ANNUAL REPORT

2001

The Greek Ombudsman

Abridged English Language Version

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Acronyms

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

BB	building block
DEI	Dimosia Epiheirisi Ilektrismou (Public Power Corporation)
ESY	Ethniko Systima Ygeias (National Health System)
GLK	Geniko Logistirio tou Kratous (State General Accounting Office)
IKA	Idryma Koinonikon Asfaliseon (Social Security Organization)
KETHEA	Kentro Therapeias Exartimenon Atomon (Therapy Centre for Dependent Individuals)
LAC	local administrative committee
OAED	Organismos Apasholisis Ergatikou Dynamikou (Manpower Employment Organization)
OEK	Organismos Ergatikis Katoikias (Workers' Housing Organization)
OGA	Organismos Georgikon Asfaliseon (Agricultural Insurance Fund)
OTE	Organismos Tilepikoinonion Elladas (Greek Telecommunications Organization)
SDOE	Soma Dioxis Oikonomikou Eglimatos (Financial and Economic Crime Unit)
TEE	Tehnika Epaggelmatika Ekpaideftiria (Technical Vocational Training Centres)
TEVE	Tameio Epaggelmation kai Viotehnon Elladas (Professionals and Craftsmen's Insurance Fund)
VAT	value added tax

CONTENTS

A.

INTRODUCTION

INTRODUCTION

As I have argued in previous annual reports, the Ombudsman, as an external control mechanism of the public administration, is empowered by his founding law to combat maladministration, to defend citizens' rights and to ensure respect for legality. By his very nature, he constitutes an integral part of state initiatives aiming at the qualitative restructuring and redefinition of the relationship between state and citizen, designated to benefit the latter, to reinforce civil society, to modernize public administration and, in the final analysis, to enhance the quality of democracy in Greece.

From this specific point of view, the year 2001 was marked by two events of major significance: the explicit recognition, in the Constitution, of the Ombudsman as an independent authority and the decision to include in the text of the Constitution a series of provisions aimed at combating maladministration and at further strengthening citizens' rights in their relationship with the state.

The constitutional recognition of this institution has enhanced the personal and functional independence of the Ombudsman who, henceforth, will be elected by the Conference of the Presidents of Parliament, either unanimously or with a qualified majority of four fifths of its members, and will no longer be appointed by the Cabinet.
In its new form, the institution has moved closer to the model of the parliamentary Ombudsman, as it exists in many countries of the European Union, without however being fully comparable to it. At the same time, the institution has moved away from the hitherto mixed model, which linked it more directly to the executive power. There can be no doubt that this development enhances the Authority's legitimacy and strengthens its capacity to respond more fully to the expectations of the state and its citizens in the accomplishment of its mission.

The various provisions of Greece's revised Constitution contribute substantively to the realization of these broader goals, since they redefine the operational framework of the public administration and strengthen the arsenal of legal measures available to control mechanisms of the state in combating maladministration, and ultimately corruption. Such internal and external state-control mechanisms include the various corps of inspectors and auditors operating in many ministries, as well as independent authorities such as the Ombudsman. Thus, these new or revised provisions acquire particular significance for the Ombudsman, since they enhance his capacity for mediation and expand the means at his disposal for ensuring respect for legality and fuller compliance with the rule of law.

As I have repeatedly pointed out, the Ombudsman does not deal directly with cases related to corruption. The Authority's founding law expressly provides that, should there be tangible evidence that a criminal act has been committed, the case must be immediately referred to the relevant public prosecutor. From the moment that a case has been turned over to justice, the Ombudsman has no authority to intervene or even follow to it.

Even though these conditions preclude direct intervention in cases of corruption, the Ombudsman's daily experience of systemic administrative malfunction, which is linked to the hard core of maladministration, brings the Ombudsman into extensive indirect contact

with instances of corruption within his field of competence. More specifically, the cumulative experience gained from over 30,000 citizens' complaints during the three years of the Ombudsman's operation, leads effortlessly to the conclusion that the traditional form of maladministration, as represented by long delays in resolving individual complaints, fosters an environment that is undoubtedly conducive to the development of illicit transactions between citizens and civil servants or officials, in order to speed up the processing of an individual case by the administration. In other words, corruption, which provides the civil servants concerned with all manner of "incentives", material or immaterial, in order to ensure a quicker resolution of citizens' requests, is thriving in those services of the central administration and local government authorities, where long delays in dealing with citizens' applications are common.

Viewed more abstractly, the revised provisions tend to promote three distinct but closely interrelated principles, which have a bearing on the hard core of public administration, and are directly or indirectly related to the struggle against maladministration, and, by implication, corruption. They are based on the principle of transparency, the principle of the timely, consistent and systematic application of legal provisions and the principle of the protection of legitimate expectations.

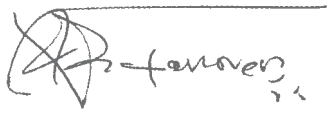
The principle of transparency is founded on the simple but obvious premise that lack of transparency in the functioning of a complex organization – as every public administration is by definition – undermines the relations of trust between the parties engaged in a transaction and opens the way to illicit or illegal deals and corruption. It is indicative that the creation of conditions capable of ensuring transparency in public administration has, over the past few years, become a priority on the agendas of supranational organizations such as the European Union and the Organization for Economic Cooperation and Development, of which Greece is a member. It further constitutes the exclusive preoccupation of the private international organization, known as "International Transparency". Indeed, this organization annually issues a "corruption perception index" which has become increasingly influential and particularly significant in more mature democracies. Within this wider context, the enhancement of transparency, which is reflected in many of the revised provisions of our Constitution, is becoming increasingly important for the functioning of Greek public administration and its relations with the citizen.

Equally obvious, and indeed of vital importance for the respect of legality, is the fact that the revised provisions insist on the administration's obligation to implement legal provisions. Although this would seem to be self-evident, it is an obligation that is often violated, the extreme example being the non-enforcement of court rulings by public administration authorities, which is not uncommon. It is noteworthy that one of the revised provisions extends this commitment, not only to the Council of State (Greece's supreme administrative court), but also to the civil and criminal courts. The Ombudsman's experience unquestionably supports the view that the vicious circle linking maladministration to illicit deals and corruption is a direct result of the inadequate enforcement on the part of the central administration, as well as local government authorities, of the disciplinary and legality controls envisaged by existing legislation. This practice, which has been repeatedly reported by the Ombudsman, has progressively contributed to a decline in effectiveness and a de-legitimization of existing state-control and

accountability mechanisms, as well as to the fostering of an environment of tolerance and impunity, which directly or indirectly serves as a breeding ground for corruption.

The rapid changes of the past decade, which are transforming Greek society, constitute a further macro-sociological factor exacerbating the difficulties experienced by the Greek administrative authorities in adjusting to the new conditions of increased transparency and in systematically and consistently implementing the legal provisions, enjoined by the constitution. More specifically, the major changes arising from the modification in the demographic make-up of Greek society, as well as from its gradual inclusion in the wider environment created by the process of European integration, have led to a growing gap between social and legal reality in Greece. The consequence of this situation is that the legal reality, which public administrative authorities are called upon to enforce, is enshrined in numerous complex laws and legal provisions that are often outdated and do not respond with even elementary adequacy, consistency and rationality to the conditions of the new social reality. Equally, the human resources available to the public administration seriously lack the know-how and skills needed for the efficient resolution of the increasingly complex problems confronting the state as it strives to improve the quality of its services to the public. A widespread effect of this situation is the emergence and proliferation of incidents of maladministration, precisely in those areas of administrative action where major social changes are taking place. Urban planning authorities, tax offices, insurance funds and the health care system are examples of areas in the public sector that are liable to foster illicit dealings and potential corruption.

The role of the Ombudsman in combating this state of affairs is quite clear. From the very first moment he has concentrated his attention on the dual effort to resolve individual cases of maladministration, as expressed in citizens' complaints, and to carry out preventive, corrective measures, based on proposals aimed at improving the administration's operational framework, whilst, at the same time, fostering a climate of trust in the Ombudsman's relations with public services and authorities. The increased response of administrative authorities to these proposals – a response that is recorded in a variety of ways in the present report – combined with the revised constitutional provisions geared to the systematic enforcement of the rule of law, is a promising development, which should be widely encouraged. It is in this direction that the Ombudsman has, from the outset, channelled his energies in an effort to deal with the malfunctions in public administration, through mediation and control practices, based on the logic of resolution and of positive-sum approaches, as well as through solutions capable of contributing to the progressive redefinition of state–citizen relations to the benefit of the latter, of promoting relations based on mutual trust, and of serving as mechanisms in supporting and enhancing the quality of our democracy.



PROF. NIKIFOROS DIAMANDOUROS
March 2002

B.

EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

According to the provisions of the founding law of the independent administrative authority of the Ombudsman (article 3, par. 5 of Law 2477/1997, Government Gazette A 59), the present report is submitted to the Prime Minister and the Speaker of Parliament and communicated to the Minister of the Interior, Public Administration, and Decentralization.

The report, which covers the period from 1 January to 31 December 2001, is also directed to all citizens and public officials wishing to inform themselves about the Ombudsman's work during the year 2001, and about the problems of public administration, as highlighted by his mediation activities.

1. Structure of the Report

The report consists of eight sections:

Chapter A contains a personal evaluation of the work of the Authority for 2001 by the Greek Ombudsman himself, as well as thoughts about the development of the institution and a brief description of its goals for 2002.

Chapter B comprises a concise presentation of the structure of the report and the work of the Ombudsman during the year 2001, as well as a brief description of the activities of the Office's four Departments (Human Rights, Social Welfare, Quality of Life and State–Citizen Relations).

Chapter C refers to the recent constitutional recognition of the Ombudsman as an independent authority.

Chapter D contains the overall assessment of the Ombudsman's activities for the year 2001 and consists of two parts. The first part presents the most significant conclusions drawn from the analysis of 2001 statistics. The second part comprises the statistical tables and graphs that provide a quantitative analysis of the Ombudsman's work for that same year.

Chapter E covers the work, conclusions and proposals of the Ombudsman's four Departments, with a presentation of the most important cases investigated in 2001.

Chapter F, as stipulated in article 3, par. 5 of Law 2477/1997, contains the proposals, by agency involved, for legislative amendments and administrative reforms with the aim of improving the operating framework of public administration, following systematic analysis of the problems described in citizens' complaints. These proposals are addressed to the political leadership of the agencies and authorities that fall under the Ombudsman's jurisdiction. The chapter also includes a follow-up section on the legislative and organizational proposals put forward in previous annual reports.

Chapter G contains a presentation of the outreach activities carried out by the Ombudsman with the aim of better informing both citizens and the public administration as to his responsibilities and mission, as well as promoting the work of the Office through communication and cooperation with other institutions, together with the participation of its representatives in seminars, conferences and other activities of academic and institutional interest.

Finally, chapter H comprises, in the form of appendices:

- The legislative provisions relevant to the independent administrative authority of the Greek Ombudsman (Law 2477/1997),
- the speech of the Greek Prime Minister, Kostas Simitis, marking the first three years of the Ombudsman's operation,
- a brief CV presentation of the Greek Ombudsman and the four Deputy Ombudsmen,
- a personnel list.

2. Summary of the Report

ORGANIZATION, STAFFING AND OPERATION OF THE OMBUDSMAN

The organization, staffing and operation of the Ombudsman are laid down in his founding law (2477/1997) and in the Rules of Internal Organization of the Ombudsman (Presidential Decree 273/1999), within the framework created by the provisions of the Constitution following its revision in 2001, particularly those of article 101A pertaining to independent authorities in general, and article 103, par. 9, by virtue of which the Ombudsman is constitutionally confirmed as an independent authority. This set of provisions lays down the Ombudsman's institutional powers, thus ensuring that he can act effectively as an independent, extra-judicial mechanism for control and mediation.

These powers range from simple intervention aimed at resolving conflicts between citizens and public services, through to the publication of the results of the investigations conducted by the Ombudsman.

During 2001, civil servants seconded to the Ombudsman's Office filled a number of scientific and administrative posts. Furthermore, senior and junior investigators were recruited on the basis of private-law employment contracts.

OVERALL ASSESSMENT FOR THE YEAR 2001

During 2001, the Office of the Ombudsman received 11,282 new complaints from citizens and dealt with a total of 15,018 cases. The latter include 3,736 complaints submitted in previous years, which were still pending for various reasons.

From 1 October 1998 until the end of 2001, the Ombudsman received a total of 30,103 complaints. During 2001, there was a further, significant increase in the number of complaints (+17.3%). More specifically, the 15,018 cases dealt with by the Ombudsman are distributed as follows (see Table B.1):

TABLE B.1 **INTERDEPARTMENTAL DISTRIBUTION OF CASES DEALT WITH DURING 2001**

DEPARTMENT	NUMBER OF CASES	% OF THE TOTAL
Human Rights	1,731	11.53
Social Welfare	4,561	30.37
Quality of Life	3,593	23.92
State–Citizen Relations	5,133	34.18
Total	**15,018**	

Of the total of complaints received in 2001, 9,665 were investigated and resolved, i.e. 64.36% of the total, whereas on 31 December 2001, 5,353 cases (35.64%) were still pending. This high figure is due to the substantial increase in the number of new complaints submitted at the end of the year, which reached almost 4,000 in the last quarter.

There was also a relative increase in the number of cases that were filed for being out of mandate (32.9% of all new complaints), as well as a small drop in the percentage of cases with a positive outcome that were investigated in depth and were close to 47.3%. Furthermore, there was a slight reduction in the percentage of unresolved complaints, in that the administrative authorities did not accept the proposals put forward by the Ombudsman (4.6%).

USE OF STATUTORY POWERS

Based on the use of statutory powers provided by his founding law, as well as on the experience acquired from handling a large number of related cases, the Ombudsman presented to the Minister of the Interior, Public Administration, and Decentralization a special report including proposals for the amendment of a series of provisions contained in Law 2910/2001, which regulates the residence of aliens in Greece.

In addition, the Ombudsman carried out two own-initiative investigations. The first was carried out at the detention facilities of the Attica Police Headquarters (Aliens' Sub-Directorate). Having established the appalling conditions prevailing in the detention centre from every point of view, the Ombudsman sent a report to the Minister of Public Order with specific proposals aimed at ensuring respect for the relevant provisions of the Penitentiary Code.

The second own-initiative investigation carried out by the Ombudsman was conducted in the city of Thessaloniki, in order to establish a clearer view of the circumstances under which the Municipality of Thessaloniki had decided not to allow the services of the Therapy Centre for Dependent Individuals to operate in the area of Ladadika, a decision that had led to strong reaction from political parties, social organizations and distinguished personalities of public life. The findings of the investigation led the Ombudsman to call upon the municipality to rescind its controversial decisions, to cooperate with the city's social organizations in drawing up and implementing social-policy programmes and to take measures against instances of social exclusion, be they due to ignorance or conflict of interests, in its area of responsibility.

Adhering to the practice of previous years, in 2001 the Ombudsman made even more use of the provision provided by law to carry out on-site inspections – some of which are cited in the present report – that have significantly contributed to the investigation process.

In a fewer number of cases, the Ombudsman asked from the supervising agencies to carry out internal controls or administrative investigations under oath, regarding the behaviour of public administrators.

Finally, the report cites instances in which the investigation of cases led the Ombudsman to the conclusion that there was sufficient indications of criminal acts that had been committed. These cases were handed over to the responsible prosecuting authorities.

OUTREACH ACTIVITIES

Outreach activities of the Ombudsman in 2001 included visits to locations outside Attica, conferences, meetings, seminars and working meetings with representatives of various

public agencies and services. The aim of these activities was to provide citizens with better information about the Office's mission and mandate and to promote cooperation between the Ombudsman and public administration authorities in order to improve the quality of their services.

In particular, with reference to visits to locations outside Attica, a large team from the Ombudsman visited the city of Thessaloniki, as it had done during the two previous years. Another team visited Komotini, the capital of the Region of Eastern Macedonia and Thrace. The Greek Ombudsman, Professor Nikiforos Diamandouros, headed both these teams and brought the Office into contact with representatives of public services and social organizations, as well as with citizens who had submitted complaints to the Office or were advised about the progress of their cases.

Amongst the many academic events that were attended by members of the scientific staff of the Office of the Ombudsman, special reference should be made to the two meetings organized by the Department of Social Welfare in cooperation with the State General Accounting Office and the Social Security Organization, which proved to be particularly useful. The aim was to provide mutual information and to seek solutions to problems arising from the handling of complaints submitted by citizens and pertaining to these agencies.

Finally, in September, to commemorate the Ombudsman's three years of operation, an event was organized at the premises of the Office; the Greek Prime Minister Kostas Simitis was the keynote speaker. Ministers, members of Parliament, as well as representatives of the political parties, judicial authorities, public services, social and non-governmental organizations were also present, thus confirming the social acceptance of the institution and the extensive support it enjoys from both the state and society.

3. Activities of the Departments

DEPARTMENT OF HUMAN RIGHTS

The Department handles complaints that are linked to violations of individual, social or political rights, as enshrined in the Constitution, in legislative texts and international conventions that have been incorporated into domestic law.

TABLE B.2 **DEPARTMENT OF HUMAN RIGHTS: HANDLING OF CASES**

	NUMBER OF CASES	%
Out of mandate/closed	280	16.1
Investigated/closed	966	55.8
Pending by 31.12.2001	485	28.1
Total	**1,731**	

During 2001, the Department of Human Rights investigated 1,731 cases or 11.53% of the total number of complaints handled by the Ombudsman (see Table B.1). Of these, 16.1% were shelved (see Table B.2) because they were either out of mandate or for other formal reasons (such as lack of signature or address, vagueness of complaint, etc.).

TABLE B.3 **OUTCOME OF CASES INVESTIGATED**

	NUMBER OF CASES	%
Founded/positive outcome	455	47.1
Founded/negative outcome	60	6.2
Unfounded	367	38
Other	84	8.7
Total	**966**	

As can be seen from Table B.3, 47.1% of the complaints examined had a positive outcome, while for another 38% of the cases investigation showed that the action taken by the administration was in accordance with the law. Finally, the administration did not concur with the views of the Ombudsman in 6.2% of all founded complaints. Approximately one third of all cases were submitted by foreigners, the majority of whom were economic immigrants. These complaints deal with issues of discrimination based on nationality but, above all, they point to the malfunctions in the legal system governing the entry, residence and employment of aliens, as well as the naturalization procedure.

The review of the activities of the Department in 2001 concentrates mainly on cases involving foreigners. The predominant conclusion arising from the Ombudsman's experience to date, with regard to the problems brought to his attention, is that maladministration, in the wider sense of the term, is perhaps the most serious cause of violations of human rights in this country.

The remainder of the cases handled by the Department of Human Rights concern the investigation and substantiation of violations of human rights committed by the public administration and pertaining to the freedom of religion and religious belief, education, employment and professional freedom, equality of citizens, free access to information, freedom of the mass media, protection of personality, and effective judicial protection. Of all cases handled by the Department in 2001, the following issues were selected for inclusion in the present annual report:

- In the context of protection of religion and religious belief, issues pertaining to the founding, operation and protection of temples and places of worship, as well as issues concerning the religious education of school children.
- In the context of the right to education, issues related to the manner in which candidatures for teaching positions at higher education institutions are evaluated, as well as cases in which student transfers were refused.
- With regard to the right to employment, instances of protectionism in professional sectors, but also on the part of the legislator.
- With regard to the principle of equality, cases concerning discrimination based on sex or nationality.
- In the context of free access to information, issues pertaining to citizens not being granted access to documents kept by public services, as well as issues concerning inadequate protection of personal data by the public administration.
- In relation to the freedom of the mass media, issues involving the implementation of the new provisions contained in the Constitution.

- In the context of the protection of personality, cases of arbitrary action by the police.
- With regard to personal freedom, cases of arrest, detention and incarceration.
- In the context of judicial protection, issues related to the failure of public administration authorities to comply with court rulings.
- With regard to civil and municipal status and citizenship, cases of arbitrary behaviour, staff shortages, but also of incorrect and harsh implementation of law provisions on the part of public services, which cause much inconvenience to citizens.
- With regard to the entry and residence of aliens and refugees in Greece, issues related to the arbitrariness of consular authorities, incorrect interpretation of the law, deficiencies in the relevant legal framework, as well as malfunctions in the process of granting political asylum and the conditions of detention of the persons concerned.

In conclusion, the Ombudsman once again expresses serious reservations as to the efficiency of administrative investigations carried out by the Greek police, when handling complaints of improper behaviour on the part of police officers towards citizens. Although the police have admittedly been making efforts with respect to issues of human rights, it must nevertheless be pointed out that there is still much room for improvement in this area.

DEPARTMENT OF SOCIAL WELFARE

The Department deals with cases pertaining to the protection of citizens' social rights, the struggle against maladministration and the observance of the law on the part of social institutions. The Department's mandate mainly covers social insurance, health and welfare and general issues of social policy.

Complaints addressed to the Department come from Greek citizens, foreign economic immigrants and refugees, as well as other socially excluded groups or categories in need of special care, such as children, the elderly, the physically and mentally ill, people with special needs, the Roma, the unemployed, etc.

In the year 2001, the Department of Social Welfare examined 4,561 complaints, i.e. 30.37% of the total number of complaints examined by the Ombudsman (see Table B.1). This figure includes 3,322 complaints submitted in 2001, as well as 1,239 pending cases from previous years.

Table B.4 shows the distribution of the 4,561 cases by the end of 2001, with regard to handling.

TABLE B.4 **DEPARTMENT OF SOCIAL WELFARE: HANDLING OF CASES**

	NUMBER OF CASES	%
Out of mandate/closed	803	17.61
Investigated/closed	2,059	45.14
Pending by 31.12.2001	1,699	37.25
Total	**4,561**	

Of the 2,059 cases that were investigated in depth (see Table B.5), 1,098 (53.3%) were deemed to be founded and resulted in a positive outcome for the complainant, 57 (2.8%) were deemed founded but the administration did not respond positively, while 797 cases

(38.7%) were declared unfounded, as the administrative authorities had acted in accordance with the law. On 31 December 2001, the investigation of 1,699 complaints (37.25% of the total) had not yet been completed.

TABLE B.5 **OUTCOME OF CASES INVESTIGATED**

	NUMBER OF CASES	%
Founded/positive outcome	1,098	53.3
Founded/negative outcome	57	2.8
Unfounded	797	38.7
Other	107	5.2
Total	**2,059**	

The Department of Social Welfare found that in 2001 the main problems with regard to administrative action were linked to instances of maladministration, particularly within social insurance institutions and supplementary insurance funds. The most striking examples of maladministration at this level are the delays observed in issuing pension decisions (one third of all founded complaints), insufficient or non-existent information provided to those concerned, failure to respond or delays in answering citizens' queries, as well as organizational and operational pathogenies. Furthermore, the examination of complaints showed that in a great number of cases, the principle of legality is violated and so is the principle of fair administration.

Based on cases which are of particular interest from a qualitative as well as a quantitative point of view, the Department of Social Welfare has presented proposals for legislative amendments and organizational reforms to the relevant ministries, with the aim of resolving problems and improving the operation of the public agencies and services involved.

The fundamental conclusion to be drawn from the first three years of activity of the Department of Social Welfare is that social administration, in as much as it is directly linked to major problem areas in this country, such as social insurance and health care, is riddled by excessive bureaucracy, deficient organization and operational insufficiencies. This is why it is recommended:

- To incorporate the protection of citizens' social rights into any measures and regulations adopted by the political leadership of the relevant ministries, with the aim of improving the quality of the services provided to citizens.
- To simplify the procedures, to codify and harmonize the rules, particularly those relating to social security law, with the goal of protecting citizens against the confusion arising from the intricate, extremely fragmented and case-oriented legislation in this field.
- To adopt initiatives that may change the attitude of social administration with respect to legality as a concept, which does not only imply strict literal interpretation of legal rules, but rather incorporates in its implementation the purpose for which it was adopted, as well as the general legal principles.
- To promote cooperation mechanisms between the administrative authorities and the Ombudsman, that will enable them to seek lawful and fair solutions to specific demands from citizens and to raise the overall standard of public services.

DEPARTMENT OF QUALITY OF LIFE

The Department deals with complaints concerning the protection of the natural and urban environment and, in general, with cases referring to issues of land use, urban planning, public works, and culture. Primarily, the central services of the following ministries fall under its mandate: Ministry of Agriculture; Interior, Public Administration, and Decentralization; Transportation and Communications; and Ministry for the Environment, Physical Planning, and Public Works, as well as the Local Authorities (local, municipal and prefectural governments) and the General Secretariats of the regions, whilst public utility corporations, such as the Public Power Corporation, the Athens Water Supply and Sewage Company, and others, are also often involved.

During the year 2001, the Department of Quality of Life received 2,256 new complaints, amounting to 20% of all complaints submitted to the Ombudsman in 2001. Finally, during the same period, the Department continued with the examination of 1,337 cases pending from previous years.

Approximately two thirds of all complaints relate to issues falling within the responsibility of Local Authorities; next come issues falling within the responsibility of the central administration, the bulk of which involve 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 total 3,593 cases handled by the Department in 2001, 963 (26.8%) were deemed out of mandate under Law 2477/1997 and thus were filed. Of the remaining 2,630 complaints, 893 (34%) were investigated and closed, while 1,737 (66%) are still under investigation.

TABLE B.6 **DEPARTMENT OF QUALITY OF LIFE: HANDLING OF CASES**

	NUMBER OF CASES	%
Out of mandate/closed	963	26.8
Investigated/closed	893	24.8
Pending by 31.12.2001	1,737	48.4
Total	**3,593**	

More specifically, of the 893 cases investigated and resolved, 398 were deemed founded, 354 unfounded, whilst the remaining 141 were shelved on formal grounds. Of the 398 cases judged to be founded, 354 resulted in a positive outcome for the complainant, whereas in 44 cases the administration did not accept the Ombudsman's proposals (see Table B.7). On 31 December 2001, there were 1,737 cases still pending. In 235 of these, investigation by the Department had been completed and its findings and proposals had been duly notified in writing, but there had as yet been no response on the part of the administration. Finally, on the same date, 15 cases had reached the reporting stage, whilst the remaining 1,487 were still in various stages of preliminary and substantive investigation.

In this year's annual report, the Department of Quality of Life decided to focus its review on its mediation work concerning the restoration of legality and environmental protection. The report presents in detail the Department's findings on these two subjects, 19 of which were drawn up in 2001. It should be stressed that the administrative courts and the Council of State are already referring to some of these findings.

TABLE B.7 **OUTCOME OF CASES INVESTIGATED**

	NUMBER OF CASES	%
Founded/positive outcome	354	39.64
Founded/negative outcome	44	4.93
Unfounded	354	39.64
Other	141	15.79
Total	**893**	

Special attention has been given in the report to the conditions under which the Department decides to intervene in compliance with the Ombudsman's founding law, and either propose disciplinary measures against civil servants who refuse to cooperate with the Ombudsman, thereby hindering the investigation of citizens' complaints, or refer cases to the relevant public prosecutor, if during their examination sufficient evidence of criminal acts committed by public servants or officials was found. During the three years of the Department's operation and until the end of 2001, cases in the first of these two categories exceeded 20, whilst those in the second category approached 40. Finally, the report also records the response of the relevant administrative or prosecuting authorities to the Ombudsman's initiatives. Based on the information made available to the Ombudsman, until 31 December 2001, and as a result of these initiatives, criminal prosecutions against employees as well as high-ranking officials of local government have been initiated in a large number of cases. At the same time, during 2001 the first conviction took place of civil servants whose case had been referred by the Ombudsman to the public prosecutor, following sufficient indication of their involvement in criminal acts.

In conclusion, the findings that are periodically published by the Department on cases referred to the relevant public prosecutor, and in general on all cases handled by the Department in 2001, clearly indicate extensive and serious violations of environmental legislation and particularly in ecologically vulnerable areas, such as, for example, those included in the Natura 2000 Network. Through its mediation work, as recorded in its findings and proposals for the improvement of the operation of public services, the Department of Quality of Life seeks to contribute to the administration's work in order to:

– Achieve the delicate but crucial balance between the right to the environment and the right to property (in particular in connection with land use), as required by law and the Constitution.
– Clearly specify essential concepts and rules contained in national and EU legislation on the environment. The recent revision of article 24 of the Constitution, which establishes the individual right to the environment and the principle of sustainability and expressly recognizes the obligation of the state to draw up a forest and a land registry, significantly extends the Ombudsman's capacity to investigate and mediate in environmental matters.

DEPARTMENT OF STATE–CITIZEN RELATIONS

The mandate of the Department virtually covers all areas of public agencies and the public sector in general, thus including the full range of instances of maladministration. More

specifically, the Department handles cases related to problems arising from the citizens' daily dealings with all public-sector services, the quality of services provided and, in particular, tax issues, the operation of Local Authorities, public utility corporations and public transport authorities, as well as issues involving government procurements, public education, trade and industry, the protection of housing and employment, agricultural policy and farming.

TABLE B.8 **DEPARTMENT OF STATE–CITIZEN RELATIONS: HANDLING OF CASES**

	NUMBER OF CASES	%
Out of mandate/closed	1,628	31.72
Investigated/closed	2,073	40.38
Pending by 31.12.2001	1,432	27.90
Total	**5,133**	

During the year 2001, the Department of State–Citizen Relations investigated 5,133 complaints, i.e. 34.18% of all complaints addressed to the Ombudsman. As can be seen from Table B.8, of these complaints, 1,682 were shelved for being out of mandate or for other formal reasons, and 2,073 were investigated in depth, whilst 1,432 were still pending on 31 December 2001.

TABLE B.9 **OUTCOME OF CASES INVESTIGATED**

	NUMBER OF CASES	%
Founded/positive outcome	928	44.77
Founded/negative outcome	114	5.50
Unfounded	848	40.91
Other	183	8.83
Total	**2,073**	

Of the complaints investigated (see Table B.9), 1,042 were deemed to be founded; in 848 the legitimacy of the administration's action was confirmed, while in 183 cases the investigation was interrupted for various reasons (withdrawal of the complaint, subsequent inadmissibility, failure to produce evidence on the complainant's part). Of the 1,042 founded complaints, the administration refused to comply with the Ombudsman's recommendations (calling for satisfaction of the citizen's demand) in 114 cases, whilst the remaining 928 cases were resolved to the favour of the complainant.

The most important instances of maladministration, as shown by the qualitative analysis of the cases handled by the Department in 2001, once again, concern general problems of organization in public services, delays or even the refusal on the part of the services involved to respond to requests from citizens and supply them with the requested information; there are also incidents of direct violation of substantive law, anti-contractual behaviour or failure to act as required by law. Moreover, the identification of cases of sudden and unjustified modification of the terms and conditions for receiving benefits and allowances, or the

issuing of individual administrative acts, was of particular concern to the Department, since these cases constitute typical examples of flagrant violation of the principle of the protection of legitimate expectations, which should govern the actions of the administration. In 2001, once again, the non-enforcement of court decisions was the main cause of violation of the principle of legality, a fact which led to the introduction of constitutional provisions allowing for sanctions, should the administration fail to comply with the decision of the court (article 95, par. 5 of the Constitution).

The Department dealt to a great extent with cases which, with reference to the real circumstances cited by the citizens concerned, proved to be very similar and meant that it could focus its activity on reducing maladministration and improving the protection of citizens in specific areas of administrative action. Characteristic examples of such cases are issues arising from the implementation of specific provisions of the Road Traffic Code, the levying of services rendered by Local Authorities or the delays in payment of compensation for expropriations.

