry of Health and Welfare promptly paid benefits to disabled political refugees in accordance with the Geneva Convention.

- After mediation by the Ombudsman, the Minister of Education and Religious Affairs issued an administrative act preserving the right of student finalists in the Mathematics Olympics to enrol in some university departments and technological education institutes without examination.

- The Ministry of Public Order informed the Office of the Ombudsman that it had already set the procedure in motion for amending the legislation requiring EU citizens to go through a health examination before being issued a residence permit. The amendment is intended to harmonize Greek administrative practice with that of other EU member states.

One must not fail to note that in some cases public administration officials radically altered their initially negative stance towards proposals submitted by the Ombudsman. The Minister of Finance issued a decision about the payment of overdue pensions of retired judges, possibly as a result of the pressure put upon Greece by the condemning relevant ruling of the European Court of Human Rights. The same ministry also abolished the ban on departure from the country for sums owed to the state, after it realized the practical impossibility of applying this regulation when the Schengen Treaty came into effect.

On certain issues of major importance, however, the relevant administration officials have shown extraordinary reluctance, although their intentions are to solve the arising problems. A typical issue is the delays in recognizing professional training titles in accordance with the relevant European Union directive. Even though the competent board on this matter has made some progress, completion of its task is expected to confront the difficult problem of permitting holders of such degrees to join the respective legally regulated professions in Greece as long as the relevant presidential decrees are still pending.

E.2 DEPARTMENT OF SOCIAL WELFARE

That the administration adheres to the principle of formal legality is partly explained by the multiplicity of laws governing the social insurance system that allows administrative action to be rooted in an obsolete legal order. Such an approach to law, without interpreting it in the light of modern social developments, distances it from the essence of the law. Lax observance of the institutional framework of health systems and the nonexistence of an institutional framework for welfare systems make administrative malfunctioning possible.

E.2 DEPARTMENT OF SOCIAL WELFARE

CONTENTS

DEPARTMENT OF SOCIAL WELFARE

1. Area of Jurisdiction and Responsibilities of the Department

The Department of Social Welfare handles cases aiming primarily at the implementation of the social rights of citizens and mediates in the cases of maladministration or breach of the law by the administration. It corresponds to the "social nature" of the citizen, contributing towards the creation of a new management culture.

Those entitled to the above rights are Greeks and aliens, immigrants, refugees or tourists. The Department focuses its activities on particularly sensitive groups, like children, the elderly, persons with special needs, physically and mentally ill persons, etc.

Indicatively, it can be said that the responsibilities of the Department include social insurance cover, health and welfare, while also included in its activities are general matters of social policy, as outlined in article 2, par. 1 of Presidential Decree 273/1999.

2. General Assessment of the Department's Activities

2.1 GENERAL REMARKS AND CONCLUSIONS

What characterizes the Department of Social Welfare in 2000 is the slight increase in the number of complaints. There was a small increase in the area of health-related issues, while the number of complaints in the field of social welfare, including issues related to social policy, such as the protection of those excluded, protection of the elderly, the unemployed, etc., remained stationary.

More specifically, from a total of 2,999 complaints, 2,300 related to social insurance issues, 365 to health issues and 274 to welfare and specialized matters of social welfare.

A significant development is noted in the qualitative improvement of citizens' complaints. The Department now receives many cases involving claims for cover against new social insurance risks, as that of the single-parent family, as well as complaints aiming at the protection of the patients' rights, such as the freedom to choose a doctor, as well as the utilization of options to avoid social exclusion. The result of these developments is the broadening range of issues covered by the Department.

2.1.1 SIGNIFICANT CASES

During the year 2000, a study was completed and a report prepared relating to the problem of the delayed issue of pension decisions by the former Supplementary Pension and Insurance Fund for Metalworkers (ETEM). The report recorded the structural changes brought to bear on the fund by its merger with the Social Security Organization (IKA) (Law 2676/1999); it assessed the collaboration between the administration of the ETEM with the Ombudsman, the structural problems which were found in its operations and finally, it made specific recommendations aiming at the improvement of the fund's productivity. The report contains detailed proposals by the Ombudsman for the resolution of the problems of the former ETEM.

Another significant development was the acceptance, on the part of the administration of the Social Security Organization for the Self-Employed (OAEE), of the findings of the Department relating to the abolition of the collection of contributions of those insured with the Merchants' Insurance Fund (TAE) by prefects hired by the fund for specific project contracts. This practice created problems to those insured and had as a result the imposition of fines for delayed contribution payments. After the merger between the TAE and the OAEE, in the application of the provisions of Law 2676/1999, it is now possible for the insured parties to pay their insurance contributions through the banking system.

Progress was also noted in the attempt to speed up the hearing procedures by the State General Accounting Office of pensioners' appeals against acts of pension adjustments.

There was also progress in the matter of political refugees who were repatriated from countries of Eastern Europe. The problem which arose in this category of citizens is due to the fact that some of these citizens used the option of recognition of the years of insured service evolving from their work in countries abroad, in accordance with the regulations of Law 1539/1985, while others ensured the recognition of the years of insured service based on the beneficial regulations of the subsequent Law 1902/1990.

A satisfactory development was noted in the case of relocation of camp 42 of Roma families, found on the borders of the Municipality of Halandri. Already, having avoided their violent removal from the area, regulations are being implemented for their permanent installation under circumstances ensuring the observation of public health regulations.

The findings relating to the Ombudsman's own-initiative investigation on the Social Welfare Institution "Theometor" in Ayiasos, Lesvos, were submitted to the Minister of Health and Welfare in 2000. The findings record the true situation of the structural foundations, the staff and inmates. Serious issues were also noted which, on the one hand, relate to the smooth operation of public institutions of a welfare nature, and on the other, relate to the protection of the rights of the "weak." Based on these findings, a request was made for immediate steps to be taken to improve the living and treatment conditions of inmates, as well as the undertaking of initiatives for total intervention and adjustments within the institution. The result was a positive response from the ministry to the conclusions submitted by the Ombudsman and the firm undertaking to initiate actions in accordance with his suggestions.

Following a series of complaints wherein doubts were expressed relating to the conditions of birth and death of newborns in the "Alexandra" Regional General Hospital of Athens and Children's Hospital "Ayia Sofia", the Ombudsman conducted an investigation relating to all the services involved therein, i.e. register offices, hospitals and cemeteries.

In his findings, the Ombudsman requested that monitoring measures be taken to protect the legality of all relevant procedures.

Among the significant cases must also be included that relating to the distribution of blood coagulation factors to the AHEPA Hospital of Thessaloniki. The complaint was submitted by the association of haemophiliacs of Northern Greece. In this regard investigations have taken place at the AHEPA and the "Ippokrateion" hospitals in Thessaloniki.

2.1.2 THE POSITION OF THE ADMINISTRATION TOWARDS THE OMBUDSMAN

The way in which the administration deals with the various initiatives of the Ombudsman

relating to the Department of Social Welfare is apparent from the collaboration between the relevant services during the investigation of cases, as well as from the percentage of nonacceptance, on the part of administration, of the findings and proposals of the Ombudsman.

The collaboration with the administration is expressed in two ways:

1. The formal collaboration, which focuses mainly on the supply of information and facts by the party involved to the Ombudsman.
2. The intrinsic collaboration, which characterizes the mutual effort to find suitable solutions to specific problems and concludes either with the acceptance of proposals put forward by the Ombudsman or with the justified rejection of these proposals.

Experience gained during 2000 shows the improved working relationships of the involved parties with the Department, mainly in the formal collaboration area. The direct supply of information, the swift responses to documents from the Ombudsman and the positive attitude of the officers of the administration in daily contacts with the Department are a positive step, which strengthens the Ombudsman's mediating role.

Notwithstanding, there were several instances whereby the Ombudsman determined a certain unwillingness on the part of the administration, even the raising of obstacles during the formal, as well as the intrinsic stage of their collaboration.

TABLE E.2.1 **SUMMARY OF COMPLAINTS HANDLED IN 2000**

Complaints from 1999	800	
New complaints in 2000	2,999	
Total number of complaints	**3,799**	
Complaints outside mandate	906	24%
Complaints investigated	2,893	76%
Pending	1,095	29%
Resolved	1,789	71%

TABLE E.2.2 **COMPLAINTS OUTSIDE THE OMBUDSMAN'S MANDATE**

LEGALLY EXCLUDED FROM THE MANDATE	**672**
Lack of individual administrative act or of material action / omission	224
Beyond the six-month deadline	180
Pending before judicial authorities	91
Service status of civil servants	86
Private differences	39
Exempted authorities	33
Lack of legal interest	10
Third party rights	7
Exempted authorities – special case: other independent authorities	2
OTHER FORMAL REASONS	**234**
Vagueness of complaint, briefings, general proposals, provision of advice	124
Lack of previous request to the administration	84
Lack of formal requirements in complaint (no signature or phone number, etc.)	19
Insignificant complaint, special filing act	7

Another source of problems is the insistence by social administration agencies, such as the State General Accounting Office, the Social Security Organization and the Agricultural Insurance Fund, that do not often violate the principle of formal legality, to interpret strictly the letter of law without taking into account the general principles of fairness or the particular circumstances of cases that could not be foreseen at the legislative level.

The institutional role of the Department of Social Welfare is not just to resolve complaints, but also to help foster a new administrative mentality based on the principle of citizens' rights.

2.2 STATISTICS ON CASE FLOW AND PROCESSING

2.2.1 COMPLAINTS HANDLED IN 2000

In 2000, the Department of Social Welfare handled 3,799 complaints, or 29.65% of the total of the complaints investigated by the Ombudsman during this period. Of these, 2,999 were submitted in 2000 and the remaining 800 were carried over from 1999. Of the 3,799 complaints, some 906 were judged to be outside the Ombudsman's mandate and the remaining 2,893 were investigated in depth. Of these, 1,798 were resolved in 2000 and the remaining 1,095 were still in progress on December 31, 2000.

2.2.2 COMPLAINTS OUTSIDE THE OMBUDSMAN'S MANDATE

The year 2000 saw a small increase in the number of complaints judged to be outside the Ombudsman's mandate. More specifically, 906 such complaints were shelved either because they were legally outside the mandate (672 complaints) or because of lack of other formal requirements (234 complaints). The most common reason a complaint was judged to be outside the mandate was because the complainant had not raised the issue with the public administration involved. In these cases, the complainant turns to the Ombudsman for information or expresses a general complaint without having previously petitioned the administration. Another significant factor was the expiry of the six-month deadline. Finally, a significant number of complaints were found to be outside the Ombudsman's mandate because of other formal reasons, mainly that the complaints consisted simply in notifications or did not contain specific requests, but merely general observations and conclusions.

2.2.3 COMPLAINTS INVESTIGATED IN DEPTH

During 2000, the Department of Social Welfare investigated 2,893 complaints, of which 1,798 were resolved and 1,095 were still pending on December 31, 2000.

2.2.3.1 COMPLAINTS PROCESSED

This category includes the 1,798 cases that were closed in the year 2000 following an in-depth investigation. Complaints were processed in different ways. For a small number of cases (89), investigation was interrupted at an advanced stage without the Office of the Ombudsman reaching a conclusion. In some cases the citizen revoked his complaint (51 cases), while other cases were taken out of the Ombudsman's hands (for example, taken to the courts; 38 cases). Of the total number of cases, 995 (or 55.34%) were deemed founded and 714 cases unfounded (39.71%).

More specifically, for 995 founded complaints (53.39%) intervention by the Ombudsman led to a positive outcome, while for 35 cases (1.95%) the Ombudsman's proposals were rejected by the public administration, and as a result the citizen's claim was not satisfied.

For 714 cases the complaints were deemed unfounded following an investigation that showed that the administration had acted legally or that, although the citizen's claim was reasonable, it was not covered by law or that a gap in the law meant that his claim could not be met. This category includes 27 cases in which the administration acted within the limits of its own discretion and 6 cases in which it turned out that the citizen was withholding information from the Ombudsman.

2.2.3.2 PENDING COMPLAINTS

By the end of the year 2000, 1,095 cases (29%) were still pending. Most of the pending cases concern complaints (795 cases or 73%) for which investigation has not yet been completed. These include complaints submitted in November and December 2000, as well as complicated cases requiring a time-consuming research and compilation of data that could not be completed by December 31, 2000. Among these are 70 cases for which the investigation had been completed, but the findings had not been issued by December 31, 2000.

In 246 cases (22%) the Ombudsman had prepared findings or had submitted proposals to the service involved and was waiting for official responses. In addition, on December 31, 2000, there were 42 cases (4%) pending because the investigation had been suspended on the basis of article 4, par. 3 of Law 2477/1997 concerning the adjudication of complaints deemed to require legal proceedings, which prevents the Ombudsman from intervening until a decision is issued or three months pass after the submission of the complaint.

Finally, 12 cases (1%) were still pending because additional material was expected from the complainant.

2.3 BREAKDOWN OF COMPLAINTS

2.3.1 BREAKDOWN OF COMPLAINTS BY SUBJECT

TABLE E.2.3 **CATEGORIES OF ISSUES**

Social insurance	77%
Health	12%
Welfare	5%
Other welfare issues	6%

Most complaints handled by the Department during 2000 concerned social insurance issues. More specifically, of the 2,999 complaints received, 77% (2,300 cases) concerned social insurance issues, 12% (365 cases) concerned health issues, 5% (137 cases) concerned welfare, and the remaining 6% (197 cases) dealt with other related issues of social welfare.

Table E.2.4 shows the distribution by category of the 2,999 complaints submitted to the Office of the Ombudsman, concerning social insurance issues.

TABLE E.2.4 **SOCIAL INSURANCE ISSUES**

Insurance benefits in cash	1,441
Financing of social insurance	461
Insurance	304
Structure and operation of insurance institutions	80
Insurance benefits in kind	14

2.3.1.1 HEALTH

Out of a total of 365 complaints concerning health issues, 158 dealt with health-care issues. Sickness benefits from insurance organizations and benefits in kind (health care) are included in this category. A significant number of complaints (88) concern difficulties experienced by health-care professionals, particularly the hiring of doctors by authorities providing health services (social insurance institutions, hospital units) and in the evaluation of doctors in the National Health System. In addition, 47 complaints concerned infringements of the right to good health, and, more specifically, the rights of people who use health services, and 44 complaints concerned issues associated with the organization and operation of health-care units.

Most health-care cases in Greece are concerned with medical care (60 out of 158 complaints). The main issue concerning health care abroad is hospitalization. In these cases, the insured party requests his social insurance institution to approve the expenses for hospital care abroad (usually in EU member states). Almost all the insurance organizations are involved in such cases, but most frequently the Professionals and Craftsmen's Insurance Fund, the Engineers and Public Works Contractors' Pension Fund and the Social Security Organization.

2.3.1.2 WELFARE

Regarding the issue of welfare, the total number of complaints handled by the Department was 137, of which 115 or 85% concerned benefits in cash. This high percentage is due to both the lack of alternative policies, that is, welfare policy is limited to disbursing cash payments (benefits or allowances), and to the excessive administrative obstacles regarding the requirements or the termination of welfare payments.

This year, again, most complaints on cash benefits concerned benefits paid to families with many children (51 cases) and special financial aid provided by welfare organizations (40 cases).

2.3.1.3 GENERAL SOCIAL-WELFARE ISSUES

This category includes complaints which, according to article 2, par. 1 of Presidential Decree 273/1999, are within the Department's area of jurisdiction and concern vulnerable social groups needing special protection. Most of these complaints concern issues related to caring for people with special needs, as well as the more specialized issues of job availability and access to education, tax relief, ensuring normal living conditions, and special benefits in kind and in cash (76 complaints).

The Department of Social Welfare dealt with only a small number of cases involving protection of the unemployed. Similarly, a small number of cases concerned issues of protecting people suffering from social exclusion (16 cases), children (15 cases), and the elderly (4 cases).

2.3.2 DISTRIBUTION OF COMPLAINTS TO THE AGENCIES INVOLVED

Most of the complaints (947) involved the Social Security Organization (IKA). This was followed by the Agricultural Insurance Fund with 359 complaints; the Social Security Organization for the Self-Employed (i.e. the former Pension Fund for Professional Drivers; the Professionals and Craftsmen's Insurance Fund and the Merchants' Insurance Fund) with

292 complaints; the State General Accounting Office (225); the former Supplementary Pension and Insurance Fund for Metalworkers (270); the Ministry of Health and Welfare (98); various hospitals (85); the Manpower Employment Organization (63); the Engineers and Public Works Contractors' Pension Fund (38); the Merchant Marine Retirement Fund (36); the General Secretariat of Social Security (36); the Civil Servants' Welfare Fund (32); and the Pension and Insurance Fund for Health Personnel with 24 complaints.

Equally important is the fact that the IKA services have problems throughout the country. Of all complaints in this category, 60% related to the IKA branch offices in Attica, 13% to the IKA offices in Thessaloniki and 27% to the IKA offices in the remainder of the country. Finally, as it was noted in the *1999 Annual Report*, most of the agencies involved in citizen complaints are located in the metropolitan area of Attica.

2.3.3 BREAKDOWN OF COMPLAINTS BY COMPLAINANTS' PLACE OF RESIDENCE

Of the people who submitted complaints to the Department of Social Welfare, 97.8% were residents of Greece while the remaining 2.2% were Greeks living abroad.

As pointed out in the *1999 Annual Report*, most of the citizens who submitted complaints to the Ombudsman are residents of Attica (48.5%). A smaller percentage (17.7%) come from the region of Central Macedonia (17.8%), whereas the number of complaints coming from the rest of the country is quite small.

It should be noted that according to the 1991 census, 34.4% of the population of Greece lives in Attica and 16.8% lives in the region of Central Macedonia.

2.4 PROBLEMS RELATED TO ADMINISTRATIVE ACTION

TABLE E.2.5 **MAIN CATEGORIES OF PROBLEMS ARISING FROM ADMINISTRATIVE ACTION**

Maladministration	69%
Violation of the principle of fair administration	19%
Violation of the principle of legality	12%

The investigation of complaints during 2000 once again brought to light the *modus operandi* problems of public administration (i.e. malpractices, gaps in the law, organizational failures, entrenched attitudes, etc.) that adversely affect the daily work of public administration employees.

The problems identified take the following forms (see Table E.2.5):

– Maladministration (2.4.1),

– violation of the principle of legality (2.4.2),

– violation of the principle of fair administration (2.4.3).

The classification of Table E.2.5 is a general grouping of the various sub-issues, as these are presented in Table E.2.6. This classification is indicative, in that an action (or inaction) by the public administration can basically fall under two categories. For practical reasons, however, it was considered useful to use this three-part classification in order to present a wider picture of the conclusions reached from investigations.

Various problems of administrative action identified by the Department of Social Welfare during the investigation of cases, involving the main agencies, are presented in Table E.2.6.

TABLE E.2.6 **CATEGORIES OF PROBLEMS REGARDING ADMINISTRATIVE ACTION**

Delays in issuing administrative acts	41%
Failure to provide adequate information	10%
Failure to respond to requests	8%
Organizational and operational problems of administration services	7%
Incorrect interpretation of the law	5%
Lack of clarity	4%
Delay in convening administrative bodies	3%
Failure to apply the principle of fair administration	3%
Administrative irregularities	3%
Discriminatory administrative practices	3%
Failure to take the required action	3%
Failure to apply the principle of equity	2%
Failure to justify administrative actions	2%
Breach of law	1%
Failure to implement court rulings	1%
Failure to apply the principle of proportionality	1%
Violation of the principle of equality	1%
Incorrect interpretation of administrative act	1%
Negligence	1%
Improper behaviour of employees	1%

2.4.1 MALADMINISTRATION

As shown in Table E.2.6, 69% of the complaints investigated revealed problems of maladministration, such as delays in issuing administrative acts, delays in replying to written petitions from the public, inadequate or often nonexistent provision of information to the public, lack of clarity, improper behaviour by civil servants towards the public, and problems involving the organization and operation of services. More specifically:

- Delays, either in issuing administrative acts or in carrying out material action, are the largest problem related to the agencies involved. Delays were observed in 516 cases (41%). This high percentage is directly associated with the fact that most of the cases concern social insurance issues, where delays in issuing pension decisions are common.
- In 86 cases (7%) general problems were found in the structure and organization of the agencies, particularly those involved with social insurance. These problems are the main cause of maladministration, resulting from the departmental structure of the agencies and a lack of technological support and sufficient staff.
- Inadequate or nonexistent provision of information to the public about their rights and the administrative procedures that concern them is quite common. Such problems of inadequate information were found in 126 cases (10%), while in 97 cases (8%) the administration failed to respond to written petitions from citizens. The 52 cases (4%) of unclear responses from the administration to requests from the public can be included here.

Characteristic cases of maladministration investigated by the Department are presented below.

MALADMINISTRATION WITHIN INSURANCE AUTHORITIES

Delays in issuing pension decisions because of consecutive insurance periods

Agencies: Social insurance institutions

The largest percentage of problems of maladministration in the public sector are associated with delays observed in processing applications for pensions, which often, mainly in cases involving consecutive insurance periods, may exceed five years from the date the application was submitted. This problem is found mostly in cases of consecutive social welfare cover, where the establishment of the pension right requires the joint calculation of the period of contributions made to two or more insurance institutions, either within Greece or, in many cases, in countries within the EU or countries with which Greece has bilateral agreements for social welfare.

The Ombudsman wrote the Minister of Labour and Social Affairs about the delays in issuing pension decisions and the failure to implement the Joint Ministerial Decision ΔΙΣΚΠΟ/Φ17/2-26420/1991 of the Minister for the Prime Minister's Office and the Ministers of Health and Welfare, and Social Affairs, which sets a one-year time limit for processing cases of consecutive insurance periods in foreign countries.

In reply, the Ministry of Labour and Social Affairs pointed out that the one-year time limit for processing such cases is calculated after the pension file is complete. One possible result of this interpretation is that an application filed in 1990 would still be pending today if all the information in the file has not been collected. In the Ombudsman's opinion, however, such delays and their legal sanction based on such interpretations constitute maladministration, which denies a large category of citizens – mainly Greek emigrants and migrant workers – their right to prompt decisions on their pension applications within a reasonable time limit. In addition, this interpretation is in conflict with the legislator's intention expressed in Law 1599/1986 and with the Code of Administrative Procedure (Law 2690/1999), which give specific time limits within which the administration is to process applications, while at the same time enabling the administration to make exceptions for special cases because of their nature and complexity.

Clearly, these problems are not caused only by insurance funds being insufficiently staffed and inadequately computerized, as it is often claimed, but, instead, by ineffective organizational structure. The need for restructuring appears regularly, requiring serious consideration and research. Maladministration appears in almost all social insurance institutions, a prime example being the Agricultural Insurance Fund, in which the problem is particularly intense.

In addition, extreme delays in taking decisions on consecutive insurance under different schemes, which are partly intergovernmental, constitute an indirect barrier to the free movement of workers, one of the European Union's basic principles and goals. Ensuring the free movement of workers cannot be accomplished at just the level of institutional transfer of insurance periods accumulated from one country to another, according to the provisions of the EU Regulations 1408/1971 and 574/1972. The European Union's directive coordinating social insurance systems requires effective policies capable of liberating insurance organizations from distortions and bureaucratic malfunction. Obviously, extreme delays before receiving pensions force people with no other means of support into living standards that offend their dignity, often to the limits of financial exhaustion, in direct contravention of the principle of social protection.

Mergers of insurance organizations
Agencies: Social Security Organization for the Self-Employed; Supplementary Pension and Insurance Fund for Civil Servants

Problems, the most important being delays in issuing decisions about pensions, persist even after the merging of some social insurance institutions.

Two recent mergers of social insurance institutions carried out according to Law 2676/1999 are typical examples. More specifically, the Social Security Organization for the Self-Employed (OAEE) was set up in accordance with articles 1 through 13 of this law to provide coverage to people whose professions were until recently covered by the Merchants' Insurance Fund (TAE), the Pension Fund for Professional Drivers (TSA), and the Professionals and Craftsmen's Insurance Fund (TEVE). In addition, articles 14 through 24 of this law established the Supplementary Pension and Insurance Fund for Civil Servants (TEADY) and closed down the various supplementary social insurance institutions for civil servants. Nonetheless, investigations of complaints revealed that these merged funds continue to produce instances of maladministration, since each merged organization generally follows the same rules as before, is housed in the same buildings, and employs the same staff. The experience of the Office of the Ombudsman has shown that these mergers of insurance organizations have not provided the expected positive results because they were not accompanied by appropriate organizational restructuring. For example, the operation of these merged social insurance institutions housed in the same building would have contributed to the restructuring of their services and personnel, thus reaching the goal of a substantive merger by providing the highest quality of services to the public while reducing administrative costs.

MALADMINISTRATION WITHIN HEALTH AUTHORITIES

Delay in holding meetings to evaluate National Health System doctors
Agencies: Evaluation and Selection Councils for Hospital Medical and Dental Staff

The investigation of a considerable number of complaints revealed long delays in completing administrative procedures for selecting doctors for the National Health System. Current legislation (Law 2519/1997, article 37 and Ministerial Decision ΔΥ 13α/οικ.37939/19.11/4.12.97) requires that each applicant's qualifications be compiled and submitted, a recommendation be written, that any objections be submitted together with the recommendation, the opinions about the objections be written by the candidate's sponsors, and, finally, that the Evaluation and Selection Councils for Hospital Medical and Dental Staff be convened for the decisive judgment. The deadlines set for each of the above steps were not kept. The institutional structure for these committees gives broad leeway to the timing of the final decision. Often, when there are many candidates or several equally strong candidates, the committee finds it hard to choose, reaching something of a solution by continuing to defer the decision.

This practice seriously delays the process of selecting doctors for National Health System hospitals. Often, more than a year will pass between application and selection, infringing on doctors' rights as health-care professionals and adversely affecting the staffing of hospitals and thus the ability of hospitals to provide high-quality health care.

2.4.2 VIOLATION OF THE PRINCIPLE OF LEGALITY

Investigation of complaints has shown that violations of the principle of legality account for 12% of all the problems caused by administrative action.

Violations of the principle of legality include cases in which:

– There were outright breaches of the law,
– legally mandated actions were not carried out,
– the administration did not implement court rulings,
– there was inadequate or nonexistent justification for the administration's action,
– the law was misinterpreted,
– there was negligence,
– there was abuse of power.

In particular, investigation by the Department of Social Welfare found only 11 cases of outright breaches of the law, 42 cases (3%) of failing to act in a legally mandated manner and 58 cases (5%) of misinterpreting the law. In the latter cases the administration had complied with the formal requirements of the law but violated the essential meaning of the law.

That the administration adheres to the principle of formal legality is partly explained by the multiplicity of laws governing the social insurance system, that allows administrative action to be rooted in an obsolete legal order. Such an approach to law, without interpreting it in the light of modern social developments, distances it from the essence of the law. Lax observance of the institutional framework of health systems and the nonexistence of an institutional framework for welfare systems make administrative malfunctioning possible. In order for the legality of the activities of the social administration to have some value for the public, it needs to contain the idea of social protection. A basic condition for fulfilling citizens' social rights is to understand legality as a concept not strictly tied to the letter of the law, but as something that includes, in its implementation, the purpose for which the law was established.

The cases below involve violations of the principle of legality. They are presented here to establish more clearly this insistence on focusing on the intention rather than the letter when interpreting the law, which governs the Ombudsman's approach to citizens' complaints and the protection of their rights.

The circular as a mechanism for overruling the law
Agency: Social Security Organization

From the Office of the Ombudsman's daily communication with insurance organizations it has become evident that the rules governing each institution and especially the Social Security Organization (IKA), the largest social insurance institution in Greece, are largely based on circulars interpreting the provisions of relevant laws. Circulars constitute, indeed, a useful management aid, but they are not regulations.

The lack of clarity and the gaps that dominate the prolific and non-codified social insurance legislation leave much room for interpretation, which is covered by the issuance of interpretative circulars. This, however, does not justify using circulars to circumvent current law by, essentially, establishing new rules. Among others, such a practice violates the principle of the separation of powers. The large number of circulars issued to interpret and implement legislation makes it difficult for citizens to know what the law is and enables the administration to exceed the law, thus strengthening its position.

A typical example of violating legality is the charges the IKA imposes on contractors for construction works. There are even cases in which breaking the principle of legality by means of circulars concerns not only domestic law but European Union law as well. A case in point is an IKA circular providing for artificial limbs and orthopaedic products to the insured.

According to this circular, for approval to be given for purchasing these items, the manufacturer's licence and the insured person's social insurance number must accompany requests. The requirements listed in the circular for the importation of these products from EU member states are stricter than those set out in the legal framework governing medical devices. This framework is determined by EU Council Directive 93/42EEC/14.6.93, incorporated into Greek law by Ministerial Decision ΔΥ 7/οικ.2480 and by the general provisions of European Union law, such as article 28 (formerly article 30) of the European Community Treaty ensuring the free movement of goods. More specifically, the label "CE" marked on imported goods means that they have been certified according to the procedures imposed by European Union directives. These procedures are enough to ensure that a product is appropriate for its stated use. Therefore, the Greek administration's demand that the manufacturer provide a permit is an additional requirement, subordinate to the "CE" label, that reveals, in effect, that Greek public administration does not share the mutual trust that should govern relations among European Union member states.

This public administration's practice, besides violating national legislation, is also in conflict with European Union law, since it prevents the insured person from enjoying his rights to deal with an illness using all the resources inside an area without internal borders, a right he has by virtue of his identity as a European citizen. After repeated communication between the Office of the Ombudsman, the administration of the IKA and the Ministry of Health and Welfare, the responsible authorities understood the danger of the country being convicted by the European Court of Justice, accepted the Ombudsman's proposals and changed most of the points at issue in the circular.

Narrow interpretation of the provisions on issuing decisions about pension payments
Agency: State General Accounting Office

Investigations have already established that the State General Accounting Office tends to insist upon following a narrow interpretation of the regulations on pensions and maintains that only this line of interpretation ensures legality. Nevertheless, it is quite clear that this line of approach often leads to irrational or unjust results.

A typical example of the above is the State General Accounting Office's practice not to pay women the old-age or invalidity pensions to which they are entitled when they are also recipients of a lifelong welfare benefit foreseen for raising over three children. This refusal is based on the rationale of not paying double pensions (see 3.1.7). The State General Accounting Office refuses to interpret this specific regulation in terms of its purpose (i.e. a social benefit provided in order to encourage families to have more children), and makes instead an interpretative regulation connecting the benefit to the "pension based on contributions paid" principle – which is of course an entirely different issue. Thus, the benefit is seen as a double pension and since there is no contribution, the second pension is considered unjustified and, therefore, illegal.

In contrast to its long-established practice of narrowly interpreting fiscal regulations, the State General Accounting Office, as a pension provider, is allowed to consider the purpose of pension payments when interpreting regulations both in issuing decisions on pensions and in its payment procedures, avoiding a narrow fiscal approach when this clearly clashes with the social nature of the benefits foreseen.

Failure to implement the principles of European Union law
Agencies: Social insurance institutions

Violations of the principle of legality are also found in cases in which public administration does not conform to European Union law. In many cases, public services disregard European Union regulations and administrative procedures as established by the European Court of Justice. This occurs mainly in cases of illness benefits and approvals for transfer and hospitalization in another European Union member state.

Social insurance institutions do not seem to realize that the concept of illness benefits is also a requirement of European law. These benefits, therefore, must be determined not by national legislation, but mainly on the basis of European Union regulations that define the constituent elements of these benefits.

The social insurance institutions respond that, in providing illness benefits, they have a duty to consider the dangers to the national social insurance system. Maintaining this system in good condition is in the interest of everyone in the country and justifies deviations from the fundamental principles of European Union law. Investigations into complaints about hospitalization in European Union member states revealed two types of related problems.

In cases for which treatment was approved prior to the patient's going abroad, reimbursement often involves a complicated procedure, and the insured person eventually receives only part of the funds to which he is entitled.