Once again, communication in writing and by telephone proved the Department's most effective method of procedure during the year 2001. Another particularly successful way of resolving cases were the visits of senior investigators to the public services involved in order to arrive at a satisfactory solution for the citizen, in cooperation with the relevant staff. To a significant extent, the immediate resolution of cases, through simple mediation, as well as the direct or indirect acceptance of the organizational or legislative proposals put forward by the Department, reflects the progressive acceptance of the Ombudsman's institutional authority and the recognition of his role as a mediator.

The main conclusion that can be drawn from the examination of citizens' complaints in 2001, as well as from the proposals for improving the operation of public administration, is that the latter has committed itself to a process of modernization which will not achieve the desired results if public officials do not drastically curtail their fear of responsibility and formalistic approach when processing matters within their area of duty, and as long as it does not become clear to all concerned that the law and citizens' rights must be respected when providing public services.

C.

CONSTITUTIONAL RECOGNITION OF THE OMBUDSMAN AS AN INDEPENDENT AUTHORITY

CONSTITUTIONAL RECOGNITION OF THE OMBUDSMAN AS AN INDEPENDENT AUTHORITY

After its revision in 2001, the Constitution now recognizes the Ombudsman as an independent authority (article 103, par. 9 of the Constitution). In conformity with this same provision, the Authority's formation and mandate are regulated by the legislator.
Of course, the provisions of Law 2477/1997 still apply to the extent that they comply with the new constitutional provisions on independent authorities in general (article 101A), the relevant provisions of the Regulations of Parliament and the uniform arrangements which shall govern the organization and operation of independent authorities, after the voting of the Constitution's implementing law, as provided in article 101A of the Constitution. It is clear that any new legal provisions should follow exactly the same direction, in the event of a change in the existing legislative framework.

The Ombudsman, as one of the five independent authorities recognized by the Constitution, is governed by the provisions of article 101A, which:

- Protect the personal and operational independence of the members of independent authorities,
- provide for the appointment of persons with the necessary qualifications as their members for a specific term of office,
- stipulate that these persons shall be selected by the Conference of the Presidents of Parliament, preferably unanimously or at least with a qualified majority of 4/5 of its members.

Under the provisions of this same article, the selection procedure for the members of independent authorities, Parliament's relations with independent authorities and in particular the modalities of parliamentary scrutiny over their activities are to be determined by the Regulations of Parliament. On the other hand, the legislator shall provide for a series of other issues related to the independent character of these authorities. These include the determination of the qualifications, term of office and individual guarantees of their members' personal and operational independence, as well as applicable rules for the selection and status of the scientific and other staff of the independent authorities.
The legislator is bound by the Constitution to provide these legal arrangements, in the sense that, when regulating these questions he should ensure maximum independence for independent authorities of equal standing.

The implementing law of article 101A of the Constitution had not been voted until the end of 2001 and the same is true of the above-mentioned provisions of the Regulations of Parliament.

D.

OVERALL ASSESSMENT FOR THE YEAR 2001

OVERALL ASSESSMENT FOR THE YEAR 2001

1. General Conclusions

The completion of three years since the founding of the Ombudsman is an appropriate milestone at which to draw some general conclusions concerning the progress of the Ombudsman's work to date. Against this background, the present section of the annual report for 2001 serves a double purpose: on the one hand, to provide a general overview of the work accomplished over this three-year period, and on the other hand to present an assessment of the activities of the Ombudsman during the past calendar year.

In his speech on the occasion of the event celebrating the establishment of the Authority on 24 September 1998, the Greek Ombudsman emphasized in particular the following five conditions that will support the success of the institution and safeguard its independence:

- Material and technical infrastructure,
- staffing and organization based on meritocracy,
- legitimization by the citizen–user,
- the creation of a relationship of trust with the mass media,
- support from the political leadership.

In the almost three and a half years that have elapsed since then, the progress made by the Ombudsman has been satisfactory in all these areas. The material and technical facilities initially provided were sufficient for the beginning. With time, based on needs as they arise, the Authority has significantly improved its computer system. It is the intention of the Ombudsman to make use of the experience gained so far, together with the opportunities offered by the "Information Society" programme for a radical restructuring of the Authority's computer system, which will enable him to comply with the demanding standards of a modern administrative mechanism in an EU member state, whose chief purpose is to effectively control public administration, as well as to provide high-quality information to public services and citizens.

Overall, staff recruiting has advanced satisfactorily. Capitalizing on the provisions contained in his founding law, by 31 December 2001, the Ombudsman had examined more than 3,000 applications for employment or secondment and had conducted 701 public interviews. Over this three-year period, the Ombudsman has recruited or ensured the secondment of 173 people as investigators and members of the secretariat, some of whom later resigned voluntarily. By making sure that the integrity of this procedure and the principle of meritocracy were consistently observed, the Ombudsman has been able to attract scientific staff of the highest standing, an accomplishment which is one of the Authority's most significant assets. The only grey area in connection with this issue was (and still is) the difficulty confronting the Ombudsman in the secondment of civil servants to his Office. This is due to the fact that public authorities feel that such secondment of their staff to the Ombudsman, as an exception to legal provisions in force, deprives them of particularly capable officials. This is of course understandable at the level of the specific administrative service. In practice, however, it leads to excessive delays in completing the

secondment process, strictly in accordance with the relevant legislation, and on occasion even to a de facto cancellation, a situation which naturally disrupts the Authority's smooth operation.

The Ombudsman's work as regards the main object of his mission, i.e. the handling of citizens' complaints, has also developed satisfactorily. The flow of complaints increased considerably during the second year of the Ombudsman's operation and remained at a high level during the third year as well. Already, the total number of complaints investigated by the Office of the Ombudsman in the first three and a half years exceeds 30,000. The resolution rate remained high in 2001 as well: 47.32% of all within-mandate complaints and 91.16% of all founded complaints. Finally, the large number of letters received from citizens expressing thanks, not only for the resolution of a case but also for the way in which they were treated by the Ombudsman's staff, clearly show that this institution has been accepted by the public and is acquiring a steadily increasing legitimization in their eyes.

Relations with the mass media have been established in an equally satisfactory manner; for the ultimate aim of the Ombudsman is to promote the work of the Authority by making its activities known to the public and informing citizens about its efforts. In the period of time that has elapsed since the establishment of the Greek Ombudsman's Office, the latter seems to have successfully created information and communication mechanisms for the mass media based on mutual trust and openness. The relatively recent launching of the Authority's website, as well as its expanding communication policy, will further enhance these relations and make them even more expedient.

However, the confidence shown in this institution by the political leadership of the country has also had a catalytic effect on its legitimization and the establishment of its independence. The recent constitutional recognition of the institution has confirmed the broad political support it enjoys, as do the positive statements on the Ombudsman's work at the yearly meetings of the Authority's leadership with the Parliamentary Standing Committee on Institutions and Transparency. The same effect was achieved by the Ombudsman's participation in recently founded advisory bodies of national scope, such as the Greek National Commission for Human Rights and the National Council on Public Administration Reform, operating under the Prime Minister and the Minister of the Interior, Public Administration, and Decentralization respectively. At the same time, the particular interest of the Prime Minister himself in the Ombudsman's work, the support the Office receives from all ministries, as well as the progressive establishment of good relations with the administration, have given the necessary momentum to the Authority's development over the past three years and allow it to look to the future with increased self-confidence and measured optimism.

These generally positive statements should in no way be misinterpreted as complacency or lack of vigilance. On the contrary, any success achieved in the past serves as an incentive for the Authority to intensify its efforts towards its main objective as laid down by the state in its founding law: to defend the rights of citizens, combat maladministration and safeguard legality. In other words, to contribute in every possible way towards the deepening and enlargement of the principle of the rule of law in this country, this being the foremost criterion for evaluating the quality of democracy in Greece.

In order to achieve this objective, based on the conditions for success referred to

previously, the Ombudsman, already in his second year and especially during 2001, has set the improvement of relations with the public administration as his top priority. This improvement extends to all echelons of the administration, from the lowest to the very highest, and, with time, has acquired many different forms and operates at various levels. To this end, the Ombudsman has adopted the "logic of resolution" as a basic rule for approaching the public administration and seeking ways of resolving both systemic and individual problems, as these are reflected in citizens' complaints submitted to his Office.

As a cultural model for dealing with controversies, the logic of resolution differs from the model which has traditionally prevailed in this country, that of the "logic of confrontation and denunciation", making the search for "user-friendly" solutions the foremost concern of a modern public administration; these are solutions capable of responding adequately to citizen demands, and are not entrenched in a narrow or narrow-minded interpretation of the law. The rejection of responsibility, the traditional objective of this latter approach, is bound to lead to a clash with the citizen and very often to a denunciation of the administration's behaviour. On the other hand, in order for the logic of resolution to be applied it must be linked to the "logic of the positive sum", whose basic principle is that in the overwhelming majority of cases, if not in all, conflicts should be resolved in a way that will provide sufficient satisfaction to both parties and avoid favouring one over the other. This type of approach differs from the other predominant model, that of the "logic of the negative sum" according to which the satisfaction of a demand calls for the "victory" of one party and the "defeat" of the other, with evident adverse effects for their mutual relations.

In the practical context of daily contact with public services and agencies, "turning to the administration", as the Ombudsman has named this significant initiative, is a complex, multifaceted and long-term effort, which was at the centre of the Authority's work during 2001 and will remain a priority for the coming years. These efforts were reflected in a number of specific actions initiated during previous years, but which were given special impetus and priority during the reporting period:

a. Organization of one- and two-day seminars in close cooperation with the public authorities concerned and the active involvement of their supervising political leadership. The aim of these seminars is firstly to make the administration more familiar with the way the Ombudsman works, and subsequently to convene meetings with a specific agenda that will focus on the resolution of pending cases and the adoption of common rules for dealing with future disputes, based on the logic of resolution. Typical examples of such actions, which the Ombudsman hopes to develop further in the near future in cooperation with other services, are the one- and two-day seminars organized in collaboration with the State General Accounting Office and the direct support of the Deputy Minister of Finance, as well as with the Agricultural Insurance Fund. These events utilized the experience gained from a similar pilot initiative organized in 2000 in Herakleion, Crete, in cooperation with the Ministry of Finance and contributed to the development of new approaches based on the logic of resolution and good service to citizens.

b. Publication of special reports focusing on systemic weaknesses of the administration, which, in addition to identifying existing problems, also include specific recommendations for appropriate solutions. These include the special reports on Local Authorities, on the operation of the former Supplementary Insurance Fund for Metalworkers and on

conscientious objectors doing alternative civil service (in lieu of military service), which the Ombudsman presented to the competent ministers in person.

c. Inclusion in the Ombudsman's annual report of specific proposals for legislative, organizational and operational measures, in conformity with the Authority's founding law, aimed at overcoming systemic problems of the administration and thus decisively contributing to the improvement of the level of services provided to citizens.

This final area is of crucial importance and often, if not always, in order to be successful, will require active monitoring and involvement on the part of the political authority which supervises the services concerned, as well as a regular feedback to the Ombudsman on the outcome of his proposals and the reasons for which they may have been rejected, in order to arrive at mutually acceptable solutions. In 2001, there was a growing tendency on the part of the administration to accept the Ombudsman's proposals; this is a promising development as regards the eventual adoption of the Ombudsman's specific recommendations for improving the overall standard of public administration. To put it differently, the Ombudsman should not be treated only as a control mechanism. The experience gathered over three years of activity allows him to function – and this is how this institution has been functioning for many decades in mature democracies – as an advisory and mediation mechanism for political leadership and administration alike, providing them with high-quality and quantitatively powerful data, capable of contributing to the establishment of public policies aimed at improving the productivity and efficiency of public administration, enhancing the respect for legality and the rule of law and raising the quality of democracy in this country.

A fuller understanding and acceptance of this double role of the Ombudsman on the part of the political leadership and the public administration, the political leadership's positive response to his initiatives, and the optimum use of opportunities created by the experience accumulated so far, will lead to positive results with a multiplying effect for: the quality of services provided by the public administration; the attainment of the general goals of the administrative reforms instituted by the Minister of the Interior, Public Administration, and Decentralization on behalf of the government; enhanced protection of legality, and the improvement of the quality of democracy in Greece.

The Ombudsman also acted in his advisory capacity on an international level in the course of 2001, through the initiatives taken by the Authority following an agreement with the European Council, with the aim of promoting the institution of the Ombudsman in Southeast Europe, within the framework of the First Table of the Stability Pact for the countries of the region on democracy and human rights. As a result of these activities, the Ombudsman, the Deputy Ombudsmen and members of the scientific staff visited Albania, Bulgaria, Yugoslavia (Serbia and Kosovo), Slovakia and Slovenia in order to provide support to existing institutions or to undertake efforts to create such institutions through the transfer of know-how.

Finally, such transfer of know-how also took place in the opposite direction, this time to the benefit of the Ombudsman, during a three-day international meeting organized in October 2001 on the occasion of his first three years in office. The meeting was attended by the Ombudsmen of Denmark, Ireland, and Slovenia, as well as distinguished university professors from Canada and the United Kingdom specialized in the comparative study of the institution of the Ombudsman. The purpose of this event was to evaluate the progress

made by the Ombudsman, look for ways of improving the organization and operation of the institution and make plans for the future.

In conclusion, the initiatives taken by the Ombudsman in 2001, both on a national and international level, are totally in line with his overall efforts to expand and systematize his activities, as well as to promote his double role as a mechanism of control, mediation and consultation, capable of contributing to the defence of citizens' rights and the improvement of the level of services provided by the public administration to those dealing with it, irrespective of nationality, within and beyond the boundaries of the Greek state.

2. Statistical Evaluation of Activities for the Year 2001

The Office of the Ombudsman received a total of 30,103 complaints since the beginning of its operation and until 31 December 2001.

The year 2001 was characterized by a continuing and steady increase in the flow of new complaints submitted to the Ombudsman. Thus, the number of new complaints reaching the Office of the Ombudsman during 2001 totalled 11,282, whilst the overall figure was 15,018, if one takes into account the 3,736 complaints submitted in previous years but still under investigation in 2001 (see Table D.1).

TABLE D.1 **TOTAL NUMBER OF CASES DEALT WITH IN 2001**

	NUMBER OF CASES	%
Pending by 31.12.2001	3,736	24.88
Submitted in 2001	11,282	75.12
Total	**15,018**	

TABLE D.2 **INTERDEPARTMENTAL DISTRIBUTION OF COMPLAINTS SUBMITTED IN 2001**

DEPARTMENT	NUMBER OF COMPLAINTS	%
Human Rights	1,387	12.29
Social Welfare	3,322	29.45
Quality of Life	2,256	20.00
State–Citizen Relations	4,317	38.26
Total	**11,282**	

TABLE D.3 **INTERDEPARTMENTAL DISTRIBUTION OF OLD AND NEW CASES DEALT WITH IN 2001**

DEPARTMENT	OLD	NEW	SUM
Human Rights	344	1,387	1,731
Social Welfare	1,239	3,322	4,561
Quality of Life	1,337	2,256	3,593
State–Citizen Relations	816	4,317	5,133
Total	**3,736**	**11,282**	**15,018**

In 2001, there was an especially marked increase in the number of new complaints concerning the Department of State–Citizen Relations (see Table D.3), which handled 5,133 (or 34.18% of all, old and new, cases) and the Department of Social Welfare, which handled 4,561 (or 30.37% of all cases). The Department of Quality of Life handled 23.92% (or 1,731 cases) and the Department of Human Rights 11.53% (or 3,593 cases) of all 15,018 complaints in that year.

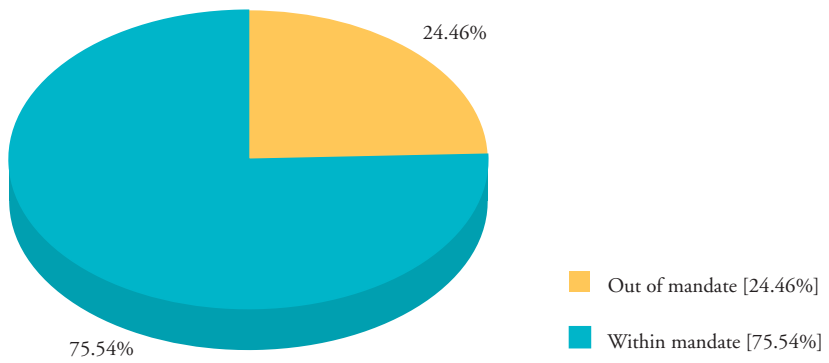
As can be seen in Graph D.1, of the total of 15,018 complaints handled in 2001:

– 3,674 or 24.46% were filed as they were out of mandate. The chief reason was that the complaints were too general or vague, whilst often the request of the citizen was primarily aimed at obtaining legal advice. It should be pointed out that of the new complaints submitted in 2001 alone (11,282), 32.9% were shelved for being out of mandate.

– 11,344 cases were investigated in depth (75.54% of the total).

These percentages are calculated on the total number of cases examined during 2001, including those complaints submitted in previous years which were within the Ombudsman's mandate. The corresponding percentages of new cases submitted to the Office in 2001 are: 32% (out of mandate) and 67.1% (within mandate). The number of new cases (out of mandate) brought to the Ombudsman's attention shows a continuing increase from year to year.

GRAPH D.1 **WITHIN MANDATE / OUT OF MANDATE**



All in all, in 2001, 9,665 cases, i.e. 64.36% of the total, were concluded either following an investigation (5,991 cases) or because they were sent directly to the archives (3,674), while 5,353, i.e. 35.64%, were still pending by the end of December 2001.

The high figure of pending cases should be attributed to the marked increase in the number of complaints submitted at the end of the year, mainly as a result of extensive coverage given to the Ombudsman by the mass media. It is noteworthy that in the final quarter of 2001 alone, nearly 4,000 new complaints reached the Office of the Ombudsman. As can be seen from Graph D.2, of the 5,991 complaints investigated during the year 2001:

• 3,110 cases (or 51.91%) were deemed founded, i.e. the complaint was justified and maladministration had indeed occurred,

• 2,366 cases (or 39.49%) were unfounded, meaning that the administration had acted legally,
• in 8.6% of the cases investigation was interrupted. This happened in cases where citizens:
– had in the meantime appealed to the judicial authorities (202 cases or 3.37%),
– decided to withdraw a complaint (163 cases or 2.73%), or
– refused to provide complaint-supporting data requested by the Ombudsman (150 cases or 2.5%).

GRAPH D.2 **OUTCOME OF THE 5,991 CASES INVESTIGATED/CLOSED**

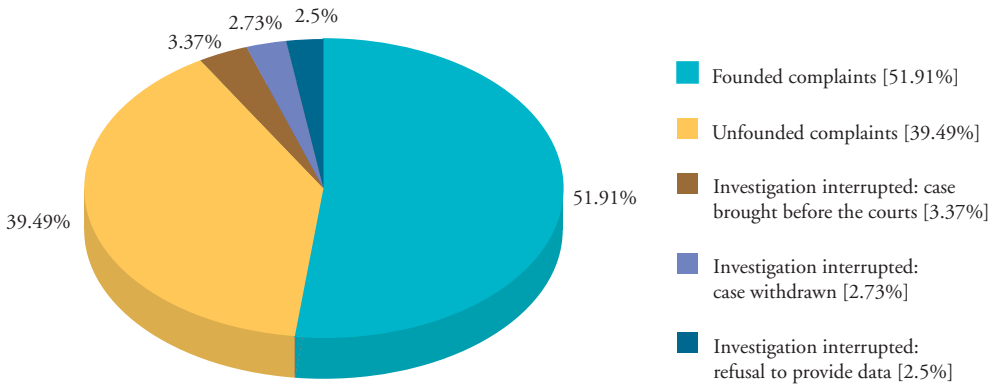


TABLE D.4 **CLOSED AND PENDING CASES**

	NUMBER OF CASES	%
Investigated/closed	5,991	39.90
Out of mandate/closed	3,674	24.46
Pending by 31.12.2001	5,353	35.64
Total	**5,018**	

The vast majority of the 3,110 founded complaints resulted in a positive outcome. In particular, a positive resolution, i.e. elimination of the problem caused by maladministration, was achieved in 2,835 cases of founded complaints, 47.32% of the total cases investigated or 91.16% of all founded complaints.

In order to achieve a positive outcome, in 1,270 cases, informal mediation took place between the citizens and the services concerned, while the administration received oral or written proposals from the Ombudsman in 1,204 cases. Finally, 361 cases were resolved without the direct intervention of the Ombudsman. Often, the mere fact that citizens had appealed to the Ombudsman led to a change in the position of the authority involved. Despite the mediation efforts of the Ombudsman, the administration did not accept his proposals or recommendations in 275 cases, i.e. in 4.59% of all closed cases or 8.84% of all founded complaints.

The rate of resolution of complaints following investigation differs by Department.

• The Department of Social Welfare has the highest rate of positive resolution (53.33% of all cases concluded after investigation by the Department). This high percentage

points to the fact that the chief problems of maladministration dealt with primarily concern delays on the part of insurance funds and not necessarily a negative stance of the administration. Indeed, the Department of Social Welfare has the lowest rejection rate as regards the Ombudsman's proposals (2.77% of all cases closed following investigation, or 4.94% of all founded complaints assigned to the Department).

- The Department of Quality of Life has the lowest resolution rate (39.64% of all complaints processed by this Department); this is due to the large number of pending cases that deal with instances of severe maladministration which, because of their often complex nature, require more time for the Ombudsman's mediation in order for legality to be restored.
- The Department of Quality of Life also has a large number of complaints for which, usually on the initiative of the citizen concerned, the investigation was interrupted (15.79%). For the most part, these are cases in which a citizen opted for the judicial course in defending his claim, based on the Ombudsman's findings and conclusions. In the majority of cases, this occurred after the administration had responded to the mediation efforts of the Ombudsman with intransigence.

The complaints for which, during investigation, the Ombudsman was confronted by a totally negative reaction on the part of the agency involved, concern, in order of frequency, public utility corporations, social insurance, taxation, acts of injustice and failure to respect contractual obligations on the part of the state, building permits, illegal constructions and environmental issues, as well as maladministration at the level of Local Authorities, legal entry and residence of aliens, health care, education, etc.

The more specific problems associated with administrative action identified during the investigation of complaints involved problems of organizational malfunction and non-implementation of legislation in force.

- The most common forms of maladministration are delays in the issuing of administrative acts, in taking administrative action, replying to requests or convening the relevant administrative body. Similar difficulties can be observed with regard to administrative action, especially in cases handled by the Department of Social Welfare, but also by the Department of Quality of Life.
- Problems concerning the application of the law, such as violations or misinterpretations of the law, irregular procedures, abuse of power and failure to cooperate with the Ombudsman are also frequent, and are in fact observed most often in the cases handled by the Department of Human Rights – issues of misinterpretation of legal provisions and abuse of authority – and the Department of Quality of Life – primarily violations of the law.
- Problems also arise quite frequently with regard to providing information to citizens, as well as justifying administrative acts. Such problems are encountered primarily by the Department of State–Citizen Relations and the Department of Social Welfare, and to a lesser degree by the other two Departments during the investigation of complaints.
- Organizational problems and instances of malfunction at the level of public services have mainly been identified by the Department of State–Citizen Relations, but also by the Departments of Social Welfare and Human Rights.

The Department of Quality of Life has primarily observed the following problems during the examination of complaints: failure on the part of the administration to take

the required legal action (usually this applies to the demolition of illegal buildings, the issuing of permits and effect controls), as well as the absence or inadequacy of measures and poor appreciation of the protection of collective and environmental property.

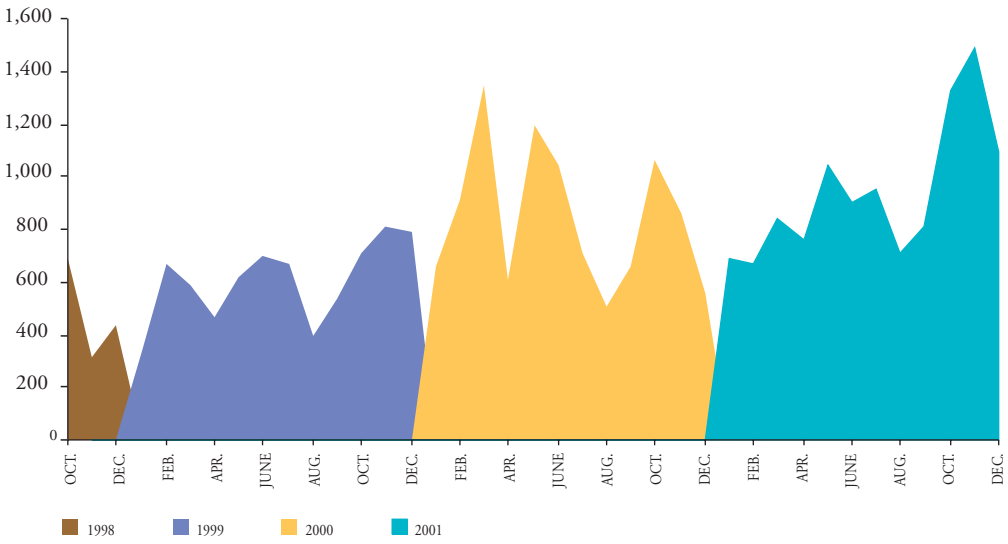
As mentioned in the *2000 Annual Report*, the agencies where problems of maladministration are most frequently observed are the insurance funds (30.9% of all maladministration cases) and Local Authorities (21.6%). They are followed by the legal entities of private law under state supervision, primarily public utility corporations (9.2%), the services of and the agencies operating under the supervision of the Ministry of Finance (9.7%), the Ministry of Education (5.2%), and the other ministries.

Nearly half of the citizens who appealed to the Ombudsman live in the region of Attica (51.2%). However, this percentage is dropping slightly from year to year, whilst the number of complaints submitted by citizens residing in other parts of Greece (outside the cities of Athens and Thessaloniki) is growing steadily (37.9%). During 2001, there was also a slight increase in the proportion of complaints from citizens residing in Germany (51% of those living abroad), in France (5.2%) and in the United Kingdom (3.8%), whilst the percentage of complaints from citizens residing in the United States of America has dropped considerably.

Although the overwhelming majority of complaints come from Greek nationals (95.6%), there has been a minor increase in the number of complaints from non-Greeks, in particular from nationals of East European countries (1.8% from Southeast Europe). This is especially the case for the Department of Human Rights, where 9.3% of all citizens who filed a complaint were of Albanian nationality, 2.1% Ukrainian, 1.5% Russian, 1.5% Polish, 1.4% Romanian, and 1.3% Bulgarian nationals, whilst 2.9% came from the other countries in Eastern Europe and the former USSR, 1.2% from the rest of Southeast Europe and the Balkans, and 5.8% were citizens from Africa and Asia, 1.2% nationals of other member states of the European Union, and 1.2% from America and Oceania.

Finally, following over three years of work, more than one third of the proposals for legislative amendments and administrative reforms put forward by the Ombudsman have been accepted, with the respective percentages by Department ranging from 21.1% to 54.5% of the total number of the submitted complaints.

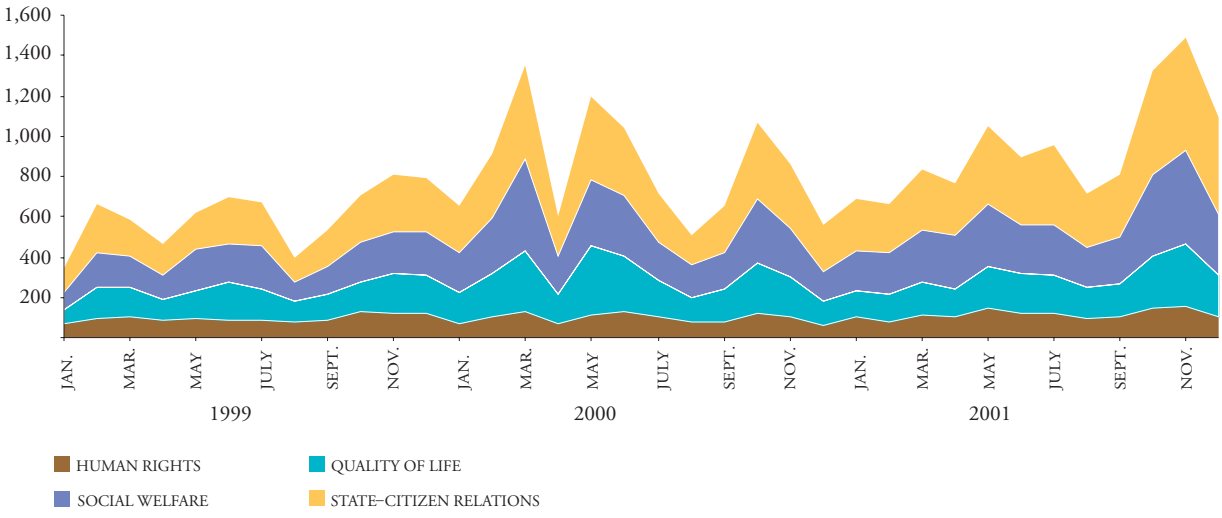
GRAPH D.3 **FLOW OF COMPLAINTS SUBMITTED IN 1998, 1999, 2000, AND 2001**



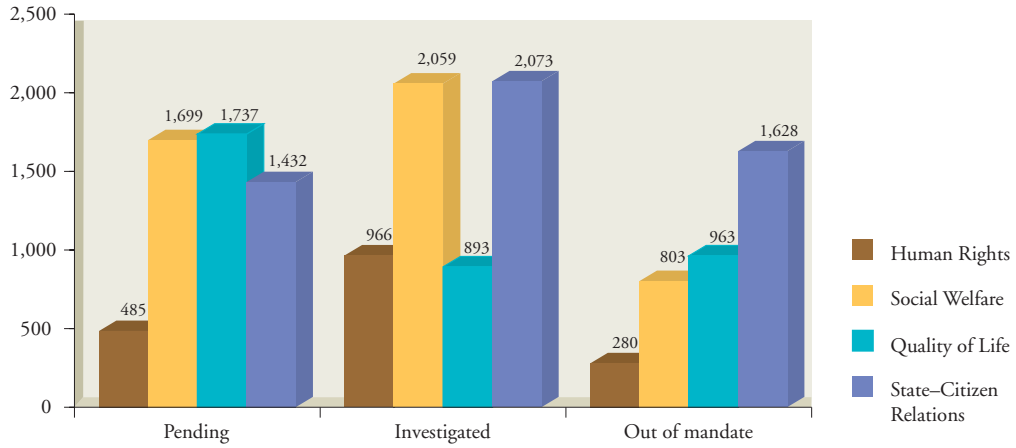
YEAR	NEW COMPLAINTS
1998	1,430
1999	7,284
2000	10,107
2001	11,282
TOTAL	**30,103**

NEW COMPLAINTS IN 2001 BY DEPARTMENT	
HUMAN RIGHTS	1,387
SOCIAL WELFARE	3,322
QUALITY OF LIFE	2,256
STATE–CITIZEN RELATIONS	4,317
TOTAL	**11,282**

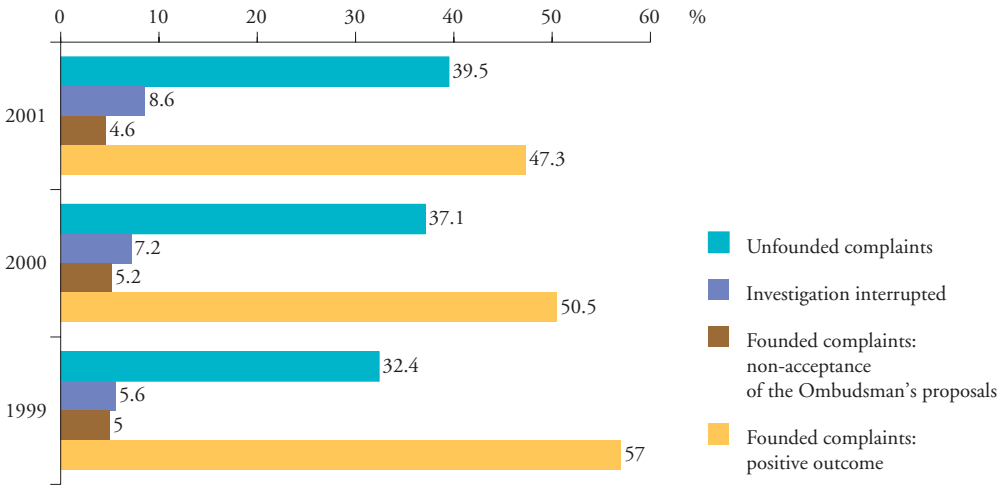
GRAPH D.4 **MONTHLY FLOW OF COMPLAINTS IN 1999, 2000, AND 2001**



GRAPH D.5 **DISTRIBUTION OF COMPLAINTS BY DEPARTMENT**



GRAPH D.6 **OUTCOME OF COMPLAINTS HANDLED DURING 1999, 2000, AND 2001**



GRAPH D.7 **OUTCOME OF FOUNDED COMPLAINTS**

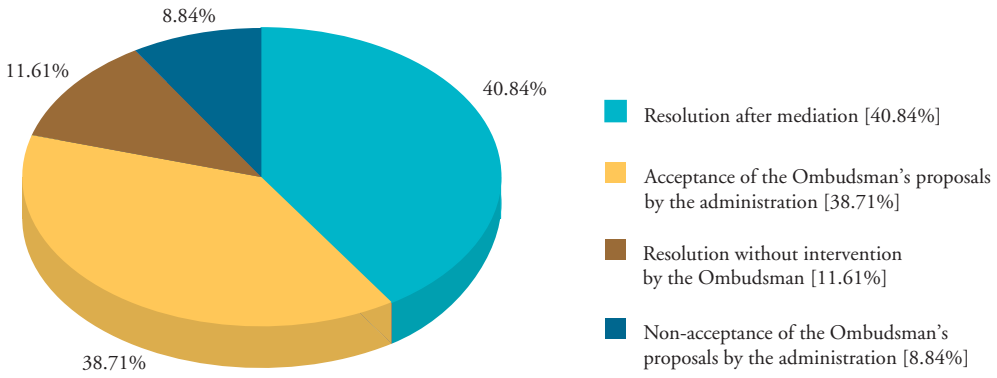


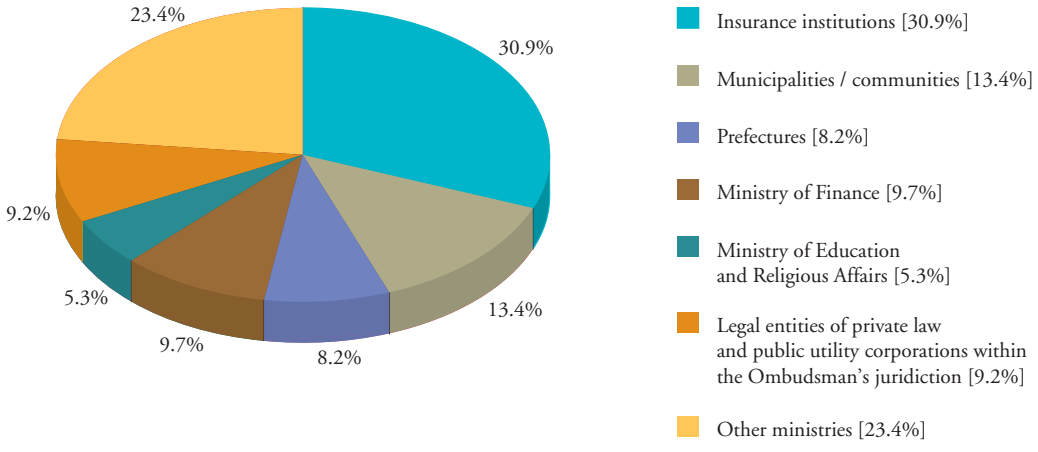
TABLE D.5 **NON-ACCEPTANCE OF THE OMBUDSMAN'S PROPOSALS: DISTRIBUTION BY SUBJECT**

Public utility corporations	8.5%
Social insurance	6.6%
Taxation (vehicular taxes, income)	5.8%
Unfair practice and contractual responsibility of the state	5.4%
Building permits / illegal constructions / environment	5.4%
Maladministration in local government	5.0%
Legal entry and residence of aliens / green card / refugees / discrimination	5.0%
Health (health protection, health professions)	4.6%
Education / ongoing training	3.9%
Expropriations	3.5%
Right to work / employment	3.5%
Judicial protection / enforcement of court decisions	3.1%
Welfare measures and benefits	3.1%
Freedom of religion and expression	1.9%
Miscellaneous	12.7%

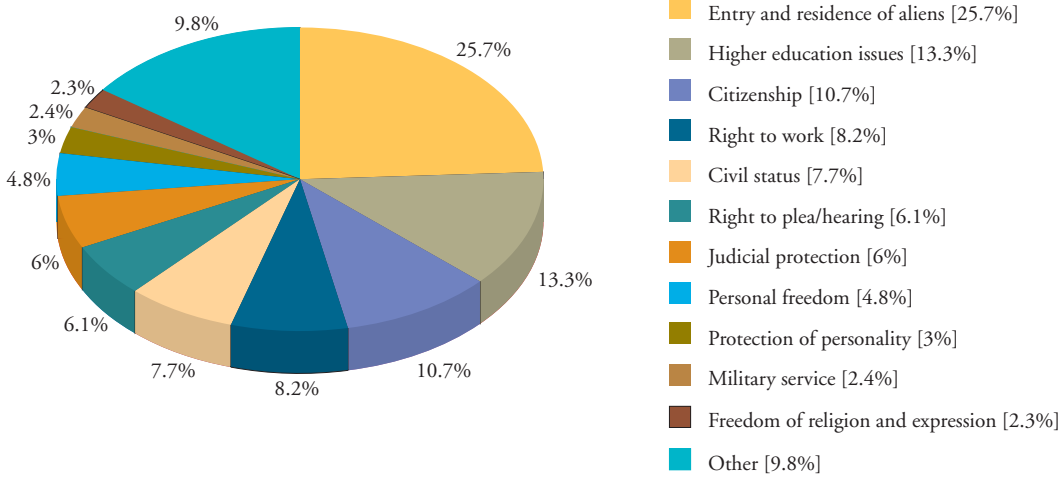
TABLE D.6 **DISTRIBUTION OF MALADMINISTRATION CASES BY DEPARTMENT**

PROBLEMS OF ADMINISTRATIVE ACTION	Human Rights	Social Welfare	Quality of Life	State–Citizen Relations	Sub-totals
Delays in issuing an administrative act or realizing a material action	146	617	435	226	1,424
Delay/non-response to petition or question	40	116	216	173	545
Delay in calling an administrative body	30	30	19	9	88
Organizational or operational problems of responsible services	62	104	44	248	458
Insufficient or lack of information	15	109	61	138	323
Omission of required administrative act	22	26	290	82	420
Incorrect interpretation of law	102	67	54	75	298
Breach of law	31	10	157	44	242
Breach of administrative formalities	22	40	120	54	236
Insufficient or lack of justification of administrative act	35	31	49	49	164
Non-implementation of court decisions	44	29	37	30	140
Insufficient or lack of protective measures for public goods	0	15	94	14	123
Lack of clarity	15	44	16	34	109
Insufficient environmental protection measures	0	1	102	1	104
Discriminatory practices	27	29	12	15	83
Illegal procedures (omission of formal requirement)	9	0	61	10	80
Abuse of power	27	6	29	20	82
Negligence or indifference	14	10	38	13	75
Improper behaviour of public officials	18	11	7	20	56
Non-cooperation with the Ombudsman	8	6	25	10	49
Incorrect interpretation of administrative act or decision	8	10	9	16	43
Other (poorly executed public works, incompetence, force majeure, etc.)	13	7	29	8	57
RESPECT OF GENERAL LEGAL PRINCIPLES					
Non-application of the principle of fair administration	19	46	56	57	178
Non-application of the principle of equity	0	19	3	9	31
Non-application of the principle of proportionality	4	7	1	4	16
Non-application of the principle of good faith	0	10	3	13	26
Non-application of the principle of equality and impartiality	13	15	13	5	46
Non-application of the principle of transparency	8	4	9	25	46
Non-application of the principle of the protection of legitimate expectations	11	10	6	29	56
TOTALS	**743**	**1,429**	**1,995**	**1,431**	**5,598**

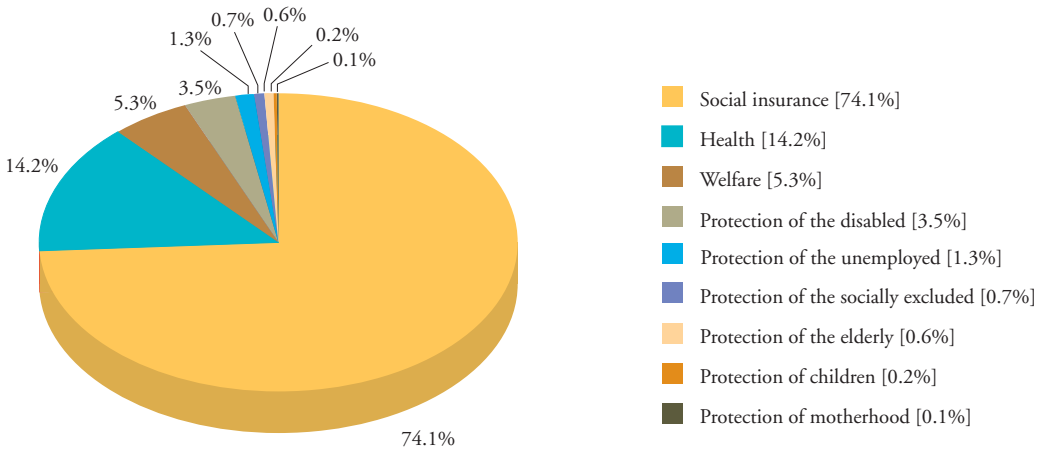
GRAPH D.8 **DISTRIBUTION OF MALADMINISTRATION CASES BY AGENCY INVOLVED**



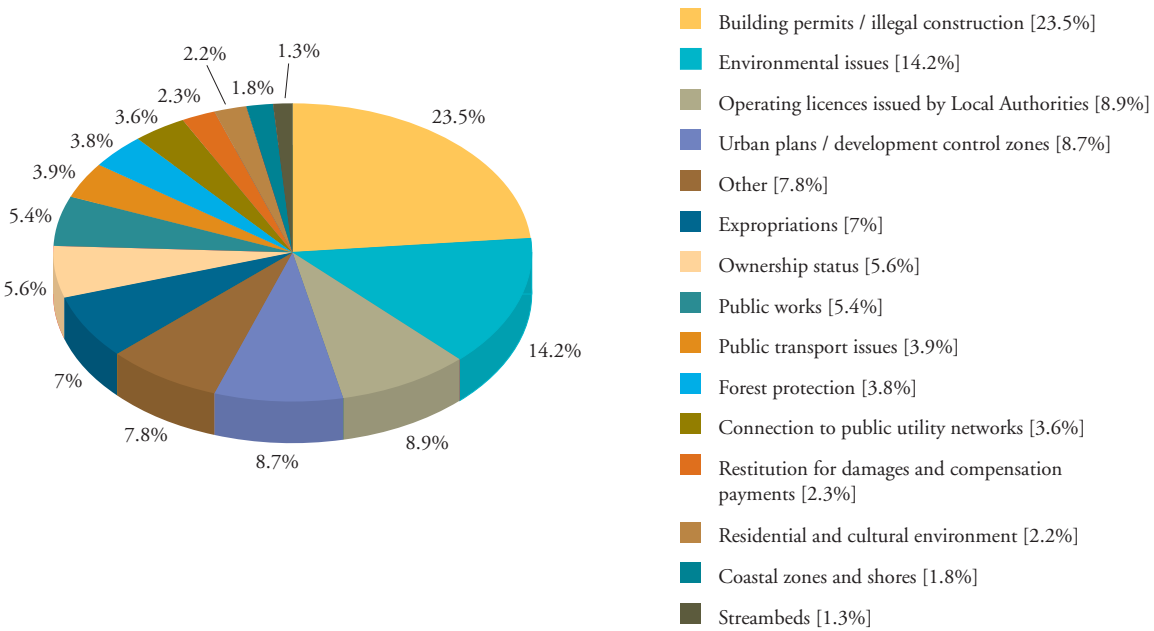
GRAPH D.9 **DEPARTMENT OF HUMAN RIGHTS: DISTRIBUTION OF COMPLAINTS BY SUBJECT**



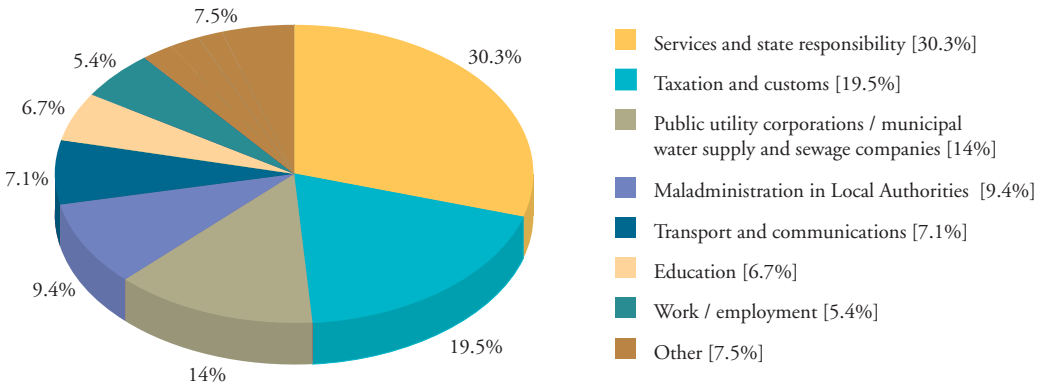
GRAPH D.10 **DEPARTMENT OF SOCIAL WELFARE: DISTRIBUTION OF COMPLAINTS BY SUBJECT**



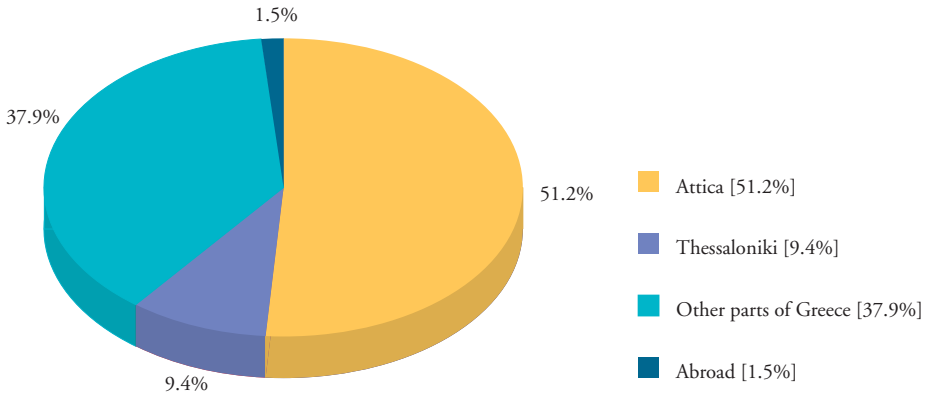
GRAPH D.11 **DEPARTMENT OF QUALITY OF LIFE: DISTRIBUTION OF COMPLAINTS BY SUBJECT**



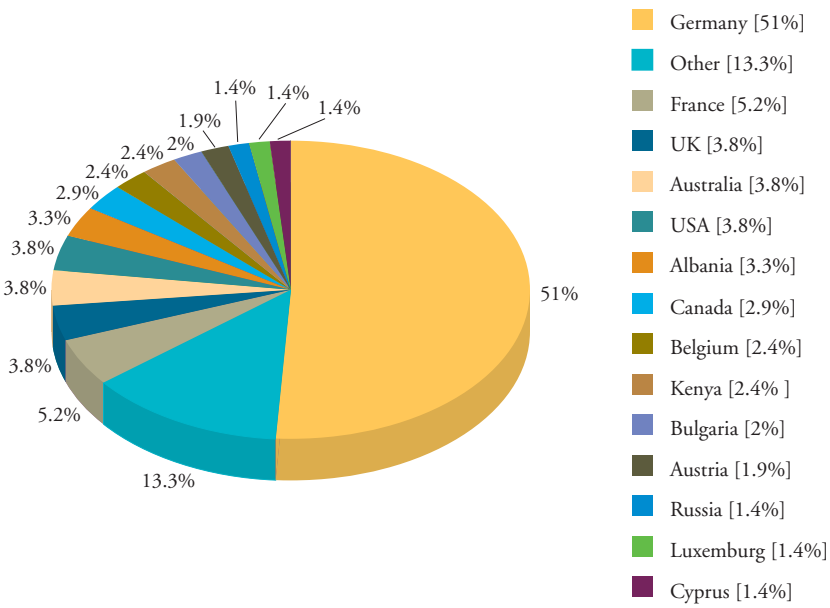
GRAPH D.12 **DEPARTMENT OF STATE–CITIZEN RELATIONS: DISTRIBUTION OF COMPLAINTS BY SUBJECT**



GRAPH D.13 **DISTRIBUTION OF COMPLAINTS BY CITIZENS' PLACE OF RESIDENCE**



GRAPH D.14 **DISTRIBUTION OF COMPLAINTS BY CITIZENS' LIVING ABROAD PLACE OF RESIDENCE**



E.

EVALUATION OF ACTIVITIES BY DEPARTMENT

1. DEPARTMENT OF HUMAN RIGHTS
2. DEPARTMENT OF SOCIAL WELFARE
3. DEPARTMENT OF QUALITY OF LIFE
4. DEPARTMENT OF STATE–CITIZEN RELATIONS

E.1 DEPARTMENT OF HUMAN RIGHTS

CONTENTS

DEPARTMENT OF HUMAN RIGHTS

1. Area of Jurisdiction and Responsibilities of the Department

The Department handles cases involving the violation of individual, social, or political rights (Presidential Decree 273/1999, article 2, par. 1), as these are protected by the Constitution, by the law or by international agreements that have been incorporated into Greek law.

The cases handled by the Department of Human Rights during 2001 relate to the investigation of alleged violations by the public administration of the freedom of religion and belief, of the right to education, the right to work and the freedom to practise a profession, of the principle of equal treatment of citizens, the right of free access to information, the freedom of the mass media, of the protection of personality, and effective legal protection. Finally, a large number of cases relate to matters concerning civil and municipal status and citizenship, as well as the entry and residence of aliens and refugees in Greece.

The issues presented in the English abridged edition of the Ombudsman's 2001 annual report have been chosen for their potential interest to foreign readers.

2. General Assessment of the Department's Activities

As already evident from the Office's first year of operation, an important part of the Ombudsman's activity relates to problems faced in recent years by hundreds of foreigners living and working in Greece, in their dealings with public administration.

This review of the activities of the Department is almost exclusively devoted to cases involving aliens, not just because the number of complaints by foreigners continuously increases, in relation to the total number of complaints received by the Ombudsman, but mainly because such cases bring to light instances of chronic malfunction in the field of public administration. The Ombudsman's experience with regard to problems faced by aliens is that maladministration, in its wider sense, constitutes perhaps the most serious cause of human rights violation in Greece.

Already in his first annual report in 1998, the Ombudsman had described as "particularly noteworthy" the high number of complaints submitted by aliens. Since then, complaints by foreigners have increased both in number and in proportion of the total number of complaints submitted to the Ombudsman. Although during 1998–1999 the percentage of complaints brought by foreigners did not exceed 25%, during 2000–2001 this percentage was 33.5% on average, which means that one third of the complaints received by the Department of Human Rights come from non-Greeks, a proportion which greatly exceeds the percentage of foreigners in the total population.

Equally important, however, is the fact that, in the overwhelming majority of cases, aliens, mainly economic immigrants, complain of problems encountered during the procedure for obtaining or renewing their residence and work permits in Greece. In contrast, the number of complaints dealing with "secondary" matters, such as the unfavourable discriminatory treatment afforded to foreigners by public services compared to Greek citizens, is smaller (see 3.3.2). As can be seen, this does not mean that foreigners do not encounter discrimination. Up until now, however, most of these cases remain "invisible" to the Ombudsman, either because they occur in the private sector, over which the Ombudsman has no jurisdiction, or

because the areas in which such discrimination may occur in the public sector are, for the time being, limited, given that only a small percentage of economic immigrants have dealings with the public administration. Having not yet ensured their lawful residence in the country, most economic immigrants do not have dealings (in fact are prohibited from having dealings) with public services, except as part of their legalization process, which, by definition, only concerns them.

Whilst inordinately limiting the field for unfair discrimination, this approach reflects an extremely pedantic and legalistic perception of the problem, given the fact that one could just as well affirm the exact opposite, i.e. that the procedure followed by the Greek state for the legalization of aliens in the last decade is a clear example of generalized discrimination. It is important to emphasize this point since such unfavourable treatment is not the result of programmed action triggered by racist or even xenophobic attitudes in Greek society. Although there are individual cases of xenophobia, what the successive and unsuccessful efforts to legalize economic immigrants have demonstrated is the inability of the Greek state to establish a firm and consistent immigration policy.

At the legislative level, such inability is reflected in a series of successive laws containing numerous contradictory or unrealistic regulations, whilst regulations on major issues are totally absent. It is this legislation and, in particular, the legalization procedure that the public administration, with all its well-known shortcomings, was called upon to enforce. The result is that aliens waiting for legalization daily have to go through an inconceivable physical and psychological ordeal, to say nothing of the huge sums they have to pay to various "middlemen", a species that always emerges in areas where maladministration thrives. In other words, the legalization procedure as a whole is a painful experience for economic immigrants, to which one would never subject Greek citizens.

A characteristic example of the differential treatment of aliens by the public administration is the fact that, while last autumn the Minister of Labour and Social Affairs had the sensitivity to publicly apologize to pensioners of the Social Security Organization for the short inconvenience they had suffered due to the modification of their pensions' payment system, the daily attitude of public administration towards economic immigrants is totally different, as they experience every possible form of misapplication of the law and maladministration, both during the process for legalizing their residence and work in the country and in other matters. At least this is what extreme cases of violation of human dignity have revealed, such as the physical assault on a young illegal immigrant by the police, or the conditions of detention of aliens awaiting deportation, which have been repeatedly reported by the Ombudsman (see 3.7 and 3.8 respectively).

Once again, therefore, there is confirmation of the fact that, in the field of human rights, political rights primarily constitute an institutional guarantee of individual as well as collective freedom and dignity. By ensuring individuals the possibility of participating in the exercise of political power, political rights are a means of protecting people's autonomy and social rights. It is to this that one should attribute, in the last analysis, the unfavourable position of economic immigrants compared to that of Greek citizens, i.e. to the fact that immigrants lack political power and cannot, therefore, have any influence over political decisions that are crucial for their lives, both at the decision-making and the implementation level.

The experience resulting from the inadequacy of regulatory legislation and the inefficiency of public services on the immigration issue is of interest to the Ombudsman also from another

perspective: it confirms the innate inability of public administration to make timely arrangements, rationally plan and efficiently enforce the measures required, each time it has to deal with complex social problems, where coordination between several public services needs to be achieved. Lack of coordination in this case was manifest, both at the level of preliminary legislative work and at the level of enforcement of the relevant legal provisions. As a result of being in daily contact with the problems that emerge during the legalization procedure as a whole, and following the publicized intention of the Minister of the Interior, Public Administration, and Decentralization to recommend to Parliament the necessary amendments to the legislation, the Ombudsman prepared a special report on the matter, which he delivered to the minister, in order to contribute to every extent possible to the handling of this situation.

The Ombudsman's experience from the problems faced by foreigners in general has shown that maladministration, in the wider sense, is a major cause of human rights violation. The legalization procedure of economic immigrants is perhaps the most striking example, as it is a daily source of blatant violation of human dignity against the most vulnerable group of the population (see 3.6). The same can be said, in general, regarding the other important source of administrative ordeal for aliens in this country: the naturalization procedure.

In both instances, maladministration also has side victims. It does not only affect aliens in the process of legalization, who have to stand in the well-known "queues" from the previous night, or those waiting in vain for years to get a response to their naturalization application. It also tests, on a daily basis, the mental endurance of those civil servants who occupy the relevant "combat" positions in services, which have somehow become places for dishonourable transfers.

Although, as stated earlier, the individual cases of unfair discrimination against "legalized" aliens on the part of self-administered legal entities of public law are few in number, they nevertheless remain serious. In fact, in some cases, one is tempted to make historic comparisons: for example, the mayor who illegally refuses to grant a permanent resident's certificate to a foreigner of Greek descent from Albania (see 3.5.1), or the Technical Chamber of Greece which also illegally does not register Greek-Cypriot engineers (see 3.2.1.2) may seem, at first sight, to be reproducing past experiences of discrimination against population groups of Greek descent by native Greeks, such as the confrontation with the *eterochthones* ("non-native Greeks") in the middle of the 19th century or with the refugees from Asia Minor in the inter-war years.

In reality, however, there is no place for such historic references. Because, while the impact of the *eterochthones* issue and the massive arrival of refugees in 1922 threatened to upset sensitive political and social balances within the Greek state, today the Albanian of Greek descent and the Greek-Cypriot engineers are simply the easy victims of smaller, yet deeply rooted, local interests (in the case of the former) or corporate privileges (in the case of the latter). In truth, it is worth noting that, whereas all cases relating to violations of professional rights (see 3.2) contain some "foreign" element, Greek citizens are also included amongst the victims solely because they earned their academic titles abroad, despite the fact that these are officially recognized by the Greek state as equivalent to the corresponding Greek degrees. This illegal discrimination is aimed at young scientists, who represent an informal minority and whose distinctive feature is not their nationality, race, or religion, but simply that they are easy victims for exclusion from the labour market, in favour of those already established "within the walls".

For the rest, two main issues of human rights protection are highlighted in this annual report. The first concerns an experience, which is alarmingly present in all annual reports of the Ombudsman: the appalling detention conditions of prisoners (see 3.8). The second phenomenon, which, for the first time, features so prominently in the Ombudsman's annual report, relates to discriminations against women regarding access to jobs in the public sector (see 3.3.1).

3. Presentation of the Most Important Cases

3.1 FREEDOM OF RELIGION AND BELIEF

The legislation which governs the status of temples and places of worship of religions other than the dominant religion includes provisions that may lead to inequalities during application when this does not comply with the Constitution and the European Convention for the Protection of Human Rights. The Ombudsman has dealt with specific issues related to the establishment, operation, and protection of temples and places of worship.

In the following case, the Brotherhood of Pentecostal Churches protested against the arrest and committal to trial of one of its ministers, under the false charges that one of its places of worship in Thessaloniki was operating without a licence.

The Police Department of Thessaloniki, relying on an article published in an Athens newspaper under the title "The mysterious hangouts of Thessaloniki", referred, en masse, the people in charge of sixteen minority temples and places of worship to the public prosecutor, without having previously requested any information from the department regarding persons of different religious doctrine or faith of the Ministry of Education, which is responsible for issuing the relevant licences.

The Ombudsman undertook the case following an acquittal by the court and indicated to the police that they are required to carry out individual investigations in order to establish whether a licence has been issued and to avoid mass intervention, which could foster the dangerous prejudice within society that all religions, other than the dominant religion, are intent on breaking the law. However, the deeper cause of the problem lies in the existing legislation. Its provisions treat the matter of the operating licence of places of worship with such obvious suspicion against all religions, apart from the dominant one, that public administration has been led to believe that religious worship must be subject to increased, stricter controls in comparison to other areas of human activity. The European Court of Human Rights has come to similar conclusions (decision dated 26.9.1996, "Manousakis and others versus Greece"): "The Greek state has used the possibilities afforded by the above-mentioned provisions to impose rigid, or indeed prohibitive, conditions on religious practice for certain non-Orthodox cults".

For this reason, the Ombudsman presented a legislative proposal. Until the eventual amendment of the legislative framework, the Ministry of Public Order has made the commitment that it will take all the necessary steps, on its own initiative, in order to find out whether the relevant licence has been issued, before initiating court proceedings (case 17422/2000).

3.2 RIGHT TO WORK AND FREEDOM TO PRACTISE A PROFESSION

For the third consecutive year, the Ombudsman has continued to receive complaints from citizens against professional associations organized as legal entities under public law. As already

noted by the Ombudsman in all previous annual reports, such associations often operate in a protectionist manner, unlawfully obstructing the registration of new scientists. Such action is obviously due to pressures exercised by corporative interests, which consider that the increase of their members and the recognition of their professional rights to them will weaken their financial interests.

From the complaints submitted to the Ombudsman, it may be concluded that professional associations usually try to prevent the entrance of new members by excessive delays in the registration of new members, which conceals a silent or express refusal to register, without any legal grounds. As a result, the individuals concerned are deprived of their constitutional right to work. The same protectionist approach, however, appears to guide the legislator, when he imposes disproportionately onerous restrictions on citizens, thus depriving them of the right to participate in the country's economic life.

3.2.1 REGISTRATION WITH PROFESSIONAL ASSOCIATIONS

3.2.1.1 REFUSAL ON THE PART OF THE TECHNICAL CHAMBER OF GREECE TO REGISTER INDIVIDUALS POSSESSING CERTIFICATES PROFESSIONALLY EQUIVALENT TO THOSE OF OTHER COUNTRIES IN THE EUROPEAN UNION

The Council for the Recognition of the Vocational Equivalence of Foreign Academic Titles has recognized the right for qualified engineers holding degrees from EU countries to exercise the profession of engineer in Greece, in accordance with the provisions of article 10, par. 1 of Presidential Decree 165/2000. According to article 11, par. 6 of this decree, the relevant bodies of the Technical Chamber of Greece (TEE) are obliged to register these engineers. However, the TEE has failed to reply to their applications and omitted – as usual – to inform them in writing about the progress of their applications.

The Ombudsman wrote to the TEE, emphasizing its obligation to comply with the relevant legislative provisions and register the individuals concerned. The TEE, invoking the fact that it had applied to the Council of State for the annulment of Presidential Decree 165/2000, refused to apply the law. The Ombudsman transmitted to the relevant public prosecutor copies of the complaints of the interested parties, in accordance with the provisions of article 4, par. 9 of Law 2477/1997. The Ombudsman's action was based on the fact that the TEE's denial to enforce the existing legislation, despite its duty to do so, constitutes sufficient indication of criminal acts. The case is pending (cases 3629/2001, 7535/2001, 12225/2001).

3.2.1.2 REFUSAL ON THE PART OF THE TECHNICAL CHAMBER OF GREECE TO REGISTER CYPRIOT ENGINEERS

Three Cypriot citizens, graduates of Greek technical universities and permanent residents of Greece, came up against the refusal of the TEE to register them and allow them to practise their profession. Two of them were in fact born in Greece and have attended school and university in this country. The TEE replied to the Ombudsman in a controversial manner. For the first of the applicants, it invoked the decision of the "Delegation", i.e. its supreme collective body, dated 28.6.1986, according to which a ten-year permanent establishment is required for the registration of foreigners, a condition that was not met by the applicant. For the other two candidates, who satisfied this requirement, the TEE argued that Cypriots are classified under the general category of foreigners for whom the TEE has full discretion, by virtue of Presidential Decree 27.11/14.12.26 on the compulsory registration of Greek or European citizens.