In cases for which the treatment was not approved beforehand, the insurance authorities base their reasoning on the general rule of European Union law that hospital care is a matter for the health system of each member state (principle of territoriality) and refuse to cover the expenses.

However, these decisions, when applied as a general rule, cannot take into account situations in which chance and unforeseeable events affecting health force the issue. The European Union Treaty, its social laws, and the European Court of Justice's rulings regulate exceptions to the general law for cases of urgency or immediate need. Obviously, the obscurity of the concept "urgency" leaves room for interpretations of a financial nature, without guaranteeing that the essential health protection requested will be provided.

In addition, Regulation EEC 1408/1971 (article 22) justifies approval *a posteriori*, when the time periods are not "those normally needed to provide treatment within the member state of residence." Considering the delays observed in the responses of public hospitals to applications for treatment and surgical operations, the time periods provided by the Greek health system in dealing with patients cannot easily be considered what the regulation describes as "normally needed." In such situations, the insured person may prefer to be operated on immediately in another European Union member state in order to avoid irreversible health complications, or even death. Basing themselves on the principle of territoriality, the social insurance institutions usually refuse to cover the expenses involved.

A series of decisions of the European Court of Justice, however, require them to investigate how effective the treatment has been in these cases, particularly when the patient has been injured in a traffic accident. Since the Greek social insurance system does not have special rehabilitation centres available, it is obliged to approve expenses for travel, treatment, and physical therapy in appropriate centres located mainly in Germany, but also in other European Union member states.

Violation of patients' rights
Agencies: Hospitals

Complaints submitted to the Office of the Ombudsman showed that the main problem in this category of complaints is how health-care professionals approach patients and their families. Investigations have shown that the often unethical behaviour is mainly the result of:

– Inadequate hospital staffing,
– paternalistic attitude of the medical staff,
– inertia with which hospital administrations react to issues of patients' rights.

This inertia infringes upon the right to health and violates the provision of article 47 of Law 2071/1992. The provision refers to the rights of hospitalized patients in second- and third-degree hospital care, essentially reflecting the findings of the EU's Hospital Committee. These rights constitute the other side of the obligations that doctors have towards patients, as described in the Code of Medical Ethics (Royal Decree 25 May/6 July 1955) and the European Code of Medical Ethics.

2.4.3 VIOLATION OF THE PRINCIPLE OF FAIR ADMINISTRATION

Cases involving violations of the principle of fair administration constitute 19% of the cases dealing with problems of administrative action. This category includes violations of the principles of equity, of the protection of legitimate expectations, good faith, etc.
More specifically, of the cases involving violations of the principle of fair administration handled by the Department of Social Welfare during 2000, 33 cases involved violations of the principle of fair administration, 28 cases involved the failure to apply the principle of equity, 22 cases concerned practices that introduced discrimination, 14 cases involved the failure to apply the principle of proportionality, 10 cases involved failure to apply the principle of equality and impartiality, 4 cases concerned violation of the principle of the protection of legitimate expectations, and, finally, 3 cases involved violation of the principle of good faith. Violation of these principles reveals a lack of essential quality in the services provided and highlights that, in many cases, public administrative practice does not meet the contemporary needs of the public.

The Department uses the general principles of administrative law, as formulated in theory and case law, as an important tool for the interpretation of the rules of law, or of specific issues raised by particular cases. The purpose of this interpretative framework, based on the principles of fair administration, equity, proportionality and the protection of legitimate expectations, is the corrective interpretation of legal regulations so that, when a decision is taken, the particular circumstances of the case are taken into account and the law is not inflexibly applied. The same rationale governs every effort to interpret laws on the basis of criteria that are linked with the principles of the welfare state and agree with the

state's constitutional obligation to protect "vulnerable population groups." Some typical examples of cases in which investigation revealed violations of the above principles are presented below.

Procedure to replace a lost insurance booklet
Agency: Social Security Organization

The Ombudsman ascertained inflexibility on behalf of the Social Security Organization (IKA) in applying the legal procedure for replacing lost insurance booklets.

More specifically, to replace a lost or damaged booklet (and to recognize the years of insured service accumulated by the insured party) the IKA, in accordance with article 10 of its Insurance Regulations, requires the individual concerned to provide "the booklet the replacement of which is requested, should it exist, and then the employer's payroll entries, the employer's statements submitted to the IKA, and, finally, certificates issued by the IKA in the past and the entries by responsible employees of the IKA in the employer's books. Witness testimonies will not be accepted as proof of the contents of the lost or destroyed insurance booklet."

In most cases, however, all this evidence does not exist or is virtually impossible for the insured to acquire. The Council of State has ruled that the health booklet (a separate document used for hospital admission) constitutes indirect proof of IKA coverage for at least twelve months prior to the issuing of the health booklet, since one of the conditions for issuing the booklet is completion of at least 50 days of work during the previous year. The IKA insists that all the above documentation be provided and that the existence of health booklets for the period in question does not constitute proof of coverage by the IKA.

This procedure indicates the inflexible stance of the IKA, whose rationale, in effect, creates insurmountable obstacles. Indeed, when one considers that witness testimony is no longer accepted, it becomes clear that the citizen loses every chance of a lenient handling of his problem.

Payment of insurance contributions for construction works
Agency: Social Security Organization

The IKA regulations pertinent to construction works constitute a typical example of the failure to apply the principle of fair administration.

For this category of works, the contractor is obligated to pay insurance contributions corresponding to, at least, the days worked as determined by article 38 of the IKA Insurance Regulations. According to these regulations and the provisions of Law 2557/1997, construction project files are audited within a decade. The result of this practice is that the contractors are called to pay contributions and fines that can reach up to 120% of the initial debt. These problems become serious because of the practice followed by the organization to carry out the audit just before the deadline expires, which often results in individuals being called to pay contributions and compounded fines for the entire decade. This practice violates the principle of fair administration, generates intense and, to a certain extent, justified distrust in the activities of the IKA by the citizens and contributes much to the Social Security Organization's lack of legitimacy.

Ministerial decision Φ.21/2930/10.11.92 amended articles 38 through 40 of the IKA

Insurance Regulations on construction works and established a new system for calculating contributions, both for work carried out after January 1, 1993 and for work carried out before December 31, 1992, for which the relevant insurance contributions had not been certified. Given the usual decade-long delays in checking the relevant files, the consequences of this change are that the contractor who undertook construction works before December 31, 1992, bearing in mind the system in effect before the above ministerial decision was issued, is ignorant of the new measures, which, however, oblige him to pay contributions and fines compounded over a decade.

3. Presentation of the Most Important Cases

3.1 SOCIAL INSURANCE

3.1.1 INSURANCE COVERAGE

Agency: Merchants' Insurance Fund
Subject: Non-exemption from insurance contributions according to the principle of being insured with a single social insurance institution – Maladministration

A person insured with the Merchants' Insurance Fund (TAE) appealed to the Office of the Ombudsman (case 3667/2000), complaining about the fund's expressed position concerning his request to be exempted from paying insurance contributions.
Investigation established that this request had been submitted three years previously. Initially, it had been accepted in part and the fund proposed that the individual be exempted from paying insurance contributions only for the period between December 1, 1999 and December 31, 2000. Later, the TAE sent another letter to the complainant saying that it had been incorrect in not exempting him from paying insurance contributions for the period from October 1, 1996 to December 31, 2000, and asked him to submit his insurance booklets, in order to settle matters. The complainant, however, believing that the fund's position violated his rights, refused to go to the TAE and asked the Office of the Ombudsman to intervene.

After repeated communications, the Office of the Ombudsman proposed that the booklet be mailed to the TAE for the issue to be settled. The booklet was mailed to the Merchants' Insurance Fund, validated, and the fund notified in writing both the Office of the Ombudsman and the individual concerned that he had overpaid his insurance contributions by 402,800 drs. Part of this money was used to pay his insurance contributions for the period between October 1, 1996 and December 31, 2000. The remainder of the money could be used to pay his contributions for the year 2001 or returned to him at his request.

Agency: Merchants' Insurance Fund
Subject: Payment of health-care contributions to the Merchants' Insurance Fund – Violation of the principle of free choice of social insurance institution

Due to multiple professional occupations, a citizen was compelled to subscribe to two insurance institutions, the TAE and the IKA, though the law forbids citizens to receive medical coverage by more than one. She submitted a complaint to the Office of the Ombudsman (case 11625/1999) protesting for not being allowed to choose one fund and

requested to be exempted from paying contributions to the TAE. Because she had inadequate and incorrect information, the complainant did not apply directly to the fund for her exemption but to a TAE contributions collector. The collector exempted her from paying the contributions and received from her the IKA certificates needed for the TAE. This procedure, however, by which the contributions collector exempted the complainant from paying insurance contributions without the TAE being informed, was incorrect.

Nonetheless, the complainant was left with the impression that she did not owe insurance fees to the TAE because, in accordance with its statutory provisions, the collector inserts and certifies standard stamps. If the insured does not pay the full amount owed but only a part, the collector should inform the fund.

The TAE calculated that the complainant owed 389,940 drs. Fines for late payment raised the amount owed to 2,091,300 drs. The complainant could re-establish her right to a pension only if she paid this amount in full.

In the findings prepared for this case, the Ombudsman noted that:

– The complainant was entitled to an exemption from paying contributions to the TAE.
– The complainant never made use of this insurance coverage. She had not renewed or used her booklet in the belief that she was exempt.
– The IKA had issued certificates that the complainant was covered by its health insurance scheme, which the complainant should present to the TAE. The complainant had given these certificates to the TAE contributions collector. For these reasons it was proposed to the TAE that the amount in question be returned as a non-justified payment. The TAE accepted the Ombudsman's proposals.

Agency: Social Security Organization, Veroia branch office
Subject: Taking compulsory measures – Maladministration

A citizen who has been running a business in the town of Veroia since 1982 submitted a complaint to the Office of the Ombudsman (case 215/2000) regarding the policy followed by the IKA when taking compulsory measures.

On July 2, 1999, the complainant submitted to his local IKA branch office a request to pay off his debt to the organization in instalments, in accordance with the provisions of Law 2676/1999. On August 8, 1999, he received a written note from the Veroia branch office, certifying that he had no outstanding debts. This certification was valid for a period of two months (until October 24, 1999).

On October 29, 1999, a court bailiff presented the complainant with a confiscation report (no. 475) announcing the compulsory confiscation of his property. Soon after, the complainant received a registered letter dated November 2, 1999, containing an administrative act imposing fines. The result of this sequence of events, caused by lack of coordination and communication within the IKA branch office, was that the complainant first learned that his house would be confiscated and found out why only four days later.

The Ombudsman contacted the IKA branch office and pointed out that the complainant had received a written note certifying that he did not have any outstanding debts. The two-month period during which this certificate was valid led the complainant to believe he had no open issues with his social insurance institution. The certificate did state

that if payment was not made on time, the IKA reserved the right to seek payments if a future audit established amounts owed. Nonetheless, the phrasing of the certificate gave the complainant the distinct impression that no amount was due and that, should there arise any problem in the future, this could be then solved by settlement.

Articles 50-55 of Law 2676/1999 which, among other things, deal with the rationalization of the system for settling debts to the IKA, allow the IKA to take compulsory measures to restrict the avoidance of paying insurance contributions to a minimum. Under no circumstances, however, does this power legitimize the practice of confiscating first and afterwards notifying the persons involved of the decisions taken to impose contributions or additional contributions in accordance with article 20, par. 1 of Law 1469/1984. This practice denies the debtor his right to object to the fines imposed and, therefore, violates article 20, par. 1 of the Constitution.

Taking compulsory measures does not mean that the constitutionally guaranteed rights of citizens under the rule of law can be violated, and, more specifically, the provisions of article 20 of the Constitution on the right to judicial protection and previous hearing of the accused. Furthermore, the procedure described in the Code for the Collection of Public Revenues and IKA circulars no. 40 E40/69/30.3.99, regarding the activation and improvement of the efficiency of revenue services, and no. 52 E33/42/30.4.99, on the publication of the provisions, is intended to protect the rights of citizens.

More specifically, article 4 of Law Decree 356/1974 (Code for the Collection of Public Revenues) requires that "a personal notification be sent to debtors informing them of their debt, the total amount owed, as well as the service's right to take compulsory measures and other measures to collect the money owed." The circulars mentioned above also emphasize that when using confiscation as a means to collect debts, the measures must be "enforced methodically but also rationally so they can be effective in collecting the money owed."

The central administration of the IKA, after noting the legality of the confiscation and the increased workload during the period in question, accepted the Ombudsman's observations and ordered that an administrative investigation under oath be carried out concerning the improper functioning of its Veroia branch office. Proper coordination requires the branch office departments to communicate effectively among them so that the confiscation procedures begin only after the citizen has been informed of his debt and all deadlines have expired. The Veroia branch office sent the complainant a written apology for the unfortunate events.

3.1.2 OLD-AGE PENSION

Agencies: Social Security Organization, Nea Filadelfeia branch office; General Secretariat of Social Security

Subject: Requirements for increasing pension payments to the wife of a pensioner – Violation of the principle of equality

An IKA pensioner complained (case 14513/2000) to the Office of the Ombudsman that she had not received the same increase in her pension as her husband had.

After investigation it was established that, in accordance with article 29, par. 3 of Law 1846/1951, as replaced and supplemented by article 5, par. 3 of Law 825/1978, male pensioners receive an increase in their pension as marriage supplement. An increase is

provided to female pensioners only when their husbands are disabled and destitute (Social Security Organization's circular 76/1958). For a wife to be granted an increase in her pension both these conditions must be met; her husband must be disabled and without financial means.

On the basis of the above information and because this discrimination violates the principle of equality, the Ombudsman considers that the increase should be extended also to female pensioners without any requirement concerning disability and poverty. The Ombudsman communicated with the General Secretariat of Social Security (GGKA), asking it to take steps to resolve the issue. The GGKA gave no substantial reply; the Ombudsman contacted the GGKA again requesting a specific answer on the issue. No reply from the GGKA had been received by December 31, 2000.

3.1.3 OLD-AGE PENSION FROM CONSECUTIVE INSURANCE

Agencies: Supplementary Pension and Insurance Fund for Metalworkers; Merchant Marine Retirement Fund, Department for Regulating Supplementary Insurance for Merchant Seamen; Supplementary Insurance Fund for Retail Employees
Subject: Delay in paying supplementary pension in accordance with the provisions on consecutive insurance – Maladministration

A citizen appealed to the Office of the Ombudsman (case 10183/1999) because for eight consecutive years she had been trying, without success, to receive the supplementary pension of her prematurely deceased husband from one of the supplementary pension funds with which he was at various times insured: the Supplementary Pension and Insurance Fund for Metalworkers (ETEM), the Merchant Marine Retirement Fund (NAT) – Department for Regulating Supplementary Insurance for Merchant Seamen (KEAN), and the Supplementary Insurance Fund for Retail Employees (TEAYEK).

On December 12, 1991, the complainant submitted an application to the ETEM for pension due to the death of her husband's. After a delay of approximately six years, the fund judged that the complainant had not met the requirements for a pension and rejected the petition on this ground, passing it on to the next insurance authority, the NAT-KEAN. Two years later, the NAT-KEAN rejected the application and returned the file, inadvertently, to the ETEM and not to the next insurance authority, the TEAYEK. After some months, the ETEM returned the file to the NAT-KEAN. Thereafter, the pension application remained shelved, although it should have been passed on to the third insurance institution, the TEAYEK.

The Ombudsman, considering that the eight-year delay in itself constituted a grave example of maladministration as well as a violation of the citizen's rights, intervened and requested that the pension file be passed on by the NAT-KEAN to the TEAYEK so the latter could decide on the complainant's pension right. After the request by the Ombudsman, the file was, indeed, passed on to the fund, which approved the complainant's request and granted the supplementary pension starting from the date on which the complainant had first applied.

3.1.4 INVALIDITY PENSION

Agencies: Social Security Organization; State General Accounting Office

Subject: Granting invalidity pension from consecutive insurance to a mentally ill person – Violation of legality

An individual submitted a complaint (case 1845/1999) on behalf of his son, who is institutionalized because of a severe psychological disorder. The complainant requested that a solution be found to resolve the problems that arose between the IKA and the State General Accounting Office about his son's pension, so that his son could receive an invalidity pension.

More specifically, the complainant's son had worked first in the private sector for the period between January 1, 1974 and December 31, 1981, when he was insured with the IKA and then, for the period between October 24, 1986 until September 9, 1991, for the Ministry of Defence, when he was insured by the state. In 1987, the man in question began to exhibit signs of severe psychological problems, resulting in him being dismissed from his service in accordance with a decision of the disciplinary board of the Army General Staff at the Ministry of Defence because of absence without leave exceeding 30 days (dismissal no. 38/1992). In 1994, the State General Accounting Office rejected the son's application for an invalidity pension on the grounds that his dismissal from service on disciplinary grounds (absence without leave over 30 days) had resulted in his losing the right to a pension, in accordance with article 63 of the Civil and Military Pension Code then in force.

During investigation it was found that the citizen in question was entitled to an invalidity pension from the IKA in accordance with the provisions governing consecutive insurance (article 9 of Law 1405/1983 and article 14 of Law 1902/1990). Current regulations require that his pension application be evaluated first by his last insurance institution, i.e. the state, and then by the previous insurance organization, i.e. the IKA.

The State General Accounting Office, however, invoking legal obstacles, refused to present the citizen's case before the responsible health committee, as required by the procedure for granting invalidity pensions. This refusal blocked further procedural progress. The position of the State General Accounting Office on the matter remained unchanged, even when a decision (Φ.61/195/1997) resolving the differences was issued by the Minister of Labour and Social Affairs, according to which public administration was given the responsibility of referring the insured party to a health committee.

The Ombudsman wrote to both the authorities involved, requesting that the State General Accounting Office implement the ministerial decision or that the two authorities cooperate in finding another solution. In a reply letter sent to the Ombudsman, the State General Accounting Office reiterated its previous position. The IKA confirmed that the citizen was entitled to a pension in accordance with the regulations governing consecutive insurance, but insisted that the last insurance authority should determine the extent of the citizen's disability. Considering that the stance of the State General Accounting Office constituted a *de facto* violation of the constitutional right (article 21) of the mentally ill or the people with special needs to protection, the Ombudsman submitted the issue to the Minister of Finance, requesting his help in finding a solution to the problem.

The minister's intervention resulted in a commitment by the State General Accounting Office to begin procedures for a joint ministerial decision involving the General Secretariat of Social Security (GGKA). After an exchange of letters between the State General Accounting Office and the GGKA about whether or not a new joint ministerial decision

based on the provisions of article 11 of Legislative Decree 4202/1961, as amended by the provisions of article 18 of Law 2079/1992, should be issued, the State General Accounting Office requested that the GGKA implement the already existing ministerial decision promptly. The GGKA complied with the above proposal made by the State General Accounting Office and the Ombudsman and referred the case of the citizen in question to the competent health committee.

Agency: Agricultural Insurance Fund
Subject: Formation of a health committee in the insured person's place of residence in order to decide on his eligibility for an invalidity pension – Infringement of the right to insurance

A citizen submitted a complaint (case 10760/1999) to the Office of the Ombudsman when he realized that in order to continue receiving his invalidity pension from the Agricultural Insurance Fund (OGA), he would have to be examined by a second-instance health committee.

In accordance with the regulations in force, the individual in question had been evaluated as disabled by the responsible health committee and was receiving a pension from the OGA. He was examined anew by a first-instance health committee of the IKA branch office in Samos, which did not make a final judgment on the extent of his disability. The individual then was summoned by the IKA branch office in Piraeus to be examined by the health committee in Piraeus where, however, he could not go because of his orthopaedic problems, confirmed by the hospital of Samos. Because he did not appear before the health committee in Piraeus, his case was shelved. In 1997, the individual had submitted a new petition and there had been no further developments.

When the Ombudsman raised the issue with the fund, the response was that the individual had to be examined by the health committee in Piraeus. Because of the individual's severe health problems, however, this remained out of the question. Following the intervention of the Ombudsman, a health committee was assembled on the island of Samos, where the individual was examined and his request was satisfied.

Agency: State General Accounting Office
Subject: Referral of a pensioner to a health committee because of an aggravation of his health problems – Violation of the principle of equity

A disabled war veteran receiving a pension asked the Office of the Ombudsman (case 5930/2000) to intervene for a problem he had with his pension authority, the State General Accounting Office. The individual had initially been granted a pension by decision of the Army Supreme Health Committee, stating that the individual had a disability of 30%. In 1989, this percentage was increased to 35%, and in 1991, after examination, to 45%. In 1998, however, his initial injury – fracture caused by gunshot – led to an aggravation of his health, making it eventually necessary for his left leg to be amputated above the knee. After the amputation, the citizen requested a re-examination by the Army Supreme Health Committee so the percentage of his disability could be determined anew and his pension adjusted accordingly. This request was repeatedly denied by the Army Supreme Health

Committee because, in accordance with Presidential Decree 1285/1981 (article 123, par. 1β) "under no circumstances . . . can re-examinations be made more than twice."

According to article 123, par. 1 of Presidential Decree 1285/1981 (article 2, par. 1 of Law 1656/1951), as it was valid before Law 1489/1984, no limit was put on the number of re-examinations by the Army Supreme Health Committee. The absence of any restrictions could lead to abuses and, by extension, to initiation of procedures and mechanisms that were really not necessary. To resolve this problem, the legislator restricted the number of possible re-examinations to two. Nonetheless, as a major and long-term injury to health, amputation holds a "privileged" position in the war veterans pension system. For example, article 10, par. 1β of Presidential Decree 1285/1981 considers amputation a permanent limitation upon an individual's ability to work. Furthermore, amputation is a condition that can be determined directly, easily diagnosed, and seriously limits a person's potential (see, for example, the IKA's Insurance Regulations on evaluating the extent of disability, Government Gazette 819/B/7.10.93). Consequently, amputation does not constitute a linear evolution of the disease or injury, but a health condition of a different nature resulting directly from the illness or injury.

This is a serious problem for cases in which a disabled war veteran undergoes amputation as a result of a wound caused during time of war and cannot have the severity of his disability reassessed. Such a possibility would have seemed reasonable enough, as the causal relation between the amputation that restricts the individual's life and the injury is obvious. Apart from the specific case, other extreme cases may well arise, for which, after two re-examinations, a rapid aggravation of an individual's condition may occur, making it necessary to assess once again the severity of the disability in view of the individual's present condition. In such cases, the restriction to two re-examinations is a major obstacle, leading to a false assessment of a war pensioner's degree of disability in relation to the damage he actually has suffered.

In the Ombudsman's view, applying the principle of equity in such an extreme case does not conflict with the law, but provides a way to deal, in essence, correctly with a particular problem, which relevant legal provisions do not cover. In addition, there must be a standard set of criteria for dealing with such problems. Treating such cases as exceptions within the existing legal framework cannot become a standing solution.

With this in mind, the Office of the Ombudsman turned to the State General Accounting Office and requested that the matter be considered from two points of view:

1. For the specific case, the Ombudsman proposed that a solution be found within the existing legal framework so the individual in question can be re-examined by a health committee.
2. As for the issue in general, the Ombudsman recommended that existing legislation might be amended to allow a third re-examination in exceptional cases.

The State General Accounting Office (47th Division) responded to the Ombudsman's proposals positively. After ascertaining that the issue could not be resolved within the existing legal framework, the State General Accounting Office acknowledged the seriousness of the problem, agreed with the Ombudsman's proposal and promoted a legislative solution. After positive recommendation by the responsible division, the Minister of Finance decided to submit the relevant constitutional provision to Parliament.

3.1.5 SURVIVOR'S PENSION

Agency: State General Accounting Office

Subject: Payment of pension by the state when already receiving a lifelong pension – Infringement of the right to insurance

A citizen submitted a complaint (case 6689/2000) that the State General Accounting Office had refused to pay her her father's survivor's pension, to which she was entitled as the divorced daughter of the deceased. More specifically, the 43rd Division of the State General Accounting Office rejected her application because article 2, par. 1γ of Presidential Decree 850/1980 provides that the applicant is not entitled to a pension since she was already receiving a lifelong pension as a mother of many children from the Agricultural Insurance Fund.

After this application was rejected, the applicant appealed to the State General Accounting Office's Appeals Committee.

After the investigation of the case and communication between the Office of the Ombudsman and the State General Accounting Office, it was established that the problem had arisen as a result of the fact that the State General Accounting Office considered that a lifelong pension for having many children is the same as a state pension, which would exclude the applicant from receiving a pension as the divorced daughter of a civil servant.

The Ombudsman addressed a letter to the State General Accounting Office's Appeals Committee, expressing the opinion that the lifelong pension for having many children is a family benefit, granted according to the number of children a beneficiary has (article 63 of Law 1892/1990) and consolidated after some years. In consequence, receiving a lifelong pension for having many children does not cancel the applicant's right to receive a survivor's pension as the divorced daughter of a deceased civil servant in accordance with Presidential Decree 850/1980. The committee did not accept the Ombudsman's proposals and rejected the complainant's application. The request was denied on the basis of a narrow, literal interpretation and on the restricting implementation of the Civil and Military Pension Code together with the provisions of Presidential Decree 850/1980.

The Ombudsman's position on the matter is the following: according to article 2, par. 1γ of Presidential Decree 850/1980, "the divorced daughter of an employee is entitled to a pension from the state if aa) . . . bb) . . . cc) . . . she is not receiving another pension." The State General Accounting Office's services rigidly consider that the lifelong pension for having many children excludes the applicant from receiving a state pension, when considering the application in accordance with the respective identical provision of the Civil and Military Pension Code (article 5, par. 1γ of Presidential Decree 1041/1979, as presently in force in accordance with Presidential Decree 166/2000). More specifically, the State General Accounting Office's defends its stand on the basis of decision 2617/1999 of the Court of Audit, which found that a woman receiving a lifelong pension for having many children is excluded from receiving the survivor's pension of a fighter in the National Resistance.

Nonetheless, the lifelong pension for having many children is non-contributory and constitutes a complex social insurance benefit. This means, first and foremost, that receiving it does not depend on the beneficiary's employment record or her financial situation, nor is it associated with insurance coverage by any other authority (Council of State 997/1998, Athens Administrative Court of First Instance 59/1999). This opinion also has been expressed by the

plenary session of the Legal Counsels of State, in decision 460/1991, which states that the lifelong pension is a social benefit, regardless of its designation as a pension.

In addition, payment of a lifelong pension for having many children serves entirely different purposes from contributory pensions, to which the requirements of Presidential Decree 850/1980 (article 2, par. 1γ) obviously refer. The lifelong pension for having many children is not intended to cover specific insurance hazards, such as old age, invalidity, or death, but is one of those measures taken by the state in accordance with article 21, pars 1 and 2 of the Constitution, to protect families, particularly large families, and to deal with the country's demographic problem. In addition, in article 63 of Law 1892/1999, which sets out the measures for dealing with the demographic problem, the term "benefit" is used repeatedly and categorically when referring to lifelong pension.

According to the Ombudsman, the above article clearly shows that payment of such benefits, which include the pension for having many children, is autonomous and therefore not affected by the granting of another allowance by whatever insurance authority, nor does it affect it. The State General Accounting Office's insistence upon a literal interpretation of the law, however, makes it necessary to completely separate the benefit in question from the meaning of pension so that an end can be put to this problem.

3.1.6 PENSION FOR MIGRANT WORKERS BASED ON BILATERAL AGREEMENTS

Agencies: Agricultural Insurance Fund; General Secretariat of Social Security
Subject: Bilateral pension agreements – Deprivation of social and insurance right

An individual receiving a pension from Australia submitted a complaint to the Office of the Ombudsman (case 7658/2000) regarding his request for a pension from the OGA. His request had been rejected by the OGA on the grounds that the pension payment he receives from Australia is higher than the basic OGA pension.

This problem is a result of the lack of a relevant agreement between Greece and Australia, which has negative consequences for Greek emigrants who return to their homeland.

The Ombudsman suggested that an effort be made at a ministerial level to have the necessary agreement signed and that the OGA find a temporary arrangement, at least for the health sector (exceptional coverage for pensioners of the Australian state). The case is still pending.

A similar case (case 774/2000) involves a citizen who was granted a pension by a Swiss insurance authority. Although a bilateral agreement has been signed between Greece and Switzerland, it has not yet been implemented by the Agricultural Insurance Fund.

Agency: Engineers and Public Works Contractors' Pension Fund
Subject: Refusal to issue a certificate for years of insured service in Greece – Maladministration

The Austrian "People's Ombudsman" (Volksanwaltschaft) turned to the Office of the Ombudsman for assistance in resolving the pension problem encountered by a Greek resident in Austria (case 9015/1999). The citizen in question had been insured by the Engineers and Public Works Contractors' Pension Fund (TSMEDE) in 1966 and had been working in Austria since 1972, where he was insured by an Austrian insurance authority.

When, in 1997, the citizen decided to retire, he sought to confirm his years of insured

service with the TSMEDE (1966 to 1972). By means of the European Union E-205 form, the Austrian insurance authority requested the TSMEDE to confirm the citizen's "Greek" insurance period. This document had been sent to the TSMEDE six times since 1997 (three times through the Social Security Organization and three times directly) without any reply being received. This made it impossible for the citizen to receive a pension from Austria by including his years of insured service with the TSMEDE.

Investigation by the Office of the Ombudsman found that insurance with the TSMEDE had not been interrupted for the period 1972-1979 and that there were no insurance contributions pending. For the period 1979-1997, during which the particular engineer was working and insured with the Austrian insurance authority, he did owe insurance contributions, but he could be exempted from paying them for the period 1979-1993. For the period after 1994 (the year Austria joined the EU), EEC Regulation 1408/1971 (article 17) was in force, which meant that the individual had the right to be exempted from insurance with the TSMEDE.

Specific steps were required from the insured individual on both these matters, namely, that he submitted a certificate of employment and insurance in the foreign country and an application for exemption. This had not taken place, since the insured party had not had any communication with the TSMEDE since 1972. As a result, no certification of the years of insured service in Greece (through form E-205) could be made until these pending matters were settled. Instead of notifying the Austrian insurance authority of the difficulty in resolving the matter, the TSMEDE wrote to the interested party to the address he had in 1971. When the letter was returned because the recipient was unknown, the TSMEDE took no further steps to find the interested party. Taking all these factors into consideration, the Ombudsman wrote to the TSMEDE requesting that it promptly notify the Austrian insurance authority about the matter. The TSMEDE did, indeed, inform the Austrian insurance authority of its inability to fill out form E-205. In this letter, however, the Greek pension fund did not mention any possible solutions to the problem, leading the Austrian institution to conclude that confirmation of the years of insured service in Greece could not be made according to Greek law.

The Office of the Ombudsman then requested the TSMEDE to notify the Austrian insurance authority and the individual concerned, clearly explaining the situation and suggesting possible solutions. The individual also had to be informed about the steps he had to take in order to have the desired confirmation issued. The TSMEDE contacted the Austrian insurance authority and the interested party about the problem and suggested possible solutions. In the meantime, the Office of the Ombudsman informed the citizen in detail about the steps he needed to take. Finally, the Austrian "People's Ombudsman" was informed in detail about the course of the investigation and the outcome of the case.

3.1.7 OTHER BENEFITS

Agency: Prefectural Government of Athens, Health Division
Subject: Refusal to grant a birth benefit to the wife of a civil servant – Violation of the principle of equal treatment

The Ombudsman investigated a complaint which was forwarded to the Office by the

Public Administration Inspectors Body from a citizen insured with the state (case 7860/2000). The citizen complained against the refusal of the Prefectural Government of Athens' Health Division to cover his wife's expenses for childbirth and to pay her a birth benefit, on the grounds that the delivery was performed by Caesarean section.

Investigation revealed that Royal Decree 665/1962, which regulates health care for people insured with the state, does not provide for a birth benefit in case of birth by Caesarean section. More specifically, in accordance with the regulation, a birth benefit is granted only in cases of natural childbirth. In contrast, birth by Caesarean section is not considered natural and, therefore, in such cases only the patient's hospital expenses are covered, after deducting the percentage of the insured party's participation. Birth by Caesarean section is considered primarily as an operation rather than a delivery. As a consequence, mothers that give birth by Caesarean section are excluded from the respective insurance protection.

The Ombudsman, bearing in mind the existing legislation as well as the fact that childbirth by Caesarean section is today very common, especially in cases of artificial insemination, considers that the regulatory framework for health care for people insured with the state needs to be brought into conformity with the needs of the modern welfare state. The regulation in question was obviously dictated by conditions at the time the royal decree was issued, providing sufficient protection to those people.

The constitutional obligation of the state to protect maternity (article 21, par. 1 of the Constitution) and its classification as an insurance risk require that the state, within the context of providing social insurance to citizens (article 22, par. 2 of the Constitution), take the necessary measures for respective insurance benefits to cover the specific risk.

The protection provided to the mother, either directly or indirectly insured, should not depend on whether the childbirth is natural or non-natural. Furthermore, giving childbirth by Caesarean section cannot result in providing less protection. Such a practice contravenes the constitutional principle of equality, which derives from article 4, par. 1 of the Constitution, as well as the protection of maternity, which is fundamentally embodied as a social right in article 21, par. 1 of the Constitution.

Consequently, excluding non-natural childbirth (Caesarean section) from maternity protection – in the form of a benefit – cannot be legally justified and cannot be handled as though the insured party were ill. Conversely, non-natural childbirth increases the need for insurance protection to the mother since the health care she needs is greater. Birth benefits should be governed by the general principles of appropriateness and need.

According to these principles, insurance authorities are obliged, within the context of covering an insurance risk, to grant not only all necessary benefits, but also additional appropriate birth benefits to protect both the mother and the infant.

On the basis of the above legal reasoning, the Ombudsman requested that the Ministry of Health and Welfare express its views on the matter and indicate what steps should be taken to put an end to this unequal treatment. The responsible division replied that the issue of paying birth benefits in cases of births by Caesarean section would be further examined by the new Health-Care Organization for Civil Servants.

Following the above, in the Ombudsman's opinion, in cases of childbirth by Caesarean section the coverage should include hospitalization expenses, including extra expenses caused by the delivery.

The Social Security Organization's practice constitutes an excellent example, since for childbirth by Caesarean section it covers both the birth benefit and the additional expenses for hospital care.

For this reason and with the goal of providing insurance coverage for non-natural childbirth, the Ombudsman believes that article 5 of Royal Decree 665/1962 should be amended to ensure full coverage of maternity hazards. If this goal is to be reached, the procedure for establishing the new Health-Care Organization for Civil Servants, defined in Law 2768/1999, should be accelerated.

Agency: Social Security Organization, Aigaleo branch office
Subject: Refusal to grant the Pensioners' Social Solidarity Benefit – Violation of legality

A pensioner of the IKA submitted a complaint to the Office of the Ombudsman regarding the termination of her Pensioners' Social Solidarity Benefit (case 2729/2000). The benefit in question depends on the amount of personal income. The individual's income exceeded the required amount because, in calculating her total income, the IKA had included also her Pensioners' Social Solidarity Benefit.

After investigation, the Office of the Ombudsman concluded that in this particular case the IKA did not implement article 7 of Law 2556/1997, according to which "the Pensioners' Social Solidarity Benefit amount paid by any insurance institution should not be taken into account when examining the income requirements of paragraph 3 of this article." Following the Ombudsman's intervention, the IKA realized the mistake and took the necessary steps to correct it. The complainant was once again paid her Pensioners' Social Solidarity Benefit.

3.2 HEALTH

3.2.1 RIGHT TO HEALTH

Agency: "Hadjikosta" Regional General Hospital of Ioannina
Subject: Improper behaviour by doctors towards people using the health services – Maladministration

The Office of the Ombudsman received a complaint (case 7835/1999) regarding ill treatment experienced by a citizen at the "Hadjikosta" Hospital when he requested an ear, nose, and throat examination. After an extremely long waiting period, the hospital had simply discharged him to the university hospital for examination by a specialist. Furthermore, according to the complainant's allegations, while he was waiting at the "Hadjikosta" Hospital, an argument arose between himself and a doctor, who addressed the patient in an insulting manner.

The Office of the Ombudsman, after investigating the allegations, found that due to the lack of an ear, nose, and throat doctor at the "Hadjikosta" Hospital, patients requiring such examination were referred to the Ioannina Regional University Hospital. As for the second issue, the hospital's administration was requested to look into the specific charges concerning the unacceptable behaviour of the doctor, explaining the incident.

The hospital carried out an investigation and ascertained that the doctor had indeed behaved in an insulting manner. As a result, the hospital's administration pressed the responsible doctor to apologize to the patient in writing.

Agencies: Korydallos Prison Inmates' Hospital; "Ayios Savas" Hospital
Subject: Accessibility to health protection for an inmate – Violation of the right to health

An Italian inmate of the Korydallos Prison Inmates' Hospital submitted a complaint to the Office of the Ombudsman (case 4248/2000) alleging he had been provided no medical care for an entire year even though it had been diagnosed that he was suffering from lymphoma.

The Office of the Ombudsman directly carried out an on-site inspection at the prison's hospital and then visited the "Aretaieio" Hospital (where the inmate had been last examined) in order to establish the medical profile of the patient's condition. A second visit to the prison's hospital followed immediately afterwards. In this instance, the Ombudsman's investigator was accompanied by an oncologist from the Italian embassy so that the patient's current condition could be diagnosed and it could be decided whether or not it would be necessary for the patient to be transferred to a specialized hospital. It was found that the patient required immediate medical care, which had been delayed for an entire year. This was the result of organizational inadequacies of both the Police's Transfer Department, which did not take the inmate to a hospital, and of the "Ayios Savas" Hospital, which, in error, did not receive the patient on the arranged date of the transfer. It should be added here, however, that the inmate had refused to cooperate in any way and did not make matters easy.

The Ombudsman's investigator managed to establish a relation of trust with the patient. After sending a letter to the "Ayios Savas" Hospital, the Office of the Ombudsman arranged for staff members of the Office to be present at the prison hospital during the patient's transfer for admission to "Ayios Savas". In this hospital a series of tests were carried out, the chemotherapy treatment required was determined anew, and the patient was treated.

RIGHTS OF USERS OF HEALTH SERVICES

Agency: "Sismanogleio" Regional General Hospital
Subject: The right to information, consent, and dignified death – Violation of legality

The daughters of an elderly citizen submitted a complaint to the Office of the Ombudsman (case 566/2000) denouncing the conditions of hospitalization and death of their father, who had died at the "Sismanogleio" Hospital the day after he was transferred to the hospital's emergency unit.

The complainants maintained that they were not informed on the seriousness of their father's medical condition. Furthermore, they protested that he was left untreated and unattended because the hospital was understaffed and doctors and personnel were offering their services according to the patients' age.

Following a complaint lodged by the close relatives of the deceased, an administrative investigation under oath was carried out. The findings were submitted to the Ombudsman with great delay and the Ombudsman's further intervention became necessary for these to be passed on to the complainants. During further investigation, the Office of the Ombudsman carried out an on-site inspection at the hospital and discovered formal irregularities and substantial omissions on the part of the committee that had carried out the administrative investigation under oath. In particular, the committee had avoided taking position on basic questions that had been raised by the family of the deceased, namely the right to information and consent, the right to a dignified death, and the obligation of health-care professionals to provide unlimited care to patients in order to preserve human life.

After collecting information from the patient's file and studying the legislation in force, the Ombudsman prepared a report for the chairman of the hospital, which was also communicated to the Independent Service for Protecting Patients' Rights in the Ministry of Health and Welfare. The report pointed out that violating the obligation to inform is a medical responsibility regardless of the responsibility of malpractice or errors in treatment. Furthermore, it stressed that health-care professionals should substantiate they had provided the patient and his immediate family with full and clear information in order to counterbalance the unequal relationship between the doctor who knows and the patient who does not know. For these reasons, it was suggested that a new administrative investigation under oath be carried out ling taking the Ombudsman's observations into consideration.

The hospital did, indeed, carry out a new administrative investigation under oath and informed the Office of the Ombudsman of its findings. Formal procedures were followed during this investigation, and the close relatives of the deceased were also called to testify. Nonetheless, the essential conclusions of this investigation are not completely in line with the Ombudsman's proposals. The conclusions on this case, which will be sent to the Minister of Health and Welfare, were to be finalized during the drawing up of the present annual report.

The findings stress the omissions committed by doctors and medical staff in observing the patient's rights, as well as the need for taking steps to protect these rights.

3.2.2 HEALTH PROTECTION

Agency: State General Accounting Office
Subject: Insufficient reimbursement of hospital expenses – Violation of the right to choose a doctor

A civil servant submitted a complaint to the Office of the Ombudsman (case 6842/2000) regarding the insufficient reimbursement by the State General Accounting Office of hospital expenses she incurred.

Following a traffic accident, and as there were no beds available at the intensive care units of nearby public hospitals, the complainant was ushered by the First Aid Centre Emergency Ambulance Service to the "Ygeia" Hospital, a private medical institution. When later on the complainant requested the State General Accounting Office to reimburse her for the hospitalization fees she incurred, the State General Accounting Office paid back only a fraction of the charges.

While investigating the case, the Ombudsman recorded the practice that is followed in cases of emergency hospitalization, when intensive care units in public hospitals have no available beds, thus forcing patients to be transferred to private medical units. In most of these cases, insurance authorities do not cover in full the expenses that incur.

The investigation revealed that, according to the provisions of article 31 of Presidential Decree 234/1980, private medical institutions are obliged to apply state rates in cases of emergency admission of patients insured by the public health-care system. Furthermore, the problem is intensified when public insurance authorities refuse to reimburse all the expenses incurred in such cases of emergency hospitalizations. In addition, according to article 21, par. 3 of the Constitution, the state is ultimately responsible for ensuring the citizens' right to health.

Since the insured party was admitted to a private hospital not on her initiative but as a result of urgent necessity, the Ombudsman proposed that the public insurance authority should cover the difference and referred the matter to the State General Accounting Office, requesting that they resolve the matter based on the above.

3.2.3 HEALTH PROTECTION ABROAD

Agency: Social Security Organization, Ioannina branch office
Subject: Approval of hospital care abroad for a person with special needs, based on the effectiveness of treatment – Violation of legality

An individual appealed to the Office of the Ombudsman (case 13089/2000) when the IKA refused to cover the expenses of his eight-year-old son's hospitalization abroad. The boy suffered from spastic quadriplegic cerebral palsy. After surgery in a German hospital, the patient's lower limbs were placed in splints, which had to be replaced as the child grew.

The IKA rejected the petition on the grounds that the case did not meet the requirements for hospitalization abroad and claimed that these splints could be manufactured in Greece or ordered from abroad and fitted locally. This alternative procedure, however, was not feasible because of the IKA's administrative practices, as expressed in circular 45/1999, which sets indirect obstacles to the free circulation of medical and prosthetic devices.

During investigation of the case, the Office of the Ombudsman found that the IKA avoided applying the European Union law and unlawfully persisted in its opinion that national regulations were the only necessary and appropriate to ensure a high level of protection for citizens' health.

The Ombudsman requested both the IKA's central administration and the Ioannina branch office to resolve the matter in a manner consistent with providing effective treatment for the child. The IKA referred the findings of the Ombudsman to the local administrative committee, which accepted them and approved the child's hospitalization abroad since lack of appropriate scientific means made it impossible for the treatment to be carried out in Greece.

Nonetheless, the IKA appealed to the administrative court against this decision taken by the local administrative committee in the patient's favour, expressing thereby its consistently negative stance with respect to the protection of the people it insures.

Agency: Ministry of Health and Welfare
Subject: Release of money acquired by means of a fund-raising for hospitalization abroad – Violation of the principle of equity

The mother of a young girl from Imathia appealed to the Office of the Ombudsman (case 15544/2000) requesting help to withdraw money collected in a bank account opened in her name in a branch of the National Bank of Greece. The money had been collected after a fund-raising organized through the initiative of a television channel. The money in question was collected in order to cover the hospital expenses for her thirteen-year-old daughter in a German hospital and enable her father to stay with her in Germany for the duration of the treatment.

The Office of the Ombudsman found that the bank's refusal to release the money was

in conformity with the legislation in force (Law 5101/1931). More specifically, article 1 of this law "forbids any form of fund-raising, raffle sales, or charity bazaars, or any other way of collecting money." Article 2 of the same law, however, provides for exceptions: "in exceptional cases only, for charity or public benefit purposes, fund-raising or charity bazaars may be permitted, after a special licence has been issued . . .". Article 6 sets out the procedures required for such exceptional money collections throughout the country, following a prior decision of the Minister of Health and Welfare.

In this particular case the above procedure had not been followed and the mother, in whose name the bank account had been opened, understandably believed that she could withdraw the funds needed whenever she wished. When the bank, however, learned that the funds had been raised without the proper legal procedures, it refused to release the money.

The Ombudsman, appreciating the exceptional nature of the case, submitted a letter to the Minister of Health and Welfare requesting him to issue a ministerial decision for this exceptional case retroactively, validating the procedures for raising money so there would be no further delay. As of December 31, 2000, the Ombudsman had received no reply.

3.3 WELFARE

3.3.1 FINANCIAL ASSISTANCE

Agency: Professionals' and Craftsmen Insurance Fund
Subject: Denial of financial assistance to a person with special needs because of money owed to the social insurance institution – Violation of the right to social care

A citizen submitted a complaint to the Office of the Ombudsman (case 3101/2000) because the Welfare Division had refused to grant him an invalidity benefit due to his debts to the Professionals and Craftsmen's Insurance Fund (TEVE). The individual in question had been insured with the TEVE for a four-month period, as he had been practising a profession that was insured by the specific fund. When the business stopped operating, however, he failed to notify the fund and the responsible tax office. In consequence, the fund expected him to continue paying insurance fees. At that time he exhibited serious health problems, which excluded him from any form of work.

The investigation revealed that no invalidity benefits are paid to people with a 67% disability who owe insurance contributions because, if the fees owed were paid, they would then not be entitled to an invalidity benefit from Welfare.

The Ombudsman proceeded to investigate the general issue of people owing insurance contributions while claiming invalidity benefits from Welfare. After close collaboration with the Ombudsman and the respective authorities, the Welfare Division, taking into consideration the seriousness of the individual's condition and his extremely difficult financial situation, accepted the Ombudsman's proposal and granted him the invalidity benefit.

3.3.2 PROTECTION FOR PEOPLE WITH SPECIAL NEEDS

Agency: Social Security Organization, Galatsi branch office
Subject: Re-examination of people belonging to special categories by a second-instance health committee with regard to their access to employment – Maladministration

An individual submitted a complaint to the Office of the Ombudsman (case 808/2000) and

requested help in appealing against a first-instance health committee's decision within the context of article 8 of Law 2643/1998, concerning the employment of people with special needs.

Between 1995 and 1999 the individual, who was mentally retarded and had, in accordance with the opinion of a first-instance health committee, the required percentage of disability, came under the beneficial provisions of the law protecting employment for people with special needs.

In January 2000, the first-instance health committee examined the individual again and found that, in accordance with article 7 of Law 2643/1998, he had exhibited mild chronic mental deficiency (35% disability). As a result, the individual was excluded from the beneficial provision of the law and raised an objection to the above decision. However, this was not considered because interpretative circular 91/10.9.99, issued by the Ministry of Labour and Social Affairs, did not provide for appeal to second-instance health committees in such cases, although this right is provided for in all other circumstances.

Investigation of the case showed that this particular practice followed by public administration violates the general legal principles, especially the right of appeal against decisions issued by the administration, which citizens consider unfair. The fact that the right of appeal to a second-instance health committee against such decisions is not clearly stated in the relevant provisions, does not mean that the public administration can choose to interpret these provisions against the citizens' interests and deprive people of the right to question this interpretation. The position of the administration, as expressed in the circular referred to above, is in conflict the principles of security, justice and uniform state action.

The legislative requirement that the decision of a first-instance health committee is necessary for employing people with special needs does not, under any circumstances, weaken the overall intention to help people with special needs find jobs. Obviously, the issue must be regulated to ensure that the above provision is applied at the optimum level.

4. Follow-up on the proposals for legislative amendments and administrative reforms presented in the 1999 annual report

In 1999, the Ombudsman, making use of the right granted to him by article 3, par. 5 of Law 2477/1997, submitted legislative and organizational proposals, included in the *1999 Annual Report*, to the ministries involved in and responsible for issues dealt with by the Department of Social Welfare.

The extent to which these proposals were accepted by the responsible ministries cannot be easily assessed, since in most cases, up to the time the present report was being written, the ministries and the authorities supervised by them had not informed the Ombudsman of the initiatives or measures they may have taken or, in general, their position regarding the legislative amendments and organizational reforms proposed on issues falling under the competence of the Department of Social Welfare. As a consequence, it is difficult to follow the proposals made to the administration and makes it impossible for the Office of the Ombudsman to inform citizens on the progress of their case, for which it was considered that the best way to satisfy their request was to submit a proposal.

Only from the Ministry of Finance has the Office of the Ombudsman received a clear and substantiated response on a proposal for the amendment of law provisions relative to issues dealt with by the Department of Social Welfare. In some instances, information on

whether proposals on issues in which the Department is interested had been accepted or not came from other sources, such as interested individuals and the press.

However, it must be pointed out, that most of the proposals with which the Department of Social Welfare was concerned and which were included in the *1999 Annual Report* involve financial costs, meaning that financial assessments should be also carried out. This may be the reason the administration has delayed its response to these proposals.

E.3 DEPARTMENT OF QUALITY OF LIFE

The Ombudsman drew up a special report recording the serious malfunctions in Local Authorities. These malfunctions owe their existence to lack of appropriate staff and infrastructure, an erroneous understanding of the role of local government authorities, overlapping (or nonexistent) jurisdictions and, finally, intentional illegal behaviour concealing private or political gains. The central administration, however, bears serious responsibility as well in that it systematically avoids implementing the statutory administrative control required.

E.3 DEPARTMENT OF QUALITY OF LIFE

CONTENTS

DEPARTMENT OF QUALITY OF LIFE

1. Area of Jurisdiction and Responsibilities of the Department

The Department of Quality of Life investigates complaints regarding maladministration actions involving issues primarily related to the natural and urban environment:

- Problems associated with urban planning and violations of building regulations,
- poorly executed public works and constructions posing dangers to citizens and citizens' properties,
- malfunctions or poor construction of public utility networks,
- illegal land use and violations of protection measures and restrictions pertaining to forests, coastal zones, etc.,
- violations of legislated measures for the protection of traditional settlements and buildings,
- pollution (air, water, noise, visual) problems as a side effect of the above.

The investigations cover the actions of all levels (central, regional and local) of public administration agencies.

2. General Assessment of the Department's Activities

Due to the nature of the complaints (i.e. issues regarding established situations, usually involving complicated ownership, legal and financial aspects of opposing parties), a substantial number of cases of the Department often require long investigation procedures.

In addition, the Ombudsman has decided against closing a number of unresolved cases – for which knowingly no further action can be taken on the individual complaint basis – because of their special characteristics, their wide importance or negative and multifold after effects. The purpose in doing so is to demonstrate the significance of the issues involved in order to exert a constant pressure upon the administration until corrective measures are taken to resolve the problem.

As the Ombudsman has nearly completed his third year of operation, it would be reasonable to expect he would by now have established good and effective venues of cooperation with public authorities and agencies. Yet, the Department was confronted once again by an administration that had not managed to overcome the feeling of mistrust and discomfort that characterized the contacts of the first two years. A good number of public services still see the Ombudsman as an additional unpleasant duty, further burdening their already heavy workload, or, worse, as an unwelcome control mechanism. Available statistics confirm this impression, for they record unreasonable delays on the part of the administration in expressing its official position as regards the complaints investigated by the Ombudsman. However, it should be stated that certain delays take place due to unfavourable conditions failing to provide the necessary support, and not because the particular employee is trying to procrastinate or avoid control.

The negative conclusions mentioned above refer to the structural malfunctions that characterize the Greek public administration and arise out of the following:

- Inadequate staffing of services. This has been mainly the case with forestry offices.
- Competency of the administrative staff is often below the training or educational levels required for the service tasks involved.
- Lack of necessary infrastructure and equipment support.
- Violation on the part of the administration of its obligation to cooperate with the Ombudsman and facilitate the investigation of complaints in every possible way.
- On several occasions, the administration refuses to implement the Ombudsman's resolution on a case and omits to communicate the reasons of this refusal back, though required to do so by law. Some agencies even retract from carrying out mutually agreed corrective measures.
- A large number of elected public officials seem to have the impression that, since they represent and therefore derive their powers from the public will, they are at liberty to overstep existing legal constraints in exercising their duties. This becomes particularly evident when it comes to local and municipal governments and to a lesser extent prefectural governments. Nevertheless, similar exhibitions can also be observed at the central administration level, more often in cases of unfavourable irrevocable court rulings, which are intentionally ignored, thereby negating the principle of the rule of law.
- Attempts to cover up private individuals' or public administration employees' illegal acts. During 2000, the Department submitted dossiers for 15 such cases to the responsible public prosecutor. For another 22 instances it requested investigations to be carried out involving public servants or administrative officers at the highest level with regard to decisions aiming at the pursuit of private gains contrary to public interest.

It is discouraging, however, to note that, as of December 31, 2000, no disciplinary action had been taken concerning any of these 22 cases. This suggests that internal control mechanisms have become to some extent ineffective. This fact shakes public confidence, but also accustoms, corrupts and encourages citizens in pursuing illegal transactions with public officials, thus contributing to the entrenchment of practices and behaviours which prove most difficult to reverse. An example of this attitude was vividly demonstrated in a complaint recently submitted, whereby a citizen requested the Office of the Ombudsman to mediate so he would be permitted to exceed building restrictions, without being fined, as had been the case with his neighbour.

3. Thematic Distribution of Complaints

The complaints are grouped and listed under subject categories in order to help identify major administrative pathogenies. The percentages given indicate their respective appearance ratio in relation to the total of complaints dealt with by the Department of Quality of Life during 2000.

- Building permits – illegal constructions (22.3%). Under this category are classified cases involving the issue of illegal building permits, structures violating building regulations and restrictions, buildings constructed without permits, failure to demolish illegal structures and impose or collect pertinent fines.
- The environment (11.4%). This category includes cases involving the whole spectrum of environmental protection issues, such as illegal land use, structures damaging the environment and natural resources, projects submitted without the required

environmental impact assessment studies or not in accordance with existing environmental provisions, etc.

- Expropriations (10.7%). Under this category are cases in which the administration delays or refuses compensation payments for expropriated properties.
- Town plans – development control zones (10.2%). Problems arising out of the implementation of general urban plans, boundary designations, and, more generally, the inclusion of private properties in the town plan.
- Business permits and operating licences issued by Local Authority services (7.9%). In this category are included complaints stemming from the activities of enterprises operating without permit or licence, or operating in violation of their operating licence terms or other specific provisions (such as the fire safety, health regulations, permissible noise levels, et al.).
- Ownership status (6%). Cases regarding urban public spaces (boundary designation, ownership, communal squares, athletic facilities, etc.).
- Public works (5.7%). Cases involving poorly executed public works or the non-execution of obligatory public infrastructures. This category further includes failures with regard to public project studies, such as disputes over payments owed for studies completed and submitted or public works carried out.
- Forest protection (4.2%). Issues arising out of classifications (or declassifications) of areas as protected forest zones, illegal timber felling, transgressions, illegal land use, structures and activities within forest-zone areas.
- Public utility networks (3.6%). Problems arising out of the improper or illegal connecting of buildings to public utility networks.
- Restitution for damages and compensation payments (3%). Cases involving compensation payments to citizens for damages sustained as a result of poorly executed or badly maintained public works and infrastructures, or due to natural disasters, such as floods, earthquakes, etc.
- Transport issues (2.7%). Complaints regarding problems of the public transportation and road network (inadequate road signs or traffic lights, lack of intersection rail bars, etc.).
- Residential and cultural environment (1.7%). Cases involving violations of protection measures regarding monuments, traditional or historical settlements and listed buildings.
- Coastal zones and shore (1.6%). In this category are included complaints dealing with encroachment on shores and coastal zones and illegal construction activities.
- Earthquake damages to buildings and dangerous structures (1.3%). Delays in making compensation payments, improper classifications of earthquake-damaged buildings (whether they should be demolished or repaired), and delays in issuing permits for repairing houses damaged by earthquake.
- Redistribution of land (0.7%). Cases dealing with the redistribution of agricultural land.
- Streambeds and water-resources management (0.7%). Problems relating to defining and managing contested streambeds, and their illegal land-filling.
- Distribution – allotment of land (0.5%). Complaints involving improper application of regulations with regard to distribution of public land for agricultural use.
- Advertising signs and billboards (0.4%). Cases arising from the illegal placement of advertising signs and billboards.

- Requisitions. Cases involving complaints regarding illegal procedures in the requisitioning of private properties. During 2000, the Office of the Ombudsman did not receive any such complaints.
- Miscellaneous (5.4%). This category includes all cases that do not fall within the previous categories.

TABLE E.3.1 **PERCENTAGE DISTRIBUTION OF COMPLAINTS BY SUBJECT CATEGORY**

Building permits – illegal constructions	22.3%
The environment	11.4%
Expropriations	10.7%
Town plans – development control zones	10.2%
Business permits and licences issued by local government authorities	7.9%
Ownership status	6.0%
Public works	5.7%
Forest protection	4.2%
Connection to public utility networks	3.6%
Restitution for damages and compensation payments	3.0%
Transport issues	2.7%
Residential and cultural environment	1.7%
Coastal zones and shores	1.6%
Earthquake damages to buildings – dangerous structures	1.3%
Redistribution of land	0.7%
Streambeds and water-resources management	0.7%
Distribution – allotment of land	0.5%
Advertising signs and billboards	0.4%
Miscellaneous	5.4%

4. Statistics and Conclusions

Between January 1 and December 31 of 2000, the Department received 2,470 new complaints (an increase of 43% over 1999), constituting 26.69% of the total complaints submitted to the Ombudsman during this period. In addition to these, the Department continued with the investigation on 851 unresolved cases from 1998-1999, while another 133 closed cases had to be reopened as the administration had retracted from carrying out the mutually agreed corrective measures. Thus, the number of complaints handled during 2000 totalled 3,454. Of these, 2,418 (70%) were found to be within the Ombudsman's mandate. Of the remaining 1,035 (30%), 631 (18.27%) complaints were out of mandate and 405 (11.73%) were closed as they did not fulfil or comply with specifically required terms (such as stating the name and address of the complainant, signing the complaint, vague arguments, etc.).

Of the 2,418 cases, 576 were resolved as follows:

– In 233 cases (40.45%) the administration accepted the corrective measures proposed by the Ombudsman;

– 238 (41.32%) were resolved simply through mediation by the Ombudsman;

– 28 (4.86%) were resolved without any action taken by the Office of the Ombudsman;

– in 77 cases (13.31%) the administration did not accept the proposed corrective measures.

From the total of 3,454 cases, 1,298 were still under investigation by December 31, 2000.

The statistical data collected from the complaints submitted to the Department made it possible to identify the nature of specific pathogenies encountered by the public in its everyday dealings with the administration, as well as their frequency. The findings show the following:

- As regards the nature of the problems encountered (i.e. maladministration, delays, administrative irregularities, etc.), citizens most frequently complained of the administration's failure to take the required action (21.4% of the cases), delays in issuing an administrative act or in carrying out material action (19.51%), and failure to answer a question or petition (8.81%). These three complementary categories accounted for 49.72% of the total, indicating that the administration basically demonstrates indifference and lack of respect towards the citizens.
- The overwhelming majority of the submitted complaints (71%) are in relation to problems implicating the Local Authorities and their supporting agencies. Because of the gravity of the problem, in September 2000 the Ombudsman drew up a special report recording the serious malfunctions in Local Authorities. These malfunctions owe their existence to lack of appropriate staff and infrastructure, an erroneous understanding of the role of local government authorities, overlapping (or nonexistent) jurisdictions and, finally, intentional illegal behaviour concealing private or political gains. The central administration, however, bears serious responsibility as well, in that it systematically avoids implementing the statutory administrative control required.
- As regards the subject of the problems encountered, 22.3% of the complaints involved building permits or lack of construction permits, illegal constructions and violations of building regulations. The next biggest category was related to environmental protection issues (11.4%), followed by improper urban-planning applications (10.2%), ownership issues (6%), and public works (5.7%). The remaining groups of cases appeared in declining percentage order (see Table E.3.1).
- Finally, the geographic distribution of complaints submitted shows that most of these came from the Prefecture of Athens (24.3%). This high percentage is to be expected since one third of the country's population resides in the metropolitan area of Attica. The Region of Central Macedonia (10.22%) comes second, followed in declining percentage order by the other regions.

5. Presentation of the Most Important Cases

A sample of characteristic cases investigated by the Department of Quality of Life during 2000 is presented below.

5.1 Violation of a Company's Operating-Licence Terms

Agencies: Nafpaktos Urban Planning Office; Prefecture of Aitoloakarnania, Division of Health and Public Hygiene, Division of Mineral Resources and Industry; Public Power Corporation, Nafpaktos branch office

A wholesale fruit and vegetable company was given a permit to raise a 600-sq.m. shed on its property in Lygia, near the town of Nafpaktos, to be used for sheltering its parked trucks (case 2979/1999). Using this permit, the company built instead, at another location within the property, a 1,800-sq.m. two-level building where it packages fresh fruits and vegetables, and from which it carries out its wholesale distributions. Packaging machinery and truck loading activities generated noise, while wayside leftover vegetable matter attracted rats and insects.

The law makes specific requirements about allowed activities within residential zones and minimum distance of such facilities from nearby homes. It is further required that an environmental impact assessment study be submitted, one that the company had purposely omitted to include. As these terms could not be met, the company operated under false pretences, having stated the facility as a food supermarket for which no such restrictions are applied.

The residents contacted the responsible administrative agencies and submitted complaints regarding the illegal construction of the facility (Nafpaktos Urban Planning Office), the unacceptable hygienic conditions (Division of Health and Public Hygiene), and the noise disturbance (Division of Mineral Resources and Industry). As these steps did not stir up any corrective actions, the residents further brought the matter to the attention of the community council of Nafpaktos, the Prefecture of Aitoloakarnania and the local police station. These too were to no avail. The residents then turned to the Office of the Ombudsman. Due to the number of agencies involved, the investigation procedure took many months of correspondence.

The investigation verified that the complaints were founded and that the respective administration agencies:

– Had failed to take the legally required actions, i.e. prevent the construction of the illegal building, demolish it once built, revoke the licences, press charges for all of the above, impose and collect the fines foreseen by law,
– had knowingly concealed the true nature of the company's operation (thus violating land-use regulations and environmental protection requirements),
– had produced false inspection reports,
– had illegally provided electricity at lower industrial rates,
– had failed to protect the public (health, noise hazards),
– had tried to mislead the investigation.

As a consequence the Ombudsman asked:

– the Division of Mineral Resources and Industry to re-evaluate the company's file, taking whatever measures are required to establish legality, and
– the Prefecture of Aitoloakarnania to take the necessary disciplinary actions against all officers responsible.

On 22.12.2000 the Prefecture of Aitoloakarnania issued a decision (ΔΒ 1959 Φ.14.1968) whereby it stopped the company's operation by sealing the chilling machinery and cutting the supply of electricity.

In a later document, the Ombudsman was informed that a preliminary investigation was being conducted to determine the possibility of blame. The case is still pending.