The Ombudsman noted, firstly, that the condition of ten years of permanent establishment does not apply to Cypriots, for whom the same decision of the TEE's "Delegation", which is binding until revoked, makes special provision and simply requires their permanent establishment in Greece and, secondly, that the aforesaid presidential decree allows the registration of foreigners of Greek descent, expressly including Cypriots, with the TEE. Therefore, specific and individual reasons must be given for the refusal to allow the Cypriots to exercise their right.

Further to the Ombudsman's intervention, the TEE amended its decision as to the two last persons (i.e. those born in Greece and having lived there ever since), but insisted on the existence of the ten-year permanent establishment requirement and continues to refuse the registration of the first applicant (cases 16497/2000, 908/2001, 1129/2001).

3.2.2 LICENCE TO PRACTISE A PROFESSION

The new Port Regulations, valid as of 26.4.1999, states, amongst other provisions, that the possession of a licence to practise the profession of water-sports trainer is a necessary formal qualification for issuing an operating licence to businesses that rent recreational equipment for water sports. The absence of transitional provisions created a series of problems to citizens who had been lawfully exercising the profession of trainer for years, since the new Port Regulations stipulate that:

- In case of a licence obtained abroad, prior recognition of its equivalence by the General Secretariat of Sports is required, whereas such recognition was not required in the past. For the recognition of equivalence, the opinion of the committee of the Greek Centre for Sports Research and Technology, which is established by presidential decree, is required. However, the said decree has not yet been issued and, therefore, the committee has not been set up. As a result, those in possession of outdated foreign-trainer's licences who, under the previous Port Regulations, had been practising their profession freely and lawfully for a number of years, can no longer continue to do so and so it is the state (which sets conditions that cannot be met) that is totally responsible for this situation.
- Foreign trainers must now present a certificate of proficiency in Greek whereas, in the past, the relevant port authorities established proficiency simply by means of an oral interview. The above requirement has created problems for European citizens who have realized that, in order to obtain a licence for running a business engaged in the renting of recreational water-sports equipment, their trainers had to produce a certificate verifying their knowledge of Greek. The interested parties referred the matter to the Ombudsman and the European Commission, taking into account that such a requirement violates EU provisions on the freedom of movement and establishment and the freedom of European citizens to practise a profession.

Confronting the problems of the first category, the Ombudsman requested the Ministry of Culture to appoint a separate competent administrative body for the recognition of foreign licences of water-sports trainers and the Ministry of Mercantile Marine to temporarily renew the old licences until the aforementioned committee had been formed.

In order to deal with the problems of the second category, the Ombudsman pointed out to the Ministry of Mercantile Marine that, with respect to the old training licences, an adequate knowledge of Greek must be taken for granted since it has been verified in the past, under the previous Port Regulations.

Based on the Ombudsman's findings, the Ministry of Mercantile Marine resolved the first problem by temporarily renewing the old foreign-trainer's licences, based on the previous provisions, until the relevant committee is set up and recognition of licences by the General Secretariat of Sports becomes possible. With regard to the second category of problems, the same ministry renewed the old training licences and adopted the view of the Ombudsman that knowledge of Greek by these professionals had already been certified in the past (cases 14310/2000, 2675/2001, 2676/2001, 4942/2001, 6018/2001).

3.3 EQUAL TREATMENT AND PROHIBITION OF DISCRIMINATION

The Ombudsman has ascertained that certain stereotype views still survive in public administration, which are inconsistent both with the Constitution and with national and EU legislation and case law, and which lead to gender-related discrimination of citizens. The same views, which stem from the erroneous belief that the attitude of public administration should vary according to the differences of each case, even if such differences are immaterial, often lead to the unjustifiably unfavourable treatment of citizens. A characteristic example of this is the arbitrary reduction in the duration of validity of the professional driving licence of a foreigner of Greek descent.

3.3.1 SEX-RELATED DISCRIMINATIONS

The Constitution (article 4, pars 1 and 2) and EU law (Directive 76/207) guarantee the equality of citizens, without discrimination on grounds of sex, with regard to access to jobs in the public sector. EU legislation allows for certain exceptions to this rule only when the worker's gender is a determining factor for a particular activity. This exception cannot be generally and abstractly justified, depending on the nature of the activity, but should be substantiated in each specific case, based on the particular circumstances under which the relevant duties are to be performed. Based on this rationale, the Plenary Session of the Council of State (Council of State 1917/1998) has ruled that legislative restrictions against women are unconstitutional and demanded that the exempted activities as well as the conditions under which they are performed should be determined by law, on the basis of appropriate criteria that provide sufficient grounds for the exclusion of women.

The Ombudsman received a high number of complaints referring to the unequal treatment of women who have been excluded from or have had restricted access to public-sector jobs and to the participation in vocational training programmes.

3.3.1.1 DISCRIMINATION AGAINST WOMEN

The following cases are characteristic examples of the incorrect enforcement by public administration of legislative restrictions against women.

A woman candidate for recruitment at the Fire Department was excluded because of the small proportion (5%) of posts reserved for women in the 1999 job announcement and, more specifically, due to the fact that only three posts, out of a total of 138 for vehicle drivers for the Fire Services of Attica, were open to women.

The relevant legislation (article 12, pars 1 and 2 of Law 2713/1999) restricts the percentage of women enrolled in the police and fire brigade academies to administrative activities and to activities "for which sex is not a determining factor". On the contrary, it considers that the specific duties of the other police and fire-department personnel require "an increased level of

muscle power, speed and endurance, qualities which, as common logic and experience have shown, belong to men due to their particular biological characteristics". The Ombudsman asked the Fire Department whether the inclusion of drivers in the "other fire-department personnel" mentioned in par. 2 of article 12 of Law 2713/1999 meets the criteria laid down in the Constitution and case law. The Fire Department's Headquarters replied that this restriction is justified by the service's regulations, which calls upon drivers to assist firemen on duty in putting out forest fires.

The Ombudsman noted that the restriction by law of the jobs determined in the above job announcement by the Fire Department is questionable.

a. The table attached to the announcement showed that the number of jobs reserved for women also included administrative posts (information technologists, musicians, etc.) to which the principle of equal access should be applied, without gender discrimination. This means that the said restriction was not applied exclusively to forest firefighting duties, as prescribed by law.

b. Moreover, this restriction was not fully applied, in the sense that women were not totally excluded from the duties of active fire fighters, as alleged by the Fire Department, since of the total of 138 vacant drivers' jobs in Attica, three were reserved for women. The question therefore arises as to how the requirement for "increased muscle power, speed and endurance" was bent for these positions.

The provisions of Law 2713/1999, which justify the restriction on the basis of the particular biological characteristics needed for putting out forest fires are reiterated in the Fire Department's regulations and are considered by the Council of State as complying with the Constitution (preliminary opinion no. 156/2001).

It remains, however, to be determined in the future whether the exclusion of women from seasonal forest firefighting jobs complies with the Constitution, in the light of EU legislation and the revised article 116, par. 2 of the Constitution, which provides that "the State is responsible for removing inequalities, which exist in practice, particularly against women". In addition, the Ombudsman has already noted in similar cases the inconsistent practice followed by public administration, since there are women who have been previously employed or have worked as volunteers in fighting forest fires, which is a requirement for filling seasonal posts (cases 9461/2000, 6825/2001 and 8983/2001).

The following cases provide examples not only of incorrect implementation but also of the absence of legal grounds for the restrictions against women.

Complaints submitted to the Ombudsman raised the issue of the categorical exclusion of women from cleaners' jobs at the Municipality of Vyronas, Attica. The relevant job announcement stated that, for the 19 cleaners' posts only applications by men would be accepted, as heavy manual work was required. The Ombudsman asked the municipality to inform him whether the relevant decision, by virtue of which the announcement had been published, was based on a specific law provision allowing for such divergence from the constitutional principle of equality. The municipality invoked the general provision of article 10, par. 3 of Law 1414/1984, according to which "special reference to only one sex in advertisements, notices and announcements does not amount to discrimination against the other sex when this is necessary because the work to be performed and its result can only be provided by that sex". The Ombudsman noted again that any divergence from the principle of equal treatment must be expressly contained in a special and specific law provision. Moreover,

the Ombudsman pointed out that the vague provision of Law 1414/1984, which does not specify any particular duties or conditions for performing them that would make sex a determining factor, is incompatible with the specification imposed by the Constitution and EU legislation.

Finally, the Ombudsman recommended the addition in the internal regulations of the municipality of a special provision regarding these jobs and the specific physical qualities considered necessary for performing the relevant duties. In this way, any deviation from the constitutional principle of gender equality would be legally justified, in accordance with the Council of State's legal precedents. The municipality refused to comply with the above recommendations (cases 835/2001 and 1165/2001).

Another complaint was received by the Ombudsman concerning the exclusion of women from participating in vocational training courses for certain professions (carpenters, oil-painters and welders), contrary to the constitutional principle of gender equality (article 4, pars 1 and 2). This exclusion is expressly contained in two directives of the Manpower Employment Organization (OAED), which relate to training programmes in the Prefecture of Serres.

The Ombudsman asked the OAED to specify whether men's exclusive participation is stipulated in a specific law provision, which deviates from the constitutional principle of equality, in accordance with Directive 76/207/EEC, as interpreted by the Council of State (Plenary Session of the Council of State 1917/1998). In its reply, the OAED did not mention any specific legal provision. On the contrary, it referred to the high proportion of women enrolled in other programmes, e.g. confectionery. The OAED also argued that "the purpose for which exclusively male courses were introduced was to achieve the organization's national quotas, especially for young men under 25, but also to secure jobs for the unemployed in the labour market of the area, an essential condition for the implementation of Alternating Training Programmes".

The Ombudsman considered the reasons given for the above exclusion insufficient and noted in a new document that the constitutional principle of gender equality cannot be bent in order to achieve individual goals in combating unemployment. Therefore, equal access of women to specific training courses must be ensured for each of these programmes. In addition, the Ombudsman considered that the individual goals set by the OAED, in the context of European guidelines for the labour market, do not constitute specific law provisions allowing for divergence from the principle of equal access of both men and women to certain skilled jobs.

The exclusion of women from specific skill-training programmes, in some of which women are traditionally absent, over and above the fact that it is not compensated for by the presence of a large number of women in other specialties, indeed perpetuates existing inequalities.

Finally, the Ombudsman invited the OAED to put an end to the exclusion of women from certain vocational training programmes because this practice is unlawful and helps to perpetuate older forms of exclusion from what were traditionally considered as "male professions".

On 10.10.2001, the OAED informed the Ombudsman that it had adopted his recommendation for equal access of men and women to the new announcement for vocational training posts throughout Greece (case 3949/2001).

3.3.2 DISCRIMINATION ON GROUNDS OF NATIONALITY

The Transport Division of the Prefecture of Corfu issued an Albanian citizen of Greek descent, who was a holder of the special identity card (a residence and work permit issued to persons of Greek descent), valid for three years, a driving licence for type C professional vehicles, in conformity with Presidential Decree 19/1995. Although the relevant driving licences have a five-year duration under article 4, par. 1, passage 2 of the above decree, the expiry date of the complainant's driving licence was the same as the expiry date of his identity card.

The Ombudsman pointed out to the responsible department that, according to existing legislation, the validity of the driving licences issued to aliens is not dependent on the duration of their residence permit. The driving licence simply proves the driving ability and provides the right to drive (article 3, par. 1, passage 1 of Presidential Decree 19/1995); it is not a licence to practise a profession and is therefore not dependent on lawful residence in the country.

The relevant department invited the individual concerned to bring his driving licence so that the date could be corrected. However, since other prefectural governments follow this practice, the Ombudsman notified the Ministry of Transportation and Communications. On 8.8.2001, the ministry's General Transport Division sent instructions to the relevant services, in accordance with the Ombudsman's recommendations (case 7711/2001).

3.4 RIGHT TO INFORMATION

Following the recent constitutional revision, two new provisions were added to the Constitution according to which the right of citizens to receive information from all generally accessible sources, including public services, is ensured (article 5A of the Constitution), and guarantees are provided for individual protection against the inevitable threat to personal data, as a result of the steadily increasing access to information (article 9A of the Constitution). Moreover, in article 10 of the Constitution, which prescribes the right of petition to public authorities, the following third paragraph was added: "The relevant department or authority is obliged to reply to requests for information and documents, certificates in particular, supporting documents, and statements, within a specific deadline, not greater than 60 days, as prescribed by law. In the event of expiration of the above deadline without reply or in case of illegal refusal, apart from any other sanctions and legal consequences, special financial compensation shall be paid to the applicant, as prescribed by law".

The above provisions, in combination with other existing provisions of articles 5, 9, and 10 of the Constitution, determine from now on the rights and guarantees of citizens when dealing with the public administration, not only when they apply for information but also as regards publication of personal data.

3.4.1 PROTECTION OF PERSONAL DATA

The General Secretariat for Research and Technology published on the Internet the findings of an independent experts' committee, which evaluated the research institutions under its supervision. This publication mentioned the name of a specific researcher of a surveyed institution with unfavourable criticisms of his work.

Considering that this publication amounts to a violation of his personality and an infringement of personal data, the researcher requested the removal of the unfavourable criticisms from the website. The General Secretariat for Research and Technology refused, arguing that such removal would constitute an inadmissible alteration of the report. As the

General Secretariat for Research and Technology persisted in its refusal to delete the information in question, the Ombudsman initially proposed to include on the website a text by the injured party, which would refute with scientific arguments the negative criticisms.

The proposal of the Ombudsman was based on the following reasoning: an evaluation report of the individual scientific performance of named researchers, though not touching on the private sphere of those evaluated, undoubtedly includes "personal data" in the sense of Law 2472/1997. Although the processing of such data by the General Secretariat for Research and Technology is legal, their publication, without the consent of the individual concerned, is not.

The General Secretariat for Research and Technology accepted this proposal. Prior to its implementation, however, the Hellenic Data Protection Authority intervened (on the Ombudsman's invitation) and, by virtue of its decision 38/2001, obliged the General Secretariat for Research and Technology to remove from the website the entire part of the report, which referred to the researcher concerned.

3.5 CIVIL AND MUNICIPAL STATUS – CITIZENSHIP

As in the past, during 2001, the Ombudsman received complaints against the central administration reporting phenomena that not only affect citizens themselves, but also often have serious, sometimes tragic, consequences for their social life or the unity of their family. The Ombudsman's recent experience shows that problems relating to the civil and municipal status of citizens but also to citizenship issues are due to:

- The erroneous perception of their role by the elected representatives of local government, who often invoke the principle of "self-government" in order to legitimize the arbitrary exercise of their duties;
- the omission on the part of the central administration to respond in its supervisory capacity overseeing Local Authorities and impose legality when this is breached;
- the lack of adequate staffing and infrastructure of local government services and, finally,
- incorrect or harsh enforcement of legislative provisions.

3.5.1 CIVIL AND MUNICIPAL STATUS

The complainant, holder of the special identity card issued to persons of Greek descent, had submitted to the Municipality of Koropi, on time, an application to obtain a permanent resident's certificate with all the necessary supporting documents, in order to participate in a competition organized by the Ministry of Agriculture for the recruitment of seasonal veterinarians. The Mayor of Koropi verbally refused to meet the complainant's request arguing, in repeated telephone communications with the Ombudsman's staff, that the law incorrectly gives foreigners the right to participate in competitions. The Ombudsman addressed an urgent note to the mayor, reminding him of his constitutional and legal obligations and informing him of the applicable disciplinary and criminal sanctions. At the same time he invited him either to issue the certificate or refuse to do so in writing, giving the reasons for such a refusal. Despite the mayor's persistence in refusing to satisfy the applicant's request, the Ombudsman made sure that the applicant could participate in the tender, within the specified deadline, indicating to the other authorities concerned that the missing certificate could be replaced by a relevant statement by the applicant, under par. 4 of article 10 of the Code of Administrative Procedure. Finally, the Mayor of Koropi issued the applicant the relevant certificate (case 10238/2001).

3.5.2 CITIZENSHIP

3.5.2.1 ADMINISTRATIVE PRACTICE ON CITIZENSHIP ISSUES

From the very beginning, the Ombudsman had established that the operation of the Division for Civil Status and, in particular, of the relevant Citizenship Department of the Ministry of the Interior, Public Administration, and Decentralization, suffered from serious shortcomings, which caused great inconvenience mainly to citizens, but also to staff who have to process a vast number of files that have accumulated over the years. The most disturbing aspect of this situation, which has now become explosive, exists at the Ministry of the Interior, Public Administration, and Decentralization, i.e. the ministry leading the efforts for the modernization of public administration, thus jeopardizing the positive initiatives (simplification of procedures for issuing administrative acts on the citizens' request, reduction of deadlines, abolition of useless supporting documents, etc.) that have been undertaken by this same ministry.

The fact that the majority of those dealing with the Citizenship Department are, by definition, foreigners does not of course minimize the fact that the by now endemic maladministration violates the dignity of these persons, even more so given that the Constitution and legislation fully assimilate foreigners legally residing in Greece as Greek citizens with regard to their rights in the context of administrative procedure (Law 1599/1986, Law 2690/1999). Besides, in most cases, vital interests of Greek citizens (spouses, children and other relatives, employers, contracting parties, etc.) depend on the outcome of the requests submitted by foreigners.

The most obvious malfunction in these services is the excessive delay in the processing of citizenship cases. There are cases for which the final decision has been pending for fifteen years, a length of time which cannot, under any circumstances, be justified by the complexity of the case. On the contrary, the citizen will understandably see it as an example of an administration that is either totally inefficient or downright hostile towards him, even more so when the answer to his occasional reminders is, "your case is being investigated".

The Ombudsman has repeatedly identified in previous annual reports the main causes of this situation and has made specific recommendations for their control. Apart, however, from a limited change in the attitude of the Ministry of the Interior, Public Administration, and Decentralization with respect to the repatriation formalities from Eastern European countries, the Ombudsman's conclusions and recommendations do not appear to have had any impact on the administration. In most cases in fact, the recommendations of the Ombudsman did not even lead to a specific, even if unjustified, dismissal. It would be unfair, however, to put all the blame for existing malfunctions on the officials of the department concerned; their number is disproportionately low compared to their volume of work. Indicatively, one could mention that the personnel of the Citizenship Department do not exceed ten persons, whilst the respective number of pending cases is well in excess of 50,000, according to information supplied by departmental officials. Contacts and cooperation with staff and, in particular, the head of the relevant department have shown that the problems which have been identified, daily put to the test the mental endurance of all the people who work in this department.

The absence of response from the Citizenship Department but also from the political leadership of the Ministry of the Interior, Public Administration, and Decentralization to the Ombudsman's recommendations, forced the relevant Deputy Ombudsman to pay a personal visit to the ministry in order to ascertain, on the spot, and in extensive cooperation with the

relevant deputy minister and ministry officials what were the prospects of getting a response from the department. The deputy minister declared that he was already making efforts to resolve the problems as quickly as possible. The Ombudsman will be following closely the progress of these efforts, in a spirit of cooperation and with as much optimism as the present situation allows (indicatively, cases 5730/2001, 6115/2001, 3948/2001, 6378/2001, 7373/2001, 3593/2001, 17543/2000, 17223/2000, 16745/2000, 13372/2000, 3990/2000).

3.5.2.2 DETERMINATION OF NATIONALITY BY REPATRIATION

The complainant, daughter of a political refugee and married to a Greek, permanently resides in Greece since 1993. In December 1997, she submitted an application to the Ministry of the Interior, Public Administration, and Decentralization for determination of nationality. On the grounds that the applicant is the daughter of a political refugee, the ministry referred her to the Greek Consulate in Budapest to which she should submit her request for repatriation. However, the Greek consulate, which the applicant visited, informed her that she should submit her request for repatriation at her place of residence, i.e. Greece. Following her unsuccessful return from Hungary, the applicant was subjected to further useless inconvenience, this time by the Ministry of the Interior, Public Administration, and Decentralization, which referred her to the Ministry of Foreign Affairs, to which she finally submitted her application for repatriation.

The referral of the applicant to the Greek Consulate in Budapest had resulted from the erroneous interpretation of Ministerial Decision no. 106841/1983, pursuant to which applications for repatriation by political refugees and their descendants should be submitted to "the Greek Consular Authority of the Country in which they currently reside". This possibility was provided in the first place in order to facilitate those residing in another country and who could not be repatriated because of their status as political refugees.

The Ombudsman addressed both the Ministry of the Interior, Public Administration, and Decentralization as well as the Ministry of Foreign Affairs, pointing out that the Ministry of Foreign Affairs may legally receive repatriation applications by political refugees or their children who already permanently reside in Greece, which it then forwards to the competent consular authority. The above solution results from the spirit and intent of the provisions of the aforesaid ministerial decision, which expressly sets as a criterion for the determination of jurisdiction the applicant's place of residence; this is a reasonable measure, in accordance with the principle of fair administration, which avoids unnecessary travelling for these persons. In addition, the Ombudsman concluded that the Greek Consulate in Budapest was also obliged to receive the application for at least the following two reasons: firstly, because it would be processing the applicant's file, being the consular authority of the country in which the applicant had previously resided and, secondly, for reasons of equity, since the applicant had gone to the trouble and incurred the cost of travelling to Budapest, on the instructions of the Ministry of the Interior.

The Ministry of Foreign Affairs responded that it has adopted the practice of accepting repatriation applications from those already residing in Greece and requested in writing from the Ministries of the Interior, Public Administration, and Decentralization, and Public Order their consent in this matter. The Ministry of the Interior informed the Ombudsman that the Greek nationality of the applicant had already been ascertained. However, it insisted on its initial position regarding the competence of the consular authority in Hungary, as this was

the applicant's place of residence; the Ombudsman wrote again to the ministry, pointing out that: a) the Ministry of the Interior, Public Administration, and Decentralization was aware that the applicant resided in Greece, given that its documents were addressed to her as a resident of Pieria, and b) its insistence that the interested party should file her application in Hungary, this being the only legal possibility, represents a formalistic application of the above ministerial decision, whose provisions are intended to facilitate the repatriation of political refugees and their descendants by presentation of their supporting documents to the nearest Greek authorities. Regardless of the positive outcome of the applicant's request, the Ombudsman invited the Ministry of the Interior to avoid such incorrect practices in the future and seek to cooperate with the jointly responsible ministries in order to provide better service to citizens (case 10179/2000).

3.6 ENTRY AND RESIDENCE OF ALIENS IN GREECE AND PROTECTION OF REFUGEES

In recent years, Greece has become a regular pole of attraction for economic immigrants and refugees who leave their countries of origin either for financial reasons or because they are victims of persecution for their religious or political beliefs. Since its establishment, the Office of the Ombudsman has received a large number of complaints from both immigrants and political refugees.

3.6.1 ENTRY AND RESIDENCE OF ALIENS IN GREECE

In the annual report for 2000, the Ombudsman had concluded that, "the legal framework regulating the entry and residence of aliens in Greece is characterized by non-systematic and often non-equitable procedures which exacerbate a situation of instability, uncertainty and controversial practices in the treatment of aliens by the administration". The legal framework to which the Ombudsman referred to was Law 1975/1991 and Presidential Decrees 358/1997 and 359/1997. In the 1999 and 2000 annual reports, the Ombudsman had additionally pointed out the reasons to which one should attribute the failure to legalize aliens illegally entering and residing in Greece, on the basis of the above presidential decrees, as well as the problems arising from these failed attempts both for the foreigners concerned and the public services involved.

By virtue of Law 2910/2001, a new legal framework has been established that attempts to rationalize immigration policy in Greece. In the *2000 Annual Report*, the Ombudsman had welcomed the new efforts of the Greek state to deal with the major social and humanitarian problems caused by the illegal presence in the country of hundreds of thousands of economic immigrants, emphasizing, however, that for these efforts to succeed, in addition to the will of the legislator, there must be as well a radical change in administrative procedures aimed at aliens, which should be founded on: transparency, rationalization, and good administration.

In spite of the recent enactment of the new legislation, the constantly increasing number of complaints involving foreigners proves that the Ombudsman's appreciation of the situation was right, i.e. that the effectiveness of such a wide-ranging undertaking, as the legalization of aliens, does not solely depend on the quality of the relevant law provisions, but also on the manner in which these are adopted, interpreted, and enforced by the administration.

A few representative cases of maladministration involving foreign citizens are presented below. Such maladministration phenomena are mainly due to: a) unjustified caution and inflexibility as regards the entry of aliens in the country, b) long standing problems in the issuing

of residence permits, and c) the stringent enforcement of the law on administrative deportation.

Finally, it is worth noting that serious omissions have also been found in the new Law 2910/2001. For example, a case mentioned below shows that, as regards the granting of a residence permit to the family members of a Greek citizen or an EU citizen, the relevant provision is contrary to EU legislation.

3.6.1.1 ENTRY OF ALIENS IN GREECE

A Ukrainian citizen, resident of Novorosisk, submitted an application for an entry visa to the General Consulate of Greece in Moscow. The consulate refused to examine her application on the grounds that the area of Novorosisk was outside its jurisdiction. It informed her, however, that it could exceptionally assist her if she came in person to the consulate.

The Ombudsman found that the General Consulate in Moscow examined visa applications from residents of the area of Novorosisk, only if the applicants came to the consulate, the only exception to this rule being the visa applications submitted through travel agencies. In his letter to the General Consulate in Moscow, the Ombudsman pointed out that the standard procedure of examining applications only when they came through travel agencies is unlawful, as it constitutes a de facto refusal to exercise discretionary power under the relevant provision of the joint consular circular on the Schengen Treaty. In particular, this provision exceptionally allows examination of a visa application, when it is submitted by an individual or through a travel agency and the distance, which the applicant would have to travel, justifies such deviation from the rule requiring the applicant to appear in person before the authority.

In its reply to the Ombudsman, the General Consulate in Moscow defended its actions by pointing out that the extension of its jurisdiction to the area of Novorosisk justified such practice. In addition, it questioned the Ombudsman's mandate on matters relating to the issuing of entry visas on the grounds that: a) the applicant was a foreigner and not a Greek citizen, and b) the procedure at issue concerns matters relating to the country's international relations which, pursuant to article 3, par. 1 of Law 2477/1997, are exempted from the Ombudsman's mandate.

In a new letter, the Ombudsman noted that the extension of the limits of the consular region under the jurisdiction of the General Consulate in Moscow could in no event justify discrimination in the examination of visa applications submitted by citizens residing in this enlarged region nor could it explain such derogation from the legislation that generally applies to visas. As regards the challenging of his mandate, the Ombudsman pointed out that article 4 of Law 2477/1997 grants the right of appeal to the Ombudsman to every "natural person" and, therefore, the criterion for the admissibility of the complaint submitted to the Ombudsman is not the applicant's nationality but his status as a citizen. He also noted that the exemption from the Ombudsman's mandate of matters relating to the country's international relations, under article 3, par. 1β of Law 2477/1997, concerns a specific area of political action and options which, by virtue of its inherent political dimension, is reasonably removed from the Ombudsman's control. However, an individual's–alien's dealings with the authorities, as in the case of a foreigner requesting an entry visa for personal reasons (trip to Greece), do not fall within this area. Any opinion to the contrary confuses such dealings with the country's international relations and the international–political dimension, which the issuing of entry visas to aliens could generally take.

The Ombudsman concluded that matters relating to administrative practice or respect of the legality in the issuing of entry visas in general are within the overall mandate of the independent authority of the Ombudsman, as specified by Law 2477/1997. On the contrary, the final decisions approving or rejecting the relevant applications constitute, in any event, an area in which the Ombudsman cannot intervene, in particular in view of the fact that, according to article 10, par. 1 of the new Law 2910/2001 "re: immigration", these decisions do not need to be justified. The opinion of the General Consulate in Moscow and the Ombudsman's observations were forwarded to the diplomatic office of the Alternate Minister of Foreign Affairs for the information of the ministry's competent services. Finally, the applicant's claim was satisfied, following the reopening of the Consulate in Novorosisk in January 2001 (case 13153/2000).

3.6.1.2 FAILURE TO SOLVE PROBLEMS RELATING TO THE ISSUING OF A RESIDENCE PERMIT

A foreigner of Greek descent from Russia submitted in 1998 an application to the Police Department of Rodopi for a residence permit. During the investigation carried out by the Division of National Security of the Ministry of Public Order, it was established that the personal data of the applicant was identical to the personal data declared by another individual, to whom Greek citizenship and a Greek passport had been granted.

The applicant came in touch with the Ombudsman in 2000 because, although more than two years had elapsed, the necessary investigation had not been concluded by the services involved (Ministry of Public Order, Greek Consulate in Moscow), the result being that the applicant of Greek descent was illegally residing in the country and in a state of legal inexistence, at no fault of his own.

The Ombudsman asked the Ministry of Public Order to grant a residence permit, be it a temporary one to the applicant, considering that he should not suffer the consequences of the delay in processing the case. The Ombudsman's proposal was accepted and the Police Department of Rodopi issued the applicant a short-term residence permit, so that he could legally reside in the country until the necessary investigation came to an end (case 6210/2000).

3.6.1.3 ADMINISTRATIVE DEPORTATIONS

A foreigner, Russian citizen, was arrested on 28.4.2001 for illegally residing and working in the country. A decision was issued ordering her administrative deportation and detention. During her detention, Law 2910/2001 entered into force, which entitles aliens illegally residing in the country prior to 2.6.2000 to be legalized, provided they complete the necessary formalities for their legalization within a final deadline of two months (2.6.2001–2.8.2001).

The detainee appealed to the Ombudsman requesting his mediation for the repeal of the decision ordering her deportation, so that she could benefit from the provisions of the new law. The Greek police, taking into account opinion no. 328/2001 of the Legal Counsels of State, did not enforce the deportation order against foreigners illegally residing in the country and released a large number of detainees, to allow them to seek legalization. In view, however, of the fact that the Legal Counsels of State's opinion on the fate of the aliens whose deportation for illegally working in Greece was pending had not been asked, these aliens continued to be detained by the Greek police, which forwarded their appeals to the competent General Secretariats of the regions, under the provisions of Law 2910/2001.

The Ombudsman considered that, as the aliens under deportation for illegally residing

in Greece were offered the possibility to benefit from the provisions of Law 2910/2001, the same possibility should also be afforded, for reasons of equality before the law and equity, to aliens under deportation for illegally working in the country. The Ombudsman communicated his opinion to the general secretariats of the regions. The secretary general of the region, in which the applicant had been arrested, accepted the Ombudsman's opinion and declared her appeal admissible. The applicant was released in order to fall under the provisions of Law 2910/2001 (case 7961/2001).

3.6.1.4 WEAKNESSES OF THE NEW LEGISLATIVE FRAMEWORK GOVERNING THE ENTRY AND RESIDENCE OF ALIENS IN GREECE (LAW 2910/2001)

Paragraph 1 of article 33 of Law 2910/2001, in combination with par. 1 of article 71 of the same law, prescribes that a residence permit for a duration of up to five years should be granted to the foreign wife of a Greek or EU citizen. With the application for the relevant permit a fee of 150,000 drs should be paid. Following the complaints from Greek citizens requesting the Ombudsman's mediation for the revision of the above provisions, the latter concluded that these do not comply with the provisions of EU legislation and the Constitution and, in particular, Directives 90/364/EU, 68/360/EU and 73/148/EU, on the right of foreigners, family members of EU citizens, to reside in an EU member state; these directives have been transposed in Greek law by virtue of Presidential Decrees 278/1992, 499/1987 and 525/1983 respectively. More specifically:

- EU legislation establishes a five-year limit as the minimum and not the maximum duration of validity of the residence permit;
- EU legislation makes special provisions for the foreign ascendants or descendants of the foreign spouse of an EU citizen, whereas the above law contains no specific arrangements for these persons, who are treated as foreigners having no particular bond with Greece;
- the required fee for obtaining a residence permit appears to be an indirect and disproportionate restriction of family life, which is protected by article 9 of the Constitution.