5.2 ILLEGAL CONSTRUCTION IN A PUBLIC GREEN SPACE

Agencies: Prefecture of Eastern Attica; Community of Nea Penteli; Penteli police station; Public Power Corporation; Eastern Attica Urban Planning Office

In a public green space of the Community of Nea Penteli a house and a large gas storage tank were illegally erected (case 12460/1999). The illegal settler also used the remaining plot as a rubble dump. Furthermore, he illegally connected his house to the public street lighting and the community water-tap networks, thus enjoying free electricity and water supply.

Despite the fact that the Community of Nea Penteli has official knowledge of the abovementioned facts since 1994, no legal action has been ever taken. Finally, nearby residents have complained to the police that the trespasser has been repeatedly threatening and terrorizing them. The police did not react to any of these incidents, though charges were braught.

The residents brought the matter to the Office of the Ombudsman, that investigated the case, verified the accusations, and found documents establishing that the authorities had indeed official knowledge of the facts.

After completing its investigation, the Office of the Ombudsman asked for a meeting with the public agencies involved in order to set forward the mechanism that would remove the illegal structures, clean up the area and re-establish it as a public green space. It further submitted a file to the public prosecutor charging the local authority agencies for having refrained from taking the steps required by law. The case is still pending.

5.3 NOISE AND TRAFFIC DISTURBANCE CAUSED BY TWO NIGHTCLUBS

Agencies: Municipality of Kalyvia; Saronida police station; Prefectureal Government of Eastern Attica, Division of Health and Public Hygiene

At the Municipality of Kalyvia, two open-air nightclubs cause noise and traffic problems to such an extent that neighbouring residents complained that life has become unbearable and even property values have gone down as a consequence (case 11295/2000). The neighbours had repeatedly turned for help to the municipality and the Saronida police station, but to no avail.

On several occasions the local police station received complaints charging the two nightclubs for violations of noise level restrictions, parking and traffic disturbances, etc. Each time, after verifying the charges, the police submitted the findings to the municipality, which in turn voted to temporarily suspend the operation of the nightclubs and imposed small fines. Soon after the nightclubs would reopen, causing the same problems all over again.

In order to permanently close down a recreation facility, Greek law requires that within the period of one year its licence be revoked on three consecutive occasions as penalty for licence-term violation charges. On each occasion, the decision to suspend the operation of the recreation facility is taken by the municipal council, which determines the length of suspension periods and the amounts of pertinent fines. Under standard procedures, the third suspension is final, but the law does allow the municipal council to vote otherwise should it deem appropriate – a rather vague provision. Therefore, as regulations stand, and provided that licensce-term requirements are met, the extension or revocation of an operating licence is solely a matter for the municipal council to decide. Overriding its decision is for all practical purposes not feasible, as the council can circumvent closure actions by approving intermediate permits.

As explained before, the legal means for a third party to impose a permanent restraining order do not exist. However, the investigation brought forward a document of the Division of Health and Public Hygiene that revealed that the Municipality of Kalyvia had not asked this agency to rule on whether or not the nightclubs conformed to public-health regulations, as is required when renewing operating licences.

Thus, the Ombudsman was able to press for a change. The Department brought to the attention of the municipal council that, when voting for the renewal of an operating licence,

it should make certain all pertinent inspection requirements (such as permissible noise levels, fire protection and health standards, etc.) are respected. The case is still pending.

5.4 ILLEGAL OPERATION OF A TEST LABORATORY WITHIN AN EXCLUSIVELY RESIDENTIAL AREA

Agencies: Prefecture of Athens, Urban Planning Division, Division of Mineral Resources and Industry, Division of Health and Public Hygiene; Ministry for the Environment, Physical Planning, and Public Works, Central Laboratory Division for Public Works; Division of Methodology and Programming of the General Secretariat of the National Statistical Service

A quality control test laboratory operates illegally on the ground floor and adjoining open area of a building, which is located within an exclusively residential area in Halandri, Attica (case 100/2000). The activities of the laboratory (i.e. testing and crushing concrete samples) generate a lot of noise and dust, thus endangering public health. Furthermore, it uses the open area to store samples or to dispose useless debris.

The investigation of the Office of the Ombudsman revealed that the laboratory operated without a licence. After communication with the competent authorities, an on-site inspection was carried out and the respective penalties were imposed.

5.5 VIOLATION OF SAFETY PRECAUTION MEASURES BY A NATURAL GAS DISTRIBUTION STORE

Agency: Prefecture of Athens, Division of Mineral Resources and Industry

A natural gas distribution store occupied the ground floor of an apartment building. The store is adjacent to a petrol pump of a bordering parking facility. According to complaints from residents of the building, the company stored gas containers that often weighed more than 500 kg in total, taking none of the explosion and fire safety precautions required, thus endangering their life and properties (case 12447/1999).

The investigation found these accusations valid and further revealed that the store had been operating without the required permit since 1996 and was in violation of distance safety standard requirements, as it is located next to a petrol pump. As a result, the Ombudsman submitted the file to the competent public prosecutor.

The Fire Department, acting on orders from the public prosecutor, carried out an inspection of the premises. It verified that the number of stored gas containers were in excess of fire-safety permissible levels. As a result, the fire-safety certificate was revoked and the Prefecture of Athens closed down the gas store.

5.6 ILLEGALLY IMPOSED RESTRICTIONS UPON A PRIVATE BUILDING FOR A PERIOD OVER 50 YEARS

Agencies: Municipality of Piraeus; Ministry for the Environment, Physical Planning, and Public Works

A private property in Kastella, Piraeus, was under expropriation from 1928 until 1981 (case 15797/2000). In 1981, the property was released by a decision by the Council of State (689/1981). Nevertheless, the municipality, supported by the Ministry for the Environment, Physical Planning, and Public Works, continued to block all attempts of the owner to proceed with the extension works of his building. Between 1987 and 1997, the owner

appealed five times to the Council of State and each time he won his case. The Municipality of Piraeus, however, did not comply with any of the court rulings.

In 1998, the municipal council put once again the property under restriction via Presidential Decree 25.9.1998. It should be noted that while this decree was being drafted, the municipality assured the Council of State about its intention and ability to pay the appropriate financial compensation promptly after the presidential decree was issued. However, investigation by the Office of the Ombudsman revealed that, in fact, the credit written into the municipality's budget was fictitious, included solely for the purpose of bypassing Council of State's decisions and putting anew the property under restriction.

The unconstitutional actions taken by the administration have resulted in the building being left half-constructed, leading the owner to financial ruin.

The Municipality of Piraeus still insists that the current situation is completely legal, despite written instructions to the contrary issued in the meantime by the Ministry for the Environment, Physical Planning, and Public Works. The case is still pending.

5.7 BREACH OF CONTRACT TERMS BY THE NATIONAL TOURISM ORGANIZATION

Agency: National Tourism Organization

The National Tourism Organization (EOT) rented from the owner and assumed the usufruct of two traditional tower-houses in the village of Vathia in the region of Mani (case 4722/1999). The contract provided that the tower-houses would be renovated, rented to tourists for a period of ten years and then returned in good standing to the owner. However, when the usufruct period ended, because of poor maintenance, one property was no longer habitable. The EOT assured to renovate the structure and equip the two tower-houses in accordance with the original agreement. The owner agreed to that and the contract was renewed for another ten years.

The next ten years passed, only now both tower-houses were returned in an extremely poor condition. Having used all means with the EOT, the owner turned to the Office of the Ombudsman. The Department's investigation verified that the EOT had not honoured the contract terms and as a result would have to compensate the owner for damages incurred.

The Division for the Supervision of Asset Administration of the National Tourism Organization states that the amount of compensation has not been determined. Following a document submitted by the Ombudsman to the financial department of the EOT, the Ombudsman's Office was informed that although financing of the project was not approved by the Ministry of Finance, an attempt would be made to secure the funds from the regular budjet of the EOT.

While investigating this case, other similar cases were found pending, with outstanding compensations adding up to about 150,000,000 drs. The case is still pending.

5.8 ILLEGAL OPERATION OF COMPANY IN A PUBLIC FOREST AREA

Agencies: Region of Attica, Forestry Division; Ministry of Development; Athens Organization; Prefecture of Athens

A complaint was submitted asserting that a company had illegally erected several buildings within the boundaries of a public forestland (the Veikou Estate), thus violating both zone restrictions and environmental protection measures (case 9703/1999). The Ministry of Industry had cancelled the company's operating licence since 1979. In 1994, a decision by

the Prefect of Athens (1147/1994) was issued to reforest the area. A court decision in 1999 and a relevant ruling by the Forestry Division were re-establishing the area as a forestland. In addition, the Urban Planning Division at the Prefecture of Athens inspected the site and verified the charges.

In spite of all these administrative decisions, the company continues its operation, and though there exists an official decision to expel the company, this is not being carried out.

The Ombudsman insists that the responsible authorities should carry out the expulsion order, remove the illegal buildings, and re-establish the forest character of the area. The case is still pending.

5.9 ILLEGAL BUILDING ERECTED INSIDE A RESTRICTED COASTAL ZONE

Agencies: 4th Ephorate of Byzantine Antiquities; Secretariat of the Central Archaeological Council; Dodecanese Public Land Agency; Kos-Leros Land Registries; Kos Urban Planning Office; Hellenic Navy General Staff, Department of Naval Studies, Coastal Zones Department, Hydrographic Service

A building was erected illegally inside a coastal zone, which is also an archaeological site (case 5798/1999). Neighbours reported the matter to the Office of the Ombudsman.

It should be brought to the attention of the reader that legislation which is particular to the Dodecanese islands decrees that all newly erected structures cannot be built inside a specified minimum distance from the coastline and there should be public access to and use of the shore. In addition, in order to get a permit to construct a building in an area of archaeological interest, it is a prerequisite to submit an approval of the Central Archaeological Council. If such does not exist, the urban planning office is not allowed to issue the permit. When there are known archaeological finds of importance, the Central Archaeological Council imposes restrictions usually leading to the expropriation of the property.

After conducting an in-depth investigation, the Ombudsman found that:

- Archaeological finds by the 4th Ephorate of Byzantine Antiquities (which is the agency responsible for this area) had resulted in declaring the area as a zone of archaeological interest and subsequent expropriation procedures had been set in motion.
- The owner had diverged from standard legal procedures by invoking a ministerial decision, which too was later proven to be in conflict to the Constitution and, therefore, invalid.
- The submitted building-permit dossier did not include the approval of the 4th Ephorate of Byzantine Antiquities. As mentioned above, this is a prerequisite document and therefore the permit issued was invalid.
- The investigation further revealed that the site in question was initially public land and there existed no clear title legalizing new ownership through purchase.
- Since the coastline was not delineated accurately, the landscape is not protected. The Hydrographic Service of the Hellenic Navy General Staff concurs with this conclusion.

In his concluding report, the Ombudsman suggested that:

- The construction permit must be revoked and construction halted immediately,
- the coastline should be re-delineated in order to determine with accuracy the building-zone limits for that area,

- the ownership of the property must be determined through court order, after which the expropriation procedures – if found appropriate – may be concluded.

The case is still pending.

5.10 FAILURE TO IMPLEMENT COURT DECISION TO DEMOLISH AN ILLEGAL STRUCTURE

Agencies: Prefecture of the Cyclades; Andros Urban Planning Office

Despite a 1994 court decision to demolish an illegally constructed building in Ayios Nikolaos of Gavrio, Andros, the Prefecture of the Cyclades and the Andros Urban Planning Office refrain from doing so (case 736/1998). The Office of the Ombudsman repeatedly communicated with the above two authorities and reminded them that the implementation of court rulings is obligatory. Yet, calling upon lack of funds, both professed inability to carry out the decision. In order to remove this excuse, the Ombudsman succeeded in arranging for the necessary funds to be provided by the Ministry for the Environment, Physical Planning, and Public Works. Nonetheless, two years passed by and though the Department sent another fifteen letters, the prefecture did not act. Furthermore, while the case was still being investigated, the administrative authorities clearly displayed their unwillingness to cooperate by delaying responses, by using deceitful tactics and by producing false (pre-dated) documents.

This case clearly demonstrates that prefectural governments, obviously fearing political costs, systematically avoid applying the controls, which are part of their office duties. This in turn contributes decisively to solidifying public conviction that illegal profitable transactions are possible and no punishment will follow. The case is still pending.

5.11 CONSTRUCTIONS VIOLATING BUILDING PERMITS

Agencies: Municipality of Glyfada, Glyfada Urban Planning Office

Eight separate complaints were submitted to the Ombudsman accusing the Glyfada Urban Planning Office of purposely avoiding to inspect a number of newly erected buildings, thus refusing to apply the relevant legislation and building regulations (cases 326/1999, 1007/1999, 4714/1999, 4861/1999, 4889/2000, 8107/2000, 11015/2000, 16733/2000).

The Ombudsman asked the urban planning office to carry out an on-site inspection and submit a report with its findings for each building. Despite the mediation of the Region of Attica's Division for the Environment and Physical Planning, specific questions raised by the Ombudsman were not answered clearly, thus indicating that the public agencies involved were not willing to effectively assist with the investigation. This stance serious obstructed the resolution of the cases and strengthened the impression of an ongoing effort to cover up wrongdoing.

On June 2, 2000, a team of Ombudsman senior investigators visited the buildings in question and identified several important violations. As construction works were still in progress, the Glyfada Urban Planning Office could not claim that the violations occurred without its knowledge after their end-of-construction inspection. In addition, the investigation team was alarmed by the extremely large number of neighbouring constructions, where similar violations had taken place, creating the clear impression that the urban planning office is knowingly overlooking illegal activities within its area of responsibility.

The Ombudsman notified the Glyfada Urban Planning Office that unless its inspection officers did not move to impose the removal of building violations, the Department intended to request disciplinary investigation and would further turn the file over to the public prosecutor. The office complied, proceeded to impose the relevant fines and pressed for the demolition of constructions in excess of permit.

5.12 AERIALS FOR MOBILE TELEPHONY ERECTED ILLEGALLY IN RESIDENTIAL AREAS

Agencies: Ministry of Transportation and Communications; Ministry for the Environment, Physical Planning, and Public Works; Ministry of Health

The rapid growth of mobile telephony has necessitated the erecting of a great number of aerials. Many of these aerials are put up within residential areas, on the roof of apartment buildings, near schools or hospitals, in violation of existing health-protection regulations. This has prompted many citizens to submit complaints to the Ombudsman (cases 6788/1999, 2422/2000, 8325/2000, 9044/2000, 10702/2000, 11106/2000, 15422/2000).

Investigation by the Ombudsman shows that there exist differences of opinion on this matter, while scientific information available is not conclusive. The authorities involved hold different positions regarding the dangers aerials pose to people living nearby.

The Department of Noise and Radiation at the Ministry for the Environment, Physical Planning, and Public Works accepts that, although the requirements of relevant legislation have been met, an environmental impact assessment study is further required.

The division at the Ministry of Transportation and Communications responsible for controlling radio frequencies informed the Office of the Ombudsman that the law on protecting the environment does not apply to radio transmission stations installed on land.

The Ministry of Health believes that the issue of the biological effects of electromagnetic waves upon individuals is an open question. Since reports are conflicting, it makes no sense to set maximum limits that may, in the future, turn out to be low.

Current legislation and the Ministry of Transportation and Communications deal with the erecting of aerials favourably, permitting them to be set up anywhere, even within forest areas or areas to be reforested, provided, of course, that the required documentation has been submitted. In addition, no procedures have been established for verifying that limits on the highest level of radiation are upheld. In some cases people have turned to the courts and succeeded in having permits for erecting aerials revoked on the grounds that the Building Code did not allow for such installations. A new law (2801/2000), however, removed this restriction, since "aerials may be erected on top of stairwells and elevator shafts built in accordance with article 16 of the Building Code/1985." This removed a major impediment to the placement of aerials for mobile telephones on the roofs of buildings.

The European Union Council believes that, despite the uncertainty about the danger of radiation from aerials for mobile telephones, people need to be shielded from effects harmful to their health. It considers that "the public at large within the European Community must be protected from proven hazards to their health that may be caused by exposure to electromagnetic fields . . . the measures taken concerning electromagnetic fields must provide a high level of protection for all people living within the Community", and recommends that the member states take measures "to achieve a high level of protecting health from exposure to electromagnetic fields . . . ". Clearly, the Council believes that the

principle of fair administration requires taking precautionary measures to protect public health.

Accordingly, the Ombudsman recommended that this stance be included in a general legislative framework covering all issues deriving from the installation of aerials for mobile telephony. The intention is to take precautionary measures to ensure public health and minimize public concern about the harmful effects of electromagnetic radiation. The cases are still pending.

5.13 REVOCATION OF PERMITS FOR AUTOMOBILE BODY REPAIR AND PAINT SHOPS OPERATING IN RESIDENTIAL AREAS

Agencies: Prefectural Governments of Athens and Piraeus, Divisions of Transportation and Communications

The Divisions of Transportation and Communications in the Prefectural Governments of Athens and Piraeus respectively have issued a large number of illegal operating permits for automobile body repair and paint shops in residential areas. These permits are in contravention of relevant provisions and Council of State decisions. Furthermore, the divisions ignored a regulation requiring an environmental impact assessment study (meeting specific terms and imposing specific standards regarding the operation of such establishments) be submitted prior to approval. Thus, none of these shops conform to required standards and environmental protection measures (cases 13270/1999 and 6292/2000). The Ombudsman called upon the abovementioned divisions to observe the law. The divisions maintained their position that more recent legislation has cancelled the provisions of the initial presidential decree and that, therefore, issuing permits for automobile body repair and paint shops operating in residential areas is permitted. After investigation, the Ombudsman concluded that:

- No recent general law cancels an older, more specific law.
- The transfer of specific responsibilities does not affect the validity of the rule of law and, therefore, has nothing to do with the issue under discussion.
- Current law defines the conditions and requirements for establishing and operating automobile and motorcycle repair shops, and sets out the procedures that need to be followed when operating permits are issued. In any case, the regulation that classifies all automobile repair shops (including body repair and paint shops) as low-nuisance activities does not justify cancelling special provisions in the law specifically forbidding the establishment and operation of automobile body repair and paint shops.
- The above conclusions are supported by recent rulings issued by the Council of State.

The conclusions were made known to the responsible ministries. The cases are still pending.

5.14 ILLEGAL SALE OF FORESTLAND

Agencies: Ministry of Finance; Public Land Authority; Ministry for the Environment, Physical Planning, and Public Works

On May 17, 2000, the Public Land Authority sold to private interests a land parcel of 4,150 sq.m. located within the boundaries of the Municipality of Psychiko, Athens. According to an Athens Court of First Instance decision (2889/1999), this parcel was part of a 1,000-hectares national forest area designated as such since 1836 (case 6878/2000).

The investigation of the Office of the Ombudsman found that standard legal procedures had been purposely circumvented. More specifically, a regulation amending the layout of certain streets and communal squares in the Municipality of Psychiko was issued in 1988. This amendment carried only the signature of the Minister for the Environment, Physical Planning, and Public Works, though the law requires it is countersigned by the Minister of Agriculture as well. A significant amount of forestland, including the property mentioned above, was thus re-designated as urban land on the basis of this law. Although the Public Land Authority was well-aware of the serious legal deficiencies of this act (since the court decision designating the area as forestland can be altered only through another court decision designating otherwise), and though ownership was being contested in court, it went ahead anyway and auctioned off the land.

In answer to a pertinent question from the Ombudsman, the Public Land Authority attempted to justify its actions by claiming that the parcel in question was listed as property of the Ministry of Finance. This statement, however, was reversed by a 12.7.2000 decision taken by the Public Land Authority's board of directors, which had voted to cancel the contract "because of the legal issues of ownership that came to the service's attention after the auction was completed." This change of position had been brought about as a result of mounting reactions of local environmental groups and the property's heir claiming ownership of the parcel. The case is still pending.

6. Follow-Up on the Proposals for Legislative Amendments and Administrative Reforms Presented in the Annual Reports for 1998 and 1999

The cases handled in 1998 and 1999 have enabled the Department of Quality of Life to identify specific pathogenies of existing administrative practices and legislation (such as gaps in the law, contradictory legislative regulations, organizational malfunctions, etc.).

In an effort to address these problems, the Ombudsman, using the powers given to him by the provision of article 3, par. 5 of Law 2477/1997, submitted in the annual reports for the years 1998 and 1999 a series of proposals for specific changes or amendments required. These proposals were forwarded to the respective ministries, which were asked to react in return.

As this report goes to press, reactions vary considerably. Some ministries and related public authorities have already responded favourably either by putting in practice the proposals or by expressing their intention to do so soon. Others, however, have taken no positive measures nor have they communicated any thoughts regarding their intentions for the proposed legislative amendments and administrative reforms.

Since this last may lead to false conclusions (i.e. an indication of refusal to comply), it should be pointed out that some of the issues affected by the Ombudsman's proposals often touch upon solidified situations that can be reversed only with difficulty, while necessary actions involve substantial funding that needs long-term planning. Others require careful evaluation of a variety of considerations or conflicting factors and need to be readdressed in a comprehensive way. Therefore, it is only fair to state that the time that has elapsed is a short one and it is still much too soon to expect all authorities to come forward with corrective measures or reactions.

E.4 DEPARTMENT OF STATE-CITIZEN RELATIONS

The Department of State-Citizen Relations, and the Office of the Ombudsman in general, try to contribute to the rationalization of public administration's operation by encouraging the adoption of practices and behaviour capable of increasing the possibilities provided by law to serve citizens, legitimizing it in the public's mind, and ensuring that the administration will be freed from the logic of blindly following the letter of the law.

E.4 DEPARTMENT OF STATE-CITIZEN RELATIONS

CONTENTS

DEPARTMENT OF STATE-CITIZEN RELATIONS

1. Area of Jurisdiction and Responsibilities of the Department

In accordance with Presidential Decree 273/1999, the Department of State-Citizen Relations deals with issues associated with information and communication, the quality of public services provided, maladministration in Local Authorities and public utility corporations, transports, communications, labour, industry, energy, taxes, customs, budgetary issues, trade and government procurements, agriculture and agricultural policy, and education.

The review of the Department's work during 2000 focuses on the study of maladministration phenomena observed throughout the public sector (see 2.1), on ways to improve communication between citizens and public administration, and, overall, on how to improve the quality of services provided. The problems identified through the investigation of citizens' complaints are presented separately for each authority involved.

Based on the experience of the past 28 months, the Department of State-Citizen Relations has tried to identify the major causes of why public administration does not function properly. Furthermore, the Department has tried to respond to the problems revealed in the complaints submitted by the public at a deeper level, by setting them in a wider framework aiming at modernizing the practices of public administration. The need for structural changes in training public administration's personnel and the need to familiarize them with modern and effective ways of operating became evident at the same time. The Department of State-Citizen Relations is called upon to assist in this ambitious task by submitting relevant proposals to the public services and their supervising political leadership (article 4, par. 6 of Presidential Decree 273/1999).

2. General Assessment of the Department's Activities

2.1 MALADMINISTRATION IN THE DEPARTMENT'S AREA OF RESPONSIBILITY

2.1.1 PROBLEMS RELATED TO ADMINISTRATIVE ACTION

Data accumulated over time has helped identify major problems and pathogenies of public administration.

The major problem of Greek public administration is the inadequacy in both the organization and *modus operandi* of its services (17.6%). Complaints submitted by the public indicate that this form of maladministration is usually associated with delays in issuing the necessary administrative acts or delays in carrying out the actions required (16%), and delays in answering petitions submitted by the public (12%).

Despite the efforts made by the relevant authorities to inform the public about their rights and obligations, the issue of failing to provide information stands out as one of the most important problems of public administration (11.4%).

Another important group of problems are those associated with infringements of the Code of Administrative Procedure (Law 2690/1999). These infringements prove crucial as they undermine efforts to modernize public administration, leading the average official to being unaware of his primary obligations and therefore not complying with them. For example, public administration officials are obliged to provide documented answers to petitions from the public within the specific time period set by law (40 days in most cases). Yet, judging from the high percentage (12%) of complaints concerned with this form of maladministration, this does not seem to be clearly understood. Obviously, infringements also occur when a particular public authority receives a complaint for which it has no competence and fails to refer the case to the relevant service. Refusal to provide copies of or access to public and private documents violates the principle of transparency and the Code of Administrative Procedure (1.7%).

The category of other administrative irregularities (5.4%) includes such instances as refusal to register documents, certify copies, etc.

The Department of State-Citizen Relations has been involved with a small in number (1.2%), but significant in seriousness, series complaints concerning the failure to implement judicial decisions. This form of maladministration is alarming because it casts doubt upon institutions, cancels the rule of law, and promotes arbitrariness in administrative action.

Another form of maladministration is associated with issues involving flawed interpretation and implementation of the law. The absence of required legal actions, including cases in which the public administration acts in contravention of legal provisions in force, was observed in 13.2% of the complaints, while the percentage of cases in which the administration fails to comply with the principle of proportionality is significant (6.1%).

2.1.2 EXTREME CASES OF MALADMINISTRATION

In this context, those cases in which a citizen has to deal with an action taken by the administration that goes beyond the limits of logic, indicating an inherent inability to correct its mistakes and deal with reality, are particularly difficult. In such cases the Department of State-Citizen Relations, and the Office of the Ombudsman in general, try to contribute to the rationalization of public administration's operation by encouraging the adoption of practices and behaviour capable of increasing the possibilities provided by law to serve citizens, legitimizing it in the public's mind, and ensuring that the administration will be freed from the logic of blindly following the letter of the law.

2.1.3 PERSONAL COMMUNICATION AND ITS IMPORTANCE IN EFFECTIVELY COMBATING MALADMINISTRATION

Personal involvement of the responsible employee is a critical factor in effectively resolving citizens' problems. It is not by chance that the services doing the best job for the public are staffed with people ready to devote themselves to a problem, take its particular nature into consideration, and truly intent on and flexible about finding a solution. Whatever the results, the citizen is satisfied because he sees that someone in authority has dealt with his problem. On the other hand, the unresolved problems with which the Ombudsman deals usually involve a lack of cooperation on the part of the relevant officials. In these cases, what becomes clear is that the administration refuses to recognize that there is a problem,

and to utilize the suggestions made by the Ombudsman, or revise its opinions, which have obviously resulted in a situation of questionable legality.

2.2 STATISTICS

During 2000, 3,494 new complaints were submitted to the Department of State-Citizen Relations, in addition to the 521 complaints pending from the previous two years.

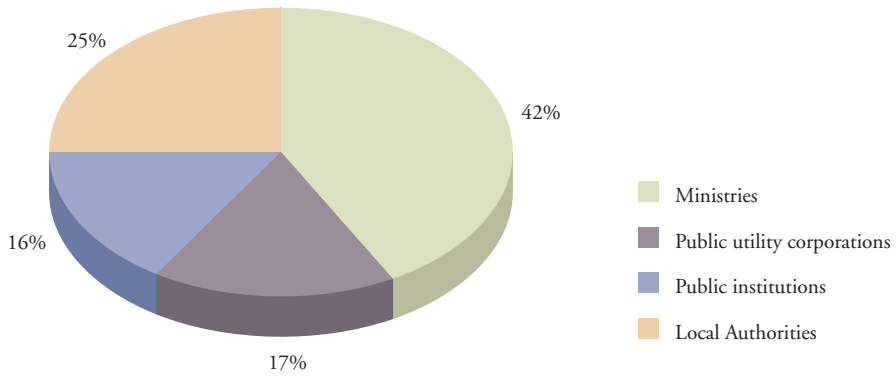
The Department investigated a total of 4,015 complaints during 2000, which is 31.34% of the total number of complaints processed by the Office of the Ombudsman. During this same period (see Table E.4.1) 1,362 complaints (33.9% of the total) were found to be out of mandate. Of the remaining 2,653 (66.1%) complaints, 1,839 (69.3%) were resolved, while the remaining 814 (30.7%) were still pending on December 31, 2000.

TABLE E.4.1 **CASE FLOW FOR THE YEAR 2000**

Pending complaints from 1999	521	
New complaints received during 2000	3,494	
Total of complaints of 1999 and 2000	**4,015**	
Out of mandate (not investigated in depth)	1,362	33.9%
Within mandate (investigated in depth)	2,653	66.1%
Resolved	1,839	69.3%
Pending	814	30.7%

A more composite picture of maladministration is provided below. The complaints are listed by public authority involved. As shown in Graph E.4.1, of the complaints handled by the Department, 42% involved ministries, 25% Local Authorities, 17% public utility corporations and 16% public institutions.

GRAPH E.4.1 **BREAKDOWN OF CASES BY PUBLIC AUTHORITY**



Of all the cases involving ministries (see Table E.4.2), 55% involved the Ministry of Finance. This high percentage is partly explained by the Ministry of Finance having a wide area of responsibility that includes services with which the public frequently comes in contact.

TABLE E.4.2 **PERCENTAGE DISTRIBUTION OF CASES BY MINISTRY**

Ministry of Finance	55%
Ministry of Education and Religious Affairs	8%
Ministry for the Environment, Physical Planning, and Public Works	6%
Ministry of Public Order	6%
Ministry of the Interior, Public Administration, and Decentralization	5%
Ministry of Agriculture	3%
Ministry of Mercantile Marine	3%
Ministry of Transportation and Communications	3%
Ministry of Development	2%
Ministry of Culture	2%
Ministry of Justice	2%
Ministry of Defence	1%
Other ministries	4%

2.3 RESULTS OF THE COMMUNICATION POLICY FOLLOWED BY THE DEPARTMENT

As has been the case in the past, during 2000 the Department of State-Citizen Relations operated at two levels. On the basis of the complaints, the Department dealt with cases of maladministration at the individual level. At the same time it explored mechanisms for dialogue and communication with public services concerning both individual cases and issues of general interest.

2.3.1 RELATIONS BETWEEN THE DEPARTMENT AND THE COMPLAINANTS

During 2000, the Department of State-Citizen Relations received 44.1% more complaints than it had during 1999. This may be because citizens are currently better informed about the Ombudsman's existence and his role. It may also be as a result of the recognition of the effectiveness of the Ombudsman or as an expression of citizen demand for rational procedures and improvement in the quality of the services provided by the public administration. Complaints submitted to the Department by groups of professionals or authorized lawyers reflect a development that already was evident in 1999. The particular increase in these complaints during 2000 provides us with enough information in order to reach some general conclusions.

The time required by the Department to resolve cases is directly associated not only with the volume of complaints submitted but, primarily, with how soon the services involved respond and to what extent they actually cooperate. For this reason, complainants are informed about the various ways their problems can be handled, so they can choose the way that best deals with the issue on the basis of specific options, provided, of course, that the complaint submitted to the Office of the Ombudsman does not suspend the deadlines for resorting to appeal or other judicial remedies.

The citizens' practice of communicating to the Office of the Ombudsman documents addressed to other public services indicates the public's positive opinion of the Ombudsman's statutory role. The indications arising from the answers of various services, that are then notified to the Office of the Ombudsman, strengthen the public's belief that the Ombudsman will deal with their concerns in greater depth.

Finally, vaguely worded complaints are another factor that restricts service to the public,

in that there are people who find it difficult to write their petitions clearly, which makes handling their cases effectively difficult.

From its experience in communicating with citizens either through their complaints or directly through personal contact, the Department of State-Citizen Relations has reached some basic conclusions that define and help improve communication with the public. More specifically:

- Even when citizens are not in the right, public administration makes them feel unfairly treated when it fails to communicate properly with them. They are, in fact, unfairly treated because their right to be informed has been infringed.
- The investigators of the Ombudsman must be strictly neutral when handling cases so as to avoid giving rise to hopes that may not be fulfilled.
- The Ombudsman must provide clear and simple explanations on the limits of his competence if he is to carry out his work effectively.
- Direct personal communication between the person handling a complaint and the citizen who submitted it helps the investigator examine the case correctly. Generally speaking, such communication also increases public confidence in the Ombudsman, helping build the image of a different service, one that knows how to listen and takes citizens into account.

2.3.2 THE DEPARTMENT'S RELATIONS WITH PUBLIC SERVICES

The building of relations based on trust and openness with public administration staff is decisive in the effectiveness of the Department. To a large extent such relations are established through daily communication and by public administration staff coming to know what the objectives of the Ombudsman are and how the Office operates.

The extent to which the Ombudsman is accepted by the administration varies from service to service. In most public services, however, the administration's staff cooperates without friction and on a regular basis with the Department of State-Citizen Relations, helping the case investigators come to solutions and avoiding bureaucratic procedures. There is frequent and productive communication between the Department's investigators and the responsible officials of such organizations as the Greek Telecommunications Organization, the Athens Public Water Supply and Sewage Company, the Inter-University Centre for the Recognition of Foreign Academic Titles and the Municipality of Athens. Because of the large number of complaints involving the Ministry of Finance, the Department pays special attention to relations with this ministry where, at the instigation of the Deputy Minister of Finance, a staff member at the highest level was made responsible for facilitating communication and cooperation with the Ombudsman.

The Office of the Ombudsman is continuing its efforts to regularly inform the highest levels of public administration staff as well as their supervising political leadership about its goals and operating methods. As part of this effort, with the approval of the Deputy Minister of Finance and in cooperation with the Educational Centre for Employees of the Ministry of Finance, the Office organized a pilot two-day meeting in Herakleion, Crete, in November 2000.

The aim of the meeting was twofold. First, to inform the staff of the Ministry of Finance about the problems the Department encounters when investigating cases involving tax issues and the implementation of relevant legislation. Second, to inform the

Ombudsman's investigators of the initiatives taken by the Ministry of Finance (strategic plan, administrative arrangements, technical infrastructure, etc.) to improve the quality of services provided. As both sides attending the meeting found it beneficial, it was decided that similar meetings should be held in Athens and Alexandroupoli during 2001.

3. Presentation of the Most Important Cases

3.1 Ministry of Finance

Ever since the Ombudsman was established, the Ministry of Finance has taken a particularly positive attitude about cooperating with the Office because it recognizes, primarily through its daily contact with the public, the problems related to its services. During 2000, 57% of the complaints handled by the Department of State-Citizen Relations had to do with the Ministry of Finance's services. As in the past, most of these cases (83%) involved the tax authorities. The other complaints involved customs (3%), the State General Accounting Office (2%), the ministry's General Secretariat for Information Systems (2%), and central services (10%).

Since the ministry's services are primarily involved in collecting payments while dealing with large numbers of citizens on a daily basis, maladministration exists mainly in the areas of communication and information. The ministry has taken several steps, which the Ombudsman endorses, towards identifying the problems and suggesting solutions.

Within this context, it is clear that the predominant form of maladministration in the Ministry of Finance (28% of the total) concerns operational and organizational problems in the services involved. In investigating these complaints, it became evident that the basic operational and organizational problems in the tax offices are:

- Delays in updating files, checking all kinds of statements (income tax, inheritance tax, etc.) and in sending out final tax statements.
- Shorter periods when tax offices are open to the public compared to their total working hours.
- In general, lack of coordination between jointly responsible services.

The Ministry of Finance is already dealing with the problem of information by producing pamphlets and by increasing the use of technology (the Internet, an open telephone line for information, a complaints office, etc.). In spite of these efforts, 14% of the relevant complaints involve lack of information as a form of maladministration. This can be attributed to the particularly complicated nature of tax regulation, coupled with the fact that a large number of people are unfamiliar with finance and accounting.

Another group of complaints point to infringements of the Code of Administrative Procedure and Practice, such as not observing the time period within which an administrative act must be issued or action taken (12.7%); delays in replying or not replying at all to citizens' requests (10.7%); and not adhering to the principle of transparency (0.6%). A small number of complaints (1.7%) deal solely with improper behaviour on the part of responsible employees.

In terms of quality, a particularly significant type of maladministration includes those cases that involve essential problems in implementing the law on taxation, which usually appear in the form of not applying the principle of proportionality (10.7%) and failure to take the required legal action (9.8%). The specific cases presented below mainly deal with

problems of interpreting the law on taxation, but also implementing the provisions of the Code of Administrative Procedure and Practice in the daily transactions between the services of the Ministry of Finance and the public.

3.1.1 TAX CONFIDENTIALITY

Tax confidentiality is defined in article 85 of Law 2238/1944, which clearly reveals the legislator's intent to protect the privacy of an individual from interventions into his personal life. Although the intention of the law is clear, some services in the Ministry of Finance find it difficult to carry out the legal provisions, ending up by not complying with either the letter or the spirit of the law.

3.1.1.1 TAX CONFIDENTIALITY BETWEEN SPOUSES

The possibility provided by law for married couples to present a joint income tax statement (the usual practice) reasonably assumes that tax confidentiality does not apply between spouses. Couples declare their income in parallel and both sign their joint income tax statement, so it is unreasonable to consider that tax information concerning one of them is unknown to or kept secret from the other. The opposite opinion causes considerable difficulty especially when it is combined with the non-respect of the principle of gender equality, as occurred with a case (4875/2000) in which a wife requested the Psychiko Tax Office to provide her with a copy of her and her husband's joint income tax statement. The tax office refused to provide her with a copy on the grounds that doing so would encroach upon tax confidentiality. At the same time, however, the tax office admitted that it would have provided a copy to the husband if he had requested it.

3.1.1.2 TAX CONFIDENTIALITY VIS-À-VIS THE TAXPAYER HIMSELF

The case described below is particularly interesting, mainly because the interpretation given by the responsible tax authority is in direct conflict with the meaning of confidentiality.
A taxpayer asked the Nea Smyrni Tax Office to give him a copy of his personal debt schedule and the decision to offset his debt, so he could check the legality of his debt still being deducted from his pension and the total amount of the fines added to his original debt (case 11508/2000). At first, the Nea Smyrni Tax Office refused to provide this information, calling upon the principle of tax confidentiality. The Ombudsman pointed out the obvious to the tax office, i.e. that the notion of confidentiality applies to providing information to a third party and not to the person directly concerned and asked the tax office to supply the taxpayer with his own personal data. The Nea Smyrni Tax Office agreed.

3.1.2 RESTRICTIVE INTERPRETATION OF TAX REGULATIONS AND APPLICATION OF GENERAL LEGAL PRINCIPLES

The proper interpretation of the law on taxation is one of the issues of concern in the contacts between the Ombudsman and the services in the Ministry of Finance.
Investigation into individual cases shows that adhering to the general legal principles in interpreting legal provisions will not only ensure adherence to the principle of legality, but will solve, as fairly as possible, problems that arise. The Ombudsman tried to make the relevant services understand that tax legislation rules are formal laws and that, therefore, they must be interpreted in accordance with the general legal principles embodied in the

Constitution, such as the principles of proportionality and of the protection of legitimate expectations which, according to the rulings of the Council of State and public law theory, are manifestations of the principle of the rule of law.

The cases described below are typical examples where solutions based on the principles of proportionality or *force majeure* would constitute a legal, fair, and reasonable settlement.

3.1.2.1 CONFISCATING PROPERTY WORTH 10,000,000 DRS IN PAYMENT OF AN OUTSTANDING AMOUNT OF 39,167 DRS OWED TO THE STATE

The principle of proportionality is a general legal principle deriving directly from the Constitution. It has been developed and defined frequently by the supreme Greek courts, as well as by the European Court of Human Rights. As far as law on taxation is concerned, this principle takes practical form in the judicious use of discretion in setting fines, in the sense that the fine imposed must be proportionate to the pursued objective.

The case described below (case 12194/1999) is an example of violation of the principle of proportionality. The Marousi Tax Office informed a taxpayer by personal notification that he owed 68,754 drs, including fines for late payment. The taxpayer paid the amount originally owed and asked for the fines to be written off. While his request was pending, the head of the Marousi Tax Office requested the confiscation of the taxpayer's property, valued in the confiscation report at 10,000,000 drs.

The Ombudsman maintained that this act of confiscation was illegal because it contravened the principle of proportionality, i.e. the relationship between the pursued objective and the means employed.

The Marousi Tax Office and the Financial Inspectorate maintained that the confiscation was legal because Law 2579/1998, article 5, par. 5 permits confiscation for debts in excess of 30,000 drs and that this should not, consequently, be an issue for the taxpayer. The Ombudsman's proposal that the confiscation be lifted was not accepted. A concluding report on this case is therefore being drafted.

3.1.2.2 FORCE MAJEURE AS A REASON FOR EXTENDING DEADLINES FOR OVERTURNING DECISIONS

The rule allowing deadlines, within which decisions can be overturned, to be extended because of *force majeure* has been the subject of exhaustive consideration by the administrative courts. In the case presented below, the authority involved infringed the principle of fair administration, which reasonably assumes that no one is obliged to perform the impossible. The rule of law cannot require citizens to keep deadlines for complying with a commitment when they manifestly have no knowledge of the events which gave rise to such commitment.

In the summer of 1998, while on vacation in Greece, an individual (case 11841/2000) permanently residing abroad was informed that he was the sole heir of a distant relative who had died at the end of 1996. He promptly took all the steps required to receive the inheritance, which was of considerable value. The 10th Athens Tax Office ruled that his inheritance tax statement had been submitted after the six-month deadline following his relative's death. This ruling meant that the heir had been charged with a fine equal to half the amount of the inheritance tax, as well as increased charges for filing a late return. The 10th Athens Tax Office had learned of the woman's death and that no heir had been found from the public institution where she had worked. It had even requested that a trustee be appointed for the estate.

Considering the heir's lack of knowledge of his distant relative's death – which is the point of departure for calculating the time limit – understandable, the Ombudsman requested the 10th Athens Tax Office to accept the late return and write off both the fine and the additional charges. The heir's ignorance of the requirements was shown by specific facts, such as his permanent residence abroad, his distant family relationship, the significant financial value of the inheritance, and the prompt steps the heir took as soon as he learned of the inheritance. Nonetheless, the 10th Athens Tax Office did not accept the Ombudsman's arguments and the heir appealed to the courts.

3.1.3 THE ABSENCE OF COORDINATION BETWEEN TAX AUTHORITIES RESULTS IN DOUBLE TAXATION FOR THE TAXPAYER

In 1988, an individual acquired a truck via a parental donation (case 9921/2000). By mistake, the notary public who drew up the relevant contract submitted the required tax declaration of change of ownership to the Piraeus Tax Office. On the following day, the notary public submitted the papers correctly to the responsible Korydallos Tax Office. The ownership title of the truck was transferred on the basis of this declaration. In 1994, the Piraeus Tax Office investigated the declaration of change of ownership that had been submitted to it, in spite of not being the competent tax authority; it nevertheless requested that the taxpayer pay the relevant tax. The taxpayer, believing in good faith that this payment would settle any taxes owed on the truck, paid the amount requested.

In 1998, the Korydallos Tax Office, after investigating the issue, imposed the same tax payment upon the taxpayer, notifying him through the Nikaia Tax Office because he was then living in Nikaia. The taxpayer appealed to the Korydallos Tax Office, providing all the documentation showing that he had paid the tax on the parental donation. The Korydallos Tax Office informed him that, since they were the tax office that had requested the tax payment, they could not write off the tax despite the written proof that it had been paid. In addition, since three years had passed since the tax assessment, the debt had become final and could not be written off.

In communicating with the Korydallos Tax Office, the Ombudsman stressed that this event, caused exclusively by communication and organization problems within the tax services, was in blatant breach of the principle of not having to pay double taxation for the same reason. The Ombudsman requested that the competent Financial Inspectorate should intervene in order to find a solution, and either have the debt written off and the amount refunded by the tax office that had imposed the tax without having the authority to do so, or have the debt written off by the Korydallos Tax Office. Following an opinion of the Legal Counsels of State on tax issues, and in cooperation with the relevant Financial Auditor, the new debt could finally be set off against the payment already made.

3.2 LOCAL AUTHORITIES

During his initial period of operation (1998-1999), the Ombudsman made the conscious choice to deal tolerantly with Local Authorities because during that period

- they were still taking their first steps, and
- the average citizen hoped that the gradual movement toward decentralization would not reproduce at the local government level the bad practices of public administration's central services.

One year later, developments seem to have dashed these hopes. This unpleasant conclusion was presented in a special report published by the Ombudsman on Local Authorities in September 2000.

During 2000, more complaints exclusively concerned with Local Authorities were submitted to the Office of the Ombudsman compared to 1999. As a result of this increase, the complaints involving Local Authorities are the second largest category of complaints handled by the Department of State-Citizen Relations. The largest percentage of these complaints concerns local and municipal government (63%), while complaints involving prefectural government represent a 37%.

Most of the complaints concerning local and municipal government involve the Municipality of Athens both because of the high population density and because the Office of the Ombudsman is based in Athens. For the same reasons, complaints involving the Prefectural Government of Attica are more frequent than those concerning other prefectural governments.

According to the information available, the main form of maladministration at the level of Local Authorities is the arbitrary refusal by their services to take the actions required by law (20.4%), even when these fall under the exclusive competence of public administration such as, for example, the obligation to give names to streets or grant stores operating licences.

The second most common form of maladministration (15.8%) is the inability of some local government services to handle the burden of responsibilities delegated to them by the central administration or to coordinate their action in order to deal with pending cases.

The third most common form of maladministration (14.5%) is the delay in taking administrative acts or physical action. This form of maladministration is most frequently encountered in municipalities.

In addition, delay in answering citizens' requests (10.1%) and inadequate or nonexistent information to the individuals concerned about the substance of their case or its progress (11.1%) are usual practices for local government authorities.

Special reference must be made to the non-enforcement of judicial decisions by Local Authorities (1.3%). This form of maladministration is of the greatest importance because resorting to the judicial system is the most powerful weapon provided by the modern legal order to protect individual rights.

As for the causes of the various forms of maladministration associated directly with the operation of Local Authorities, the most important are: that local government services are staffed by people lacking the necessary training; the attitude that working for local government, particularly in the municipalities, is essentially a part-time position and, therefore, that personnel can absent themselves from their posts during working hours; the fundamental belief that elected local government officials are untouchable, and that, therefore, employees hired through their personal relations with these officials are also untouchable; the practice of putting personal interests over the public good.

The Department of State-Citizen Relations investigated during 1999 several complaints, mainly characterized by the refusal of the relevant municipal official or special advisor to the municipality or prefecture to cooperate with the Ombudsman. In all these cases, regardless of the subject, the obstacles were overcome only when the Ombudsman contacted directly the competent mayor or prefect, impressing upon them his intention to take disciplinary measures against the uncooperative employee, in accordance with the provisions of the Ombudsman's founding law.

3.2.1 ILLEGAL SERVICE RATES IMPOSED BY THE PREFECTURAL GOVERNMENT OF KAVALA

The Prefectural Government of Kavala, in accordance with a decision of the prefectural council, imposed rates for the provision of a large number of services. The complaints sent to the Office of the Ombudsman (cases 9751/1999 and 13002/1999) concerned service rates imposed for issuing passports.

The Ombudsman wrote to the Prefectural Government of Kavala explaining the reasons why these service rates were unconstitutional, since the main element of the concept of service rate is the direct provision of a special service to the individual by the state. The service rate implies payment by the interested person of an amount that corresponds to the value of an available service that he freely chooses to use. In consequence, since the issue of passports is a responsibility of the administration, it cannot be considered as a special or supplementary service requiring a particular charge.

In accordance with this opinion, the Ombudsman asked the Prefect of Kavala to revoke the controversial prefectural council's decision that had caused strong reactions on the part of individuals and independent bodies against the prefecture. This specific decision was suspended, but not revoked as the Ombudsman had requested, following concerted action by the Office of the Ombudsman, the regional administration and the local government authorities involved over a period of six months of fruitless communication, during which four letters from the Ombudsman on the subject went unanswered. After the decision was suspended, the Prefect of Kavala wrote to the Ombudsman defending his opinions about the service rates imposed by the Prefectural Government of Kavala.

3.2.2 REFUSAL TO TRANSFER STUDENT DOCUMENTS FOR STUDENTS WHO WERE TRANSFERRED TO OTHER SCHOOLS

The parents who filed a complaint with the Office of the Ombudsman (case 13470/2000) were employees of the Greek Telecommunications Organization and the National Bank of Greece and their children were attending the Galatas, Troizinia, High School. The parents were posted by their departments to neighbouring Poros, so they asked that their children be transferred from the Galatas High School to the Poros High School. Although they had the required certificates and the necessary transfer approval from the high school that would accept the students, the headmaster of the Galatas High School refused to approve the transfer.

The Office of the Ombudsman communicated with both the high school headmaster and the head of secondary education in the Prefecture of Piraeus. The headmaster persisted in his refusal to effectuate the transfers, maintaining that the legal requirements laid down in article 15, par. 1 of Presidential Decree 104/1970 had not been met because, in his opinion, the travel distance for the students was not so great as to justify transferring from their present school. He also referred to the broader planning of secondary education services requiring students to be distributed evenly among an area's schools in order to avoid concentrating students in one school and gradually abandoning another. The need of protecting the general interest over the personal interests of the parents was also invoked by the head of secondary education in the Prefecture of Piraeus.

After conferring with the Division of Secondary Education at the Ministry of Education and Religious Affairs, the Ombudsman concluded that invoking general interest in this case would be a legal reason for the high school headmaster to refuse to issue the

individual transfer form, provided that the school accepting the students had not already issued the corresponding transfer approval form. From the moment, however, that the administration had created reasonable expectations for the parents that it would accept the students, the later refusal by the Galatas High School constituted an infringement of the constitutionally protected right to free development of personality (article 5 of the Constitution).

The Piraeus Division of Secondary Education accepted this conclusion and directed the Galatas High School headmaster to issue the students' transfer papers.

3.2.3 RESPONSIBILITY OF THE ADMINISTRATION FOR DAMAGES INCURRED

The issue of the responsibility of the Local Authorities for damages caused by its agents (either by taking action or failing to take action) was once again raised during 2000. Most of the problems were caused by poor road maintenance for which Local Authorities are by law responsible. For these cases, the Ombudsman suggests out-of-court settlements (particularly when the damage is unquestionable and specific) in order to avoid costly trial ordeals.

3.2.3.1 COMPENSATION FOR DAMAGES CAUSED TO A PRIVATE CAR BY POOR ROAD CONDITION

In his complaint to the Office of the Ombudsman (case 12876/1999), an individual stated that the tires on his car were destroyed by the poor condition of the road on the national road between Corfu and Gyro-Achilleio. As a result, the car owner had to replace the tires at the cost of approximately 60,000 drs. The Prefectural Government of Corfu refused to pay compensation.

The Ministry for the Environment, Physical Planning, and Public Works had assigned the maintenance of this particular road to the Division of Technical Services of the Prefectural Government of Corfu. Articles 105 and 106 of the Civil Code Preamble establish the objective responsibility of public services for wrongful acts or omissions (in this particular case for failure to maintain the road surface). Consequently, the Ombudsman suggested to the prefecture it should compensate the car owner in order to save him from appealing to the courts and suffering the emotional stress, financial cost, and delays. The prefecture answered that it had already taken the necessary steps to repair the road damage as it had awarded the relevant project contract, but the road had not been repaired because of the poor weather conditions.

The Prefectural Government of Corfu brought the matter to the Corfu Judicial Office of the Legal Counsels of State, which ruled that the prefecture should pay the compensation.

3.2.4 NON-ENFORCEMENT OF JUDICIAL DECISIONS

From his very first year of operation, the Ombudsman has identified this important form of maladministration. The percentage of judicial decisions not being carried out by the Local Authorities is still relatively small (1.3%). Yet, the fact that this percentage has doubled since 1999 (0.7%) is a clear sign of an evolving negative trend, an indication of arbitrariness and a denial of the rule of law. The usual excuse raised in these cases is that the financial resources available are limited.

3.2.4.1 IMPLEMENTATION OF A JUDICIAL DECISION REGARDING PAYMENT OF COMPENSATION FOR DAMAGE CAUSED TO A PRIVATE CAR BY THE FALLING OF A TREE

In accordance with decision 5784/1999 of the Athens Administrative Court of Appeal, the Municipality of Neo Herakleio was obliged to pay an individual 2,300,000 drs in compensation for the damage inflicted upon his car by the falling of a tree. This amount included the legal interest that had accumulated in the interval between the court decision and the time when the amount was actually paid. Because the municipality was extremely late in paying the corresponding interest, the individual appealed to the Ombudsman (case 9245/20000).

The Ombudsman applied pressure to the municipal services and the interest owed in the amount of 540,500 drs was paid.

3.2.5 REFUNDING AN UNJUSTLY IMPOSED AMOUNT

A citizen applied to the Office of the Ombudsman with regard to the return of the property tax he had paid to the Municipality of Ioannina for the years 1997, 1998, 1999, and 2000 (case 3018/2000). This person was the original owner of a property which had been contracted out for development. Construction had been completed, and, in September 1997, the owners of the new apartments had moved in. All these owners had since been paying the respective property taxes on their apartments.

Furthermore, the contractor who had undertaken the work had submitted the contract agreements to the municipality's financial services and informed them that the apartments had been turned over to their new owners. Since these apartments had been supplied with electricity, the owners already had begun to pay their property taxes to the municipality. Finally, in August 1998, the citizen himself had informed the municipal services in writing that he was under no obligation to pay property tax any more.

The Municipality of Ioannina's financial services claimed that the problem lay with the individual involved, that he had vaguely adduced the submission of an application and had never submitted a written correction statement informing the service of the transfer of ownership. For this reason the service refused to make the changes requested, referring to the provisions of par. 5, article 24 of Law 2130/1993.

According to the information provided by the citizen, on August 24, 1998, he had, in fact, submitted a written declaration of the changes of ownership. As a result, the Ombudsman proposed that the amounts wrongly paid should be returned to the individual as of the date he submitted his declaration, because it was the service that should be held accountable for not implementing the law. The municipal council of Ioannina accepted this proposal and the money were returned.

3.2.6 STREET NAMING

A company appealed to the Ombudsman (case 7051/2000) that the Municipality of Spata had not named the street on which it has its headquarters, causing it to suffer losses from delayed delivery of goods and mail needed for the company to function properly.

The Ombudsman referred to article 12 of the Local Government Code (Presidential Decree 410/1995), which clearly points out that street names are assigned by decision of the municipal council after approval from the advisory council for the recognition and change of street names (article 8 of the Code), and recommended to the Mayor of Spata that he take

the necessary steps to have the street named. The municipality responded promptly and had the street on which the company making the complaint has its headquarters named.

3.2.7 GRANTING OPERATING LICENCE TO A FACILITY THAT IS SUBJECT TO HEALTH REGULATIONS

An individual asked the Ombudsman to mediate with the Municipality of Kifisia concerning the granting of an operating licence for a facility that is subject to health and safety regulations (restaurant) in Nea Kifisia (case 277/2000).

Although the application submitted to the municipality on May 3, 1999, was accompanied by a document from the municipality's Urban Planning Division certifying that the site was appropriate, the application was rejected on the grounds that the restaurant would be a nuisance for residents and would lower the quality of their lives. After the municipal council rejected his application, the individual appealed to the committee established by article 18 of Law 2218/1994 and requested the annulment of the above decision. The committee accepted the individual's appeal and annulled the municipality's decision.

The Municipality of Kifisia then moved against this decision by the committee by appealing to the Ministry of the Interior, Public Administration, and Decentralization, which rejected the appeal. After this decision, the individual submitted a new application for a restaurant's operating licence to the Municipality of Kifisia.

The Office of the Ombudsman called upon the municipal authority of Kifisia to grant the operating licence in question as required, pointing out the following:

- When legal requirements are fulfilled, the local government is obliged to grant an operating licence and may not exercise its discretionary judgment.
- The Region of Attica and the Ministry of the Interior, Public Administration, and Decentralization agree with this position.

Although four months passed and a written reminder was sent, the Municipality of Kifisia did not grant the operating licence nor did it reply to the Office of the Ombudsman, as it was required to do. The Municipality of Kifisia ignored all the above and informed the individual verbally that the municipal council, concerned with the danger of overloading the area, had decided not to grant permits. This decision was taken despite the fact that the area is not an exclusively residential zone.

The Ombudsman sent his findings on these developments to the Ministry of the Interior, Public Administration, and Decentralization. The case is still pending.

3.2.8 REFUSAL TO ISSUE A PAYMENT ORDER

An individual submitted a complaint that the Municipality of Spata refused to issue a financial payment order in the amount of 394,600 drs (case 4877/1999). Part of this sum represented compensation for 7.4 sq.m. of land that had belonged to the individual and was transferred to a third party. Although the municipality recognized this specific debt towards the individual during 1998, it did not issue the financial payment order, invoking pending objections by the new owner.

The Office of the Ombudsman repeatedly tried to speak over the telephone with the municipality's special treasurer in order to learn what steps the municipality was taking to resolve this issue, but this proved to be impossible. For this reason the Office sent a letter to the municipality's financial services asking for information about the reasons of the delay.

There was no verbal or written answer from the Municipality of Spata. In September of 1999, the Office of the Ombudsman began a new round of attempts to communicate with the municipality's financial services. Finally, with the help of the head of the relevant service, communication was established with the municipality's treasurer, who promised to inform the Office in writing. After another two months passed without any communication from the treasurer, the Office of the Ombudsman managed, with considerable difficulty, to communicate with the treasurer who again promised to inform the citizen of the situation. Nevertheless, the municipality again did not keep its word, obliging the Ombudsman to speak with the Mayor of Spata in person, describing this particular employee's refusal to cooperate and the general lack of cooperation by the municipality's financial services, as well as the possibility of disciplinary measures.

In February 2000, nine full months after the first communication by the Ombudsman with the Municipality of Spata, the municipality informed the Office that it was taking steps to pay the amount owed. The money was paid the following month.

3.2.9 PAYMENT OWED FOR WATER SUPPLIED TO RENTED PROPERTY

Several people appealed to the Office of the Ombudsman (case 4402/2000) complaining about the increased charges imposed by the Municipality of Artemis on money owed for supplying water to their properties during 1989-1998, and for the fact that the municipality delayed bringing their complaints (dating from July 1999) before the municipal council for discussion.

According to the municipality's Regulations, the property owner is responsible for paying for water supplied. In this case, however, as was shown later, the tenant acted in bad faith by changing the name on the water meters without the consent or at least the knowledge of the owners. The result was that the owners were not aware that this money was owed and, therefore, could not deal with the situation in time and, in so doing, avoid the additional charges imposed.

The municipality's negligence in taking judicial or other available means, such as cutting off the water supply, to ensure payment by the tenant led the Ombudsman to conclude that the increased charges levied against the owners should be written off and that the owners should pay only for the actual amount of water consumed during 1989-1998.

The Ombudsman tried to have the subject brought for discussion before the municipal council. In May 2000, the subject was finally discussed and the complaints dismissed. After the municipal council had turned down the complaints as well as a similar request from the Region of Attica, the interested parties submitted a new application to the municipality's Tax Disputes Settlement Committee, by which they asked that the increased charges should be written off and declared their readiness to pay for the water actually consumed.

The Ombudsman supported this position before the Municipality of Artemis Tax Disputes Settlement Committee in early October 2000. An answer is still awaited.

3.3 PUBLIC UTILITY CORPORATIONS

In the Ombudsman's report for 1999, cases relating to very high bills from public utility corporations were a major issue. The problem seems to have decreased during 2000, mainly because the authorities involved have adopted a more rational approach. Such problems can be solved more easily in the case of the Public Power Corporation (DEI) and the Athens

Public Water Supply and Sewage Company (EYDAP) because their meters are located where consumers can read them. The DEI has technical control over the supply of electricity, but has not established an independent committee to work on these issues. Consumers of the EYDAP, after the possibility of meter leakage or failure has been checked, can appeal to the Review Committee, asking for their bill to be revised even if the reasons for a high bill have not been established. Since there are fewer complaints concerned with high bills, it seems that people are increasingly satisfied with the committee's work.

When a public utility corporation supplies a particular property, it has to seek payment for any outstanding amounts from the property owner even if he clearly is not the consumer. This problem arises mainly with the EYDAP and the DEI, because the Greek Telecommunications Organization seeks payment only from people with whom it has signed a contract. The problem is particularly acute with the DEI's bills. When the consumer renting a property does not pay, the DEI will request payment from the property owner or from any third party connected to the consumer (relative or other person). As this practice, which derives entirely from the DEI's intention to obtain payment no matter what the source, is not legally sound, cases are resolved in favour of the complainant.

The problem, however, remains with the EYDAP, which concludes contracts with both property owners and tenants. Its Regulations stipulate that the water is supplied to the property. This, however, dos not justify requesting that bills be paid by someone who did not use the water. The Department of State-Citizen Relations is holding discussions with the EYDAP on this issue and is hopeful that the new Regulations being drafted will provide a solution.

3.3.1 PUBLIC POWER CORPORATION

Of all the complaints handled by the Department of State-Citizen Relations, 4.13% involve the DEI. The two most important issues regarding the DEI are how the consumption of electricity is calculated for billing and the corporation's responsibility for damage people sustain by poor network maintenance. In both kinds of cases, the citizen moves within the terms of a contract with the DEI, which, because the corporation is a monopoly, has the form of an agreement. The result is that all private-law cases are treated as though they were exactly the same, without much opportunity for opposing positions to be maintained.

3.3.1.1 ARBITRARY BILLING FOR ELECTRICITY CONSUMED

The problem of arbitrarily calculating the value of electricity consumed is associated with the DEI's decision of issuing bills every two months, while reading the meters every four months, in order to save on operating costs. In practice, this means that the first bimonthly bills are actually estimates (identified as "payment towards the amount due") while the second bimonthly bills are the result of meter readings for the total electricity consumption of the preceding four-month period. These second bills are identified as "clearing" or "settlement" bills. In calculating the "clearing" bill, the amount already paid according to the "towards" bill is subtracted.

A large number of complaints arose out of this system. As a result, the Ombudsman prepared a special report with detailed proposals for dealing with the issues more effectively (see under chapter F, Public Power Corporation).

In addition to this, a practical problem arises in a more intense form when the

scheduled four-month meter reading is not carried out. When this happens (cases 6277/2000 and 1415/2000) the consumer receives a series of "towards" bills, and, when the meter is finally read, the amount charged for the electricity consumed based on the interim bills is usually particularly high. The reasons cited by the DEI when the four-month meter readings are not carried out are insufficient personnel, bad weather, and the location of meters in places difficult to reach. In these cases the Office of the Ombudsman works together with the local DEI branch office in order to adjust bills on the basis of the charge rates and to arrange convenient payment terms when the amount remains particularly high.

3.3.1.2 PUBLIC POWER CORPORATION'S RESPONSIBILITY FOR DAMAGE TO CONSUMERS' HOME APPLIANCES CAUSED BY POOR NETWORK MAINTENANCE

There are a large number of complaints (cases 13674/2000, 16238/2000, 17046/2000) about damage caused to home appliances by surges in electrical power caused by the DEI not maintaining the electricity network properly. The Ombudsman investigated the Public Power Corporation's affirmation that such damage is always caused by chance or *force majeure* and that, therefore, in accordance with article 18, par. 2 of its Regulations, the corporation is not responsible.

The investigation carried out found that these surges in electrical power are usually caused by deterioration or a break in the neutral cable in the DEI's network, i.e. the cable used for carrying current from one phase to the other without much change in voltage. According to European standards, voltage can vary between 207 and 244 volts. If, for whatever reason, this neutral cable is damaged, surges in voltage can no longer be controlled. In such instances, the network can transmit as many as 380 volts, seriously damaging home appliances. According to research carried out by the University of Patras, damage in the underground network occurs regularly and is usually due to poor network maintenance.

The position of the Ombudsman is that the extent to which *force majeure* or chance are contributing factors must be examined for each case. This will make it possible to treat those cases in which damage is caused by poor maintenance of the network differently, for if the network has been poorly maintained, then the DEI's contractual obligations towards its customers have not been met. Public Power Corporation's Regulations strictly limit the corporation's responsibility in such cases by refusing responsibility for damages caused by interruptions in electricity supply while work, scheduled or not, is being undertaken.