The Ombudsman has already requested the Ministry of the Interior to amend the disputed provisions of this law, in the sense of retaining the provisions of the above-mentioned presidential decrees and including, as the only new element, the application of these provisions also to the foreign family members of a Greek citizen (see chapter F). The Directorate General for Justice and Home Affairs of the European Commission (DG JHA) has also intervened on this issue in a letter, dated 3.9.2001, addressed to the Ministry of the Interior, in which it points out that the relevant provisions of Law 2910/2001 contravene EU legislation. As the Ministry of the Interior has not replied to the European Commission, the latter has already drawn up a letter of formal notice, which was to be sent to the Ministry of the Interior in February 2002 (cases 8257/2001, 12343/2001, 13585/2001, 14327/2001).

3.6.2 PROTECTION OF REFUGEES

Although the legislation pertaining to refugees in Greece (Law 1975/1991 and Presidential Decree 61/1999) meets the criteria of the 1951 Geneva Convention on refugees (Law Decree 3989/1959), in practice serious problems emerge in three main sectors: the possibility for aliens illegally entering the country to seek political asylum, the conditions of their detention, as well as the excessive delays, beyond any reasonable measure, for the examination of asylum applications.

3.6.2.1 ACCESS TO THE POLITICAL-ASYLUM PROCEDURE AND DETENTION CONDITIONS OF POLITICAL-ASYLUM SEEKERS

The Ombudsman received a complaint from a non-governmental organization regarding the detention on the island of Kos and under appalling conditions, of economic immigrants who had entered the country illegally (see 3.7) and were not facilitated in applying for political asylum if they so wished. A team of investigators from the Ombudsman travelled to Kos and carried out an on-site inspection, in the course of which they also checked the respect of international and national legislation on political asylum.

It was established that the absence of interpreters, the lack of information on the possibility to submit an asylum application, and the absence of any means of communication with the outside world (telephones) made it in fact impossible for individuals enjoying refugee status under the Geneva Convention to have access to the asylum procedure. It was further established that, until their transfer to a refugee reception centre, asylum seekers remain under police supervision in the same area as the other detainees. In the opinion of the Ombudsman, this procedure amounts to detention and, as such, contravenes international and Greek legislation (article 2, par. 8 of Presidential Decree 61/1999 and article 31 of the Geneva Convention), according to which asylum seekers may not be detained, save for exceptional circumstances.

Following the above conclusions, the Ombudsman, in a document addressed to the Ministers of Public Order and Mercantile Marine, noted the need of providing an interpreter and of informing the coast-guard and police personnel on asylum issues, so that they may receive asylum applications, when such intention is expressed by foreign detainees. As a means for rapidly clarifying the legal status of asylum seekers, the Ombudsman further recommended to broaden the application of the fast-track procedure for examining asylum applications prescribed in article 4, par. 1 of Presidential Decree 61/1991. For this purpose, it is absolutely essential to train and increase staff members.

Finally, the Ombudsman pointed out that, through the establishment of a central body, which would coordinate the reception of aliens who enter the country illegally, the lack of transparency, which characterizes the whole political-asylum procedure, could be effectively overcome, as this is a problem that has become more severe due to the growing numbers of illegal immigrants. The separation of the authority responsible for controlling the entry and for prosecuting those who enter the country illegally from the authority that examines asylum applications, is also essential. Already, there is a draft Directive of the European Council on the procedures for recognizing refugee status (Doc. 500PC578/3.11.00), which contains the obligation for member states to enforce such separation.

3.6.2.2 DELAY IN THE EXAMINATION OF POLITICAL-ASYLUM SEEKERS

The Ombudsman was further concerned with the fact that the Political Asylum Office of the Aliens' Department of the Athens Police Headquarters delayed the interviewing of aliens who, in accordance with the procedure of Presidential Decree 61/1999, have applied for asylum, so that they could be issued a "foreign asylum-seeker's card". In particular, continuous postponements (up to four times even) of scheduled interviews of asylum seekers have been reported, the result being that the interview required by law had not taken place even one and a half year after the initial submission of the asylum application.

The Ombudsman contacted both the Aliens' Department and the Ministry of Public

Order, indicating that the delay observed in the examination of asylum applications was not only illegal (article 2, par. 2 of Presidential Decree 61/1999 expressly provides that the relevant requests must be examined "within three months" from submission), but also excessive beyond any reasonable measure. During this endless waiting, the aliens concerned and their families remain in the country, having as their only legalizing document a service memo, bearing the date of the scheduled interview. Therefore, they do not enjoy any of the social rights, which the legislation concedes to aliens who have completed the relevant procedure and are already in possession of the "foreign asylum-seeker's card". These rights include the right to work and to vocational training (Presidential Decree 189/1998), and the right to free medical care and hospitalization (Presidential Decree 266/1999).

Following the Ombudsman's intervention, the interviews of some of the foreign applicants finally took place. However, two documents concerning other cases still remain unanswered. The Ombudsman considers that the problem of the delays continues to be acute and personnel shortages no longer constitute sufficient excuse for the perpetuation of the present situation. The Ombudsman intends to meet with the heads of the services involved, in order to arrive at a generally and unanimously acceptable solution. However, the Ombudsman's fundamental position is that the prolonged residence of aliens in Greece with just a service memo must stop, in as much as its legality is questionable and it has particularly adverse effects on the financial and social life of those aliens waiting to be recognized as refugees (cases 15785/2000, 23/2001, 2440/2001 and 8038/2001).

3.7 PROTECTION OF PERSONALITY

In his *2000 Annual Report*, the Ombudsman had expressed certain reservations regarding the efficiency of the administrative investigations carried out by the Greek police when they receive complaints of improper conduct of police officers against citizens. Without disregarding the fact that, recently, the police have made endeavours towards the respect of human rights, it should be noted that still much remains to be done.

As indicated by the Ombudsman in last year's report, the problem is mainly centred on the conditions that prevail at police stations concerning the so-called "marginal population groups". The following case is mentioned as an example of the attitude of the police towards these people; it involves the investigation of allegations of ill treatment of an arrested minor immigrant. It should, however, be noted that the inquiry of the police was carried out under the scrutiny of the mass media due to the publicity which surrounded this incident.

3.7.1 GRAVE BODILY DAMAGES INFLICTED BY POLICE OFFICERS ON UNDERAGE FOREIGNER

An alien under age, of Albanian descent, illegally entered Greece in December 2000. On 8.2.2001, officers of the police station of Ayios Stefanos, Attica, arrested him and drove him to the police station where they hit him so cruelly that the minor suffered severe bodily injuries, as a result of which he lost consciousness inside the police station. However, instead of looking after him, the police officers sent him away, so as not to be held liable for his condition. On the following day, the young boy underwent successful surgery for the removal of his spleen at the Athens Regional General Hospital "Yorgos Gennimatas", where he was hospitalized until 17.2.2001. On that date he was arrested by police officers of the Papagos police station for illegally residing in the country. His subsequent detention under very bad conditions at the police station of Ayia Paraskevi led to significant deterioration of his health.

The minor was urgently transferred to the Athens Regional General Hospital "Sismanogleio", where he remained until 5.3.2001.

Meanwhile, on 22.2.2001, the competent police authorities ordered the minor to leave the country within fifteen days. The above case received particular publicity due to the gravity of the injury, the age of the arrestee (just 16 years), as well as the number of illegal acts committed by the police officers. The minor complained to the Ombudsman, requesting that the legality of the police officers' actions should be checked, the decision for his deportation revoked, and that he should not have to pay hospital expenses. Considering that the Greek state has the obligation to correct the damage, which the minor suffered at the hands of the police, not only for humanitarian reasons but also for reasons of public interest (creating an extremely negative impression against the Greek police), the Ombudsman recommended to the competent services to take the following actions:

- Grant to the minor a residence permit for exceptional–humanitarian reasons,
- investigate the case, in order to hold accountable the police officers involved,
- pay for the minor's hospital expenses.

The Ministry of Public Order, accepting the Ombudsman's recommendations, issued a residence permit to the minor and ordered an administrative investigation under oath, following which two police officers have been referred to the relevant disciplinary council that will decide on whether they should be dishonourably discharged. As regards hospital expenses, the Ombudsman is in contact with the Ministry of Health and Welfare and the "Yorgos Gennimatas" Hospital, to make sure that they will not have to be borne by the minor. The hospital agreed to cover hospital expenses (case 3047/2001).

3.8 PERSONAL FREEDOM

The Ombudsman has indicated in previous reports that the bad living conditions in prisons and police detention facilities can be considered as degrading treatment, within the meaning of article 3 of the European Convention for the Protection of Human Rights. This article is of particular practical and symbolic significance for assessing the liberal character of contemporary democracies, as it protects the very core of personal freedom, by prohibiting torture and inhuman or degrading treatment.

The Ombudsman's observations were confirmed by the recent convictions of Greece by the European Court of Human Rights (decisions of the European Court of Human Rights in cases Peers versus Greece of 19.4.2001, and Dougoz versus Greece of 6.3.2001). These decisions have established that conditions of detention in police holding areas (Drapetsona, Alexandras Avenue) and in prisons (Korydallos) amount to degrading treatment, because they objectively offend human dignity. The Ombudsman stressed to the Ministry of Public Order that this problem requires immediate priority under the rule of law, and continued in 2001 to make specific recommendations for the improvement of living conditions and the protection of detainees' fundamental human rights, following frequent visits to the detention facilities of aliens who have entered the country illegally.

3.8.1 DETENTION OF ALIENS RESIDING IN THE COUNTRY ILLEGALLY

Following a complaint regarding the living conditions of foreign detainees at the detention facilities of the Chios Police Department, members of the Ombudsman's staff conducted an on-site inspection on 6 and 7 July 2001; during this visit, they discovered that there was no

exercise yard for the detainees and that conditions were the usual, i.e. bad to appalling as regards cleanliness and sanitation, which one finds in police detention facilities. However, the Ombudsman noted that the aliens' dormitory was properly laid out to secure ventilation and natural lighting. As regards the main problem of the inadequacy of the dilapidated building, the Ombudsman was reassured that efforts are being made to relocate the facility to a larger building, meeting the standards for decent detention conditions. The shortage of running drinking water on the island combined with the very small subsistence allowance were the main problems faced by detainees. The doubling of the detainees' allowance from 1,000 to 2,000 drs, by decision of the Minister of Public Order (no. 2/30868/022/3.8.01), following the Ombudsman's recommendation during a previous on-site inspection to the detention facility of Herakleion, Crete, is a positive development. The number of alien detainees at the Chios Police Department was small, since the on-site inspection took place at a time when the legalization procedure of aliens had already started and deportations were temporarily not permitted under the new Law 2910/2001 "re: aliens" (case 7099/2001).

On the contrary, on 6 and 7 September 2000, an on-site inspection was carried out on the island of Kos, in the facilities of the port and police authorities, where a large number of aliens who had attempted to enter the country illegally by sea were held. This investigation highlighted the specific problem of inadequate detention facilities in some remote islands, which daily have to provide accommodation and care to destitute economic immigrants or asylum seekers, in much larger numbers than the capacity of the detention facilities, which is for twenty people. The problem is even greater for the port authorities that detain immigrants at the port guardhouse, before handing them over to the police, without, however, having any funds especially allocated under existing provisions for their food. As regards those who are subsequently handed over to the police, their temporary detention facility (an abandoned night club outside the city) does not meet the legal requirements for the exercise and supervision of detainees.

Apart from recommendations regarding ventilation and lighting, which were immediately adopted by the police, following discussions with all local agencies, the Ombudsman's proposals were directed at the long-term resolution of the problem, based on centralized coordination and the use of facilities, which can provide accommodation for large numbers of people in view of international immigration trends, while ensuring, at the same time, appropriate sanitation and decent living conditions. In his recommendations to the competent Ministers of the Interior, Public Order, Health and Welfare, and Mercantile Marine the Ombudsman stresses the fact that to treat the phenomenon of the illegal entry of aliens as an exceptional and incidental local problem, in spite of the efforts of local port and police authorities, will only perpetuate detention conditions, which constitute inhuman and degrading treatment, within the meaning of article 3 of the European Convention for the Protection of Human Rights.

Of the authorities involved, only the port authorities of the island of Kos adopted immediate measures. Such measures consisted in the transfer of detainees from the guardhouse to the detention facilities of the Harbour-Master's Office. However, this is a temporary solution, which cannot handle a large number of immigrants who illegally enter the country, while there is no provision for a subsistence allowance from the Ministry of Mercantile Marine to cover their basic needs. The Ministry of Public Order acknowledged the problem of the inadequacy of police detention areas and agreed with the Ombudsman's

proposal regarding immediate implementation of the provision of Law 2910/2001 on the establishment of immigrant reception centres by the regions, a recommendation to which, however, the Ministry of the Interior has not yet reacted. Moreover, the Ministry of Health and Welfare has also not responded to the Ombudsman's detailed proposals (case 12280/2001).

3.9 JUDICIAL PROTECTION

The Ombudsman's three-year experience in checking observance of legality confirms that compliance by the executive with the decisions of the judiciary remains problematic. The constitutional principle of effective legal protection (article 20, par. 1), which is intended, amongst other things, to prevent any irreparable harm prior to the hearing of the case, also covers the possibility for the court to suspend any legal or practical effects of administrative action. The Ombudsman handled cases of refusal on the part of administrative bodies to comply with the decisions of the Council of State's Suspensions Committee.

3.9.1 PROVISIONAL JUDICIAL PROTECTION

Two foreign citizens complained to the Ombudsman that the Ministry of Public Order had refused to revoke the decisions ordering their deportation and that the Dafni and Keratsini offices of the Manpower Employment Organization had not renewed their green-card certificate and green card, which had been taken from them, in breach of decisions no. 526/2000 and 45/2001 of the Council of State's Suspensions Committee. Such refusal resulted in serious difficulties in their daily life, since it was extremely difficult for them to prove that they were legally residing in Greece, in view of the aforesaid judicial decisions, and they were at risk of being deported at any time.

The Suspensions Committee suspended the enforcement of the administrative acts, by virtue of which the complainants' residence permit had been revoked and their deportation ordered, until the final decision on the petition for annulment, which they had made to the Supreme Court. The above court rulings argued that immediate enforcement of the disputed administrative acts would affect the living and economic conditions of the applicants and cause them harm that could not be easily redressed, should the petition for annulment be accepted.

The Ombudsman indicated to the services involved that their refusal to comply with the aforesaid decisions of the Suspensions Committee, on the one hand, violated the provisions of article 58 of Presidential Decree 18/1989 that establish the procedure for submitting an application and issuing a suspending decision, and that, on the other hand, it constituted abuse since the administration had not requested on time the revocation of the decision suspending enforcement, on specific grounds, in accordance with par. 9 of the above article.

Following the Ombudsman's intervention, the Ministry of Public Order temporarily deleted the first complainant's name from the list of undesirable aliens and the Dafni branch office of the Manpower Employment Organization reissued her green-card certificate with temporary validity, until the final decision on her petition for annulment (case 4675/01). In the case of the second complainant, the Manpower Employment Organization's special committee, under article 5 of Presidential Decree 359/1997, decided to reissue his green card for a period of one year (case 8170/2001).

E.2 DEPARTMENT OF SOCIAL WELFARE

CONTENTS

DEPARTMENT OF SOCIAL WELFARE

1. Subject Matter of the Department

The Department of Social Welfare handles cases related to the protection of social rights, the control of maladministration, and the respect of legality by public agencies and services. This protection is extended to Greek citizens, persons of Greek descent, repatriates, and aliens. The Department has the double objective of:

- Providing protection, through mediation work, to particularly vulnerable groups such as children, the elderly, people with special needs, the physically and mentally ill, the Roma, refugees, foreigners, etc., and
- increasing their confidence in social institutions, through high-quality services, out-of-court resolution of their cases and the elimination of maladministration.

2. General Assessment of the Department's Activities

2.1 GENERAL REMARKS AND CONCLUSIONS

In 2001, the Department of Social Welfare examined 4,561 cases, 30.37% of the total complaints received by the Ombudsman during that year. Of these, 3,322 were new complaints and 1,239 cases were pending from the previous year. Of the total number of complaints assigned to the Department, a small percentage (17.61%) was deemed to be out of mandate, while in 1,098 (53.33%) of the total complaints examined by the Department on their merits, a positive outcome was achieved. More specifically, of the total founded complaints, 95.06% were resolved in the citizen's favour, while in 57 cases (4.94%) the Department's proposals were not accepted.

Of the total complaints handled by the Department, 74.1% concerned social insurance and 14.2% health issues, 5.3% welfare questions, 3.5% the protection of people with special needs, 1.3% the protection of the unemployed, while the remaining 1.6% included issues relating to the protection of maternity, children, elderly people and the social exclusion of individuals or groups.

According to the above statistical data, in 2001 the number of complaints dealing with social-insurance issues remained fairly high. There was an interesting development, however, worth mentioning, namely the rise in the number of complaints filed by people belonging to socially excluded groups. More specifically, the Department received complaints that dealt with the living conditions of the Roma and the protection of their social rights. The Department also received a large number of complaints from persons with many children, both of Greek descent and foreigners, with regard to their entitlement to welfare benefits, as well as complaints from unemployed people, concerning their access to jobs. There were also a significant number of complaints on health-related issues dealing with procurements, malpractice and medical ethics.

The conclusion that can be drawn from these cases is that the increase in the number of complaints relating to health and welfare issues is due both to the widening of the range of issues for which the Ombudsman's mediation was sought, and to a notable improvement in their quality.

This qualitative improvement can be attributed to two reasons. The first is the clear increase in the number of citizens who decide to claim their rights to equal and high-level

social services and care, independent of their financial and social condition or place of residence. The second is linked to the growing awareness on the part of citizens of the Ombudsman's institutional role and contribution, through his mediation efforts, to the development of a new perception of the state's obligation to provide social services free of any client-oriented considerations.

2.1.1 IMPORTANT CASES

a. In 2001, acting in conformity with article 4, par. 1 of the Ombudsman's founding law, the Department of Social Welfare conducted on its own initiative investigation into a matter which had received a lot of public attention and had to do with a particularly vulnerable social group. The investigation concerned a decision of the municipal council of Thessaloniki not to allow the operation of a unit of the Therapy Centre for Dependent Individuals (KETHEA) in the city's Ladadika area. The Ombudsman considered the legality of this decision during his examination of the case and conducted an on-site investigation at the town hall and at the KETHEA's premises. After talking to all parties involved, he drew up his findings which he sent to the municipality and the relevant ministers, recommending that KETHEA should be allowed to complete the installation of its services.

b. Following a number of complaints, the Department of Social Welfare examined the access of Roma children to primary schools located close to the area where they live. The complaints received by the Ombudsman concerned the Roma who live in settlements in the regions of Attica and Thessaloniki and raised specific problems such as regular access of children living in these settlements to primary schools in neighbouring areas (distribution of schoolchildren among the schools of bordering municipalities, provision of school buses to take children to school, improvement of the roads leading to the settlement, etc.). The examination of these cases is continuing with on-site investigations and contacts with the residents and authorities involved, in order to ascertain the extent of the problem. The aim of the Ombudsman is to ensure, through his proposals, the necessary conditions for free and equal access of Roma children to education, a right that is guaranteed by the Constitution to all Greek citizens.

c. In 2001, the Ombudsman investigated a complaint regarding the pension rights of persons working at the Crete Rehabilitation Centre for the Disabled. The investigation showed that the persons working at the centre, although coming under the state's insurance scheme, were facing a serious retirement problem because the department that handles civil servants' pensions (the State General Accounting Office) claimed that it had no authority in the matter.

Persons working at the centre, which is a public-law entity, are subject to special provisions that name the Social Security Organization (IKA) as the responsible institution for their insurance and retirement benefits. Their employer, however, did not arrange for the deduction of the necessary contributions in respect of the IKA from their salary. On the contrary, during the whole period of their employment, they paid contributions to the state, they were covered by the state's health-care system and were issued with the relevant health booklet, which was regularly renewed. Although irregular, the resulting situation understandably led them to believe that they were rightly covered by the state's insurance scheme and would receive their pension on retirement from the State General Accounting Office.

In view of the fact that these people will shortly reach the retirement age (as they all have more than 20 years of active service), any change in this situation would deprive them of their pension rights. As their affiliation, at this late stage, to the proper institution would involve an

enormous cost for the state budget, given the fact that the relevant contributions have not been paid to the IKA, this solution has been rejected by the competent services.

The Ombudsman has pointed out that, in conformity with the general principles on the revocation of administrative acts issued in favour of the citizen, the acts by which the employees were affiliated to the IKA may not be revoked after such a long period of time, as this would be against the principle of fair administration and the principle of the protection of legitimate expectations. He has repeatedly recommended to the Ministry of Finance to resolve the matter through a legislative provision. The same issue was discussed at a meeting with the competent departments, where the legal problems resulting from any change in the insurance status of workers and the practical consequences of such failure to arrive at a final resolution of the question were emphasized.[1]

d. The Department also examined cases related to the rights of patients hospitalized in public hospitals. One particular case concerned the death of a patient at the "Venizeleio-Pananeio" Hospital in Herakleion, Crete. The complaint referred to the failure of the hospital's management to investigate a disciplinary offence committed by a doctor who allegedly had performed an operation on a patient, which had resulted in her death. The hospital management had decided that an administrative investigation under oath was not required, as the prosecuting authorities were already investigating the criminal aspects of the case. On the request of the dead woman's family, however, an investigation was carried out by the Ministry of Health's Inspection Division, which concluded that the deceased and her relatives had not been fully informed beforehand, nor had their consent been obtained for the operation and that the patient's death was connected to the specific intervention performed by the doctor.

The Ombudsman sent his findings to the hospital, pointing out that the investigation of disciplinary offences is an independent procedure from any criminal proceedings and that the management, in addition to ensuring the safe and proper running of the hospital, is also responsible for controlling the conditions under which medical interventions are performed, especially when these are not routine procedures but involve new techniques.

The investigation of this case raised the issue of the application of article 127 of Law 2683/1999 on the initiation of an administrative investigation under oath by the management of the hospital when there have been accusations of malpractice. According to this provision, an administrative investigation under oath should be conducted by the relevant department if there is strong suspicion or clear indication that a disciplinary offence has been committed. Whenever, therefore, charges are being made concerning violation of patients' rights, these should be examined and assessed in conformity with article 127 of Law 2683/1999. This means that the management should arrive at a reasoned opinion as to whether the charges and evidence thereto meet the law's requirement for an administrative investigation under oath. Such approach is dictated by the principles of fair administration and transparency in the operation of health-care institutions and the obligation to respect the users of health services.

2.1.2 THE ATTITUDE OF THE ADMINISTRATION TOWARDS THE OMBUDSMAN

By recognizing the Ombudsman as a mechanism for the control of public administration and out-of-court settlement of disputes, the legislator imposes the obligation on public agencies to

1. The latest development on this issue is the information published in the daily press at the beginning of 2002 concerning a forthcoming bill of the Ministry of Finance, which would include the final solution to the retirement problem of the employees of the Crete Rehabilitation Centre for the Disabled.

cooperate with the Authority, by facilitating its investigation of different cases and by either adopting its conclusions or recommending their rejection on justified grounds.

Experience from the handling of cases during 2001 clearly suggests that the response of the administration to proposals submitted by the Ombudsman has still left much to be desired. It should be clarified, however, that at the level of daily cooperation, refusal to cooperate or problems of communication have become rare; when they do occur they can be attributed to the behaviour of individual officials rather than to the attitude of a whole department. To this there has been one exception: the attitude of the Manpower Employment Organization (OAED) towards the Ombudsman. Despite the fact that members of the Department's scientific staff have established relations of trust with their counterparts at the OAED, which certainly contribute to the exchange of views and concerns on the cases under investigation, at the institutional level communication and overall cooperation with the organization remains difficult. The unwillingness to cooperate is particularly apparent as regards written communication; in violation of provisions of par. 6 of Law 2477/1997 and par. 4 of Presidential Decree 273/1999, the OAED's central administration systematically fails to reply to the Ombudsman's documents.

In an attempt to improve its relations with public administration, the Department of Social Welfare has introduced new mediation practices in the past year. On 15 May and 19 November it organized a working meeting with the State General Accounting Office and the Agricultural Insurance Fund, respectively. The main purpose of the two meetings was to provide information about the Ombudsman's role to the officials of these departments and to discuss specific problems arising from citizens' complaints.

In addition to meetings, the Department's staff also visited public services in order to find solutions to citizens' requests and establish a good working climate that would promote the understanding and acceptance of the Ombudsman's proposals, aimed at improving the overall standard of public administration. In 2001, the Ombudsman's cooperation with the General Secretariat of Social Security improved, despite the fact that there are still problems with some of its divisions, in particular the division which supervises supplementary insurance funds. The Department's cooperation with the services of the Social Security Organization, the Agricultural Insurance Fund and the Social Security Organization for the Self-Employed has also improved. Although, on the level of formal cooperation, at least, communication between the IKA's administration and the Department of Social Welfare is good, there are still problems with some decentralized services of the organization and some supplementary insurance funds, which to a large extent reflect a functional disability to meet the standards of modern public administration.

2.2 PROBLEMS OF ADMINISTRATIVE ACTION

2.2.1 MALADMINISTRATION IN SOCIAL INSURANCE INSTITUTIONS

2.2.1.1 DELAYS IN PROCESSING SOCIAL INSURANCE CLAIMS

In all annual reports of the Ombudsman, the Department of Social Welfare has established that delays in processing beneficiaries' claims constitute the primary maladministration problem. Such delays can be observed in most insurance institutions and above all at the IKA and the Agricultural Insurance Fund.

Well-aware of the organizational problems faced by social insurance institutions and the specificity of insurance issues, the legislator has provided for longer deadlines than usual for the

processing of insurance claims. Nevertheless, these deadlines are often not respected and citizens have to seek the Ombudsman's help in order for their cases to be processed more quickly.

Delays occur at all levels of the institutions' operation and constitute the primary example of maladministration, severely undermining the citizens' trust in public administration. One could say that the state's lack of credibility and the questioning of its efficiency are, to a great extent, due to the impression that citizens receive when they come into contact with insurance institutions. Given this situation, if public administration wishes to change its negative image, it needs to reorganize its structures so as to create conditions that will ensure timely services to citizens.

Having established, for the fourth consecutive year, that delays not only persist but are becoming increasingly serious, the Department of Social Welfare intends to prepare a special report on this issue. In cooperation with the administration, its aim is to formulate specific proposals that will put an end to the problem of delays. Allowing this situation to continue will only foster corruption in citizens' dealings with public officials.

2.2.1.2 INFORMATION PROVIDED TO CITIZENS

Inadequate information provided to citizens is another aspect of maladministration. The Department of Social Welfare daily receives complaints from citizens, concerning insufficient or non-existent information on the part of the administration. In this sense, failure to provide adequate information emerges as one of the most serious problems of public administration. In several instances, citizens are obliged to contact other, non-competent authorities, in order to get the information they need, the result being that they are then referred back and forth from one civil servant to the other, without obtaining reliable information on their problem. In areas, however, such as social insurance, which are governed by a highly complex and technical in character legislation, reliable information is an important factor for the beneficiary to obtain access to benefits whilst, conversely, often the absence of such reliable information may de facto deprive a citizen of his rights.

With regard to social insurance issues, timely information should be provided to citizens a) about the type of services available, and b) about procedures required for the completion of a case. In other words, the problem of insufficient or untimely information can arise before the citizen presents his claim, as well as during later stages in a case. At all these stages, the lack of adequate information is critical for the quality of service. Information provided to citizens, in all its forms, is essential, since it is the basis of efficient social administration.

The right to information is not explicitly contained in a law provision. It represents, however, a fundamental moral and ethical rule of good practice, since timely and correct information is a condition for the exercise of certain rights. The right to petition before public services, which is enshrined in article 10 of the Constitution, is directly linked to the obligation of providing information. Moreover, timely and reliable information is a fundamental aspect of the rule of law, since it is indivisibly linked to the principle of transparency of administrative action. Such transparency presupposes that citizens are informed, to ensure both their effective participation in civic affairs and the unhindered control of administrative procedures. The measures adopted so far by the administration in the matter of information (e.g. publication of information leaflets, announcements in the departments or the press, etc.) are not sufficient. Long-term planning as well as systematic and ongoing efforts will be required so that citizens may progressively obtain reliable information as to their rights and obligations.

2.2.1.3 JUSTIFYING ADMINISTRATIVE ACTIONS

When the administration gives reasons for its actions, this has a catalytic effect on the acceptance of their consequences; at the same time, this process is the primary mechanism for controlling the legality of administrative action and the quality of services delivered to citizens. It seems, however, that the administration's obligation to provide citizens with a reasoned reply to their requests, within the deadline specified by law, is not yet a standard procedure for many public services. This can be clearly seen in the complaints that were received by the Department of Social Welfare in 2001.

These complaints have also shown that even when the administration gives reasons for its actions, the usual, standardized expressions used by government departments cannot be readily, if at all, understood by the people concerned. This is particularly true for certain insurance institutions, whose principle customers are citizens who have little education and are not familiar with the written language (e.g. farmers in the case of the Agricultural Insurance Fund). As a result, they are unable, despite their efforts, to understand the complicated, unclear, obscure language used for the standardized information leaflets, replies, and pension decisions which concern them.

2.2.2 MALADMINISTRATION IN HEALTH INSTITUTIONS

2.2.2.1 DELAYS IN OBTAINING APPOINTMENTS AT NATIONAL HEALTH SYSTEM HOSPITALS AND IKA DISPENSARIES

The examination of a significant number of complaints has shown that there are long delays in obtaining an appointment for scheduled, non-urgent clinical and laboratory tests, both at National Health System (ESY) hospitals and IKA dispensaries. The problem is particularly acute in those cases where the test must be made within a specific period of time (e.g. amniocentesis, allergy test, etc.), the result being that people often have to go to a private practitioner. This situation does not only affect patients' rights, it also weakens the role of public hospitals and IKA dispensaries that have an obligation to provide proper, timely and satisfactory health services.

The system used by hospitals for arranging appointments is neither uniform nor efficient. In certain hospitals the patient has to come to the outpatient department in the morning to obtain a priority number, in order to be seen by a physician sometime during the day. Even in the hospitals where patients may make an appointment by phone, waiting times are quite long.

A more efficient organization of the outpatient departments of public hospitals and IKA dispensaries would certainly help. In addition to the uniform procedures that should apply to all hospitals, the number of patients, the number of physicians on duty and the degree of severity of individual cases should also be taken into consideration, in order to give priority to those considered to be more serious. Moreover, appointments should be given at regular intervals, based on the approximate average time required for examining each patient, and not grouped together, as was the practice when this report was being drafted, which meant that patients had to wait pointlessly from early in the morning until their turn came. Of course, it is also important to make sure that doctors keep their appointments. Several complaints indicate that citizens had kept their appointment for tests, but the doctor was absent and had not been replaced. It would probably help if more outpatient departments were also open in the afternoon, in addition to those provided by article 9 of Law 2889/2001, which presently operate in a few hospitals only. This law attempts to correct the shortcomings of the ESY, but it is still too soon to assess its effects.

2.2.2.2 IMPROPER BEHAVIOUR OF NATIONAL HEALTH SYSTEM AND IKA DOCTORS

The Department of Social Welfare has received complaints concerning the unethical behaviour of physicians towards patients, both in public hospitals and whilst providing home care, in the case of IKA doctors. The examination of these complaints has shown that, over and above the rude behaviour of physicians and their refusal to provide medical care to patients, the latter's complaints were not investigated and there was no response from the relevant departments or the patient-rights protection committees.

Such behaviour is due to the paternalistic attitude of medical staff towards patients, the indifference of hospital management with regard to the protection of health-services users, and the inefficient and irresponsible operation of the citizen advisory desks, which have been established in every hospital.