The entire issue was discussed in a meeting of the Ombudsman with the chairman of the DEI. In the meantime a concluding report is being prepared that stresses, among other things, the corporation's responsibility for the inadequate information it gives its customers about what steps they can take to be protected from such damage.

3.3.2 GREEK TELECOMMUNICATIONS ORGANIZATION

Of the complaints handled by the Department of State-Citizen Relations 5.23% involve the Greek Telecommunications Organization (OTE). In addition to issues related to the primary services the organization provides, there are also problems with the secondary services, such as the listing in the telephone directory or the Yellow Pages. The OTE is paid for such services in accordance with article 21 of its Regulations: "the telecommunications bill includes the amounts owed by the customer to the Greek Telecommunications

Organization for all direct or indirect services. The OTE has the right to include, quote, or note all other charges for whatever reason owed by the customer to the organization regardless of whether or not these charges are connected to the telephone line or other telecommunication services."

Clearly, the OTE can cut off telephone service even for non-payment of charges related to secondary services, such as the listing in the Yellow Pages. This practice, however, violates the principle of proportionality (that is, the reasonable balance between offence and penalty), while drastically restricting the right to challenge the amount or the charge itself for the secondary service, because the customer is promptly confronted with the threat of having the primary service cut. Since the amounts charged for secondary services are usually low, consumers rarely question them.

3.3.2.1 CHARGE FOR UNLISTED TELEPHONE NUMBER

A citizen (case 8411/1999) encountered unjustified difficulties in stopping the charges for having his telephone number unlisted, particularly since his telephone number was not, in fact, unlisted and he had never requested that it be so. When, after intervention by the Office of the Ombudsman, the charge was finally stopped, the OTE refused to return these payments, which had been incorporated into the telephone bills, if they were more than five years old. The argument at first was that claims more than five years old were invalid. Moreover, the OTE called upon the lack of past records and requested the citizen to provide copies of previous bills to prove that he had paid charges for an unlisted telephone number. The case was solved in the complainant's favour when investigation in the central telephone directory files of the OTE confirmed what the complainant had been saying all along.

3.3.2.2 ESTABLISHING WHO IS LEGALLY RESPONSIBLE FOR PAYING CHARGES DUE

The person responsible for paying charges imposed by the OTE is the person who has undertaken the contractual agreement with the organization, that is, the person in whose name the telephone connection was made. Often, however, the person using the telephone is a third person who, because of some relationship with the person in whose name the telephone is registered (i.e. a tenant), pays the bill on the latter's behalf. Problems arise when the OTE, while dealing with the user of the telephone as though the user were the person in whose name the telephone is registered and making arrangements with him, in the end requests payment for additional charges from the person legally responsible, who has not been informed of any arrangements made.

For example, the Greek Telecommunications Organization's branch office in Lesvos (case 7366/2000) negotiated payment with the tenant/user of a telephone connection without informing the owner in whose name the telephone was registered. When the tenant did not fulfil his financial obligations, the OTE sought payment from the person who had undertaken the contractual agreement with the organization, who, understandably, protested that he was informed of the amount owed when the amount already had been increased. In a visit to the OTE office in Lesvos, the Ombudsman examined the file and suggested that after the settlement the debt should be divided between the tenant and the property owner. The case was resolved in favour of the complainant, as the OTE office in Lesvos adopted the Ombudsman's suggestion.

3.3.3 OLYMPIC AIRLINES – MACEDONIAN AIRLINES: SELECTION OF FLIGHT ENGINEERS

The issue of transparency in selecting personnel arose in connection with Olympic Airlines and, in particular, with its subsidiary company, Macedonian Airlines. In this case (3695/1999), the complainant claimed that he had participated in the competition for a position as flight engineer announced by Macedonian Airlines in February 1999. The complainant came in eighth place, although the seven applicants finishing ahead of him had not presented the required validated certificates by the time the results were made known. In addition, he claimed that the people participating in the competition had not resigned their positions with Olympic Airways, as required by the terms of competition.

Macedonian Airlines refused to cooperate with the Office of the Ombudsman or provide the information requested for the examination of the case. The Ombudsman sent his findings to the Minister of Transportation and Communications so that he could carry out the control required by law.

An inspector of the Ministry of Transportation and Communications examined the case and ascertained that there had been irregularities during the hiring procedure, and that Macedonian Airlines had obstructed communication with the Ombudsman. The Minister of Transportation and Communications requested the chairman of Macedonian Airlines in writing to impose the sanctions provided on the individuals directly involved.

3.3.4 ATHENS PUBLIC WATER SUPPLY AND SEWAGE COMPANY: RECEIPT OF CANCELLED DEBT

A small percentage (3.42%) of the complaints handled by the Department are concerned with the Athens Public Water Supply and Sewage Company (EYDAP). The difficulty arising out of the company operating as a business establishment and at the same time as a public utility corporation can be seen in the case below (13484/1999), in which, after 37 years, the EYDAP asked a customer to pay an amount due that had been written off. In good faith, not knowing that he could refuse to pay this particular debt, the customer arranged terms of payment. After paying two instalments, however, he found out that he did not have to make these payments, so he requested that they be returned. The EYDAP refused to return the payments on the basis of the legally sound argument that although the claim had, indeed, been written off after 37 years, nonetheless the person owing the money could pay it without the amount being considered as wrongly paid.

While acting as a mediator, the Ombudsman stressed that the legal argument advanced by the EYDAP may be valid as a judicial principle regarding relations between individuals, but it cannot be accepted within the operating framework of a modern public administration. Public sector services in addition to their legal and financial interests must also protect the interests of their clients-citizens as members of the public. This is never achieved when a public service (in this instance, the EYDAP) not merely accepts amounts that have been written off, but demands such payments by sending the relevant notices and hiding the fact that the person has the right to refuse to pay. The EYDAP chairman and managing director did not accept the Ombudsman's position that the disputed amount should be returned. Nonetheless, the board of directors of the Athens Public Water Supply and Sewage Company agreed (decision no. 12858/17.1.01) not to assess amounts owed by property owners for connection to the sewage system if twenty years have passed since the building was constructed and the connection made. The board refused, however, to return the money wrongly paid.

3.3.5 ATHENS URBAN TRANSPORT ORGANIZATION

Complaints made about the Athens Urban Transport Organization (OASA) and its subsidiaries, the Athens-Piraeus Electric Railways and the Company of Thermal Buses (ETHEL S.A.) refer to public transport issues. These cases, most of them concerning policy, are examples of good cooperation between these services and the Ombudsman and indicate genuine interest in serving passengers.

3.3.5.1 ADJUSTING BUS SCHEDULES TO SERVE THE PUBLIC

Students at the Nea Ionia Vocational Training School complained that the last bus on the Patisia-Halandri route 444 leaves at 19:20 and not at 22:00, as scheduled in order to be timed with the end of their classes. They had written about this to OASA but had received no reply. The Ombudsman asked for assistance from the OASA's managing director in having this issue reconsidered. The organization responded promptly and changed the bus schedule within a short period of time.

3.3.5.2 TICKET INSPECTION BY EMPLOYEES OF THE COMPANY OF THERMAL BUSES

Many complaints (7962/1999, 13937/1999, 13882/1999, and others) raise the subject of fines imposed by ticket inspectors of the ETHEL S.A. and how tickets are inspected. Investigation revealed that passengers were not properly informed about the amount of the fine and the legal rights of offenders (the fine can be paid any time within twenty days), as well as serious omissions on the part of the inspectors when filling the fine form. All these complaints stress the rude behaviour of ticket inspectors towards the passengers who did not have tickets.

After intervention by the Ombudsman, the financial services of the OASA issued instructions concerning the information to be given to passengers travelling without tickets and the correct way of completing the fine form. The Ombudsman raised the issue of rude behaviour during a telephone conversation with the head of the inspectors and obtained a promise that special steps would be taken to improve things through recommendations and clear directions. The Ombudsman is following the way in which the ETHEL S.A. is complying with these commitments.

3.4 MINISTRY FOR THE ENVIRONMENT, PHYSICAL PLANNING, AND PUBLIC WORKS

Statistics regarding complaints pertaining to the Ministry for the Environment, Physical Planning, and Public Works show that delays either in issuing administrative acts or in carrying out material action constitute the predominant form of maladministration (20.7%). Next comes the category of not taking the required steps (18.8%), followed by delays in answering or not answering questions or requests submitted by citizens (10.1%), and inadequate or total lack of information (9.1%). In addition to these categories, there are operational and organizational problems (9.1%), and the failure to apply the principles of proportionality (7.2%), fair administration (6.7%), and of the protection of legitimate expectations (4.3%). Other administrative irregularities (2.9%) and the failure to implement judicial decisions (2.4%) must be included as well, leading to the conclusion that, although not present throughout all the services, nonetheless maladministration covers a broad range of the ministry's activities.

In their contacts with some of the ministry's services, the Department's investigators encountered inexcusable unwillingness on the part of the responsible employees to

cooperate with the Ombudsman. This occurred particularly frequently with the General Division for Technical Support and Other Works. This attitude was taken both towards individual cases and towards the effort to regulate issues of general interest in accordance with legislation. For this latter category of cases in particular, the behaviour of the ministry's services revealed a widespread feeling of indifference about the real dimensions of the problems, which, in turn, led to peremptory dismissal of the issues the Ombudsman brought to their attention from time to time.

3.4.1 CHARGES FOR USING LARGE EARTH-MOVING EQUIPMENT

The issue of charges for using large earth-moving equipment already presented in the 1999 report (see *1999 Annual Report*, chapter E.4, 4.1.4) remains as a source of disagreement between the Ombudsman and the Ministry for the Environment, Physical Planning, and Public Works. There was no response by the ministry to the Ombudsman's proposals during 2000, nor did the responsible services show any willingness to work with the Ombudsman in finding a solution. Bearing in mind the new complaints submitted during 2000 concerning this matter, the Department raised the issue again and submitted his findings on the subject to the Ministry for the Environment. The findings classified the problems revealed by the complaints, summarized them, and presented an overall view of all the cases related to the imposition of a charge for the use of large earth-moving equipment, where maladministration by the services involved had been identified. The report also included well-documented proposals for dealing with the issue thoroughly and fairly, stressing that doing so would be to the advantage of both the citizens who submitted complaints and the administration itself.

3.4.1.1 ASSESSMENT OF CHARGES FOR USING LARGE EARTH-MOVING EQUIPMENT

A typical example of the Ministry for the Environment, Physical Planning, and Public Works not dealing with the issue properly is the refusal by the General Division for Technical Support and Other Works, in violation of the principle of written evidence, to accept a fact verified by a public document. The complainant (case 10337/2000) purchased a large earth-moving machine in 1984 and acquired the operating licence needed. In 1989, the machine was sold and the new owner took it out of commission and dismantled it. In 1993, the complainant, aware of the imposition of charges for using large earth-moving equipment, applied to the General Division for Technical Support and Other Works in the Prefecture of Athens to have the machine removed from the records, including with his application the sales contract, operating licence, and numberplates. At the same time, he informed the service of the machine's change in ownership and that it was later taken out of commission and dismantled. The steps he took and the content of his application were in accordance with advice given him by the employees of the above service.

In 2000, seven years later, the General Division for Technical Support and Other Works in the Prefecture of Athens called upon the relevant division of the Ministry for the Environment, Physical Planning, and Public Works to remove the machine from their records after, first, requesting the complainant to pay the charges for using the equipment for the current year. The ministry refused to remove the machine from the records before the complainant paid the charges for the years 1994 through 2000, and challenged the validity, both formally and practically, of the application to remove the machine from the records. The ministry advanced three reasons for this position:

1. The handwriting on the complainant's 1993 application requesting that the machine be removed from the records is different from the handwriting in the rest of the text dealing with the machine's change in ownership.
2. The same application cannot deal with two issues at the same time (transfer of ownership and removal from the records).
3. The application did not contain a specific note stating that the operating licence and the numberplates accompanied the petition.

After studying the case, the Ombudsman suggested that this particular case should be re-examined, and the machine in question be removed from the records as of the date the application was submitted (22.12.1993). The Ombudsman stressed that the complainant wrote the application requesting that the machine be removed from the records according to the advice given him by employees of the relevant service, i.e. the General Division for Technical Support and Other Works. If the application had not been presented in the proper form and if the text was inaccurate, the fault lies not with the applicant but with the responsible service, which did not check it.

It should also be noted that at that time the responsible technical services did not provide any printed form for requesting earth-moving equipment to be removed from the records. In addition, the Ombudsman stressed that the service's judgment about different handwriting was completely arbitrary, based on the personal opinions of employees. The Ombudsman also suggested, if the services wished and thought it would be useful, that the case be referred to the courts for interpretation by a handwriting expert or that other means be found to establish whether or not the application was genuine. In the meantime, however, the application should be accepted since, according to the principle of written evidence, as laid down in article 438 of the Code of Civil Procedure, the contents of public documents are presumed accurate unless they are challenged as false and, therefore, any statements they contain must be considered to be true.

The Ministry for the Environment, Physical Planning, and Public Works accepted the Ombudsman's position and removed the machine from the records as of the date the application was submitted, in 1993.

3.5 MINISTRY OF EDUCATION AND RELIGIOUS AFFAIRS

Of all the complaints handled by the Department of State-Citizen Relations 8% involved maladministration by the Ministry of Education and Religious Affairs. Many of the differences between citizens and the Ministry of Education and Religious Affairs concerned the right of access to administrative documents.

Many of these complaints involved the Inter-University Centre for the Recognition of Foreign Academic Titles (DIKATSA), which, because of a whole series of operational and organizational weaknesses, presents serious malfunctions. The first attempt to organize the problems into groups began in 2000 and will be completed in 2001. This will lead to a report that will include proposals concerning the organization and operation of the DIKATSA so it may function properly.

3.5.1 DENYING ACCESS TO DOCUMENTS

The complainant, president of an association of computer-science graduates from a regional university, requested intervention by the Ombudsman (case 9807/2000) in order to acquire

copies of the certificates submitted by teacher applicants, so that they could be listed in the assignment list for section PE 19 of Information Systems of Higher Education Institutes. The complainant stressed that the Personnel Division of secondary education at the Ministry of Education and Religious Affairs had refused to provide the requested copies.

The Ombudsman asked that the request be reconsidered. Denying access to documents violates article 5, par. 2 of the Code of Administrative Procedure, which provides that anyone with particular legitimate interest is permitted access to the personal documents kept by public services, unless these documents refer to the personal or family life of a third party or if such access infringes upon the confidentiality provided for in special provisions. In order for any restriction upon the right of access to documents kept by the public administration to be legal, it must be accompanied by a specific reasoned decision of the administration.

Following intervention by the Office of the Ombudsman, the Personnel Division of secondary education at the Ministry of Education and Religious Affairs provided the documents the complainant requested.

3.5.2 INTER-UNIVERSITY CENTRE FOR THE RECOGNITION OF FOREIGN ACADEMIC TITLES

The complaints involving the Inter-University Centre for the Recognition of Foreign Academic Titles (DIKATSA) clearly revealed the centre's most important operational and organizational problems.

3.5.2.1 REDUCTION IN AN INDIVIDUAL'S GRADES BECAUSE OF A LEGISLATIVE AMENDMENT SUBSEQUENT TO HIS APPLICATION

On May 17, 1999, an individual requested the DIKATSA to certify the corresponding classification of the grades he had earned towards his academic degree from a foreign recognized accredited university (case 8882/2000).

According to the respective notice, the centre had to respond within 20 days from submitting such a request. Yet, the DIKATSA let this deadline pass and replied in March 2000 (ten months later).

In the meantime, in November 1999, a new law (2738/1999) regulating the grade-scale equivalence was put into effect. This development resulted in reclassifying the individual's grades as "very good" rather than "excellent", as would have been the case under the previous legal status. The individual submitted a complaint to the Office of the Ombudsman asking it to intervene with the centre so his original application could be reconsidered on the basis of the law in force at the time it was submitted.

Based on the principle of non-retroactive effect of laws, the Ombudsman supported the complainant's request. He reminded the DIKATSA that in cases of unfavourable legislative amendments, applications submitted by citizens are judged on the basis of the most favourable regulation in force during the period within which the administration was obliged to respond to the request. In addition, the Ombudsman stressed that citizen's position cannot be damaged because of a change in the legal framework, when the reason for such damage is the unjustifiable failure of the administration in replying to the citizen's request within the specified deadline.

The board of directors of the DIKATSA accepted the views of the Ombudsman and recognized the complainant's grades according to the law in force before its amendment.

3.6 MINISTRY OF LABOUR AND SOCIAL AFFAIRS

Complaints involving the Ministry of Labour and Social Affairs were concerned less with the central services of the ministry than with two of the public institutions it oversees, the Manpower Employment Organization and the Workers' Housing Organization.

3.6.1 MANPOWER EMPLOYMENT ORGANIZATION

Most of the problems associated with the Manpower Employment Organization (OAED) involve people not being informed about their rights and the steps they need to take to exercise these rights. The organization's services do not pay proper attention to the information they should provide people so that they know precisely what they should do to exercise their rights and what steps they should take.

3.6.1.1 REFUSAL TO PROVIDE A GRANT TO A SELF-EMPLOYED PROFESSIONAL BECAUSE THE NEW COMMERCIAL ACTIVITY CLOSELY RESEMBLES THE FATHER'S BUSINESS

A businesswoman, who wanted to open a store for automobile lubricants and tires, applied to the OAED in Grevena requesting to be included in the "Grants to Young Self-Employed Professionals" Programmes (case 8909/2000). Her application was turned down on the grounds that the business could not be considered as a new one because the applicant's father was already selling fuel. The citizen appealed this decision to the OAED's central services, which, a year later, turned down her appeal on the same grounds.

The citizen then asked the Ombudsman to intervene so she could get the grant. The Ombudsman's intervention encouraged the OAED to re-appreciate two facts that had been ignored during the previous examinations of the application. These were the formal starting of a new business, and the different line of products the two businesses would be selling (as specified in the fuel station's operating licence).

The Manpower Employment Organization finally agreed to accept the grant application.

3.6.2 WORKERS' HOUSING ORGANIZATION

The complaints involving the Workers' Housing Organization (OEK) handled by the Department of State-Citizen Relations show that the major problem is the organization's tendency to restrict the right to housing aid. The Ombudsman considers that the OEK must respect the purpose for which it was established fully as it carries out its responsibilities, finding solutions consistent with this purpose as closely as possible.

3.6.2.1 REFUSAL TO GRANT A SUPPLEMENTARY HOUSING LOAN TO AN EARTHQUAKE VICTIM BECAUSE HE HAD OBTAINED AN EARLIER LOAN

The complainant (case 3115/2000) had received a loan from the OEK to buy a house in Kozani, which he bought in 1993. This house was completely destroyed by the May 3, 1995 earthquake. After the three-year suspension of payments allowed to loanees from the OEK, the complainant should have started making payments on the house. His house, however, had been destroyed and no longer served the purpose for which it had been bought. The supplementary loan he requested from the organization would enable him to repair the house. His request was denied because, according to article 29 of the organization's Regulations, people who have already been granted a housing loan cannot receive another.

The Ombudsman considered the request reasonable and asked the Minister of Labour to make use of the possibility provided by article 12, par. 2 of Law 1641/1986 of granting a supplementary loan. The Ombudsman further suggested that the current legislation should be amended to make it possible for new loans to be granted to people who already had obtained such a loan, but were victims of a natural disaster that cancelled what the earlier loan had accomplished.

The result of the Ombudsman's intervention was the establishment of a legal provision (article 14, Law 2819/2000) that makes it possible for people whose homes have been damaged by earthquake to receive a new loan from the OEK to meet their housing needs. Nonetheless, the complainant's case has not yet been satisfactorily settled because the relevant provision does not apply retroactively. However, a reply to his application is expected from the Minister of Labour.

3.7 MINISTRY OF TRANSPORTATION AND COMMUNICATIONS

The small number of complaints handled by the Department of State-Citizen Relations involving the Ministry of Transportation and Communications (1.22% of complaints within the mandate) do not make it possible to reach general conclusions. There has been very good cooperation on these cases between this ministry and the Department and a willingness on the ministry's part to solve the problems that arise.

3.7.1 TAXIS WITHOUT VALID PERMITS

A complaint from the Attica Union of Taxi Owners (case 6213/2000) raised the issue of checking the validity of taxi permits. The documents submitted showed that, in fact, because of inadequate controls, there are a good number of taxicabs with false permits. This is done in two ways:

1. When a taxicab is removed from circulation following a serious accident or due to old age, a false statement is submitted by its owner, claiming that the permit and numberplates have been destroyed. These are then illegally used for operating another car appearing as a taxi.
2. Taxis operate with forged permits and numberplates.

The Ombudsman pointed out the seriousness of this issue to the Minister of Transportation and Communications, stressing that the documents in his possession show that the number of taxis operating in Attica illegally is particularly high. A recent decision by the Minister of Transportation and Communications (A-44342/2942/28.7.00) established joint committees, on which a representative of the Attica Union of Taxi Owners also sits, to catalogue and verify the legality of the taxis operating in the prefectural division of Athens. The task of these committees is to catalogue the taxis and verify the validity of their permits to operate for public hire, as reflected in the information contained in their files. According to the above ministerial decision, after the documentation is verified, the automobile itself will be checked and a report, signed by the three committee members, will be included in the automobile's file. The completion of this work, which is scheduled to take six months, will be certified in writing to the Division of Public Transport of the Ministry of Transportation and Communications.

The Ombudsman believes that this will deal with the issue of taxis operating without valid permits.

3.8 MINISTRY OF CULTURE

The complaints submitted to the Ombudsman involving the Ministry of Culture constitute 2% of the complaints within the mandate submitted during 2000. In spite of their small number, these complaints reveal serious forms of maladministration.

3.8.1 DELAY IN PAYING OUTSTANDING FEES TO A TEAM OF CONSULTANTS BY THE ARCHAEOLOGICAL RECEIPTS FUND

The complainants appealed to the Ombudsman (case 3192/1999) protesting against the inexcusable delay in approving final payment for the study on the overall development of the Parga castle, when the Archaeological Receipts Fund unilaterally denounced the contract for the study. The delay was due to the study not having been evaluated by the Division of Building Registration and Maintenance of the Ministry of Culture.

After verifying the extended delay, the Office of the Ombudsman communicated with the Division of Building Registration and Maintenance repeatedly between May and September of 1999, in order for the division to evaluate the work and make the final payment to those who had carried it out. Since the division failed to respond, the Ombudsman was obliged to write two letters, in January and May 2000, requesting the Minister of Culture for his personal assistance. The issue was even brought to the attention of the Prime Minister.

In July 2000, after continuous interventions by the Ombudsman, the board of directors of the Archaeological Receipts Fund finally gave approval for the remainder of the fee to be paid to the interested parties.

3.9 MINISTRY OF MERCANTILE MARINE

The small number of complaints involving the Ministry of Mercantile Marine (1.26% of the total) does not make it possible to draw any overall conclusions. It does, however, make clear that implementing provisions on issues falling within the ministry's competence is a source of friction in its relations with the public. The case described below, which shows problems of coordination among the services of the Ministry of Mercantile Marine, was chosen because it concerns a large number of citizens.

3.9.1 COAST GUARD APPLICATION BARRED

The complainant protested to the Office of the Ombudsman (case 14886/2000) because the Central Port Authority of Patras had refused to accept the documentation she provided within the specified deadline, in order to compete for enrolment as a cadet in the Hellenic Coast Guard. The employee who received her documents considered her certificate of graduation as a certificate from a comprehensive secondary school with a specialization, whereas applicants were requested to present graduation certificates without specialization. In investigating the case, it was found that other port authorities had accepted candidates with similar certificates and that the failure of the Ministry of Mercantile Marine to provide clear instructions had resulted in the citizen not being treated equally.

The Division of Programming, Organization and Education of the Ministry of Mercantile Marine recognized the problems that arose during the submission of applications, and informed the Ombudsman of its intention, together with the Ministry of Education and Religious Affairs, to issue a ministerial decision incorporating the suggestions from the Ombudsman.

3.10 MINISTRY OF THE INTERIOR, PUBLIC ADMINISTRATION, AND DECENTRALIZATION

Most of the issues on which the Ombudsman worked together with the Ministry of the Interior, Public Administration, and Decentralization involved Local Authorities.
In addition, the Department of State-Citizen Relations was particularly concerned with cases involving the committee established by article 2, par. 2 of Law 2690/1999, which is responsible for imposing fines when public services delay in handling citizens' issues within the legal time limits. The effectiveness of such committees remains in doubt, mainly as regards the time period within which applications are examined, and the rationale behind decisions.

The Ombudsman's mediation is limited to seeing that proper procedures are followed and checking on any clearly illegal decisions made by the above committee. In practice, what is checked in each case is whether or not the sixty-day deadline set by law has been observed and whether or not the reasons set forth for the committee's decision are sufficient. The case described below is an example of insufficient justification.

3.10.1 JUSTIFICATION OF THE DECISION OF THE COMMITTEE OF ARTICLE 2, PAR. 2 OF LAW 2690/1999

A citizen complained to the Ombudsman (case 6740/2000) that, among other things, the committee established by article 2, par. 2 of Law 2690/1999 had turned down his application. The committee turned down his application on the grounds that his status of civil servant meant that the time limit set by the Code of Administrative Procedure and Practice for a reply from public services on issues related to his status as a public official could not be observed. The Ombudsman advised the committee of the weaknesses identified in its reasoning, in particular where it distinguished public officials from other citizens and referred to the Ministry of the Interior, Public Administration, and Decentralization's circular no. ΔΙΔΑΔ/Φ.18/784/28/7.1.97. This circular refers to the time periods within which the service is obliged to respond to civil servants. As of December 31, 2000, the committee had not replied to the Ombudsman.

3.11 MINISTRY OF DEFENCE

The Department of State-Citizen Relations handled a small number of complaints involving the Ministry of Defence. The case described below is an example of violation of the principle of transparency.

3.11.1 OBTAINING DOCUMENTS FROM THE HELLENIC NAVY GENERAL STAFF

A citizen (case 12874/1999) wrote to the Hellenic Navy General Staff in 1998 and 1999 for documents mainly concerning his discharge from the navy. Up to December 1999, when the individual appealed to the Office of the Ombudsman, the documents he requested had not been provided.

The Ombudsman found that the Hellenic Navy General Staff refused to provide the documents because they were "classified" and, therefore, confidential. During communication with the responsible service, the Ombudsman pointed out that, without additional justification, being designated as "classified" does not automatically mean that a document is also confidential. After repeated interventions by the Ombudsman, the Hellenic Navy General Staff provided the individual with the documents requested.

F.

PROPOSALS FOR LEGISLATIVE AMENDMENTS AND ADMINISTRATIVE REFORMS

The Ombudsman has presented several proposals for legislative amendments and administrative reforms he considers necessary for the improvement of specific aspects of public administration. In some instances, the current legal framework should be modified and supplemented by new provisions. In other instances, administrative practice needs to be modernized.

PROPOSALS FOR LEGISLATIVE AMENDMENTS AND ADMINISTRATIVE REFORMS

This chapter contains a number of proposals for legislative amendments and administrative reforms on several issues examined by the Ombudsman. Investigation of issues revealed that, in some instances, the current legal framework should be modified and supplemented by new provisions. In other instances, administrative practice needs to be modernized.

In addition to the new provisions suggested, this chapter includes in further detail and analysis some proposals that were included in the Ombudsman's annual report for 1999 but to which the administration has not responded. These proposals are still of high importance, in light of both the gravity of the problems already identified and the Ombudsman's increasing experience in dealing with similar cases.

Ministry of the Interior, Public Administration, and Decentralization

SUBJECT: *Protecting aliens waiting for the renewal of their entry or residence permits (competence being transferred from the Ministry of Public Order to the Ministry of the Interior)*

The general rule (Law 1975/1991, article 31, par. 2), barring public services from dealing with aliens not holding a valid entry or residence permit for Greece, makes no exceptions for those foreigners whose applications for renewal of the entry or residence permits they already hold are pending with the administration. The principle of fair administration and the uniform application of the Code of Administrative Procedure (article 10, par. 4) stipulate that the aliens in question should not bear the consequences of any delays by the administration in issuing documents that they have requested on time.

PROPOSAL:

According to the principle of fair administration and in order to apply to aliens article 10, par. 4 of the Code of Administrative Procedure, a specific provision should be included in Law 1975/1991, enabling aliens to deal with the public services when their applications for renewal of their entry or residence permits are pending with the administration.

SUBJECT: *Residence permits for adult aliens who are children of Greek citizens (competence being transferred from the Ministry of Public Order to the Ministry of the Interior)*

Children born of one Greek and one foreign parent, who are not considered Greek because of the previous law about citizenship, as well as children of naturalized Greek citizens, when they come of age, are provided with short-term residence permits similar to the permits given to aliens who have no connection with Greece. This harsh treatment compromises the constitutional right Greeks have to live in family union together with their children.

PROPOSAL:

A special legislative amendment concerning residence permits should be drawn up that will favourably consider those adults who have lived in the country for years as underaged children of naturalized citizens. This will ensure their rights to a normal family life with their parents even after they have come of age.

SUBJECT: *Option to cremate the dead*

The possibility of cremation, enabling interested persons to order the disposal of their body after death following their own fundamental ideological principles, is consistent with article 5, par. 1 of the Constitution recognizing the free development of personality, as well as with article 4, par. 1 of the Constitution providing for equality before the law.

PROPOSAL:

A legislative provision should be drawn up providing the option for cremating the dead, regardless of religious beliefs. However, the legislator should cover all conditions possible to ensure that the wish to have one's body cremated will be expressed clearly in each case, that is, leaving no room for doubts to the family of the deceased.

SUBJECT: *Confirming certificates of naturalization*

Applicants for naturalization are obliged to submit the same certificates repeatedly because the procedure involved takes so much time that the validity of the certificates expires before their applications are answered. The principle of fair administration requires that the people whose applications are being considered should not bear the burden of the administration's delay in completing the task.

PROPOSAL:

Certificates with a limited period of validity should be submitted together with the application for naturalization. When they expire, the responsible authority and not the applicant should have the certificates revalidated or reissued by using modern technology, such as a fax confirmation. This official revalidation should not take place at every stage of the procedure, but only at the final phase, that is, when all other conditions have been examined.

Ministry of Foreign Affairs

SUBJECT: *Reasons for denying aliens' entry visas*

The obligation to provide reasons in writing for denying aliens' entry visas derives from the constitutional right to address public authorities and constitutes a fundamental guarantee of transparency and fair administration.

PROPOSAL:

The provision on the obligation to give reasons for denying entry visas should remain in force and be fully applied by Greek consulates.

Ministry of Finance

SUBJECT: *Exempting pensions for mothers with many children from the allowances blocking state pensions*

The State General Accounting Office considers the lifelong pension for mothers with many children, which is a family allowance, as a pension paid by the state. Therefore, a mother entitled to such a lifelong pension is denied any other retirement allowance from public administration, under article 5, par. 1γ of the Civil and Military Pension Code (Presidential Decree 1041/1979 as amended by Presidential Decree 166/2000). The Railway Personnel Pension Code (article 2, par. 1γ of Presidential Decree 850/1980) contains a similar provision. This interpretation of the above provisions nullifies the state's constitutional obligation (article 2) to protect families with many children.

PROPOSAL:

A provision should be added to the Civil and Military Pension Code and the Railway Personnel Pension Code exempting the lifelong pension for mothers with many children from the category of pension allowances disqualifying the beneficiary from any other retirement allowance paid by the state.

SUBJECT: *The right to have a third review of cases involving serious deterioration in health by the Army Supreme Health Committee*

Wounded war veterans receiving pensions have the right only to two reviews of their state of health by the Army Supreme Health Committee for considering an increase in their benefit payments. This prevents benefit allowances being increased when the applicant's health condition seriously deteriorates after the second examination, leading to amputation or permanent disability. This inflexible regulation contravenes the principle of equity, which requires a new review in cases of severe health deterioration. In order, however, to avoid exceptions being made arbitrarily, specific criteria should be set for the third review.

PROPOSAL:

A final passage should be added to Presidential Decree 1285/1981, article 123, par. 1, providing that: "In exceptional cases a third review may be held, if the individual has subsequently become maimed or permanently disabled and this is certified by a public hospital document submitted together with the application for review."

Ministry of Finance – Ministry of Agriculture

SUBJECT: *Clarifying procedures for paying the "early pension" to farmers*

Farmers who have stopped working the land and have transferred the land to young farmers are provided with an allowance supplementing their income. This allowance, however, is not paid regularly. In addition, the term "early pension for farmers" gives rise to doubts as to the nature of the payment in respect of the public administration's obligation to pay Christmas and Easter extra payments and vacation allowances. The delays experienced in paying the above allowance show the need for adjusting the procedures involved.

PROPOSAL:

The Ministry of Finance and the Ministry of Agriculture should issue a joint ministerial decision setting a fixed date per month by which the services involved would be bound to pay this "pension" to the farmers entitled to it. Alternatively, this allowance could be paid every two months or every three months, which would significantly reduce administrative costs.

The term "early pension for farmers" should be replaced by the term "farmers' allowance" in all official documents and leaflets concerning this particular payment.

Ministry of Development

SUBJECT: *Possibility of not joining the Union of Greek Chemists*

The statutory provisions of the Union of Greek Chemists (Law 1804/1988) impose compulsory membership on all holders of a degree in chemistry and do not provide the possibility for any member to leave the association voluntarily. As such, these provisions are not consistent with the constitutionally guaranteed freedom of association that includes the right not to associate.

PROPOSAL:

Law 1804/1988 requiring compulsory membership for all holders of a degree in chemistry in the Union of Greek Chemists should be amended to provide for voluntary discontinuation of membership.

Ministry for the Environment, Physical Planning, and Public Works

SUBJECT: *Demolishing illegally constructed buildings*

Legislation currently in force regarding the demolition of illegally constructed buildings within the town plan is adequate. The competent authorities, however, systematically refrain from carrying out demolitions, even though they are thus ignoring the law, the relevant administrative acts and court decisions, even those taken by the Council of State. This attitude, as has been pointed out in previous Ombudsman reports, finds its questionable legal base on a vague document (no. 8578/26.6.95) issued by the Ministry for the Environment, Physical Planning, and Public Works, and other relevant documents. A typical example of these documents of questionable legality is the decision no. 2/1996 taken by the Prefectural Council of Athens "re: illegally constructed buildings", which, by introducing priorities, in practice leads to suspending the demolition of illegally constructed buildings. Furthermore, the elected local government officials often invoke social reasons or the lack of means and funds for not enforcing demolitions, arguments that usually are not supported by sufficient evidence or real facts.

The aim of the proposals that follow is to highlight the particular problems, which, in the Ombudsman's opinion, can be solved only if relevant political decisions are made. The proposals below are submitted in order to ensure that legality is respected and that decisions taken by the Council of State are implemented.

PROPOSAL:

• Legislation containing exceptional provisions that encourage or legitimize illegal constructions should be reviewed.

• Procedures (such as connecting to the electricity, water, telephone, and sewage networks) that, directly or indirectly, legitimize illegally constructed buildings should be suspended.

• The avoidance of lengthy procedures for judging whether or not a building is illegally constructed should be ensured and prompt examination of objections should be provided for, to prevent the illegal status from being perpetuated and false expectations from being encouraged. The speed of these procedures is directly associated with preventing the construction from being completed, thereby creating irreversible situations and high subsequent costs to be covered by the state, possibly even under exceptional circumstances (i.e. collapse of incomplete illegal constructions after an earthquake).

• Credits should be approved for establishing demolition crews for illegal constructions at the local government level so that the lack of funds cannot be used as an argument which, in reality, covers the absence of political will to implement judicial decisions or existing provisions.

• Local government officials (e.g. region general secretaries) with disciplinary powers should supervise the completion of the demolition works.

• The provisions of Presidential Decree 16/1989 concerning criminal and other charges should be applied in full to individuals who do not carry out decisions taken by the Council of State and appropriate sanctions should be imposed in cases of breach of legal obligations.

• The cost of demolishing an illegally constructed building and the associated fines should be born by the person who built it and payment should be secured by applying the procedures of the Code for the Collection of Public Revenues.
• Regulations should be established forbidding favourable terms on loans for illegally constructed buildings that have been damaged or are collapsing because of natural disasters (such as earthquakes, floods, landslides).

SUBJECT: *Workshops operating in exclusively residential areas*

Workshops operating illegally in areas designated exclusively for residence damage the environment with dangerous pollution particles and high levels of noise. Current legislation enables the classification of businesses per economic activity on the basis of the applications submitted by the interested parties, without any investigation being made to establish that the information submitted is true or accurate. Since there is no specific administrative body for verification, the protective provisions of the law are systematically violated. The usual method is for a given business to be broken into smaller segments in order to circumvent the provisions in force. How inadequate the controls are is shown by the frequency with which such workshops operate without permits. In any case, the result can be seen in the high concentration of businesses of high nuisance level operating in residential areas, dramatically degrading the quality of life for inhabitants.

PROPOSAL:

The concentration of a high number of workshops and small manufactories in zones specified as exclusively residential areas should be forbidden. A precise definition of the number and density per square meter of these establishments should be undertaken, particularly when the activities carried out are dangerous or damage the health of the area's residents.

The legal framework governing this kind of activities should be clarified so that control can be exercised and workshops eventually closed down by a specific administrative body if the law is violated.

Urban planning offices should be provided with the means (such as vehicles, measuring instruments, etc.) and appropriate funds to facilitate their work for the conduct of speedy and efficient controls.

SUBJECT: *Livestock farms*

Joint Ministerial Decision 69269/1990 was issued to adjust domestic legislation to EU Directive 85/337. The absence of specific reference to livestock farms in Appendix II of this directive was covered by the more recent EU Directive 97/11, in force since March 1997 (Appendix II explicitly refers to poultry and cattle breeding farms).

Moreover, the relevant legal provisions (Law 1650/1986 and Joint Ministerial Decision 69269/1990) must be interpreted in each case in view of the state's constitutional obligation to protect the environment (article 24 of the Constitution) and ensure equal treatment for similar livestock breeding activities.

Ignoring the above, permits for establishing livestock farms were given without following the procedures prescribed by law of preliminary site approval or carrying out an environmental impact assessment study. It has to be noted that there is no mechanism whatsoever for following environmenal developments, for surveying the existing conditions

and taking preventive measures to protect the environment. The result is that the domestic legal framework differs from the relevant EU framework.

PROPOSAL:

EU Directive 97/11 should be incorporated into Greek law so that the activities described in Joint Ministerial Decision 69269/1990, requiring preliminary site approval and an environmental impact assessment study, will apply to all poultry and cattle farms (including cow sheds) due to equal standards.

The whole impact on the environment should be evaluated on the basis of reliable studies, ensuring that the environmental conditions will be fully investigated by an in-depth exploration of the area affected (by means of sampling, chemical analyses, examining existing conditions) so that the best area for such activities can be selected on the one hand, whilst avoiding, on the other, degradation of a particular area by establishing many livestock farms that would harm the ecosystem.

Establishing systematic controls and monitoring environmental conditions (air, soil, and ground water quality) would enable the development of a system of dynamic survey of environmental impacts, to replace the current system, which has proved to be rather insufficient and unreliable for evaluating existing conditions and taking the necessary measures to protect the environment.

The existing legal framework should be more systematic and complete in order to regulate in a uniform and coordinated way the actions of all authorities involved (stages of investigation, admissible pollution levels, remedial measures, competent public services) should pollution be identified in a certain area. It is particularly important to specify which is the competent authority for monitoring law enforcement and imposing appropriate sanctions.

The Environment Protection Inspectors' Special Unit, established by Law 2242/1994 but which has not yet been fully staffed, should become fully operational.

SUBJECT: *Restrictions and obligatory expropriations of property*

Many complaints deal either with restrictions placed upon property without procedures for obligatory expropriation having been followed or compensations awarded by the court paid. This has led the Ombudsman to establish that the country's urban planning is not in step with the allocation of the funds needed for expropriations and public works.

In many cases, urban-plan studies do not include all the sub-studies required (such as environmental impact assessment studies, all infrastructure studies, etc.) to ensure that an area's inclusion in the town plan is followed by thorough consideration of relevant requirements. Regardless of the excuses usually advanced by local government authorities, the deadlines by which compensation payments should be made are systematically ignored and extreme delays are the rule, with private properties remaining restricted, in some cases for more than forty years. Revoking or abrogating an incomplete expropriation procedure by the administrative authority that initiated it is now regulated in detail by the new code on obligatory expropriation of property (article 11). Strict implementation of this code will solve many long-standing problems. It should be added that the standard position of the Council of State for such cases is that expropriation of restricted property must be completed within seven years at the most, otherwise it is no longer valid. This situation has led to a huge number of restrictions no longer legally valid (as the seven-year limit has run

out), yet local government authorities do not relinquish their claims. The proposals below take into consideration the valid reasons imposing these restrictions (primarily to create the necessary urban infrastructure) without negating the protection of property rights according to article 17 of the Constitution.

PROPOSAL:

The central administration should explore the possibilities to extend low-interest loans to Local Authorities in addition to the sums they are already being refunded. Such loans would make it possible for local governments to deal with the large number of land restrictions or expropriations by fulfilling their respective obligations to pay the compensations owed to landowners. The role of the Special Fund for Urban Planning Implementation and its Regulations should be reconsidered, and regular distribution and flow of the relevant funds to Local Authorities assured.

SUBJECT: *Violations of building permits*

Many complaints refer to the frequent illegal conversion of the open ground-llevel space of appartment buildings into built apartment space. It should be explained here that the "open" (i.e. not built) ground-level space is left available for common use (such as green space, children's playgrounds and parking of vehicles belonging to inhabitants of the building only). By building this open ground-level space a series of problems are generated.

More specifically, the approved legal building rate is superseded, increasing the number of residents living within the particular area. This results in violating the property rights of the owners of other apartments of the building. It further increases the number of car-parking requirements per building while eliminating a number of existing car-parking spaces within the plot. The displaced cars have no place to park other than the street or sidewalks, thus clogging the street network (double parking, etc.) and significantly lowering traffic speed.

Since policing these violations by the local urban planning and police authorities has proven ineffective – potentially leaving room for illegal financial transactions – financial deterrents countering profits gained from these violations must be established, thereby also dealing with the vital issue of creating more parking places.

The set of measures proposed below are intended to help reduce the growing number of cars in public spaces (roads, sidewalks, parks, even the National Garden in Athens) and to reduce their negative impact to the environment.

PROPOSAL:

The law foresees fines and penalties for these violations. These should be imposed by the local urban planning authorities or the technical services of local governments (that will monitor the entire area under their jurisdiction on an annual basis and record all violations) and collected by the local tax authorities (i.e. both the fine for erecting illegal constructions, as well as the annual fine as long as the constructions stand). These fines will act as a financial deterrent on potential violators (building contractors and buyers). The payments will be deposited in a special account earmarked for financing municipal or public garage buildings. The parking fees will cover the operating costs of the garages and create new jobs, while also protecting parked cars from vandalism and theft.

In addition to this measure, owners of private cars should include in their annual income tax statement a proof of a legal parking-space ownership (a copy of the relevant

notarized document), or proof of having paid the annual rent for a parking space in a nearby public or privately owned garage.

If either of the two above described documents is not provided, the responsible tax authority will impose a parking fee equivalent to the annual rent for parking space, which fee will be deposited in the special account mentioned above. This will increase public funding for municipal or public car parks and will also encourage private initiatives for building garages.

As a result:

1. A new obligation, which lies with the private-car owners to solve the parking problem, would be established (in accordance with "the polluter pays" principle) instead of the problem being passed on to the state.

2. The existing road network would be freed of parked cars and able to handle better the flow of traffic.

3. Automobile pollution would be reduced.

4. The time involved for trips by car in the urban road network would be reduced.

Establishing the obligatory submission to the notary public of accurate copies of architectural plans for a building approved by the local urban planning office and reference to these plans in each future notarized purchase or sale act as a condition for the validity of the contract. This will make it impossible for titles of ownership to be illegally created *a posteriori* on property constructed in excess of the relevant building rules and regulations.

Ministry for the Environment, Physical Planning, and Public Works – Technical Chamber of Greece

SUBJECT: *Possibility of terminating membership in the Technical Chamber of Greece*

The statutes of the Technical Chamber of Greece (Presidential Decree 27/1996 and Law 1486/1984) do not provide the possibility for any member to terminate his membership. Nevertheless, the possibility of voluntarily leaving the association must be provided if an individual does not wish to practice the profession of engineer, architect, etc., so that provisions in the Technical Chamber of Greece's statutes comply with the constitutionally guaranteed freedom to associate or to not associate.

PROPOSAL:

Existing legal provisions on the Technical Chamber of Greece (Presidential Decree 27/1996 and Law 1486/1984) should be amended by the addition of a provision, which expressly recognizes a member's right to voluntarily terminate membership.

Ministry of Education and Religious Affairs

SUBJECT: *Non-registration of religion on high school diplomas*

The registration of religion on high school diplomas or other public documents of compulsory character raises the threat of discrimination based on religious convictions because individuals are obliged either to declare their religion or to declare that they do not want to have their religion registered. The provision requiring such registration contravenes the fundamental right not to reveal one's religious beliefs (article 13 of the Constitution).

PROPOSAL:

There should be no registering of religion on high school diplomas in order to protect religious freedom for graduates and prevent unlawful discrimination against religious minorities.

Ministry of Agriculture

SUBJECT: *Excessive delays in classifying land as forest area*

The formal designation of land as forest area requires excessively long procedures that are further delayed by the subsequent associated court appeals by affected private owners. This actually results in either insufficient protection of the public interest (i.e. trespassing of public land) or infringements of private ownership rights. The long delays are due, among other reasons, to the insufficient staffing in the local forestry offices and the absence of time restrictions for completing the administrative procedures.

PROPOSAL:

1. Legislation shuld be established as to set firm time limits within which objections are to be resolved.

2. A sufficient number of committees should be set up to deal with the large number of cases.

3. Additional staffing of the responsible forestry offices with competent and specialized personnel.

4. Mapping forest areas in accordance with Law 2664/1998 "re: National Land Registry" must be expedited.

5. Heavy fines should be imposed and collected by the responsible tax authorities from people who have trespassed forestlands (in accordance with the obligatory EU principle that "the polluter pays"), and serve as financial deterrents in the fight against illegality. It is further proposed that the fines so collected be deposited in a special account used only for setting up crews for demolishing illegal buildings and return the forest area to its natural state.

Ministry of Labour and Social Affairs

SUBJECT: *Non-provision of insurance coverage to aliens requesting renewal of their residence permits*

The Social Security Organization (IKA) has been following discriminatory practices against legally employed aliens (green card holders) whose residence permits have expired and renewal applications are pending with the administration. Though it continues to collect their insurance contributions, the IKA refrains from providing insurance coverage while case procedures are still in progress. This illegal and harsh practice contradicts the principle of fair administration, which requires public services to treat all people equally.

PROPOSAL:

A supplement should be added to the IKA circular no. 58/04.5.99 specifying that all applications be examined and appropriate insurance be granted to aliens who have submitted all legally required supporting documents together with their application for obtaining or renewing a residence permit.

SUBJECT: *Familiarization of insured Greek nationals with the requirements for hospital care abroad*

Greek citizens are not sufficiently informed about the procedures they must follow in order to obtain hospital care when travelling within other EU member states. In many cases, insured people are hospitalized for emergency reasons and, since they do not have the necessary E-111 form, encounter problems in having these expenses covered by their social

insurance institution. The administration is under the obligation to provide complete and accurate information to pensioners and insured people about their rights associated with hospitalization abroad and modern communication procedures providing this information must be established.

PROPOSAL:

Insurance authorities should inform on a regular basis their beneficiaries through leaflets about the conditions covering hospital care abroad. In particular, the information should include the conditions and criteria for obtaining the European Union forms required to cover the relevant expenses, i.e. form E-111 for emergency situations and form E-112 for scheduled hospitalization abroad.

SUBJECT: *Workers' Housing Organization's refusal to grant supplementary housing loans*

Article 29 of the Workers' Housing Organization Regulations does not grant loans to individuals who have already taken out a housing loan. A case brought before the Office of the Ombudsman dealt with the following situation: the house that the complainant had built by means of his previous loan was destroyed by the May 1995 earthquake; the Workers' Housing Organization denied approving the loan to repair damages because of the aforementioned article.

On the basis of this case, the Ombudsman proposed that the current legal provisions be amended so as to allow the organization to grant a new loan to individuals who have already been granted a housing loan but have suffered such loss from natural disasters as to make the first loan worthless. Article 14 of Law 2819/2000 embodied this suggestion of the Ombudsman. Because this new provision, however, does not cover instances of damage suffered before 2000, the following proposal is submitted.

PROPOSAL:

Law 2819/2000 should be amended to apply retroactively to people requesting a loan for houses destroyed by earthquake before 2000.

Ministry of Health and Welfare

SUBJECT: *Hospitalized patients' rights*

Hospitalized patients are often unaware of their rights as regards health services, whilst health-care professionals tend not to respect these rights. Obviously, this directly affects in a negative way the quality of health services provided.

PROPOSAL:

The rights of hospitalized patients, as these are defined in article 47 of Law 2071/1992, should be displayed prominently in public hospitals.

SUBJECT: *Payment of birth benefits also in cases of Caesarean section*

It is public policy that state social insurance institutions give a stipulated lump-sum assistance allowance to mothers of newborn children in order to assist them in covering hospitalization costs. This benefit, however, is given only in cases of natural births and not for births made by Caesarean section because the latter is classified as a surgical operation. This practice contravenes the constitutional principle of equality as stipulated in article 4, par. 1 of the Constitution, and the state's obligation to protect motherhood (article 21, par. 1 of the Constitution).

PROPOSAL:

Article 5 of Royal Decree 665/1962 should be amended so that birth benefits be paid also for births performed by Caesarean section.

Ministry of Justice

SUBJECT: *Limits of custody in view of deportation*

Aliens awaiting deportation are often held in prison for periods long over sentence limits foreseen by law for such cases. This practice constitutes an infringement of human dignity, since the restriction of freedom is not vested with the constitutional safeguards accorded to punishment and is not in accordance with the constitutional principle of proportionality. The law should be amended with a provision requiring that the period an individual is held must not exceed the period of time considered necessary to process deportation.

PROPOSAL:

Par. 4, article 74 of the Penal Code should be amended to set a maximum time limit for custody under a court's deportation order. One month could be considered as the maximum period reasonably needed for deportation procedures to be completed.

Ministry of Public Order

SUBJECT: *Accessibility to asylum procedures*

International conventions on political refugees and the relevant provisions of Law 1975/1991 and Presidential Decree 61/1999 require all state agents to facilitate free access to asylum procedures for all aliens threatened by political, racial, or other persecution in their countries of origin. Domestic and international rules of access to the asylum procedure are, however, not always well understood by the frontier police authorities, which often treat with suspicion all incomers as "illegal immigrants." The following proposal is made to prevent police practice from infringing the rights of political refugees.

PROPOSAL:

Frontier police authorities should be sufficiently educated and trained in order to become rights-minded to issues affecting asylum seekers. Furthermore, pertinent information should be made available at the frontier crossing points (as required by the relevant provisions of article 1, par. 6 of Presidential Decree 61/1999), in a written form and in the languages understood by the people entering the country.

Public Power Corporation

The investigation of a large number of complaints submitted involving unfair electricity charges, payment deadlines and disconnecting practices followed by the Public Power Corporation, resulted in a final report which was sent to its chairman of the board of directors and the executive manager containing the following points:

SUBJECT: *Charges policy*

In an effort to reduce its operating costs, over the last few years the Public Power Corporation has followed an estimate-billing policy whereby, though bills are mailed out and collected on a bimonthly basis, actual consumption levels are calculated on a 4-month basis. Obviously the in-between "towards the amount due" bills are an arbitrary estimate, often creating problems with consumers when "clearing" or "settlement" bills are issued.

Most of these problems have to do with the consumption climax-escalating pricing policy of the Public Power Corporation, resulting often in overcharges of consumers by artificially shifting monthly consumption levels under one period. In an effort to address these problems the Ombudsman suggests the following changes:

a. Since the amount estimated "towards the amount due" probably will not be the same as the actual amount owed, par. 3 of the information printed on the reverse side of the bill for the consumer states that "in exceptional cases of major difference" between the amount billed "towards" and the actual consumption of electricity, the consumer may request that the amount billed "towards" be corrected.

PROPOSAL:

A provision should be made to allow any difference to be challenged and not only a "major difference" (a vague term open to various interpretations in different cases).

b. To check the amount being charged and, eventually, challenge the bill "towards the amount due" the consumer must first convert the monetary amount into electrical consumption measured in kilowatts by estimating the possible kilowatts for which he is being charged according to the days and gradual charging rates applicable in his case. The following proposal is made to simplify this complicated and discouraging procedure.

PROPOSAL:

The estimated amount of kilowatt consumption on bills "towards the amount due" should be presented on the bills so that the consumer can easily compare this figure with the reading on the electric meter at his home. This will save consumers from having to calculate the equivalent of a financial amount in kilowatts and then add this to the last reading of the electric meter in the previous "clearing" or "settlement" bill.

c. In the current billing system, the "clearing" bill does not inform the consumer of the dates on which his "towards" bill is estimated. This information would be useful for calculating when he will receive the next "towards" bill.

PROPOSAL:

The "clearing" bill should indicate the precise dates on which the next "towards" bill is going to be calculated and issued.

SUBJECT: *Payment deadlines*

In the "contract for supplying electricity for domestic use", under section "stamps and payment of bills", and more specifically in article 16, it is stated that "payment of bills following this contract will take place . . . within fifteen (15) days from the date the bill was communicated to the consumer for payment." Problems have arisen in association with the time when the bill was communicated to the consumer and how this date can be determined in order to apply the abovementioned time limit of 15 days.

PROPOSAL:

The time period for paying bills should be lengthened to reduce instances of non-compliance with the time limit of 15 days from the bill's communication to the consumer, as determined in the contract. This will help the consumer (for example, in case of absence) to properly fulfil his financial obligations and will also provide him with an adequate margin of time to challenge, if he wishes, the difference in the consumption charged on his "towards" bill.

It must be noted that other public utility corporations, such as the Greek Telecommunications Organization and the Athens Public Water Supply and Sewage Company allow approximately 30 days for bills to be paid.

SUBJECT: *Discontinuing electricity supply*

Currently there is a 10,000-drs upper limit for outstanding bills over which electricity supply is cut off. This limit is particularly low, since in Greece much of this amount represents charges collected for third parties (such as municipal taxes, public radio and TV charges, etc.).

PROPOSAL:

The maximum permitted outstanding amount should be increased.

SUBJECT: *Free supply of electricity to people who have suffered earthquake damage*

During the September 1999 earthquake, a substantial number of buildings in Attica suffered serious structural damages. In many cases their power supply was cut off for reasons of safety until building repair works were completed. When their owners requested to have electricity supply reconnected, the Public Power Corporation demanded reconnection fees. These fees are foreseen for cases where power supply had been cut off as a result of non-payment of past consumption bills.

The Ombudsman considers this as an unjustified, unfair practice on the part of the Public Power Corporation and an issue of particular social importance since it involves people hard-hit by natural disaster causes in need of support.

PROPOSAL:

The people who suffered earthquake damage should be exempted from paying reconnection fees.

The Public Power Corporation acceded to the Ombudsman's request on condition that the new power supplied should be of the same type as that which was cut off from the damaged building.

G.

USE OF STATUTORY POWERS

In addition to the main statutory powers, which the Ombudsman uses in accordance with the Office's founding law, provisions have been made for the Ombudsman to participate in state collective bodies so that these can take advantage of his experience in protecting human rights and combating maladministration.

USE OF STATUTORY POWERS

1. Introduction

In addition to the main statutory powers, which the Ombudsman uses in accordance with the Office's founding law, provisions have been made for the Ombudsman to participate in state collective bodies so that these can take advantage of his experience in protecting human rights and combating maladministration.

More specifically, Prof. Nikiforos Diamandouros, in his capacity as the Greek Ombudsman, is by law a regular member of the Greek National Commission for Human Rights. The Ombudsman is also by law a member of the National Council on Public Administration Reform (Law 2889/2000).

The fundamental statutory powers provided to the Ombudsman to enable him to carry out his mission are defined in the founding law (2477/1997) and in the Rules of Internal Organization of the Ombudsman (Presidential Decree 273/1999), and have as follows:

- Drawing up of an annual report containing the most important cases, proposals for legislative amendments, as well as recommendations and suggestions on how to improve the operation of public services. In March of each year the report is submitted to the Prime Minister and the Speaker of Parliament and is communicated to the Ministry of the Interior, Public Administration, and Decentralization.
- Preparing special reports on particularly serious issues. These documents are submitted to the Prime Minister and the Speaker of Parliament and communicated to the responsible minister in each case. During the year 2000 the Ombudsman submitted several such documents.

2. Special Reports

2.1 SPECIAL REPORT ON LOCAL AUTHORITIES

The report crystallizes the experience gained from the involvement of the Office in various cases that highlight maladministration by local government authorities. However, as mentioned in the introduction of the report, the negative aspects do not define the total of local government authorities nor the sum total of their activities. On the contrary, it must be pointed out that many local government authorities collaborate harmoniously with the Office of the Ombudsman and accept its mediation in a positive spirit.

The Ombudsman has observed that serious malfunctions in local government services provoke public mistrust towards Local Authorities. Investigations have revealed that serious problems are caused mainly by inadequate staff and infrastructure, a flawed conception of the role played by Local Authorities, overlapping responsibilities and, in some cases, illegal behaviour by local government employees and staff. Furthermore, the displayed inaction of the responsible supervising bodies allows, not to say encourages, illegality, arbitrariness and corruption, and a systematic violation of the principles of the rule of law, which further

leads to a progressive distortion of the conscience of citizens, since it becomes common belief that illegality pays. This can be clearly seen in the cases of illegal constructions, illegal occupations of public property or destruction of the environment.

2.2 SPECIAL REPORT ON THE STATUS OF ALIENS IN GREECE

On the occasion of the submission in Parliament of a draft law, on December 7, 2000, "re: Entry and residence of aliens in Greece; acquiring Greek citizenship through naturalization", investigators of the Ombudsman drew up a report, which was further submitted to the Greek National Commission for Human Rights. The Ombudsman's report was taken into consideration when preparing comments on the draft law.

In principle, the report considers some of the innovations contained in the draft law as positive. Most of these concern the transfer of essential responsibilities from the agents of public order to state political bodies and, of course, the quite generous adjustments included, finally, in the interim provisions of the law applied to aliens who have been living in Greece for years but do not have valid residence permits.

The philosophy behind this draft law, however, gives the impression that the illegal presence of aliens in the country is, more or less, an unforeseen historical accident that can be resolved easily by simple legislative measures that will:

– stop all future immigration influxes into our country, and
– discourage any future establishment of a permanent population of foreign workers through mainly repressive measures.

The major problem of the draft law may be that it does not give serious consideration to innate weaknesses in the Greek public administration that plague the effectiveness, but also the legality of its actions, resulting in the perpetuation and spreading of what it seeks to eradicate: the existence of illegal residents and working immigrants in the country.

2.3 SPECIAL REPORT ON THE SUPPLEMENTARY PENSION AND INSURANCE FUND FOR METALWORKERS

During 2000, the Department of Social Welfare issued a special report on the operation of the Supplementary Pension and Insurance Fund for Metalworkers. The report was prepared as a result of the large number (297) of complaints submitted to the Office of the Ombudsman between October of 1998 and December of 2000 concerning delayed decisions on pension payments.

3. Own-Initiative Investigations

The Ombudsman may, on his own initiative, investigate issues within his sphere of jurisdiction that have attracted particular public interest (Law 2477/1997, article 4, par. 1).

3.1 SOCIAL WELFARE INSTITUTION "THEOMETOR" IN AYIASOS, LESVOS

In 2000, the Ombudsman carried out one such own-initiative investigation into the Social Welfare Institution "Theometor" in Ayiasos, Lesvos, in response to Greek and foreign press reports about bad conditions in this institution.

The investigation brought to light a series of major problems associated with the proper operation of public institutions and touched upon the particularly sensitive issue of

protecting the rights of people being cared for in such an institution. In the report's conclusions, the Ombudsman lists the malfunctions arising from the outdated legal framework, within which the institution operates, the old building and material infrastructure, the lack of staff, the lack of caring for the personal hygiene of the patients, the absence of any programme for reintegration into society, and the different categories of patients (the elderly, the mentally ill, patients with chronic diseases, etc.) all living together.

3.2 KEA PORT AUTHORITY AND MINISTRY OF MERCANTILE MARINE'S SERVICES

The Ombudsman also conducted an investigation at the Kea Port Authority on his own initiative. Because the Ombudsman had learned from the mass media of the forced boarding by excessive numbers of passengers and the temporary interdiction for the ferry boat "Express Karystos" to leave the port of Kea in July, 2000, he undertook an investigation and an on-site inspection of the services involved. The purpose of the investigation was to establish the reasons behind and the conditions under which these serious problems had been created in the port of Kea while people were boarding the "Express Karystos".

4. On-Site Inspections and Administrative Disciplinary Measures

In establishing the true facts of a case, the investigators of the Office of the Ombudsman can carry out on-site inspections. If during an investigation it is found that an administrative official has acted illegally or refused to cooperate, the Ombudsman can propose that administrative disciplinary measures be taken against the person(s) involved. During the year 2000, the Ombudsman used this measure on several occasions. Finally, whenever there was sufficient indication of criminal acts by the official involved, the Ombudsman forwarded the case to the responsible public prosecutor.

H.

OUTREACH ACTIVITIES

Outreach activities undertaken by the Ombudsman include visits to cities outside the metropolitan area of Attica, participation in conferences, seminars and meetings in an effort to familiarize both the public and the public authorities with the role of the Ombudsman.

OUTREACH ACTIVITIES

Officials of the Ombudsman attend conferences, meetings, seminars or other events in an effort to familiarize both the public and the public authorities with the role of the Ombudsman, to establish better venues of cooperation and to promote a new mentality within public administration. During the year 2000 the Ombudsman, the Deputy Ombudsmen, and the senior investigators made presentations at approximately 30 such events. Furthermore, in order to bring the Office closer to the peripheral regions of the country, the Ombudsman, assisted by a team of officials, carried out two visits over this same period, to the city of Thessaloniki and to the island of Lesvos, the administrative centre of the Region of the Northern Aegean. The response from the public and the public services showed that these visits should be repeated in the future as direct communication enables all concerned to better understand the problems outside the metropolitan area of Athens.

Finally, the Office of the Ombudsman and the Ministry of Finance jointly organized a two-day meeting in Herakleion, Crete. The purpose of the meeting was to inform the financial services of tax authorities in the Region of Crete about the work and role of the Ombudsman, but also for the investigators of the Office to become informed on the new regulations and, in general, the problems encountered in implementing the law on taxation.

I.

INTERNATIONAL ACTIVITIES

The Greek Ombudsman, the Deputy Ombudsmen, and Office investigators participated in international meetings focusing on the institution of the Ombudsman, and, more generally, the consolidation of democracy.

INTERNATIONAL ACTIVITIES

1. Introductory Remarks

The Greek Ombudsman is of the opinion that experience deriving from international relations contributes in enhancing the ability of the Office to deal with issues raised in complaints or made apparent through the Ombudsman's cooperation with the public administration, and to apply the principles of transparency, accountability, meritocracy, and best practice.