As a result of this situation, the complaint which a dissatisfied patient submits to the hospital's advisory desk either remains unanswered or the reply simply indicates that recommendations have been made to the physician, without, however, any proper investigation of the case. This practice directly affects the right to health and clearly infringes patients' rights as enshrined in article 47 of Law 2071/1992; it also undermines citizens' trust in the ESY and motivates them to use private health services.

Effective and continuous monitoring of secondary and tertiary health services by the competent division of the Ministry of Health and Welfare, and implementation of the relevant statutory provisions would certainly help control maladministration and ensure the protection of patients' rights.

2.2.2.3 PATIENTS' RIGHTS: INADEQUATE OR NON-EXISTENT INFORMATION TO PATIENTS OR TO THEIR RELATIVES

A large number of complaints received by the Ombudsman have identified the problem of inadequate or non-existent information to patients or their relatives regarding their rights. The provision of proper information to patients is not only a legal obligation on the part of the physician, arising from his obligation to medical care, it is also a requirement under ethical and moral rules. Informing the patient is, from an ethical point of view, an issue that is linked to his right to decide for himself and consent to the proposed intervention or treatment. A patient is a human being and the physician has the moral obligation to respect his wishes and to make sure that medical intervention is not arbitrarily imposed on him.

The personal relationship that develops between doctor and patient requires that the patient be informed, so that he can give his consent for the medical interventions and treatment which he will have to undergo, but also because this will reduce anxiety for him and his relatives. Seen from this point of view, the obligation to provide timely information is not only necessary to ensure the patient's cooperation during treatment, but it also contributes to his recovery and rehabilitation.

Fuller implementation of article 47 of Law 2071/1992 on providing information to patients, obtaining their consent for treatment, observing medical confidentiality, and generally respecting patients' dignity, would certainly be a step in the right direction, in order to build a relationship of trust between them and their doctor. Trust is an essential element that allows health professionals to offer comprehensive medical care, thereby enhancing their role within the overall health system.

It should finally be noted that examination of the complaints received by the Ombudsman

has shown that, in addition to the instances where the doctor had given patients incomplete information, there were also cases where the doctor was accused of malpractice during the operation which, in some cases, caused serious damage to the patient's health, or his death.

2.2.3 MALADMINISTRATION IN WELFARE INSTITUTIONS

2.2.3.1 DIVERSIFICATION OF CONDITIONS FOR OBTAINING WELFARE BENEFITS

Conditions for obtaining welfare benefits from the relevant prefectural government services was one of the issues which the Department of Social Welfare had to deal with regularly during 2001. The investigation of a large number of cases has shown that there is no uniform manner in which this question is handled by the relevant welfare divisions.

According to the legislation in force, i.e. the various ministerial decisions which determine the amount, as well as the conditions for granting welfare benefits to different categories of people with special needs, deaf-mute persons aged 19–65 are not entitled to such benefits, unless they also suffer from another chronic physical or mental disease or impairment, which makes them unable to work for a living.

These same decisions, however, provide for other categories of people with special needs, who receive benefits because they are unable to work for a living. Moreover, higher amounts are given to certain categories, such as blind people who have a profession – and especially lawyers – whilst unemployed citizens of that same category also receive benefits. There are other categories of people with special needs, on the other hand, who are in an even more disadvantaged situation than the deaf-mute, with regard to the conditions for obtaining welfare benefits. This category includes, for example, persons with cerebral palsy who receive benefits until the age of 18.

The practical result of this fragmentary and case-by-case handling of people with special needs, based on often conflicting criteria, is that employment for certain categories of individuals (the blind, for example) is encouraged, whilst for others (e.g. deaf-mute, spastics) it is not. In this way, the latter categories are forced to claim before the health committees that they simultaneously suffer from other additional diseases, in order to obtain the relevant welfare benefits, or request an invalidity pension, which means that they leave the labour market and are no longer productive members of the society; in fact they are following precisely the opposite direction than the one advocated by the state in the revision of the Constitution. Such a development has both a moral cost, since it scorns the citizen and alienates him from the state, and also a socio-economic cost, in that it deprives society and the economy of the citizen's productive contribution.

Given this situation, public policies which set out criteria on which welfare benefits may be granted should be uniform; their aim should be to cover all related or similar categories of persons with special needs and certainly they should not be dictated by corporatist considerations, which inevitably lead to unequal treatment of potential beneficiaries, depriving them of the state's support which can guarantee a decent way of life for them.

2.2.4 NON-RESPECT OF THE PRINCIPLE OF LEGALITY

The study of the problems relating to administrative action that were identified by the Department of Social Welfare during the investigation of the complaints assigned to it in 2001 showed further examples of non-respect for the principle of legality.

As the Ombudsman has repeatedly noted in his documents and reports, he perceives the

principle of legality as a fundamental principle of the rule of law, aimed at providing to citizens guarantee of fair treatment by public services. In this context, its application is dependent both on the existence of suitable legislation, which determines the scope of administrative action, and on the recognition of a set of legal values that enhance the understanding of the law when enforcing legislation. In the Ombudsman's view, therefore, the existence of a legal framework and the acceptance of principles of law, that contribute to its systematic interpretation and correct application, are two complementary aspects of the principle of legality, which the Ombudsman is directly bound to uphold by virtue of his founding law.

During the handling of complaints, the Department of Social Welfare had to deal with cases of non-respect or improper interpretation of relevant provisions.

2.2.4.1 NON-ENFORCEMENT OF FINAL JUDICIAL DECISIONS

The first category includes cases relating to the enforcement of administrative judicial decisions. Most of these decisions concerned social insurance claims; they had not been enforced by the relevant insurance institutions, which were either procrastinating or had expressed reservations as to their obligation to take specific action in order to comply with the decision of the court (submission of claim for re-evaluation by the competent body, issuing of enforceable administrative decision with a modified content to replace an earlier decision which had been cancelled), or were finally questioning the enforceability of said decisions.

In cases of this category, the institutions concerned invoke, as a rule, the provision of article 21, par. 9 of Law 1902/1990, under which all social insurance institutions under the Ministry of Labour and Social Affairs enjoy the judicial and procedural privileges of the state; this provision also stipulates that both the deadline for and submission of the appeal itself will suspend the enforcement of final decisions against these institutions. It must, however, be noted that the above provision expressly exempts judicial decisions concerning the payment of benefits, insurance coverage and the duration of the insurance. Regarding these cases, the practice frequently followed by insurance institutions, particularly for those dealing with benefit claims, was to exhaust all available legal remedies. The Ombudsman thus handled cases where, although the point at issue was covered by the exception of article 21, the administration invoked the general rule, disregarding its obligation to satisfy the citizen's demand. During the selection of ESY doctors by the relevant Evaluation and Selection Councils for Hospital Medical and Dental Staff, other cases of non-enforcement of judicial decisions were observed. The decisions of the administrative courts of appeal, which cancelled the evaluation process as unlawful and ordered its resumption, were not enforced. In these particular cases there were delays in taking the necessary action, thus eliminating effective judicial protection, which applicants had sought and obtained.

2.2.4.2 INCORRECT INTERPRETATION OF THE LAW

The Ombudsman has received complaints concerning incorrect interpretation of the law. A characteristic example of that type of complaints is the non-enforcement by the IKA of the decisions of higher bodies (the local administrative committees – LACs), which accepted the claims submitted by insured persons against the decisions of a branch director.

More specifically, the IKA's Regulations provide that insured persons may appeal against the decisions of a branch director of this organization before the relevant LAC. As a review body, the committee will control the legality and the merits of the case. In accordance with the general

principles of administrative law, its decision is an enforceable administrative act, which cancels any previous relevant administrative act and may be quashed only if one appeals to the competent administrative court; such appeal, however, has no effect on the enforceability of the decision.

In the cases investigated by the Department of Social Welfare, the IKA's relevant services had refused to enforce the decision of LACs, which accepted the claims of the insured as regards, in particular, payment of employers' contributions or granting of insurance benefits. The argument advanced by the services concerned to justify their refusal was that an appeal had already been lodged against these decisions before the competent administrative courts. The practical effect of this refusal was that the IKA did not refund the amounts which the insured had already paid to the organization, or was still claiming from them the amounts which, following the LAC's decision, they did not have to pay, imposing fines and threatening to take measures for their compulsory collection. In both these cases, the actions of the administration were based on invalid administrative acts, i.e. the acts that had been cancelled by the decisions of the LACs and could not, therefore, have any legal effect. The above practice (on which a relevant circular had been issued) resulted from the incorrect interpretation of the IKA's Regulations and the rules of administrative law, which clearly provide that an administrative appeal does not on its own stop the enforcement of an administrative act, which has been appealed against.

Following the Ombudsman's intervention, the IKA's administration sent a new circular to all branch offices for the enforcement of the decisions of LACs. At a later stage, however, the Ombudsman discovered that this illegal practice was still followed by an IKA branch office, in spite of the instructions to the contrary issued by the organization's administration. Similar problems of interpretation were identified in relation to the payment of travel costs when insured persons have to go from an annex of the organization to a branch office in order to receive health care. The IKA's Regulations specifically provide for the payment of the largest portion of travel expenses incurred by an insured person, when he cannot receive the necessary health services at his place of residence (except for those who have to travel from Athens to Piraeus and vice versa). The IKA departments did not refund travel expenses when the insured person had to move inside the area a branch office covers, and, more precisely, from the place where the IKA annexes are situated to the branch office under which these annexes operate. As a result of this practice, insured persons who live in other regions of Greece, the islands in particular, find themselves deprived of health services, although they are entitled to insurance coverage, and have to suffer the inconvenience of travelling in order to get treatment, plus the extra costs involved, despite the existence of legislation to the contrary.

This is another example where a legal rule has been replaced by a circular. Such practice violates the principle of legality and infringes patients' rights. In the end, to restore legality the IKA administration, proposed the addition of a new paragraph to the provision, which expressly stipulates that travel expenses within the area covered by an IKA branch office are refunded.

Finally, irregularities were also observed in the case of payment of the Pensioners Social Solidarity Benefit by the IKA. The relevant services of the organization invoke the annual prescription of claims concerning payment of the Pensioners Social Solidarity Benefit, the result being that the benefit cannot be given retroactively for a period of time that goes further back than the previous year. The provision to which they refer, however (article 40 of Law 1846/1951), concerns pension instalments that are due and not claims which have not been generated for other types of social security benefits. The Ombudsman has presented his views to the organization's administration and is waiting for further developments on this question.

2.2.5 VIOLATION OF THE PRINCIPLE OF FAIR ADMINISTRATION

2.2.5.1 ACCESS OF PERSONS WITH SPECIAL NEEDS TO EMPLOYMENT

A large number of complaints handled by the Department of Social Welfare in 2001 concerned the access of persons with special needs to employment and, in particular, the application of Law 2643/1998. Its provisions have redefined the conditions and procedures for the recruiting of persons with special needs in public- and private-sector jobs. The investigation of the complaints identified a series of problems relating to:

- The accessibility of persons with special needs to the selection procedure,
- the selection criteria for available jobs,
- the transparency of the selection procedure, and
- the attainment of the pursued objective, i.e. the inclusion of persons with special needs in the labour market.

Firstly, it was established that prospective candidates were not adequately informed about the supporting documents they had to collect and the deadlines for presenting them. Given the specialized nature of this citizens' group and their increased need for information, the Ombudsman feels that, in this particular case, persons with special needs were not given systematic and reliable information by the OAED's local offices. Moreover, several of the complaints received by the Ombudsman concerned problems which had arisen when the results were announced. More specifically, whilst complaining that they had not been selected, the individuals concerned also stressed the fact that they did not trust the impartiality of the competent bodies. The investigation showed that the citizens' reservations were indeed justified; the fact that decisions of first-instance regional committees were not well substantiated and that the data on which the selection had been made were unavailable, certainly contributed to the lack of transparency, prompting questions about the legality of the whole procedure.

In the final analysis, although modernizing the legislation on the employment of persons with special needs represents great progress towards new policies for the employment and protection of the rights of these persons, major problems have been observed during its implementation, which jeopardize the attainment of the legislator's objectives, i.e. the inclusion of persons with special needs in the labour market.

On the one hand, the departments concerned do not seem able to efficiently receive and process candidates' applications, which results in significant delays; this is indirectly confirmed by the issuing of a series of interpretative circulars and instructions aimed at ensuring proper application of the procedure. On the other hand, employers who are invited to recruit the individuals selected refuse to do so, raising objections allowed by law. The sanctions laid down by the legislation are not imposed, while objections on the part of employers and non-selected candidates are accumulated before the same body (the second-instance committee of article 10 of Law 2643/1998), which results in excessive delays in the issuance of the final selection decision. This situation creates a climate of insecurity, both for those who have been selected and those who have lodged a protest requesting a new evaluation.

Consequently, red tape, delays, and inefficiency can be observed in the functioning of the departments. Flexibility and efficiency of administrative action are, however, essential for good administration. If this is not achieved, citizens' expectations for fair and reliable treatment by the state cannot be met.

3. Presentation of the Most Important Cases

3.1 SOCIAL INSURANCE

3.1.1 INSURANCE COVERAGE

Institution: The State General Accounting Office

Subject: Recognition of insurance period in an EU member state – Violation of EU legislation, violation of the principle of legality

A citizen contacted the Ombudsman, complaining of delays in the issuing of a pension decision on the part of the State General Accounting Office (GLK). The complainant had submitted a pension application in 1998, requesting the aggregation of his period of insurance with the German state (case 2306/2001). In 2000, two years after his application had been filed, the GLK's relevant department, Division 42, issued a pension decision, taking into account his period of insurance in Germany. Division 45, however, which audits payment orders for civil pensions, could not process payment because the director was questioning whether, under Greek legislation, the person concerned could be considered a "civil servant" or be equated with a civil servant. It should be noted in this respect that such a refusal could be challenged before the Pensions Auditing Committee, in accordance with the Civil and Military Pension Code.

The Ombudsman intervened, in the first place, in order to speed up procedures and ensure quick enforcement of the GLK's decision. In addition, in a document addressed to the relevant department, he pointed out that for the definition of civil servant, in this particular case, one should refer to EU legislation. He also noted that the significant differences which exist between social insurance schemes covering civil servants in the member states, as well as the absence of a common definition of "civil servant" in Regulation 1606/1998 (which extends to civil servants provisions of Regulation 1408/1971 on the coordination of national laws on social insurance schemes), do not in any way negate existing EU definitions of civil servant and public service. These definitions have been formulated from the case law of the Court of Justice of the European Communities, with the aim of promoting freedom of movement of workers in the European Union, including civil servants.

The Ombudsman also noted that to interpret the terms "civil servant" and "special insurance scheme" as referring to the narrow core of public administration would in fact abrogate freedom of movement for those employed in the public sector in member states. Existing differences in the structure of public administration in member states should not impede freedom of movement. Greek public services attempt to find absolute similarities, based on the criteria of Greek pension legislation, with systems which have a different background, a different public-sector organization and even a different conceptual understanding of public service.

In the end, the Pensions Auditing Committee, which considered the case, recognized the disputed insurance period and the GLK's relevant department could thus enforce the decision.

3.1.2 SOCIAL INSURANCE FUNDING

Institutions: Social Security Organization for the Self-Employed; Professionals and Craftsmen's Insurance Fund, Ayioi Anargyroi branch office

Subject: Refunding of additional amounts paid by an insured person because of inadequate information on the contributions payment procedure – Violation of the principle of fair administration

An insured person with the Professionals and Craftsmen's Insurance Fund (TEVE) complained to the Ombudsman because the fund's branch office at Ayioi Anargyroi had asked him to pay arrears for failing to pay his contributions within the specified deadline. The arrears covered the time period for which he had asked for a settlement of his debt, under the special arrangements made for earthquake victims (case 1886/2001).

The complainant owed contributions for the last four months of 1999 and the first four months of 2000. He therefore requested the settlement of his debt, making use of these special provisions, and produced all the necessary documents. Since then he has not heard from the fund. However, when he went to the TEVE to get a certificate that he did not owe any contributions, he discovered that he had lost the right to benefit from the special arrangement and therefore had to pay outstanding arrears.

In the context of his role as mediator, the Ombudsman wrote to the fund's Ayioi Anargyroi branch office about the case, requesting details regarding the way in which the insured person had been informed about the procedure he was supposed to follow to have his request for settlement accepted.

In its reply, the fund informed the Ombudsman of the real facts of this case, stressing that the individual concerned had to come to its offices each month in order to pay an instalment. Regarding the information provided to him, the fund indicated – and this is indeed interesting – that "concerning the way in which the insured person had been informed of his debt, he may have been given verbal information when he came to file his application as an earthquake victim".

What emerged from the fund's reply was that:

- The decision on the settlement of the citizen's debt, indicating the amount due, the procedure, and the consequences in case of non-compliance had never been notified to him, in response to his application, and
- he had never been informed about the steps he should take in order to obtain such settlement.

For this reason, in a new letter to the director of the branch concerned, the Ombudsman requested the refunding of the additional amount, which the citizen had had to pay, as the fund was not able to confirm that it had indeed informed the insured person and that his failure to act should, therefore, be considered as the result of insufficient information received from the fund's services.

The TEVE's Ayioi Anargyroi branch office did not accept the Ombudsman's proposal, while, on the matter of information, it once again failed to provide a clear answer, referring the Office to the fund's competent administrative division.

Following a meeting between the Ombudsman and the fund's administrative officials, it became clear that the absence of computerized forms and the heavy workload of that particular branch, which delivered services to a large number of earthquake victims, probably did not make it possible to inform the citizen concerned.

Based on the above, the Ombudsman asked the TEVE's management board to look again into this matter, since providing information to the citizens is unquestionably an obligation of the administration.

The fund's management board, in a resolution, accepted the Ombudsman's conclusions and refunded to the insured the additional amount he had been asked to pay as outstanding arrears.

3.1.3 SOCIAL INSURANCE BENEFITS

3.1.3.1 OLD-AGE PENSION

Institution: Agricultural Insurance Fund

Subject: Old-age pension – Violation of the principle of fair administration

A citizen requested the Ombudsman's intervention in order to have his entitlement to old-age pension recognized at the age of 65 and not from the date of submission of the relevant application to the Agricultural Insurance Fund (case 13780/2000).

In 1996, the citizen had presented an application to the Agricultural Insurance Fund (OGA) for an invalidity pension. In 2000, the fund rejected his application on the grounds that it did not meet the relevant legal requirements. During the four-year period that elapsed from the date of his application for an invalidity pension until its rejection, the citizen had turned 65, and was therefore entitled to an old-age pension. He did not, however, present the relevant application, since his earlier application for an invalidity pension was still pending, and he had not been informed by the OGA about the possibility of receiving an old-age pension. When he learned, in 2000, quite by chance, that he could claim an old-age pension, he applied and started receiving the pension from the date of his application.

The Ombudsman established that the excessive delay in publishing the rejection decision, combined with the failure of the OGA staff to provide the necessary information, had adversely affected the citizen, since he had started receiving a pension almost two years after acquiring entitlement to a pension, i.e. after he had reached the age of 65.

In view of this situation, the Ombudsman sent his findings to the governor of the OGA, in which he pointed out that insurance institutions are obliged to provide information to their members. If this information is not provided, the institution, in accordance with the principle of fair administration, should accept responsibility and take the necessary action to reinstate the rights that were affected. In the present case, the Ombudsman asked that the pension decision should be revoked and a new decision issued, setting as the date of retirement the date on which the right to a pension was acquired. Furthermore, in order to avoid similar cases in the future and to protect citizens' pension rights, the Ombudsman recommended to the OGA to draw up a standardized information leaflet, which would be sent to all the insured persons applying for an invalidity pension.

The OGA adopted the recommendations of the findings and issued an amending decision concerning the date on which the citizen acquired entitlement to a pension. Regarding the Ombudsman's suggestion about an information leaflet, the fund informed the Office that it would implement it.

3.1.3.2 INVALIDITY PENSION

Institution: Administration of the Social Security Organization

Subject: Non-enforcement of final judicial decisions – Violation of the principle of legality

A former employee of the IKA submitted a complaint to the Office of the Ombudsman concerning the non-enforcement by the organization of judicial decisions on the legality of her dismissal procedure (case 4770/2000).

During her period of service, the citizen concerned suffered from health problems following which, on 7 December 1990, the relevant IKA health board ruled that she was unfit for work, as she suffered from an incurable disease. The citizen then filed an application for retirement, but as the procedure for her dismissal was still pending, issuance of the relevant

decision was delayed. When finally, after two years, the IKA review board was convened, it decided on her dismissal with retroactive effect from the date when she was deemed to be incapable of working. The complainant appealed against the dismissal decision before the Athens Administrative Court of Appeal, which annulled the decision. The IKA then issued a new dismissal decision, again with retroactive effect from 7.12.1990. The complainant appealed against this new decision, which was again annulled by the Athens Administrative Court of Appeal. After that, the IKA, ignoring the two annulment decisions, retired the complainant, taking the date of 7.12.1990 as the date of her departure from the service, with all it implied for the calculation of her pension, the length of her service allowance, her lump sum payment, and her supplementary pension.

In the investigation of this case, the Ombudsman collaborated with the relevant IKA departments (the divisions that handle the pensions of employees of public-law entities and health personnel, as well as the IKA branch office where the former employee had been posted) and was able to establish that the organization's Health Division had failed to take the necessary action to enforce the Court of Appeal's annulment decisions. As a result, the correct date of the complainant's lawful departure from service was not indicated in her file. In a letter addressed to this division, the Ombudsman stressed the administration's obligation to comply with judicial decisions and asked that steps should be taken for their enforcement. In its reply, the division alleged that it had taken the necessary action, i.e. it had forwarded the judicial decisions to the IKA branch where the complainant had been employed and referred the Ombudsman to the IKA legal department, considering the matter as closed. Consequently, the Ombudsman sent his findings to the governor of the IKA, in which he pointed out that:

- Refusal to review the matter constituted a flagrant violation of the administration's obligation to enforce the annulment decisions of the Administrative Court of Appeal, in accordance with articles 95, par. 5 of the Constitution, and 50, pars 4 and 5 of Presidential Decree 18/1989;
- non-compliance with this obligation had adversely affected the complainant's pension rights;
- this particular case was a striking example of maladministration, as it involved a two-year delay in completing the dismissal procedure, the issuing of an illegal dismissal decision and failure to comply (on two occasions) with a final annulment decision of the Administrative Court of Appeal.

Finally, the Ombudsman emphasized that, under articles 105–106 of the Civil Code, the IKA was responsible for the difference in the pension amount and the lump sum that the complainant was not receiving, although legally entitled to it, as a result of its prolonged failure to restore legality, in accordance with the operative part of the Administrative Court of Appeal's final judgment.

The Ombudsman's findings were accepted and the date of dismissal of the former employee was redetermined, in accordance with the Court of Appeal's decisions.

Institution: Agricultural Insurance Fund
Subject: Entitlement to provisional invalidity pension – Violation of the principle of proportionality
The Office of the Ombudsman dealt with the case of a pensioner of the OGA, who complained of unequal treatment by the fund against a category of invalidity pension

beneficiaries (case 12572/2000). Since she was an invalid, the complainant particularly wanted her invalidity retirement benefit to become final, as she was already 70 years old and had been deemed temporarily incapable of work for the past 20 years.

More specifically, in 1979, the insured person had been deemed to be, for the first time, temporarily invalid and began receiving an invalidity pension. Since then, in order to continue to receive her pension, she was examined at regular intervals by the relevant health committees. The last time was in September of 2000, when her entitlement was extended for another three years.

The investigation of this case revealed that persons insured with the OGA who, in accordance with the provisions of Presidential Decree 334/1988, are entitled to an invalidity pension, receive this pension for the period of time for which they are deemed to be incapable of work, within the meaning of the law, by the health committees. Their pension is finalized only when the relevant health committees rule that they are permanently incapacitated.

On the other hand, in the case of those insured with the OGA who, following the conversion of the fund from a welfare to a primary insurance institution, now fall under the primary pension section and receive a pension in conformity with the provisions of Presidential Decree 78/1998 and Law 2747/1998, their entitlement to an invalidity pension becomes final under certain conditions (article 6, par. 3 of Law 2458/1997, as amended and supplemented by the provisions of article 9 of Law 2747/1999).

These conditions, however, are also met in the case of insured persons who receive a provisional invalidity pension under Presidential Decree 334/1988. These persons are nevertheless obliged to undergo examinations, at least every three years, which often involves travelling, and is a source of both physical and financial inconvenience.

The Ombudsman collaborated with the pensions section of the OGA and reached an agreement on the need to provide uniformity of treatment to all invalidity pension beneficiaries. The legislator's omission to provide a rule to that effect either in Law 2458/1997 on the establishment of a primary insurance institution, or in the farmers' insurance and pension statutes (Presidential Decree 78/1998), or even in the amending provisions of Law 2747/1999, is in breach of the principle of equal treatment for pensioners, who effectively belong to the same category.

For this reason, it is proposed to complete the relevant provisions of Law 2458/1997, as they apply following their amendment by Law 2747/1999.

3.2 HEALTH

3.2.1 RIGHTS OF HEALTH-SERVICES USERS

Institution: Prefectural General Hospital and Health Centre of Kos

Subject: Violation of patient's rights

A citizen filed a complaint to the Office of the Ombudsman because during his hospitalization in the surgical department of the Kos Prefectural General Hospital and Health Centre for an "inflammation of the lower right limb" he was asked to sign a form entitled "Patient's Formal Statement" (case 13218/2001). This particular form stated, amongst other things, the following: "…having been informed by the doctors in charge about my condition … I give my consent for them to determine and apply any diagnostic method and therapeutic treatment which may be required by any surgical, pharmaceutical, and radiological means. I also give my consent and have full confidence in my doctors regarding any other medical

intervention which they may deem necessary (anaesthesia, blood transfusion, puncture, etc.) for the rehabilitation of my health, fully aware of all the risks for my life which may arise during their application".

The patient concerned refused to sign this form, and as a result he was discharged on "disciplinary grounds", for having refused "to sign the printed formal statement form that is given to all patients in the hospital".

In accordance with article 47 of Law 2071/1992, which establishes the protection of patients' rights, doctors must obtain the patient's prior consent before performing any medical intervention; moreover, the patient should receive specific and not general information, in order to be able to decide whether or not to consent to a particular medical intervention. In addition, his consent must be "prior, affirmative, and specific". When the patient consents to as yet undetermined medical procedures, this is a "blank" consent. To require of a patient, who finds himself in a weak position, to give his unconditional consent is in direct breach of the obligation to respect his rights as an individual. Consequently when doctors, who are state officials, ask patients, who are the users of health services, to sign a "blank" consent form, this goes against medical ethics.

More precisely, to put the patient before the dilemma, "you either sign and are hospitalized or you leave" is tantamount to blackmail and unethical pressure to make him accept a "formal statement", whose contents are not prescribed by the legislation. Furthermore, to refuse to continue treating the patient and to discharge him on "disciplinary grounds" also raises the issue of refusal to provide medical assistance. Finally, to discharge the patient on "disciplinary grounds", i.e. to force him to leave before the end of his treatment, constitutes an unlawful act.

In his extensive findings, the Ombudsman asked the hospital of Kos to ensure that patients are fully informed and have the opportunity to give their consent, and to look into the facts and responsibilities in relation to the above incident, as well as other occurrences where, for the same reason, patients were refused hospitalization.

The management of the hospital immediately asked for the withdrawal of the controversial "Formal Statement" form and started to investigate the scale of such phenomena. At the same time, in order to implement the Ombudsman's proposals, it requested the help of its supervising authority. The Deputy Minister of Health, to whom the findings were communicated, immediately came in touch with the Central Health Council for its scientific opinion, in order to be able to take the appropriate decisions "in view of the particular importance of the matter". The case is pending.

3.2.2 HEALTH CARE ABROAD

Institution: Social Security Organization, Tripoli branch office
Subject: Payment of hospitalization costs abroad – Maladministration

A citizen filed a complaint concerning the refusal of the IKA to recognize and refund the costs of her child's hospitalization abroad (case 4372/2000). The refusal by the IKA was based on the fact that the invoices, which the complainant had presented as legal evidence of the expenses incurred, had not been accepted. In 1999, the citizen, who was insured with the IKA, had to go abroad urgently so that her child, who suffered from leukaemia, could receive treatment. On her return, she submitted all supporting documents to the relevant Tripoli branch office of the organization, to have her departure approved as urgent, in order to be entitled to a refund of expenses incurred, in accordance with the IKA Regulations. Her request was not accepted

and she appealed before the local administrative committee, which ruled that the expenses should be refunded. The IKA then appealed against this decision to the Administrative Court of First Instance, but the appeal was rejected. Without, however, waiting for the outcome of the appeal – which was rejected – the branch office enforced the decision of the Court of First Instance and refunded to the complainant part of the expenses on the basis of the supporting documents she had produced (£3,409.85). The remaining amount of £2,136.69 was not refunded.

From the investigation of this case and the correspondence exchanged with the branch office, it appeared that the IKA had refused to pay the remaining amount because it did not consider the relevant documents as legal proof of the expense. There were two vouchers with the same number but in a different format than the other supporting documents presented. They, nevertheless, contained a detailed description of all the medical examinations and their cost, a "paid" stamp, and had been authenticated by the Greek consulate of the country of hospitalization.

In the course of the investigation, the Ombudsman made a visit to the branch office to study the case file. The information required in order for a voucher to be accepted as an admissible invoice is contained in circular no. 23/1997 (number, "paid" stamp, and indication "invoice"). During the examination of the file at the branch office and a cross-check of the original documents and their translation by the Ministry of Foreign Affairs' Translation Department, it appeared that one section of the originals that bore the indication "invoice" had not been included in the translated text. The Ombudsman asked the Ministry of Foreign Affairs to make a new official translation of the two vouchers, which he then sent to the IKA administration, with a cover letter, in which he emphasized the particular conditions of the case and all the elements that indicated that the documents were in fact payment receipts, and recommended the refunding of the expenses.

The IKA administration accepted the Ombudsman's views and recommendations and instructed the branch office to refund the relevant amount.

3.2.3 ORGANIZATION AND OPERATION OF HEALTH INSTITUTIONS AND UNITS

Institution: Regional General Hospital and Obstetric Clinic "Helena Venizelou"
Subject: Imputation of amounts by the hospital to a private individual – Maladministration

A limited company submitted a complaint to the Ombudsman concerning an amount of 440,000 drs which the Regional General Hospital and Obstetric Clinic "Helena Venizelou" requested it to pay for the failure of a respirator for newborn babies. The company had a contract for preventive maintenance of the hospital's compressed-air system. When two respirators broke down, the hospital had them repaired and then asked the above company to refund it part of the cost. The company alleged that this decision was unjustified, arbitrary and in breach of contract, and requested its revocation (case 18175/2000).

The investigation of the case showed that:

- In their reports, the hospital's administrative and financial services did not hold the company responsible for the breakdown, and
- according to a decision of the managing board, the problem was due to a fortuitous event.

Based on this evidence, the Office of the Ombudsman sent a document to the hospital with its views on the procedure followed and the correctness of the board's decision, noting in particular that:

- In order to establish responsibility for non-contractual behaviour or injustice, you need to establish "fault", i.e. culpability for the harmful result. The document of the hospital's administrative and financial services, as well as the relevant decision of the managing board, expressly referred to a "fortuitous" event, thus rejecting any responsibility on the part of the maintenance company;
- given the fact that the cost of repairing the failure amounted to 2,708,090 drs, the question that arises is why, since the company was considered to be responsible, it was only asked to pay the sum of 400,000 drs, which only represented the cost of the repair work (without the cost of the spare parts);
- the board's decision was not adequately reasoned, since from the above information one cannot establish any causal link between behaviour and result, or liability of the company.