In this framework, during the year 2000, the Ombudsman drew up a project within the framework of the First Table of the Stability Pact for Southeastern Europe on democratization and human rights. The project, under the title "Contribution to the Creation of Mediation Institutions in Southeast European Countries" has been included in the relevant activities of the Directorate of Human Rights of the European Council.

In addition, the Ombudsman continued and extended his contacts with his international counterparts; he gave lectures at international conferences, universities, and public policy research centres; he also participated in international meetings on issues related to the institution of the Ombudsman.

The Deputy Ombudsmen and the senior investigators also participated in similar activities.

2. Cooperation With the European Council Within the Framework of the Stability Pact

Since 1999, the Ombudsman has been cooperating with the European Council within the framework of the First Table of the Stability Pact. The task at hand is the implementation of an action plan for building civic institutions in Southeastern Europe, with emphasis on the establishment of Ombudsman-type mediation institutions. These activities aim at contributing to the development and medium-term support of the young mediation institutions in the countries of Southeastern Europe. Furthermore, they aim at providing training for their personnel and creating informal international networks geared on promoting these institutions.

During 2000, successive meetings were held in Strasbourg and Athens, at which the Greek Ombudsman, Prof. Nikiforos Diamandouros, represented the Office. The aim of these meetings was to put on track the first steps of collaboration between the Greek Ombudsman and the European Council and to clarify the operational framework of this collaboration. It should be noted that the Greek Ombudsman has been a central partner of the European Council since the official inauguration of the project regarding the activities of organizations relating to mediation institutions, especially in the states of Southeastern Europe. In this context the following activities were undertaken:

- In May, the Greek Ombudsman, Prof. Nikiforos Diamandouros, participated in a seminar organized by the "European Commission for Democracy through Law" of the European Council and the Marangopoulos Foundation for Human Rights. The

seminar, on "The Ombudsman Institution in Europe and the Challenges for the Consolidation of Democracy," was held in Athens within the framework of the First Table of the Stability Pact.

- In June, the Greek Ombudsman took part in a coordinating meeting in Strasbourg on the implementation of the European Council's activities pertaining to Ombudsmen in Europe.
- In October, following an invitation by the European Council, senior investigators Christos Adam and Andreas Takis took part in a conference organized in Tirana by the OSCE Delegation in Albania and the European Council. The subject of the conference was the Albanian Ombudsman. Also in October, senior investigators Rena Papadaki and Dimitris Christopoulos participated in the round-table seminar on "The Institution of the Ombudsman in Kosovo," organized by the OSCE Delegation in Kosovo, the European Council, and the local Ombudsman Office. In November 2000, the Greek Ombudsman, Prof. Nikiforos Diamandouros, and senior investigators Panayotis Alexopoulos and Michalis Tsapogas attended a conference on the "Establishment of the Ombudsman Institution: the Bulgarian Perspective," held in Sofia, Bulgaria.
- In December, senior investigators Zinovia Asimakopoulou and Eftychis Fytrakis participated in a conference organized by the European Council in Plovdiv, Bulgaria, on "Mediation as a Means for the Non-Judicial Solution of Disputes."

3. Lectures and International Meetings

The Greek Ombudsman, the Deputy Ombudsmen, and Office investigators participated in international meetings focusing on the institution of the Ombudsman, and, more generally, the consolidation of democracy.

The Greek Ombudsman held an increasing number of bilateral and multilateral meetings with other Ombudsmen in the year 2000. Special reference should be made to the participation of a Greek Ombudsman delegation in the 7th Conference of the International Ombudsman Institute, held in Durban, South Africa, at the end of October and early November. At this conference, which was attended by representatives of Ombudsmen from all over the world, the Office was represented by the Greek Ombudsman, Prof. Nikiforos Diamandouros, and the Deputy Ombudsman Maria Mitrosyli, head of the Department of Social Welfare.

All of the abovementioned contacts of the Greek Ombudsman, the Deputy Ombudsmen, and the senior investigators contributed substantially to the participation of the Office of the Greek Ombudsman in international networks related to Ombudsman activities. These contacts also facilitated the transfer of experience and know-how, and enhanced his outward orientation, creating possibilities for initiatives and cooperation within the framework of both the European and the wider international community of Ombudsmen.

J.
APPENDICES

J.1 FOUNDING LAW OF THE GREEK OMBUDSMAN

The Ombudsman undertakes the investigation of any issue in his jurisdiction, following a signed complaint lodged by any directly concerned person or legal entity or union of persons. He may also proceed *ex officio* to the investigation of cases that have aroused particular public interest.

FOUNDING LAW OF THE GREEK OMBUDSMAN (LAW 2477/1997)

HELLENIC REPUBLIC
GOVERNMENT GAZETTE

FIRST ISSUE Number 59

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LAW No. 2477
The Ombudsman and the Public Administration Inspectors Body

THE PRESIDENT OF THE HELLENIC REPUBLIC

The following Act passed by the Parliament is published hereby:

CHAPTER A

THE OMBUDSMAN

Article 1
Establishment – Mission

1. An independent administrative authority is established under the title of "The Ombudsman", with the mission of mediating between citizens and public services, local government authorities, public agencies and public utility corporations, as these are defined in article 3, par. 1 of the present law, with the aim of protecting the rights of the citizens, combating maladministration, and ensuring observance of legality.

2. The Ombudsman is not subject to supervision by any government body or administrative authority.

3. The Ombudsman is assisted by four (4) Deputy Ombudsmen. In the exercise of their duties, they enjoy personal and functional independence.

The Ombudsman and the Deputy Ombudsmen are not held responsible, prosecuted, or subjected to inquiry for any opinion expressed or act committed in the discharge of their duties. Prosecution is permissible only following a private suit for slander, libel, or violation of confidentiality.

The Ombudsman, the Deputy Ombudsmen, the senior investigators, and seconded

civil servants with the qualifications of senior investigators, when prosecuted or sued for an act or omission related to the exercise of their duties, may be defended in court by members of the Legal Counsels of State.

4. The Ombudsman is assisted by thirty (30) senior investigators, forty (40) seconded civil servants with the qualifications of senior investigators, and a Secretariat.

5. The funds required for the operation of the Authority are entered in a special account, and incorporated in the annual budget of the Ministry of the Interior, Public Administration, and Decentralization. The Ombudsman or his alternate is legally responsible for the expenditures.

Article 2
Appointment – Term of office

1. The Ombudsman and Deputy Ombudsmen are selected individuals of acknowledged prestige, who have superior educational qualifications and enjoy broad social acceptance.

The Ombudsman is selected by the Cabinet, following a prior opinion of the Parliamentary Standing Committee on Institutions and Transparency, in line with the provisions of the Regulations of Parliament, and is appointed by presidential decree.

The Deputy Ombudsmen, including the alternate Ombudsman, are appointed by decision of the Minister of the Interior, Public Administration, and Decentralization, upon recommendation of the Ombudsman.

Substitution of the Ombudsman may take place when, for whatever reasons, the Ombudsman is unable to exercise his duties.

3. The term of office of the Ombudsman and the Deputy Ombudsmen shall be for five years. Reappointment of the same individual as Ombudsman is not permitted. The premature termination of the Ombudsman's term of office, for any reason, entails *ipso jure* the termination of office of the Deputy Ombudsmen.

4. The Ombudsman may be relieved of his duties by presidential decree, issued on the recommendation of the Cabinet following a prior opinion of the Parliamentary Standing Committee on Institutions and Transparency, for reasons of incapacity to exercise his duties due to illness or disability, whether physical or mental.

The Deputy Ombudsmen may be relieved of their duties by decision of the Minister of the Interior, Public Administration, and Decentralization, upon the recommendation of the Ombudsman, for reasons of incapacity to exercise their duties, due to illness or disability, physical or mental, or for reasons of inadequacy in exercising their duties.

5. During the term of office of the Ombudsman and the Deputy Ombudsmen, the exercise of any other public function is suspended. The Ombudsman and the Deputy Ombudsmen are not permitted to assume any other duties, whether paid or unpaid, in the public or private sector.

6. A member of Parliament who is appointed as Ombudsman shall resign his seat prior to assuming his duties.

7. The salary of the Ombudsman and the Deputy Ombudsmen is determined by joint decision of the Ministers of the Interior, Public Administration, and Decentralization, and Finance, as an exception to the provisions in force.

Article 3
Jurisdiction

1. The Ombudsman has jurisdiction over issues pertaining to: a) the public sector, b) the Local Authorities (communities, municipalities, prefectures), c) other legal entities of public law, and d) public utility corporations charged with: i) the filtering and distribution of water, the drainage and discharge of impure water and sewage, ii) the distribution of electricity and gas, iii) the transportation of persons and commodities by land, sea and air, and iv) telecommunications and postal services. For the purposes of the present Act, the terms "public-sector service" or "public-sector services" are used as defined in the preceding passage of this paragraph.

The Ombudsman shall not have any jurisdiction over government ministers and deputy ministers for acts pertaining to their political function, religious bodies, judicial authorities, military services with regard to issues of national defence and security, the National Intelligence Service, services of the Ministry of Foreign Affairs for matters related to the conduct of the country's foreign policy or international relations, the Legal Counsels of State and independent administrative authorities with regard to their main function.

The Ombudsman shall not investigate cases that concern state security. Also not included in his responsibilities are issues pertaining to the service status of public-sector personnel.

2. The Ombudsman shall investigate individual administrative acts or omissions or material actions of public bodies, which violate rights or infringe upon the legal interests of persons or legal entities.

In particular, the Ombudsman shall investigate cases in which an organ of the public sector, whether individual or collective:

i) By an act or omission, infringes upon a right or interest protected by the Constitution and the legislation;

ii) refuses to fulfil a specific obligation imposed by a court decision against which there is no right of appeal;

iii) refuses to fulfil a specific obligation imposed by a legal provision or by an individual administrative act;

iv) performs or omits to perform a due legal act, in violation of the principles of fair administration and transparency or in abuse of power.

3. The Ombudsman shall not investigate cases pending before a judicial authority.

4. The Ombudsman coordinates the work of the Deputy Ombudsmen and supervises and guides the senior investigators and the personnel of the Secretariat.

The Ombudsman is the disciplinary supervisor of the senior investigators and the administrative personnel and may impose a penalty in the form of a reprimand or a fine of up to one month's salary.

The Ombudsman may authorize one or more of the Deputy Ombudsmen and the supervisors of the administrative units to sign documents or take other actions.

5. The Ombudsman shall draw up an annual report, explaining the work of the Authority, presenting the most important cases, and formulating recommendations for the improvement of public services and the adoption of the necessary legislative measures.

The report of the Ombudsman is submitted each year in March to the Prime Minister

and the Speaker of Parliament and is communicated to the Minister of the Interior, Public Administration, and Decentralization. The Ombudsman may, during the course of the year, submit reports to the Prime Minister, the Speaker of Parliament, and the competent ministers. The annual report of the Ombudsman is debated in a special plenary session of Parliament, in accordance with the provisions of the Regulations of Parliament, and is published in a special edition by the National Printing House.

Article 4
Investigation procedure

1. The Ombudsman undertakes the investigation of any issue in his jurisdiction, following a signed complaint lodged by any directly concerned person or legal entity or union of persons. He may also proceed *ex officio* to the investigation of cases that have aroused particular public interest.

2. The Ombudsman shall not investigate cases in which the administrative act has generated rights or created a favourable situation for third parties, reversible only by a court decision, unless there is manifest illegality or the main subject of the case is related to the protection of the environment.

3. The complaint shall be lodged within six months from the date on which the applicant is informed of the acts or omissions for which he has the right of recourse to the Ombudsman, and is entered in a special register. The submission of such a complaint does not depend on any parallel application for legal redress or process of higher appeal and shall not interrupt or suspend the time limits defined by law for recourse to legal action or relief. In a case where a special administrative appeal is submitted, the Ombudsman shall not investigate the case until the competent body has taken a decision or a period of three months has elapsed since the submission of the administrative appeal.

The Ombudsman may, on his own authority, close a case which is judged to be manifestly vague, unfounded, or insignificant.

4. The Ombudsman may, during the investigation of cases, request the assistance of the Public Administration Inspectors Body.

5. The Ombudsman may request public-sector services to provide him with any information, document or other evidence relating to the case, and may examine individuals, perform an on-site investigation and order an experts' report. During the examination of documents and other evidence, which are at the disposal of public authorities, their classification as confidential shall not apply, unless they concern issues of national defence, state security and the country's international relations. All public-sector services have an obligation to facilitate the investigation in every possible way. Non-cooperation during an investigation by a public service shall be the object of a special report by the Ombudsman to the competent minister.

6. On completion of the investigation, the Ombudsman shall draw up a report on the findings, to be communicated to the competent minister and authorities, and shall mediate in every expedient way to resolve the citizen's problem. In his recommendations to the public services, the Ombudsman may set a time limit within which the services have an obligation to inform him of the actions taken in implementation of his recommendations or of the reasons for which they cannot accept them. The Ombudsman may make public

the refusal of a service to accept his recommendations, if he considers that this is not sufficiently justified.

7. The Ombudsman shall, in all cases, inform the citizen concerned of the outcome of his case.

8. The Ombudsman, the Deputy Ombudsmen, the senior investigators, the seconded civil servants with the qualifications of senior investigators, and the personnel of the Secretariat have a duty of confidentiality with regard to documents and evidence which come to their knowledge in the context of an investigation and which are classified as confidential according to the provisions in force, or are exempted from the right of access to administrative documents, in accordance with article 16 of Law 1599/1986 and all other relevant provisions.

9. The refusal of a public official, civil servant, or member of the administration to cooperate with the Ombudsman during an investigation constitutes a disciplinary offence of breach of duty, and for members of the administration, a reason for their replacement. If during the course of the investigation it is established that there has been unlawful behaviour on the part of a public official, civil servant, or member of the administration, the Ombudsman shall submit the report to the competent body and may call for disciplinary action against the person responsible or recommend the adoption of other measures, if the person responsible is not subject to disciplinary control. The Ombudsman may define a reasonable time limit, in view of the circumstances, at the expiry of which, if no action has been taken, he may himself order the control. The Ombudsman may also, in serious cases, call, by means of a document addressed to the competent body, for disciplinary action against the responsible public official or civil servant for the above omission in exercising the indicated control. If it emerges from the reports of the Ombudsman that a public official or civil servant, for the second time within a three-year period, has obstructed the work of an investigation or refuses without a serious reason to cooperate in the solution of the problem, the penalty of definitive dismissal may be imposed.

10. If there is sufficient evidence that a public official, civil servant, or member of the administration has committed a criminal act, the Ombudsman shall also communicate the report to the competent public prosecutor.

Article 5
Senior investigators – Secretariat

1. Thirty (30) positions are established for senior investigators, as defined in par. 2 of article 25 of Law 1943/1991, with a work contract under private law for a term of five (5) years, which may be renewed. The positions shall be filled following a public announcement by the Ombudsman for the submission of applications.

The Ombudsman shall shortlist candidates, the selection itself being allocated to a five-member committee, whose composition is determined by the Ombudsman. The committee is composed of the Ombudsman, two Deputy Ombudsmen, a university professor and a senior member of the judiciary. The committee evaluates the formal and actual qualifications of the candidates and their personality by means of a public interview. All necessary details for the process of hiring the personnel are defined in the Rules of Internal Organization of the Authority.

Lawyers may be appointed to the above positions under the same procedures, as an exception to any contrary provisions in force. The appointment of a lawyer entails the suspension of his professional functions.

The senior investigators are appointed by decision of the Minister of the Interior, Public Administration, and Decentralization.

2. Up to forty (40) civil servants, whether permanent officials or employees on private-law work contracts for an indefinite period, employees of the public sector, public institutions, banks controlled by the state or public-sector agencies, who fulfil the requirements of par. 2 of article 25 of Law 1943/1991 or civil servants who are university graduates with at least eight years in service may be seconded to the Office of the Ombudsman. The secondment of civil servants takes place following the procedure defined in the first and second sentences of the preceding paragraph. The secondment is effected by joint decision of the Minister of the Interior, Public Administration, and Decentralization and the competent minister in each case, without the opinion of the service committee, as an exception to the provisions in force. The duration of the secondment is three years and may be renewed once.

3. A Secretariat supervised by a director shall be set up within the Authority.
A permanent civil servant meeting the requirements of article 36 of Law 2190/1994 shall be chosen as director by the Ombudsman.

The director is selected by the Ombudsman, for a three-year term, from the candidates who apply following a public invitation. The director is seconded for a term of three years by decision of the Minister of the Interior, Public Administration, and Decentralization, without the opinion of the service committee, as an exception to the provisions in force.

4. On first implementation of the present Act, the positions in the Secretariat may be filled by transferring or seconding employees from public services, following a public invitation. The seconded employees must have the qualifications for the position to which they are seconded. The transfer or secondment is decided by joint decision of the Minister of the Interior, Public Administration, and Decentralization and the competent minister in each case, as an exception to the general and special provisions in force. The secondment may be revoked at any time, and in any case the resulting vacancy shall be filled.

5. Senior positions in the Secretariat's units may also be filled by seconded employees. The secondment ends *ipso jure* with its revocation.

6. The salary of the thirty (30) senior investigators, employed under par. 1 of article 5 of the present Act, is determined by joint decision of the Ministers of the Interior, Public Administration, and Decentralization and Finance. This salary may not be lower than that foreseen in article 92A of the Code on Attorneys.

The civil servants seconded under par. 2 of the present article receive their salary and any additional standard payments, as well as all regular allowances of the official service position they occupy, which continue to be paid regularly by the service from which they are seconded. Furthermore, they receive a special allowance, which is determined, as an exception to the provisions in force, by joint decision of the Ministers of the Interior, Public Administration, and Decentralization and Finance.

7. The service council of the employees of the Authority is established by decision of the Ombudsman and is composed of one Deputy Ombudsman, as president, with another Deputy Ombudsman as his alternate, two regular members, with their corresponding

alternates, and two elected representatives from the personnel of the Authority. For all other issues, the provisions of the Civil Servants Code apply, as usual.

8. With regard to supplementary social insurance, the personnel of the Authority are insured with the Personnel Assistance Fund of the Ministries of Foreign Affairs, Presidency of the Government, and Culture. Lawyers employed as senior investigators are exempted. In these cases, the special supplementary insurance of their own fund applies.

9. The Rules of Internal Organization of the Authority provide for all issues pertaining to the organization and operation of the Authority, the distribution of the senior investigators, the organization of the Secretariat, the number of personnel and their allocation to the central units and regional offices, the distribution of the personnel by branch and specialization and all other necessary details. These Rules are enacted by presidential decree, issued upon recommendation of the Minister of the Interior, Public Administration, and Decentralization, with the agreement of the Ombudsman.

CHAPTER B

PUBLIC ADMINISTRATION INVESTIGATORS – INSPECTORS

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Article 11

The present Act enters into force on the date of its publication in the Government Gazette.

Athens, 17 April 1997

THE PRESIDENT OF THE REPUBLIC
KONSTANTINOS STEFANOPOULOS

THE MINISTERS OF

THE INTERIOR, PUBLIC ADMINISTRATION AND DECENTRALIZATION
A. PAPADOPOULOS

FINANCE
G. PAPANTONIOU

Authenticated and sealed

Athens, 18 April 1997

THE MINISTER OF JUSTICE
E. GIANNOPOULOS

J.2 CURRICULA VITAE OF THE GREEK OMBUDSMAN AND THE DEPUTY OMBUDSMEN

The Ombudsman is assisted by four Deputy Ombudsmen. In the exercise of their duties, they enjoy personal and functional independence.

CURRICULA VITAE OF THE GREEK OMBUDSMAN AND THE DEPUTY OMBUDSMEN

Nikiforos Diamandouros

Greek Ombudsman

Professor of Comparative Politics, Department of Political Science and Public Administration, University of Athens

UNIVERSITY STUDIES

- 1972: Ph.D., Columbia University
- 1969: M.Phil., Columbia University
- 1965: M.A., Columbia University
- 1963: B.A., Indiana University

PROFESSIONAL EXPERIENCE

- 2000: Member of the National Council on Public Administration Reform
- 1999: Member of the National Commission for Human Rights, Greece
- 1998: Greek Ombudsman
- 1997: Visiting professor of Political Science, Juan March Centre for Advanced Studies in the Social Sciences, Madrid
- 1995-1998: Director and chairman of the Greek National Centre for Social Research
- 1993-present: Professor of Comparative Politics, University of Athens
- 1988-1993: Associate professor of Comparative Politics, University of Athens
- 1988-1991: Director of the Greek Institute for International and Strategic Studies, Athens
- 1983-1988: Programme director for Western Europe and the Near and Middle East, Social Science Research Council, New York
- 1978-1983: Director of Development, Athens College, Greece
- 1973-1978: Teaching and research appointments at the State University of New York and Columbia University

PUBLICATIONS

Has written extensively on the politics and history of Greece, Southeastern Europe, and Southern Europe and, more generally, on democratization, state- and nation-building, and the relationship between culture and politics. He is joint general editor of the *Series on the New Southern Europe* published by Johns Hopkins University Press.

LANGUAGES

Greek, English, French, Italian, German, Spanish, Portuguese

PROFESSIONAL ASSOCIATIONS AND HONOURS

- 1992-1998: President of the Greek Political Science Association
- 1990: Co-chairman of the Subcommittee on Southern Europe, Social Science Research Council, New York
- 1985-1988: President of the Modern Greek Studies Association of the United States

YORGOS V. KAMINIS

Deputy Ombudsman for the Department of Human Rights

Assistant professor of Constitutional Law, University of Athens

UNIVERSITY STUDIES

- 1989: Doctorat d'État en Droit, thesis titled *La transition constitutionnelle en Grèce et en Espagne*, University Paris I
- 1982: Diplôme d'Études Approfondies (DEA) in Public Law, University Paris II
- 1980: LLB, Faculty of Law, University of Athens

PROFESSIONAL EXPERIENCE

- 1998: Deputy Ombudsman for Human Rights
- 1998: Assistant professor, Faculty of Law, University of Athens (on leave from 1998)
- 1991-1998: Lecturer, Faculty of Law, University of Athens
- 1989: Research fellow, Department of Parliamentary Studies and Research, Directorate of Studies of the Greek Parliament
- 1982-1991: Research and teaching fellow, Faculty of Law, University of Athens

MAIN PUBLICATIONS

- *Παράνομα αποδεικτικά μέσα και συνταγματική κατοχύρωση των ατομικών δικαιωμάτων. Οι αποδεικτικές απαγορεύσεις στην ποινική και την πολιτική δίκη* (Illegally Obtained Evidence and Constitutional Guarantees of Human Rights. The Exclusion of Evidence in Criminal and Civil Proceedings). A. N. Sakkoulas, Athens/Komotini 1998
- *La transition constitutionnelle en Grèce et en Espagne*. Paris, Librairie Générale de Droit et de Jurisprudence, Bibliothèque Constitutionnelle et de Science Politique, vol. 76, Paris 1993

LANGUAGES

Greek, English, French, German, Spanish

PROFESSIONAL ASSOCIATIONS AND HONOURS

- Member of the Union of Greek Constitutionalists
- Member of the Hellenic Political Science Association
- Member of the editorial board of the journal *Σύγχρονα θέματα* (Contemporary Issues)

MARIA MITROSYLI-ASIMAKOPOULOU

Deputy Ombudsman for the Department of Social Welfare

UNIVERSITY STUDIES

- 1991: Doctorat d'État en Droit, Ancien Régime, University Paris X, Law School of Nanterre, specialized in health and welfare issues
- 1981: Diplôme d'Études Approfondies (DEA) in Comparative History, Anthropology and Sociology of Law Systems, University Paris X, Law School of Nanterre
- 1978: LLB, Faculty of Law, University of Athens

PROFESSIONAL EXPERIENCE

- 1998: Deputy Ombudsman for Social Welfare

- 1989-1998: European Commission Expert in the health and welfare sector, member of the Legislation Committees of the Ministry of Health and Welfare
- 1983-1998: Lawyer, member of the Athens Bar Association
- 1983-1998: Has lectured at the Technological Education Institute of Athens (Health and Welfare Education); the National University of Athens, Medical School; the University Institute of Mental Health; the National Centre for Public Administration; the University of Athens, Psychiatric School; the University Paris II, Centre de Recherches Criminologiques et de Sociologie du Droit
- 1982-1998: Research: Author of educational material on health and bioethics for the Open University of Athens; research director for the European Commission; senior researcher at the Panteion University of Athens; research fellow of the National Research Centre of France

MAIN PUBLICATIONS

Has published several studies and articles in Greece and abroad

LANGUAGES

Greek, French, English

PROFESSIONAL ASSOCIATIONS AND HONOURS

- Institute of Sociology of Law for Europe
- Research Committee of Law, Ethics and Psychiatry
- European Committee of Law, Ethics and Psychiatry
- World Association for Psychosocial Rehabilitation
- European Institute of Social Security
- Other Greek and foreign scientific societies and non-governmental organizations

Yannis M. Michail
Deputy Ombudsman for the Department of Quality of Life

UNIVERSITY STUDIES

- 1971: Ph.D. in City Planning, Technical University of Aachen
- 1959: Degree in Architecture, Technical University of Munich

PROFESSIONAL EXPERIENCE

- 1998: Deputy Ombudsman for Quality of Life
- 1979-1998: Co-responsible (together with Prof. D. Zivas) for the Plaka-Athens Historical Centre Rehabilitation Study, carried out by the Ministry for the Environment, Physical Planning, and Public Works. In 1983 this study was awarded the "Europa Nostra" Prize
- 1977: Director of the working programme "Educational and Cultural Spaces" of the International Union of Architects
- 1972-1995: Director of City Planning for the Greek National Mortgage Bank (New towns in Komotini, Xanthi, Sapes (Thrace), Athens, Thebes, Lavrio, Thessaloniki)

LANGUAGES

Greek, English, French, German, Italian

PROFESSIONAL ASSOCIATIONS AND HONOURS

- 1986: Corresponding member of the German Academy of City and Regional Planning
- 1985: Officer of the French Order of "Palmes Academiques"
- 1975-1978: Vice president of the International Society of City and Regional Planners (ISOCARP)

ALIKI KOUTSOUMARI
Deputy Ombudsman for the Department of State-Citizen Relations

UNIVERSITY STUDIES

- Postgraduate studies in Administrative Law, Panteion University of Athens
- Postgraduate studies, Institute for Business Management, Athens University of Economics and Business
- Degree in Law, University of Athens

PROFESSIONAL EXPERIENCE

- 1998: Deputy Ombudsman for State-Citizen Relations
- 1994-1998: Director general for Organization and Administrative Procedures, Ministry of the Interior, Public Administration, and Decentralization
- 1967-1998: Ministry of the Presidency: during her career in the ministry she was involved in projects concerning organizational development, legal issues, information technology, gender equality, quality of public services, open government and especially improving state-citizen relations. She was also member of the teaching staff of the National Centre for Public Administration; member of the committee to draft the Code of Administrative Procedures in Public Administration; coordinator-manager of the "Quality in Public Service" project
- 1964-1967: Legal adviser to the Ministry of Coordination

LANGUAGES

Greek, English, French

PROFESSIONAL ASSOCIATIONS AND HONOURS

- Greek representative in the Committee of Public Administration, Organization for Economic Cooperation and Development (OECD)
- International Institute of Administrative Sciences (IIAS)
- Association Internationale de la Fonction Publique (AIFR)

J.3 PERSONNEL LIST

Over the year 2000, the process of appointing the remaining staff foreseen by law was completed. This included senior and junior investigators, administrative staff and technical support personnel.

PERSONNEL LIST

Department of Human Rights

DEPUTY OMBUDSMAN

KAMINIS Yorgos

SENIOR INVESTIGATORS

BAKOYANNIS Kostas
DELLI Alexandra
HATZI Chryssa
MONIOUDI Isavella
MOSCHOS Yannis
TAKIS Andreas
TSAPOGAS Michalis
VERNEY Susannah

JUNIOR INVESTIGATORS

LYKOVARDI Kalliopi
MATANA Anastasia
PAPADOPOULOU Andriani
SALAMALIKI Angeliki
STEFANAKI Kalliopi

SECRETARIAT TO THE DEPUTY OMBUDSMAN

MANIATI Evangelia

Department of Social Welfare

DEPUTY OMBUDSMAN

MITROSYLI-ASIMAKOPOULOU Maria

SENIOR INVESTIGATORS

ARSENOPOULOU Ioanna
ASIMAKOPOULOU Zina
BOLOU Vasiliki
FYTRAKIS Eftychis
GARAVELA Dimitra
GRIVAS Athanasios
KALANTZI Spyridoula
PAPADAKI Rena
PAVLOU Miltos
PREVEZANOU Konstantina
TSAKANIKAS Panayotis
VAVOUYIOU Anna

JUNIOR INVESTIGATORS

GOGOU Eleni
MANTA Evangelia
MARKAKI Evangelia
STAMBOULI Eleni
TOPALIDOU Anastasia

SECRETARIAT TO THE DEPUTY OMBUDSMAN

KOTSIYANNI Eleni

Department of Quality of Life

DEPUTY OMBUDSMAN

MICHAIL Yannis

SENIOR INVESTIGATORS

ADAM Christos
ANTONIADIS Konstantinos
BILI Vasiliki
LIASKA Aimilia
LOUKAKOS Kyriakos
NIKOLAOU Anna
PAINESI Myrto
PAPADIMITRIOU Konstantinos
PAPATOLIAS Apostolos
VARDAKIS Manolis
VITTIS Nikos

JUNIOR INVESTIGATORS

KARAMITROU Zoe
KOUVARITAKI Ioanna
PANOPOULOU Angeliki
PETOUSI Theodora
SGAGIAS Konstantinos
VLACHOU Katerina

SECRETARIAT TO THE DEPUTY OMBUDSMAN

APOSTOLOU Maria

DEPARTMENT OF STATE-CITIZEN RELATIONS

DEPUTY OMBUDSMAN

KOUTSOUMARI Aliki

SENIOR INVESTIGATORS

ALEXOPOULOS Panayotis
CHRISTOPOULOS Dimitris
DROSSOS Sergios
GEORGOULAS Efstratios
KORONAIOU Katerina
LIADI Maria
PATSAVA Kalliopi
PETROPANAGOU Petroula
PROTOPAPPAS Marios
THOMOPOULOS Evangelos

JUNIOR INVESTIGATORS

ANDRIKAKI Kyriaki
ANGELAKI Despoina
ANTONAROPOULOU Chrysoula
KALAITZI Mina
MEKOU Maria
SARRAS Savvas
VASILOPOULOU Eva

SECRETARIAT TO THE DEPUTY OMBUDSMAN

TZAVELLA Maria

SECRETARIAT TO THE OMBUDSMAN

GALATI Eleanna
KOUTSOUMPELI Maria
PAPAGEORGIOU Vasiliki

ADMINISTRATIVE SERVICES

DIRECTOR OF THE SECRETARIAT

KALLIONTZI Katerina

SECRETARIAT EMPLOYEES

AMAXOPOULOU-KARPATHOPOULOU Maria
APOSTOLOPOULOS Dimitrios
ARNAOUTAKI Stavroula
BIBAS Yorgos
CHELMI Irini
EVANGELOU Theognosia
FARANTATOU Anna
FILIOS Theodoros
KAKAVA Marina
KAPAROS Spyros
KARAKOSTAS Evangelos
KARAYANNIS Loukas
KARTEROLIOTOU-TZAVARA Kallirroi
KRITIKOS Yorgos
LAGIAKOU Eleni
NAKOU Virginia
NTANASIS Vasilios
NTOULOU Athina
PAPAGEORGOPOULOU Dimitra
SALTAS Panayotis
SOLOUNIA Marianna
TSAOUSI Fotini
TYMPAKIANAKI Evangelia
TZORTZI Argyro
VERVERAKI Kleopatra