The hospital initially avoided replying to the substantive issues raised in the Ombudsman's document. At a later stage, however, it returned to the matter and concluded that "the cause of the phenomenon cannot be fully established", following which the board revoked its original decision by which it had asked the company to pay the disputed amount.

3.2.4 HEALTH PROFESSIONS: MEDICAL ETHICS

Institution: Social Security Organization, Zografou branch office

Subject: Improper behaviour of a physician while providing home care – Violation of medical ethics

A citizen insured with the IKA submitted a complaint to the Ombudsman in which she complained that the organization's physician, during a house call, had behaved rudely, and had refused to provide care in the end. She had presented a complaint to the IKA regarding this incident, but had not received a reply (case 4851/2001).

In the course of his investigation, the Ombudsman sent a document to the Zografou branch of the IKA, requesting information on the action taken by the IKA to investigate the complaint. In response to the Ombudsman's document, the IKA Zografou branch office sent the physician's written reply about the incident, with the assurance that no medical error had been committed, an aspect of the case which the Ombudsman had not referred to at all. The IKA avoided answering the critical question of the doctor's behaviour and the related infringement of the patient's rights. The reply of the physician concerning the incident revealed that he was perturbed and unwilling to be involved in the investigation of the complaint. He even went so far as to make improper remarks about the patient, which are incompatible with medical ethics.

The Ombudsman wrote again to the IKA Zografou branch office, emphasizing that the quality of health services, over and above the need for correct diagnosis and treatment in order to cure the patient, which is the primary concern, is also assessed by the way in which patients are handled and the obligation for health professionals to ensure to patients "equal care, consideration and dedication, independent from their financial or social condition and the severity of their disease or their (the doctors') personal feelings" (article 7 of the Code of Medical Ethics). In its second reply, the organization maintained its earlier position, refusing to respond to the issues raised by the Ombudsman, simply mentioning that the physician had been given verbal cautions. The Ombudsman then referred the case to the governor of the IKA, who entrusted its examination to the disciplinary department. The result was that the sanction imposed on the doctor was a verbal reprimand.

Institutions: Social Security Organization for the Self-Employed; Professionals and Craftsmen's Insurance Fund; General Secretariat of Social Security
Subject: Selection procedure for doctors under contract with the Professionals and Craftsmen's Insurance Fund – Violation of the principle of fair administration
Several doctors asked the Ombudsman to look into the procedure followed by the Professionals and Craftsmen's Insurance Fund (TEVE) for the selection of medical doctors (cases 2682/2001, 3793/2001, and 4068/2001). Social insurance institutions can entrust to doctors under contract the control of their members' medical and pharmaceutical care, in accordance with the provisions of article 17 of Law 2747/1999.

In a document addressed to the fund's administration, the Ombudsman asked for clarifications regarding selection criteria applying to physicians, in order to check whether the principle of legality had been respected or not. From the correspondence between the Ombudsman and the governor of the Social Security Organization for the Self-Employed it became clear that the fund's administration has discretionary power for the selection of doctors under annual contract, and that the legislation in force (article 6 of Law 2527/1997) does not provide for any specific procedure as regards the selection of doctors.

Considering that this selection procedure does not allow for transparency, the Ombudsman sent his findings to the General Secretariat of Social Security, in which he pointed out that this procedure did not provide the necessary transparency guarantees, since it did not include precise selection criteria nor any system for evaluating candidates, if there are several applications, and issuing an administrative document (selection report) justifying the decision. The fact that there is no specific procedure makes it impossible to control the legality of administrative action and, understandably, gives rise to suspicions regarding transparency.

The relevant department conducted an investigation and agreed that the procedure was questionable; it also expressed the view that the legislation on commissioning needed to be completed to ensure impartiality and transparency of the procedure. The Ombudsman recommended to the fund the adoption of criteria for the selection of the doctors with whom the TEVE concludes annual contacts, and publication of a selection report, which should be notified to the persons concerned, in order to overcome the problems arising from the absence of a clear-cut procedure and selection criteria.

E.3 DEPARTMENT OF QUALITY OF LIFE

CONTENTS

DEPARTMENT OF QUALITY OF LIFE

1. Area of Jurisdiction of the Department

The Department of Quality of Life handles complaints relating to the protection of the natural and urban environment and generally investigates cases which deal with land and urban planning issues, public works, and culture. In this context it also examines complaints regarding:

- Public utility infrastructure networks (such as water, drainage, sewage, electricity, telecommunications, roads, etc.);
- sewage and waste treatment plants;
- violations of legislated protection measures for monuments, historical settlements or traditional buildings;
- certain aspects related to port and airport authorities, as well as military installations;
- air, water, noise, and visual pollution as side effects of the above.

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

2. General Remarks and Conclusions

The subject matter of the Department of Quality of Life concerns above all the natural, residential, and cultural environment as defined in par. 1 of article 2 of Presidential Decree 273/1999, on "Rules of Internal Organization of the Ombudsman".

In 2001, 2,256 complaints reached the Department of Quality of Life, which made up 23.92% of all complaints received by the Ombudsman during the same period of time. This percentage is similar to that of the previous year. The fact that there is a steady inflow of complaints shows that the public is now fully aware of the role of the Ombudsman.

The largest number of complaints, apart from those coming from Attica and Thessaloniki, were submitted by citizens residing in Southern and Western Greece. Another point worth mentioning is that the percentage of investigated cases where a positive outcome was achieved was 39.64% in 2001; this is seen as satisfactory, considering that, due to the complicated nature of the cases handled by the Department, a considerable number of complaints often remain pending for a long period of time. It should also be kept in mind that the Department of Quality of Life:

- Receives a large percentage of complaints which do not fall within its mandate (26.8%), and
- has the largest number of cases which are subsequently declared out of mandate, as well as a large share of cases that are resolved without any prior action by the Ombudsman.

The latter can be seen as a positive development, since it can reasonably be assumed that a citizen's appeal to the Ombudsman and the possibility for the Office to investigate and intervene in a given case will motivate the authorities concerned to find a solution to the citizen's problem. In the first instance, it seems that citizens finally opt for judicial proceedings against the relevant administrative body, often based on the Ombudsman's findings and conclusions.

Furthermore, the Department has a large number of pending cases and a relatively small percentage of complaints processed during the year. This partly indicates that the authorities

involved do not respond in time but, above all, it underlines an express or tacit refusal on the part of certain services and departments to cooperate with the Ombudsman and, in any event, the difficulty they have in complying with the Department's recommendations and the principle of legality in general. This does not only apply to cases which are "difficult" by definition, such as those dealing with illegal construction, but also to cases where the Department has asked for the closing down of an enterprise, the adoption of environmental protection measures, timely response to citizens' requests, or even the enforcement of the decisions of the Council of State, as well as other administrative courts. It should certainly be stressed that in order to promote the resolution of a case, the Ombudsman often chooses to bring pressure to bear on competent public authorities even after one year, by constant written reminders.

Complaints concerning in particular the natural environment are very strongly represented in numerical terms, and make up 14.2% of the total number of cases handled by the Department during 2001. The most frequent cases are those dealing with violations during procedures of preliminary site approval and approval of environmental impact assessment studies, as well as cases of pollution of the natural environment as a result of commercial activities and waste management. However, it should be pointed out that, to a greater or lesser extent, all complaints reaching the Department refer to the environment. This tendency is reflected especially in the large number of cases, larger than in any other Department, in which maladministration takes the form of law violations and insufficient measures for the protection of collective goods. It is important to remember that the Ombudsman's mediation for the purpose of safeguarding legality in this specific area was extended following the recent amendment of article 24 of the Constitution, which expressly recognizes the individual right to the protection of the natural and cultural environment (par. 1), as well as the obligation of the state to draw up a forest registry (par. 1), and a national land registry (par. 2). What is more, constitutional protection of the principle of sustainability constitutes an additional criterion, which can be used by the Department of Quality of Life during its investigation and mediation work in cases concerning legal and material protection of the environment, which is one of the Ombudsman's chief concerns, under his founding law (article 4, par. 2 of Law 2477/1997).

The Ombudsman's experience shows that in Greece the environment is deteriorating steadily and that this is mainly due to the following reasons:

- Government policy and administrative practice do not systematically take into account the fact that all decisions and activities must necessarily be implemented according to environmental protection standards, for the benefit of present and future generations as well as viable growth and the principle of sustainability, which should be just as important as the value of the human being.
- The relevant legislative framework is considered to be inadequate in view of the new environmental problems resulting from man-made pollution and non-rational resource management.
- EU legislation on environmental protection is often not applied properly, or it is circumvented.
- Legislation on environmental protection is violated systematically, and this is tolerated by the administration, due to the uncontrolled activities of individuals and companies who lack environmental awareness and try, in any conceivable way, whether legal or not, to make a profit at the expense of the environment. The inadequacy of the legislative framework governing environmental matters has become obvious, as a result of the

changes in EU legislation and the fact that the principle of sustainability is now enshrined in article 24, par. 1 of the revised Constitution. These developments henceforth make it imperative to arrive at a corresponding harmonization of national legislation.

3. Review of Activities

3.1 PARTICULAR ASPECTS OF THE CASES HANDLED

After more than three years of activity, the Department of Quality of Life has gained sufficient experience and laid down systematic rules for its investigation and mediation work. However, its experience does not necessarily lead to the quicker resolution of cases, this being directly dependant on a number of factors, such as:

- The steady flow of complaints and increasing volume of cases;
- the, often, negative response from the public authorities involved, which may range from a slightly delayed reply to a total failure to react;
- the particularities of cases which, as a rule, call for an in-depth investigation and verification of the actual facts, usually by virtue of on-site inspections and spot checks, which, in cases of confirmed lack of cooperation on the part of the administration, are carried out without prior notice. This procedure is believed to be essential because of the usually complex technical aspects of the cases, but also because of the misleading information which the Ombudsman receives on occasion from citizens and competent authorities alike, as well as the time-consuming procedures imposed by the complicated nature of urban planning and environmental issues, and, finally,
- the high number of important cases which are kept pending on the Ombudsman's own initiative until a definitive solution is found by the administration.

3.2 SHORT OVERVIEW OF CASES OF EXTREME MALADMINISTRATION IN 2001 WITH EMPHASIS ON THE ENVIRONMENT

As has already been mentioned, the percentage of cases where a positive outcome was achieved in 2001 is deemed satisfactory. However, the Ombudsman not only wishes to ensure a positive resolution in as many cases as possible, but also to draw conclusions from those cases – though certainly fewer in number – in which his mediation efforts did not lead to the desired results.

Apart from deliberate and premeditated violations of the law, the following consistent parameters of maladministration should also be mentioned:

- The adverse working conditions of civil servants,
- the multiplicity of laws and the plethora of government circulars which lead to contradictory practices,
- the permanent excuse of lack of financial resources, and, lastly,
- decisions taken on the basis of political criteria.

In the present annual report, therefore, some typical and extreme cases of maladministration are highlighted, because the Ombudsman's efforts are precisely aimed at their elimination. Moreover, the resolution of these extreme cases is not only being sought in order to satisfy the demands of individual citizens, but is also linked to wider-reaching goals, such as improving administrative practices, reviewing legislation in force, upgrading urban planning rules, protecting and promoting the natural and traditional built environment, as part of the country's heritage, supporting the work of the judicial system, etc.

The cases described below were handled by the Department of Quality of Life during 2001

and represent typical examples of the most frequent forms of maladministration encountered.

a. *Violations of urban planning laws*

This category, which represents 23.5% of all cases referred to the Department in 2001, includes massive overstepping of building permits, illegal construction on common or other land uses, or refusal to demolish these structures on the permanent excuse that there are still a large number of demolition cases pending, or insufficient funds, crews, staff, time, etc.
A typical example is the operation of a nightclub on communal land adjacent to a church at Profitis Ilias in the city of Arta, causing intense noise pollution (case 11210/2000). Even though the competent urban planning authorities had issued a demolition order, it was not carried through by decision of the relevant prefect.

Illegal construction in protected areas, contained in the national list of areas proposed for inclusion in the European ecological network Natura 2000 (Directive 92/43/EEC), is important in terms of its immediate and long-term adverse effects. A particularly serious case within this category is the erection of a building in the wider protected area of the National Sea Park in the Gulf of Laganas on the island of Zakynthos (case 8780/2000). A similar case of maladministration is the construction of a 1,800-sq.m. hotel complex in a development control zone in the Alyki wetlands on the island of Kos, which are fully protected and have been included in the Natura 2000 Network (case 6806/2001). In this particular case, an order to seal the facilities was issued following the Ombudsman's intervention, which had not, however, been enforced until 31 December 2001.

b. *Pollution of the natural environment*

This category, which covers 14.2% of all cases handled by the Department in 2001, includes cases such as the operation of storage facilities for liquid fuel on the island of Lesvos, and burial of toxic waste, despite an annulment decision of the Council of State, which the administration insists on not implementing, without, however, taking any initiative whatsoever to urgently transport the waste to some other location (case 781/2000).

c. *Operation of enterprises on permits illegally issued by Local Authorities and refusal to seal the illegal facilities*

A characteristic case under this category, which represents 8.9% of all cases, is a plant producing printed material in Pallini, Attica (case 4528/2001), which has been operating without a permit and without approved environmental terms for over a decade. The order to seal these facilities, already issued in 1999, has never been enforced due to continual delays and postponements.

d. *Problems arising in connection with town plans*

This category covers 8.7% of the total cases dealt with by the Department in 2001, and refers in particular to infringements of lawful land uses, such as the operation of a wood-processing plant within a residential area in Vrontado on the island of Chios, which the permit describes as a professional workshop, whereas according to the law it is a small manufacturing industry (case 10650/2000).

e. *Damage to the residential and cultural environment*

A typical example of this category (2.2% of total cases) is the issuing of a building permit and a revised permit for the erection of structures on a plot of land intersected by the boundary of a traditional settlement on the island of Thira, and, more specifically, on a section of the land that is situated in a confirmed geologically unsuitable area on which construction is not allowed (cases 8649/1999, 11339/1999, 15143/1999).

f. *Cases of maladministration in connection with forest protection*

In this category (3.8% of total cases) the main problems are the excessive delays on the part of provisional committees for the settlement of forest disputes to issue their decision on whether the land in question is forest land or not (cases 1207/2001 and 2810/2001). Since there is no forest registry in Greece, which the state now has the obligation to produce under the revised Constitution, these delays result in an extremely insufficient protection of forests.

3.3 THE OMBUDSMAN'S CONTROL ROLE IN THE DEPARTMENT OF QUALITY OF LIFE: FROM MEDIATION TO THE RESTORATION OF LEGALITY

3.3.1 THE OMBUDSMAN'S CONCERN FOR THE RESTORATION OF LEGALITY

The Department of Quality of Life is one area of the Ombudsman's activity, which, by virtue of its subject matter, the particular conditions prevailing in Greek society and corresponding administrative practices, is frequently confronted with established violations of the law and technical regulations and standards by public authorities and individuals alike. In fact, the Office of the Ombudsman, as a rule, is also called upon to handle conflicts between the right to property and the right to the environment. The manner in which public authorities weigh these rights against each other often gives rise to problems, and usually this turns out to be detrimental to the natural and residential environment. In certain cases, however, there is no weighing at all, due to pressure brought to bear on the authorities by local interests, or owing to central political choices, or at times even because the authorities involved lack sufficient technical and economic support and properly trained staff, who in most cases are barely able to handle current business on time.

According to the Ombudsman's founding law, his mission is to mediate between citizens and public authorities with the aim of identifying maladministration and insufficient protection of citizens' rights, while recommending appropriate solutions and restoring legality. The administration's compliance with the provisions of the law and the Constitution is sought by means of the proposals formulated by the Ombudsman, in his letters addressed to the competent authorities during a first stage, and then in his findings to the relevant ministers, and lastly through the procedure of attributing disciplinary responsibility when there is a refusal to cooperate with the Ombudsman (over 20 cases fall within this last category). In addition, should there be sufficient indication that a criminal act has been committed, the Ombudsman is obliged by law to inform the competent prosecutor. He has made use of this opportunity in more than 40 cases. Finally, another means at the Ombudsman's disposal is the possibility to make public, by means of a special report, the administration's refusal to accept his proposals.

The two special reports and 50 detailed findings issued by the Department, the over 20 requests for disciplinary control, as well as the over 40 cases referred to the competent prosecutor during the first three years of the Ombudsman's activity, present in detail the rigid stance often adopted by the administration in questions of great significance, such as damage to the natural and cultural environment by illegal construction and operation of enterprises, but also violation of the right to property due to delays in paying compensation for expropriations. The aforementioned texts also demonstrate the Department's efforts to contribute to the resolution of cases by submitting well-founded proposals to the administration.

3.3.2 THE VITAL SIGNIFICANCE OF THE OMBUDSMAN'S FINDINGS

During the first three years of the Ombudsman's activity, the Department of Quality of Life

has issued 50 lengthy and detailed findings, which correspond to as many important cases. 19 of these were drawn up in 2001 and were linked to complaints submitted from 1998 to 2001. Most of these findings referred to illegal construction, in particular on coastal zones, in forest areas, and on archaeological sites. There is also a significant number of findings which describe the illegal operation of enterprises to which Local Authorities often grant an extension of operation, even if they did not have a permit to operate in the first place, or an order to seal their premises has been issued and not enforced. There is also a remarkable number of findings related to the protection of the natural environment from various activities, such as animal husbandry, waste management, energy production, etc. Major problems also arise when the boundaries of settlements are called into question, and because of the systematically negligent behaviour of certain urban planning offices or elected local government officials, who not only do not comply with the Ombudsman's recommendations, but also ignore decisions of the Council of State and other administrative courts. The submission of such detailed findings usually prompts a response from the administration, in which its positions are set out based on a number of arguments. However, there is quite a number of cases in which the Ombudsman is confronted with either an explicit or tacit refusal to cooperate, or unjustified persisting with illegal behaviour. In such cases the Ombudsman is obliged either to appeal to the responsible official at the highest level of the authority involved, with a request for disciplinary control, or to refer the case to the competent prosecutor.

Most of the findings issued in 2001 include, in particular, a systematic interpretation of Law 1650/1986, which is the fundamental law for the environment, and an effort is made to point out cases of special legal interest and general significance, which do not appear to have been sufficiently considered by the competent public authorities.

3.3.3 DISCIPLINARY MEASURES AND CONTROL BY THE PROSECUTING AUTHORITIES

During the year 2001, it was necessary to request disciplinary control against civil servants or public officials in three cases, due to their refusal to cooperate with the Ombudsman. These requests concerned a mayor, the head of an urban planning office, and the head of a department of the urban planning division of a prefecture. In all cases, the persons concerned had refused to cooperate with the Office of the Ombudsman, despite repeated letters and requests from the Ombudsman in the interest of resolving the cases in question.

In the first instance (case 11189/2000), relating to inadequate and selective collection of waste in Hydra, the Office of the Ombudsman received no input from the Regional Government of Attica with regard to disciplinary procedures up to the end of 2001.

In the second case (2549/2000), which had to do with the construction of a new community road, on the subject of which no information whatsoever had been provided by the relevant urban planning divisions, the Regional Government of the Peloponnese responded, in part positively, to the request for disciplinary control.

In the third case (8078/2000), which is related to problems arising from the construction of a supporting wall, in early January of 2002 the competent Prefecture of Athens agreed to the Ombudsman's request and, following a decision by the Prefect of Athens, conducted an administrative investigation under oath. It should also be noted that in all other cases in which the Department of Quality of Life has requested disciplinary control, no action had been taken by 31 December 2001 (at least this is the conclusion to be drawn from the official information provided to the Ombudsman on this matter). This also exposes, of course, the

higher disciplinary authority of the departments under scrutiny for not applying legal provisions in force.

It should further be mentioned that apart from very few exceptions, the secretaries general of the regional governments do not comply with the Ombudsman's suggestions for the respect of legality and effective control of Local Authorities, even though of the total maladministration cases referred to the Department in 2001, a very high percentage concerns Local Authorities, which have competence in urban planning matters, among other things. This situation strengthens law-breakers in their conviction that they can continue to escape control without being held accountable and without having to fear any intervention on the part of their superiors. This serious failure to act, which was underlined in all three previous annual reports, is damaging to the institution of administrative decentralization, increases maladministration, and creates conditions favouring the development of practices and behaviour which, directly or indirectly, promote corruption. Moreover, the refusal to cooperate with the Ombudsman, combined with the data contained in the case file, constitutes sufficient grounds for a referral to the competent prosecuting authorities. Since the establishment of the Ombudsman and after time-consuming efforts to reach a resolution, the Department of Quality of Life has referred more than 40 cases to the prosecuting authorities, of which 25 in 2001. Many of these cases concerned the operation of facilities that do not abide by health and safety regulations, but also of other enterprises in environmentally critical and sensitive locations. Other cases concern the loss of permit files, refusal to carry out an on-site investigation, issue of illegal permits by the same agency, concealment of data, refusal to reply, etc.

On his own initiative, the Ombudsman has contacted the competent prosecuting authorities in writing and by telephone, in the last few months, in order to inform himself about the outcome of the above cases. As to quite a few of these, the Ombudsman had not yet been fully briefed on the progress or outcome of the prosecution on 31 December 2001. This delay is either due to a heavy workload at the competent prosecutors' offices, or to the fact that in certain cases additional data was requested.

Despite all this, by the end of 2001 there had been significant developments, in one direction or the other, in 22 cases, while three cases were archived by the competent prosecuting authorities subsequent to examination. More specifically:

- In 10 cases, the prosecuting authority, in collaboration with the relevant magistrate, is carrying out a preliminary examination, in 4 of which depositions were made by investigators of the Department or additional data was requested;
- in 3 cases a positive outcome was achieved following referral to the prosecutor;
- upon completion of the preliminary examination, three cases were archived, since it was deemed that the conditions of article 43 of the Code of Penal Procedure for initiating criminal proceedings were not met.

On the other hand, it should be stressed that criminal proceedings have already been initiated in nine cases for breach of duty and other offences; in particular, the case of illegal continuation of construction work on a building in Lamia, where multiple violations of the Building Code had been established (1817/1999), was tried on 7 September 2001, and all the employees of the urban planning division involved were sentenced to 10 months in prison. No information had been provided on the progress of the remaining cases referred to the prosecuting authorities when the present report was drawn up. It should be pointed out, however, that, as a rule, examinations by the prosecuting authorities tend to be time-consuming.

3.3.4 THE OMBUDSMAN'S CONTRIBUTION TO THE WORK OF JUDICIAL AUTHORITIES: HOW THE COUNCIL OF STATE AVAILS ITSELF OF THE FINDINGS AND DOCUMENTS ISSUED BY THE OMBUDSMAN

The Council of State has extensively referred to the Department's findings and documents when ruling on applications for annulment or suspension following appeals by citizens who, at an earlier point in time, had filed a complaint with the Ombudsman. This use, which is the expression of an indirect but explicit recognition of the legal and technical quality of the Office's findings and reports, underlines the complementary relation between the Ombudsman as an extra-judicial mechanism for conflict resolution and the judiciary, and de facto extends its possibilities to exercise effective and thorough control of arbitrary administrative action.

In this connection, two important cases should be mentioned: firstly, the illegal operation of dairy farms on the shores of Alatzagiola Lake near Kavala (case 4792/2000), and secondly, the opening of a road for the operation of wind generators in a region of the island of Syros (case 19758/1999), which concern environmental protection in fragile wetland areas, and in the case of Syros, in a region which had been proposed for inclusion in the European Natura 2000 Network. In these two cases, decisions nos 225/2000 (for the first) and 354/2001 (for the second) were issued by the Council of State, suspending enforcement of the relevant administrative decisions, which the Ombudsman had already deemed to be in violation of the law, while at the same time underlining the ecological significance of the areas in question. In fact, the above decisions of the Council of State contain specific reference to documents from the Ombudsman, both in the case file and, more important, in the statement of reasons. Similar examples can be found in cases presented before the civil and criminal courts.

3.4 THE ADMINISTRATION'S RESPONSE TO THE OMBUDSMAN'S MEDIATION AND CONTROL OF LEGALITY

3.4.1 POSITIVE DEVELOPMENTS RESULTING FROM THE ACTIVITIES OF THE DEPARTMENT

Despite the difficulties inherent in combating maladministration, prolonged pressure by the Ombudsman often leads to partial or full compliance with the law on the part of the administration, in accordance with the Authority's proposals and recommendations.
As concerns the findings of the Department, the information supplied to the Ombudsman by the administration can be called scanty at best. Thus, in most cases no clear answer is given, or the administration's refusal to recognize the Ombudsman's findings is not expressed clearly. Such attitude usually indicates that the administration is not ready to abandon the actions or the behaviour under investigation. Of the cases successfully resolved, for which findings were issued by the Department of Quality of Life, the most significant is case 1052/1998, pertaining to the waste-landfill site in the Prefecture of Karditsa, where the Ombudsman had requested the cancellation of the site-selection procedure, which is what happened in the end.

At the beginning of 2002, the Ombudsman received documents from the Ministry for the Environment, Physical Planning, and Public Works with answers and comments on a number of legislative and organizational proposals presented by the Department in the annual reports of 1999 and 2000. The ministry's replies are commented in particular in chapter F of this report, which deals with the follow-up to the Ombudsman's proposals contained in previous annual reports. What should be underlined, however, is the favourable response to the Ombudsman's proposal on the adjustment of the rent paid for requisitioned buildings based

on the current inflation rate (see *1999 Annual Report*, E.3, 5.4), for which the Ministry for the Environment, Physical Planning, and Public Works has explicitly committed itself to officially examining a "potential legislative arrangement". A positive outcome was also achieved in 2001 for case 10174/1999, concerning the transportation of primary school pupils to schools located at some distance from their home. In his findings, but also on the basis of a specific legislative proposal, the Ombudsman had recommended that the expenses for accompanying the children should be borne by the same department which had rented the vehicles. In his letter of 3 December 2001, the Minister of Education assured the Ombudsman that the legislation in force was being re-examined, while emphasizing that "in this process your conclusions will be taken into particular consideration".

Special reference should be made to the document from the Ministry of Agriculture (no. 392500/5.12.01), eloquently entitled "The departments' obligation to reply to the Ombudsman", which was addressed to all the ministry's departments. Furthermore, the Ministry of Agriculture responded in a detailed document to the Ombudsman's letter of 6 September 2001, which dealt with more general issues of maladministration and certain important cases handled by the Department of Quality of Life. More specifically, in a document dated 27 March 2001, the ministry expressed its opinion firstly on the long delays observed in forestry offices (especially with regard to decisions classifying forest land and, more generally, issues under article 14 of Law 998/1979), and gave detailed answers on cases investigated by the Department. On the matter of forestry offices, the opinion expressed in the above document is that all matters of critical importance fall within the jurisdiction of the regional governments, and therefore within that of the Ministry of the Interior, Public Administration, and Decentralization. This opinion was however partially revised in the more recent document of 5 December 2001, which correctly specifies that decisions classifying areas as forest or non-forest land and rulings on the relevant objections must be issued without delay by the forestry offices and departments.

In the course of 2001, disciplinary sanction was also imposed for the first time against a civil servant on request of the Department of Quality of Life. The sanction consisted in a written reprimand by the Regional Government of Korinthia against the head of an urban planning office for the disciplinary offence of breach of duty. Even though this is only the minimum sanction, which naturally does not correspond to the refusal of this civil servant to cooperate with the Ombudsman, it is nevertheless regarded as a small initial step towards improved collaboration between administrative departments and the Ombudsman, which is anyway for them a legal obligation.

As regards cases where, following the intervention and proposals put forward by the Ombudsman, the departments involved took the necessary administrative action and issued administrative acts which restored legality, the following examples are indicative of this wider category:

- Prompt payment of a reward, through the efforts of the relevant departments of the Ministry of Culture, to a citizen who found and surrendered archaeological objects and indicated a new site with archaeological findings (see 4.3.2).
- The demolition of an illegal building operating as a discotheque in the vicinity of a church and a hospital, following action taken by the relevant services of the Municipality of Arta (see 4.4.1).
- The construction of a road in the Community of Examilia on expropriated land, for the

transportation of primary and nursery school children. The project was carried out as a result of action taken by the competent authorities of the Municipality of Korinthos (see 4.7.1).

- The rescinding of a decision of the Prefect of Larisa concerning an implementing act which did not properly take into account changes in the ownership status, and where the beneficiaries had not been duly recognized by the court.
- The issuing of a ten-year forest hunting ban by the Forestry Office of Penteli and the Regional Government of Attica, concerning the western side of Ymittos Mountain, where a great deal of poaching had been observed (see 4.8.1).

3.4.2 IMPORTANT PREVIOUS YEARS' MALADMINISTRATION CASES IN WHICH LEGALITY WAS NOT RESTORED

For three typical examples of extreme maladministration, the Department had formulated its conclusions and included a detailed presentation in the annual reports of 1999 and 2000. In none of these three cases, however, has legality been restored, despite the Ombudsman's repeated representations to the relevant departments and ministries, i.e. the Ministry of the Interior and the Ministry for the Environment, Physical Planning, and Public Works. On the contrary, the relevant local and regional authorities show no willingness to act, they are insufficiently informed, and their attitude is clearly negative, while the ministries involved fail to take adequate action. Two of these typical cases are:

- In the Prefecture of Fokida, two serious cases of arbitrary action (cases 145/1998 and 2119/1999) have been identified with reference to:

– Environmental pollution resulting from uncontrolled waste disposal in the Community of Gravia;

– numerous arbitrary violations of urban planning and building regulations, as well as the encroachment of public land at Monastiraki of Dorida.

In the first case, the Prefect of Fokida is in fact refusing to comply with an annulment decision from the Council of State. The Ombudsman's request for disciplinary measures by the Secretary General of the Region of Central Greece against the prefect and the head of the relevant urban planning office has not been accepted to date.

- Within the archaeological site of Falasarna located in Hania, Crete, an illegally constructed hotel has been operating since 1992; a demolition order was issued in 1997 by the prefect (case 14/2000), but was never enforced. The prefectural government refuses to execute the order, on the grounds that it is unable to recruit demolition crews. At the same time, the Region of Crete has not fulfilled its legal obligation (Presidential Decree 267/1998) to assist in the demolition process.

3.5 THE NEED FOR THE ADMINISTRATION TO ADOPT FUNDAMENTAL PRINCIPLES FOR THE PROTECTION OF THE ENVIRONMENT

The harmful effects of human activity on the environment are more and more apparent. The fact that practically any activity not only has harmful effects on its own, but also a cumulative impact over a wider area, which increases with time, points to the necessity of environmental protection based on certain fundamental principles.

Prior to its revision in 2001, the first paragraph of article 24 of the Constitution of 1975/1986 stipulated that "the protection of the natural and cultural environment is the

responsibility of the state. In order to ensure this protection, the state is obliged in particular to take preventive or restrictive measures … It is forbidden to change the use of public forests and public forest areas…". Following the recent revision, the protection of the natural and cultural environment constitutes not only an obligation of the state, but also the "right of every individual". "In order to ensure this protection, the state is obliged in particular to take preventive or restrictive measures consistent with the principle of sustainability … It is forbidden to change the use of public forests and public forest areas…". In addition, the state's obligation to create a forest registry and a national land registry is established, while the meaning of forest is also defined.

The above shows the clear intention of the revised constitutional provisions to effectively protect the environment, and in particular public and private forests, and give guidance to legislators, the judges and the administration within this context. The administration in particular is called upon to make decisions and take specific preventive or restrictive measures, based on the principle of sustainability, whereas the recognition of the right to the environment as an individual right underlines its obligation to ensure unimpeded and effective exercise of this right.

The conclusion to be drawn from this development is that the principles of prevention, preservation and rehabilitation of environmental damage, preferably at the source, which aim at ensuring sustainability and overcoming the many problems caused by human activity, as a result of the exploitation of natural resources to a degree exceeding their regeneration capacity, should be at the centre of political planning and day-to-day administrative practice.

This whole effort must be integrated in the wider framework of the European Union's environmental policy as laid down in the Founding Treaty of the European Communities, specifically in articles 2 and 6, which provide for a harmonious, balanced and sustainable development of economic activities and the promotion of a high level of protection and improvement of the quality of the environment, as well as the inclusion of environmental protection requirements in the adoption and implementation of EU policies and actions.

Based on the established jurisprudence of the Court of Justice of the European Communities, which does not allow member states to invoke domestic situations in order to justify their failure to meet the obligations and deadlines arising from EU legislation, the harmonization of national environmental legislation to that of the EU and the adaptation of national administrative practices to this legal reality represents a fundamental priority for all national legal systems.

More specifically, the administrative authorities are called upon to adopt a dynamic approach to issues involving the environment, while respecting the existing legal framework and the spirit of the constitutional revision wherever the letter of the law leaves room for interpretation. For example, the monitoring of environmental terms should be carried out regularly and controls should be systematically conducted, while administrative authorities should not be allowed to claim (which is often an excuse) that they lack the necessary resources for effectively monitoring environmental terms. For this approach to be effective, a balanced development policy must be adopted, which will weigh the necessity for buildings and activities exclusively focused on the economic dimension of development against proper assessment of their effects on sustainable development.

The issues which arise from the need to simultaneously achieve economic development and environmental protection can be clearly seen in the case of the Ministry for the

Environment, Physical Planning, and Public Works, which has jurisdiction over varied areas, such as land planning, public works, and the environment; this situation leads to a certain amount of functional confusion with detrimental effects to the protection of the environment, because the existing legal framework is frequently found to be inadequate. Nevertheless, as it is the official body responsible for the implementation of public policies concerning land planning, public works, and the environment, the ministry is often called upon to establish the appropriate balance between public interest and the demand for development.

3.6 EUROPEAN OMBUDSMEN AND THE ENVIRONMENT

In conformity with the specific requirements of the Ombudsman's founding law, the Department of Quality of Life attaches particular importance to the environment. Besides the participation of its staff in various related events (conferences, seminars, lectures, etc.), the Department has also been active on a European Union level in 2001 by organizing a working meeting in Athens on 18 and 19 May, on the role of the Ombudsman in matters of environmental protection. Ombudsmen from other EU member states took part in this event, as well as senior officials dealing with environmental issues. Delegates from applicant countries for accession to the EU, in the context of the so-called "first enlargement", were also invited, as well as representatives of the Environment Directorate-General of the European Commission and the European Ombudsman.

Besides a mutual exchange of information on the powers of the Ombudsman in each individual state with respect to environmental protection, the chief result of the two-day event was the proposal put forward by representatives of the European Union for the creation of a "network", with its headquarters in Athens, which would register information on:

- The legal framework in each state concerning the environment;
- the corresponding powers of the Ombudsman;
- best intervention practices;
- the development of intergovernmental cooperation in the field of environmental protection.

Finally, the need to set up an informal core group of representatives of participating states was underlined; this group would meet regularly and exchange views in order to inform the European Union on the directives it should be adopting and the harmonization of national legislation in the area of environmental protection.

As follow-up to this working meeting, the Ombudsman submitted to the European Commission a funding proposal for the creation of a network called "the Athens Network of the Ombudsmen for the Protection of the Environment", including a website that will provide systematic information about the activities of the Ombudsmen participating in the network. The network's founding members are Austria, France, Denmark, Estonia, Ireland, the Netherlands, and Sweden. The proposal was accepted and the next meeting was set for April of 2002.

4. Presentation of the Most Important Cases

4.1 OPERATING LICENCES GRANTED BY LOCAL AUTHORITIES

4.1.1 UNLICENSED OPERATION OF AUTOMOBILE AND MOTORCYCLE REPAIR SHOPS ON THE ISLAND OF NAXOS

Agencies: Transport Office of the Province of Naxos, Province of Naxos

On the island of Naxos, a large number of automobile and motorcycle repair shops operate without a licence in violation of the provisions of Presidential Decree 78/1988, as amended and

in force. The unlicensed operation of these businesses has come to the notice of the Province of Naxos as a result of the actions of the Ombudsman and the citizens concerned (case 3752/2000).

This situation contravenes the legislation as regards the security of workers and neighbours, the quality of services provided, authorized land use, environmental protection, etc. With respect to environmental protection, it should be noted that according to the legislation (Law 1650/1986, Joint Ministerial Decision 69269/5387/1990, Presidential Decree 38/1996), on the one hand, enterprises of this type must, in order to obtain a licence, present an environmental impact assessment study, while on the other hand, the relevant department is responsible for checking whether or not specific environmental terms are complied with during operation. It should also be noted that used lubricating oils are one of the main waste products generated by this type of business, which, in accordance with EU legislation, are hazardous waste requiring special handling. As a result of the illegal operation of these repair shops, their owners are not informed of the serious risks arising from uncontrolled disposal of used lubricant oils, while the state is fully incapable of monitoring their method of disposal.

Since this is such a serious issue, the Ombudsman brought the problem to the attention of the relevant department of the Prefectural Government of the Cyclades. The latter, however, declared that it was totally incapable of controlling whether or not the requirements for the operation of these establishments were being met, "since it does not employ an environmentalist and the employee who issues decisions on category B environmental terms is a trained architect-engineer, so that he deals with the subject only occasionally". Subsequent to this, the Ombudsman pointed out that this argument does not constitute legal grounds for not complying with the law in force, which in this case is EU legislation, since "according to established case law, member states are not permitted to refer to domestic situations, such as the difficulties arising from the implementation of certain Community acts, in order to justify their failure to comply with obligations and deadlines arising from EU legislation…" (recital 19 of the European Court of Justice, judgment of 4 July 2000, case C-387/1997 "Commission versus Greece – Kouroupitos case").

Based on this case, the Ombudsman asked the relevant regional government departments for information concerning the implementation of legislation on the management of used lubricant oils by enterprises operating under their supervision. The answers received showed that the degree of implementation of the corresponding law differed significantly from region to region. The greatest difficulties are to be found in the Region of Western Greece, which in its document no. 4903/26.3.01 refers to "an insufficient to non-existent control mechanism" and uncontrolled disposal of this type of waste. The Prefectural Government of the Dodecanese (in document no. 193/18.1.01) believes that compliance with the provisions of the law is questionable on all the islands of the Dodecanese, with the exception of Rhodes. The Ombudsman referred the case to the competent prosecutor in order to determine whether there was criminal responsibility on the part of the competent employees and the sub-prefect of Naxos.

4.2 SHORE AND COASTAL ZONES

4.2.1 CONSTRUCTION WORK ON THE COASTAL ZONE ON THE ISLAND OF KEFALONIA

Agencies: Municipality of Leivatho; Urban Planning Division of the Prefectural Government of Kefalonia; Public Real Estate Agency of the Prefectural Government of Kefalonia; Ministry for the Environment, Physical Planning, and Public Works

In the area of Spartia on the island of Kefalonia there have been interventions (construction

activities, land surface development, etc.) within a defined coastal zone (case 8231/2001). The Urban Planning Division of Kefalonia did not take any action on this matter because, as it argued, it had issued building permit no. 13/2001.

Senior investigators from the Office of the Ombudsman carried out an on-site investigation in August of 2001, during which they established that construction work was carried out on the coastal zone. They specifically saw that a "terraced wall" (ascending steps) was being built and that extensive works were being carried out in order to bank up the coastal zone. The wall as constructed prevents free access to the shore area, and in any case it will substantially alter the natural appearance of the shore.

The Ombudsman informed the Urban Planning Division of Kefalonia and Ithaca and the Municipality of Leivatho that the work under construction on the coastal zone was to be interrupted immediately. The division replied to the Ombudsman that, following his "order", construction work would be stopped, while pointing out that its actions had respected urban planning provisions in force (circular no. 26/1990). Subsequently, the Ombudsman asked the division to give precise reasons and justification for the interruption of construction, since its reference to an "order" was incorrect. The division replied that "…the reasons for which construction should stop immediately were not clear", and that "…we cannot see for what reason this construction work has to be interrupted".

The Ombudsman next drew up his findings in which he noted that the circular of the Ministry for the Environment, Physical Planning, and Public Works (no. 26/1990) is not in line with the provisions of Law 1337/1983, since the system for granting building permits on coastal zones is not clearly defined in it. It should be pointed out that article 23 of Law 1337/1983 has amended par. 1 of article 5 of Law 2344/1940, so that "wherever the coastal zone, due to the nature of the adjacent dry land, cannot serve the purpose stated in article 7 of this law, it may be expanded by the addition of a strip of land where construction shall not be allowed from the adjacent dry land and up to a width of 50 meters, beginning from the border of the coastal zone with the dry land". The Ombudsman is asking for the annulment of the above circular of the Ministry for the Environment and the enforcement of the case law of the Council of State and provisions of Law 1650/1986, which require:

- The protection of land, surface and ground water considered to be ecosystems, the protection of the air, the protection and preservation of nature and landscape in areas of biological, ecological, aesthetic, or geomorphological value, as well as the protection of sea, river and lake shores.
- The use of the "best available and economically viable technology" for the protection of the environment.

The case is still pending.

4.3 RESIDENTIAL AND CULTURAL ENVIRONMENT

4.3.1 CONSTRUCTION ON A SITE INTERSECTING AT THE BOUNDARY OF A TRADITIONAL SETTLEMENT IN THIRA

Agencies: Urban Planning Office of Thira; Prefectural Government of the Cyclades; Ministry of the Aegean; Ministry for the Environment, Physical Planning, and Public Works

Individual citizens have called into question, in their complaints, the legality of building permit no. 430/1992 delivered by the Urban Planning Office of Thira and its revised version no. 42/1996, concerning a piece of land in Oia on the island of Thira (cases 8649/1999,

11339/1999, and 15143/2000). The first controversial permit was issued in 1992, while the Ministry for the Environment, Physical Planning, and Public Works had already drawn up a technical and geological study, which had been taken into consideration by the competent administrative agencies for determining the boundaries of the settlement of Oia and was valid at the time this report was written. The settlement boundaries, determined by decision of the Prefect of the Cyclades (no. ΤΠ-5486/91/6.2.92, Government Gazette 275/Δ/1992) and still in force today, did not include, even at the time the controversial permit was issued, certain plots of land within the area of Oia, towards the side of the Kaldera, since there was no "…guarantee, due either to inclination or the nature of the soil, that they can withstand even the lightest building activity".[1] As a result of the prefect's decision, part of the controversial plot of land was located outside the settlement's boundaries. The owner of the plot asked for the re-examination of the settlement's boundaries. The Ministry for the Environment rejected his objection because of the geological inappropriateness of the soil, as established by the abovementioned study of the relevant department. Subsequently, an application for a building permit was submitted for the same plot of land, which was granted by the Urban Planning Office of Thira (no. 430/1992), and later revised (no. 42/1996).

The administration's position concerning these building permits, expressed chiefly by the Ministry for the Environment, was that they had been legally issued. Following the investigation of the case, the Ombudsman published his findings dated 11 September 2001, in which he stated that on the one hand, the initial building permit had been granted illegally, since it allowed for the construction of buildings in an area outside the boundaries of the settlement and on geologically unsuitable land, and that, on the other hand, for these same reasons it could not be revised. The findings also underlined that the revision of building permit no. 430/1992 had not been done in accordance with the law, for reasons independent of those concerning the legality of building permit no. 430/1992, since the required agreement of the relevant agency (Urban Planning and Architectural Inspection Committee) was never obtained.

It was against this background that the Ombudsman proposed that building permit no. 430/1992 and its revised version no. 42/1996 should be revoked as illegally issued administrative acts, and set a deadline for the competent authorities (the Ministry for the Environment, Physical Planning, and Public Works, the Ministry of the Aegean, and the Urban Planning Office of Thira) to reply as to whether or not they accepted his conclusions. In their response, the Ministry for the Environment and the Urban Planning Office of Thira stated that building permit no. 430/1992 was based on article 7, par. 1 of the Presidential Decree of 24 April 1985[2] on the fictitious restoring of the integrality of plots intersected by the boundaries of a settlement, according to which "is deemed to be included within the boundaries a part of the property of the size required to restore its integrality".

The Ombudsman refuted the opinions expressed by the Ministry for the Environment, Physical Planning, and Public Works in his document dated 30 October 2001, where he stated his position concerning the legality of the controversial permit. At the same time, he insisted

1. Explanatory memorandum of the Town Planning Directorate of the Ministry for the Environment, Physical Planning, and Public Works, dated 24.10.1991.

2. Presidential Decree of 24 April 1985: "Method for determining the boundaries of settlements in Greece with a population not exceeding 2,000 inhabitants, categories thereof and definition of conditions and restrictions pertaining to construction thereon" (Government Gazette 81/Δ/3.5.85), as amended by Presidential Decree of 14 February 1987 (Government Gazette 133/Δ/23.2.87).

on his conclusion that the permit had been illegally issued, adding that in this case it was pointless to claim a fictitious restoring of integrality, since integrality does not necessarily imply that the plot in question is suitable for construction.

The Ombudsman furthermore stressed that the interpretation of article 7, par. 1 put forward by the administration clearly conflicts with the provisions of article 24, pars 1 and 2 of the Constitution, concerning the protection of the environment and rational development. Such interpretation of article 7, par. 1, with no restriction whatsoever, neither with reference to the minimum area required for building nor to the precise location of the building on the site would lead to an unconditional, unlimited expansion of the settlement, with evident damaging effects on the environment and the safety of urban populations.

In addition, the Ombudsman reasoned that a systematic interpretation of the provisions of the Presidential Decree of 24 April 1985 leads to the conclusion that the specific provision applying in this case was not article 7, par. 1 but rather article 4, par. 2α στ of the same decree, whose wording absolutely excludes from any settlement "areas geologically or by the nature of the soil unsuitable for building". This provision also covers forests, monuments of natural or historical heritage, etc. The purpose of this specific stipulation is the conservation of the natural and cultural environment. Furthermore, subparagraph στ of article 4 also provides for the protection of, in particular, the safety, life, and physical integrity of all citizens. In the case of the Kaldera of Oia, there are specific reasons for protecting the traditional character of the settlement in an area which has been characterized as being of "particular natural beauty" (articles 24, par. 1 and 2, 5, par. 2, in combination with article 25, par. 1 of the Constitution).

Construction in the areas defined in article 4, par. 2α is possible, but only when allowed by specific provisions and under special terms and conditions that ensure effective protection of public interest, which is the purpose of this provision. There are, however, no particular provisions for construction in areas "geologically or by the nature of the soil unsuitable for building". Contrary to the view of the Ministry for the Environment, Physical Planning, and Public Works, the general provision of the Building Code (article 5, par. 4), concerning the study prepared by and the responsibility of the supervising engineer in charge of construction, does not constitute such a specific exception from article 4, par. 2α στ. The provision of the Building Code is a general rule, which serves a different purpose, i.e. the safe construction of buildings, and applies to all types of construction in general, provided of course that construction of buildings is permitted in the areas in question.

As a result, the position of the ministry would lead to free construction of buildings on the individual responsibility of the supervising engineer in areas deemed by the state to be unsuitable for construction due to the geological features of the soil. It is obvious that in this case public interest supersedes the right to property for the protection of the life and safety of citizens.

The above reasons led the Ombudsman to stand by his conclusions as stated in his findings of 11 September 2001 concerning the legality of the building permits, and, applying the relevant provisions of his founding law, he proceeded to make public the administration's refusal to accept his proposals.

4.3.2 DELAY IN PAYMENT OF REWARD FOR THE SURRENDER OF ANTIQUITIES AND THE DESIGNATION OF AN ARCHAEOLOGICAL SITE

Agency: Ministry of Culture

In January 1997, at Rivari on the island of Milos, four Early Cycladic vases were found, which

were surrendered to the Archaeological Museum of Milos (case 1877/2000). For the surrender of these archaeological findings and the designation of a new archaeological site at Fatourena in Rivari on Milos, the Local Council of Island Monuments issued an opinion in favour of the payment of the reward to the finder, provided by the law. This opinion was confirmed by ministerial decision ΥΠΠΟ/Αρχ./Α2/Φ44/36779/17.7.98, which, however, as transpires from the correspondence between the Ministry of Culture (Directorate for Pre-Historic and Classical Antiquities, Museum Department) and the finder, but also with the Ombudsman, should have been enforced immediately after allocation of the necessary public funds, which as a rule are insufficient. This is the reason why so many similar cases are still pending.

The Ombudsman sent three documents to the relevant department of the Ministry of Culture and met twice with its representatives. These contacts clearly showed that the inability to effect payment immediately to this particular beneficiary was due exclusively to the limited funds annually included in the state budget for this purpose. In general, however, the inability to settle payments immediately is also linked to negligence on the part of the beneficiaries, who are required to submit the necessary documents to the relevant ephorates of antiquities.

Finally, following the mediation efforts of the Ombudsman and the action taken by the Ministry of Culture in order to secure sufficient funds for this type of purpose, the beneficiary received his reward for surrendering the antiquities and indicating a new archaeological site in June of 2001.

4.4 BUILDING PERMITS – ILLEGAL CONSTRUCTION

4.4.1 ILLEGAL CONSTRUCTION ON COMMUNAL SPACE IN ARTA

Agencies: Urban Planning Office of Arta; Arbitration Committee on Illegal Structures in the City of Arta; Municipal Development Agency of the City of Arta

A nightclub (discotheque) operates in a wooden structure located on communal space of the tourist pavilion of the Municipality of Arta, on the Profitis Ilias hill, adjacent to the church of the same name.

On 25 August 1998, an on-site investigation was carried out by the Urban Planning Office of Arta and a report drawn up, which determined the building in question as an illegal structure of 290.11 sq.m. The Municipal Development Agency of the City of Arta, which owns the building, filed an objection against the report which stated, *inter alia*: "An outdoor disco operates under the sheltered area and although the indoor space was not essential, it was nevertheless deemed necessary to install vertical wooden elements in order to create a sound wall, so that the music would not disturb the adjacent hospital at all".

The Arbitration Committee on Illegal Structures examined the objection and issued an opinion stating that the structure was legal, since the General Hospital of Arta was protected against noise pollution. The committee's decision was based on article 19, par. 1 of the Building Code 1577/1985, which allows structures to be erected in public areas to serve the purpose of those areas. The same paragraph, under passage β, specifies that "the categories of the aforementioned structures or establishments for which a building permit is not required are determined by the Ministry for the Environment, Physical Planning, and Public Works".

Following numerous contacts between the Ombudsman and local authorities of the region, the former finally appealed to the chairman of the Arbitration Committee on Illegal Structures, saying that this structure was illegal and that the reasons given by the Municipal Development Agency were not founded, since according to the decision issued by the

Ministry for the Environment (no. 78753/14573/1986) and pertaining to "structures and establishments in communal spaces in residential areas for which a building permit is not required", the type of structures listed in it bear no resemblance whatsoever to the controversial building. The argument that the structure was erected as a sound wall in order to protect the hospital has no legal basis, and furthermore is not consistent with the objection filed by the Municipal Development Agency, which recognizes that the structure was erected because of the noise pollution generated by the discotheque.

Exceptions of illegal structures from demolition are decided by the Council of Physical Planning, Housing, and Environment and not by the above committee. As a result, the committee should have rejected the objection of the Development Agency as inadmissible. It should be noted that, according to article 6, par. 1 of Ministerial Decision A5/1985/β-593, "in the case of outdoor night clubs the following restrictions apply: a) The distance between them and the closest legal building … hotel, church, school, hospital … or any other establishment requiring protection, according to the reasoned opinion of the relevant Health and Safety Authority, must be a minimum of 300 meters…".

As part of his mediation efforts, the Ombudsman requested that the Mayor of Arta should withdraw the licence of the open-air discotheque, since it was not operating legally. On 22 October 2001, the Urban Planning Office of Arta sent a letter to the Office of the Ombudsman informing him that all procedures pertaining to illegal structures had been observed, as proposed by the Ombudsman. Subsequently, a decision of the Mayor of Arta was issued with reference to the demolition of the illegal structure in question, which, as confirmed on the occasion of an on-site investigation carried out by the Department, was enforced by the owner (the Municipal Development Agency).

4.4.2 VIOLATIONS OF THE BUILDING CODE IN THE GREATER PROTECTED AREA OF THE NATIONAL SEA PARK ON THE ISLAND OF ZAKYNTHOS

Agency: Urban Planning Division of the Zakynthos Regional Government

The Ombudsman was advised of illegalities, in a complaint pertaining to the construction of a building on land belonging to a German citizen in the municipal division of Lithakia of the Municipality of Laganas on the island of Zakynthos (case 8780/2000). The plot of land concerned belongs to the greater area under the protection of the National Sea Park of the Gulf of Laganas, which, under Directive 92/43/EEC, has been included in the national list of areas proposed for inclusion in the European ecological network Natura 2000. At the time of issue of the building permit for the aforementioned construction, the Presidential Decree of 5 July 1990 was in force, defining the development control zone of Zakynthos.

In particular, the complaint in question alleges that:

- The distance between the building line and the coastline does not exceed 25 m. at its maximum, thus violating the Presidential Decree of 5 July 1990, which requires a minimum distance of 30 m.;
- the required minimum distance of the building in question from an adjacent stream (at least 10 m. from the boundary line, if no works have been carried out to redirect its flow) has not been respected, and
- a historical find dating back to the 16th century is situated on the plot.

Senior investigators from the Office of the Ombudsman carried out an on-site investigation in Zakynthos in October of 2001, where these violations were confirmed.

Subsequently, a postponement of the construction works was requested from the Urban Planning Division of Zakynthos, which was granted immediately. In this case, it is impossible to revise the existing building permit, since the new Presidential Decree of 22.12.1999 on the creation of a National Sea Park in the Gulf of Laganas has now come into force, imposing a distance of 50 m. from the coastline (a spawning area of the Caretta caretta turtles). On the condition that the administration has the obligation to comply with the above, the Ombudsman completed his mediation work in this particular case.

4.4.3 ARBITRARY VIOLATION OF LEGAL LAND USE BY THE MUNICIPALITY OF GLYKA NERA, ATTICA

Agency: Municipality of Glyka Nera

This complaint reports the arbitrary violation, on the part of the Municipality of Glyka Nera, of legal land use under the approved municipal urban plan of Glyka Nera, in building block (BB) number 260, which has been defined as a communal green and parking area (case 3648/2001). The investigation of this case by the Ombudsman identified the following facts.

With its decision of 1998, the municipal council of Glyka Nera initiated the procedure for changing land use by creating a new building block (260A), over an area of 150 sq.m., which was separated from BB 260, in order to be classified as a site for a "parish cultural centre" with a chapel built on it. The proposal was rejected in 2000 by the relevant service of the Environment and Physical Planning Division of the Region of Attica, since it was found that the suggested amendment of the municipal urban plan "is in breach of provisions of article 29 of Law 2831/2000 as it reduces approved communal area". Subsequently, and despite the refusal of the regional government, the municipality took a series of steps with the aim of eliminating the communal use character of BB 260, specifically by developing the area and erecting a pre-fabricated chapel on a portion of it. The building in question was defined as illegal, following the on-site inspection carried out by the urban planning office, on 29 May 2001, which communicated its findings to the police department of Glyka Nera. Construction, however, was not interrupted.

On 3 September 2001, the Arbitration Committee on Illegal Structures heard and rejected the appeal of the Municipality of Glyka Nera against the act defining the chapel as an illegal structure. During the hearing of this appeal, the relevant committee considered the following positions put forward by the Ombudsman:

- The development of the area within BB 260 and the erection of a pre-fabricated chapel on a portion thereof constitute a serious violation of urban planning regulations, in the sense of arbitrary occupation of an area intended for communal use, illegal change of land use, and invalidation of the existing urban plan.
- The development works carried out on the land in question by the municipal enterprise, i.e. the raising of the level of the ground, landfill operations, and erection of a pre-fabricated structure on a cement foundation are in no way included in the works envisaged in article 19 of the Building Code (1985), but are actions in flagrant violation of legal land use.
- The nature, extent and size of the illegal construction require a mandatory demolition of the structure, since urban planning legality cannot be restored in any other way, in view of the fact that to legalize this building under the existing urban plan is not feasible.

The Ombudsman believes that the issuing of a demolition order for illegal structures and rehabilitation of the surrounding area to its former condition fall within the administration's

binding obligations. The Urban Planning Division of the Eastern Attica Prefectural Government has already imposed the appropriate fine for illegal construction and requested the approval of the prefectural council in order to proceed with the demolition of the chapel. The case is still pending.

4.5 ENVIRONMENT

4.5.1 BURIAL OF TOXIC WASTE AND POLLUTION OF THE ENVIRONMENT OWING TO THE OPERATION OF LIQUID-FUEL DEPOTS IN LESVOS

Agencies: Prefectural Government of Lesvos; Regional Government of the Northern Aegean; Ministry for the Environment, Physical Planning, and Public Works

This case deals with the adverse environmental effects of liquid-fuel depots operating in the area of Skala Loutron in Lesvos, pertaining to which the Council of State has issued an annulment decision, as well as a postponement order, without, however, achieving any form of compliance on the part of the administration (case 781/2000).

More specifically, decision no. 4633/1997 of the Council of State invalidated joint decision no. 30931/20.5.96 of the Secretary General of the Ministry for the Environment, Physical Planning, and Public Works and the Secretary General of the Ministry of Development, concerning the approval of environmental terms for the establishment of a storage facility at Skala Loutron in the Gulf of Gera on the island of Lesvos, as well as decision no. 14/21.2.96 of the prefectural council of the Lesvos Prefectural Government. As indicated in the decision's recital, "the installation and operation of tanks for the storage and transport of liquid fuel cannot be allowed in the area in question". Despite the fact that five years have elapsed since the publication of the Council of State's decision, the Prefectural Government of Lesvos has so far failed to seal the facilities.

With a new joint ministerial decision of the Secretaries General of the Ministry for the Environment, Physical Planning, and Public Works and the Ministry of Development (7.6.2001), new environmental terms were approved, but a new suspending order was once again issued by the Council of State. Despite all this, and, notwithstanding the Ombudsman's relentless mediation efforts for many months with the prefecture and the Ministry for the Environment alike, the facilities continue to operate.

A further detrimental aspect in this case is the fact that the environmental pollution is increased by the burial of toxic waste from these facilities. This fact had already been confirmed in the past by the Centre for Environmental Quality Control, which, following an on-site inspection, stated that "…this is waste produced by the cleaning of the storage tanks for category 1607 (hazardous waste) types of fuel, which were discharged there without permission and approval of environmental terms". Finally, a study compiled by private individuals in the area where toxic waste is buried confirmed the existence of polluting substances in the subsoil below the facilities.

As early as the beginning of 2000, the Ombudsman repeatedly requested in letters the assistance of the Lesvos Prefectural Government and the Ministry for the Environment, Physical Planning, and Public Works, in order to deal immediately with these serious problems. He also expressed the opinion that apart from the removal of these facilities from the area in question, a further examination of environmental conditions in the area is necessary, including soil and water sample analysis.

To date, the Lesvos Prefectural Government has failed to adopt the position of the

Ombudsman. As far as the illegal operation of these facilities is concerned, its opinion is that it would not be a good idea to seal them, since this would disrupt the island's fuel supply. Furthermore, it believes that there is no reason to investigate environmental conditions in the area where the facilities are operating. However, in light of:

- The decisions of the Council of State invalidating the environmental terms formerly approved,
- the decision to suspend enforcement of the more recently approved environmental terms, and
- the long period of time, at least since 1997, during which the administration has been aware of the above problems, it is no longer acceptable to keep postponing the closing down and relocation of these facilities.

Based on the above facts and arguments, in his letter of 28 September 2001, the Ombudsman referred the case to the prosecutor of Lesvos. The case is still pending.

4.5.2 ENVIRONMENTAL POLLUTION CAUSED BY AN INDUSTRY OPERATING WITHOUT A PERMIT IN PALLINI, ATTICA

Agency: Eastern Attica Prefectural Government

By virtue of decision no. 2763/2.3.99 of the Prefect of Eastern Attica, the operation of a print factory owned by the company "Grammi SA" was interrupted temporarily in the absence of a study on its mechanical equipment, a fire safety certificate and a decision approving environmental terms. There is, however, no mention of the absence of an operating permit in the above decision (case 4528/2001).

Even though the appeals procedure has been exhausted, the sealing of the plant, which was decided by the Division of Industry of the Eastern Attica Prefectural Government, and was to be carried out on 2 March 2001, i.e. two years after the decision was issued, was postponed once again.

The relevant document (no. 731/1.3.01) of the Division of Mineral Resources and Industry of the Eastern Attica Prefectural Government stated that "it should be examined whether the reasons for which the decision (to seal) was issued, no longer apply". In a more recent document, dated 14 March 2001, the same agency postponed the sealing procedure "until further notice", on the grounds that the necessary papers had been filed and that the Environmental Division of the Eastern Attica Prefectural Government, following a "macroscopic" investigation, had confirmed that "the post-combustion procedure was effective". The Ombudsman, however, believes that this control was insufficient, since the dehydration procedure used on the printed sheets (post-combustion procedure), which results in the release of potentially toxic volatile compounds, had not been substantially investigated as to the volume of pollutants discharged.

Finally, the sealing procedure was postponed for a third time on 18 December 2001, on the grounds that it was necessary to carry out measurements following an application for remedy on the part of the company, which however does not constitute grounds for postponing the sealing.

It is the position of the Ombudsman that the relevant authorities are guilty of systematically delaying legal procedures and that the decisions to postpone sealing are illegal, since in any event the company has been operating for a long period of time, without approval of environmental terms and without having initially confirmed whether the improvements of its

electrical and mechanical equipment had been completed on the basis of approved studies, a fact which is a flagrant violation of every environmental regulation. Besides, sealing is an act that must be immediately enforced, requiring no further course of action for its implementation. On the contrary, the reasons for which the sealing decision was issued must no longer exist for the decision to be repealed, and this is not applicable in this specific case.

The Division of Mineral Resources and Industry of the Eastern Attica Prefectural Government countered these arguments by responding, in its document no. 3211/25.9.01, that the two-month period within which, according to the law, the environmental terms proposed in the environmental impact assessment study must be approved, had expired and that therefore, according to par. 9 of article 4 of Law 1650/1986, and par. 4 of article 7 of Law 2516/1997, these are deemed as approved, in the opinion of the division.

The opinion of the Ombudsman is that an ex post facto authorization of operations, without a previous effective and substantiated control of the environmental impacts, the absence of approved environmental terms and the tacit acceptance of a deficient impact assessment study, due to the failure of those responsible to reply, lead to reduced environmental protection and to violation of the citizens' right to live in a sustainable environment, to be informed of the administration's decision-making process and to participate in it. The case is still pending.

4.5.3 OPERATION OF A WOOD-PROCESSING PLANT WITHIN A RESIDENTIAL AREA ON THE ISLAND OF CHIOS

Agencies: Urban Planning and Environment Division of the Chios Prefectural Government; Division of Mineral Resources and Industry of the Chios Prefectural Government

The Prefectural Government of Chios issued an operating licence to a carpenter's workshop, in a residential area at Vrontado. The authorities described the workshop as a professional workshop, under category B of Joint Ministerial Decision 69269/1990, with a low nuisance level, according to Ministerial Decision 10537/1993 (case 10650/2000). However, the relevant decision approving the environmental impact assessment study explicitly characterizes the workshop as a "wood-processing plant", whilst categorizing the tools used in the workshop into "noisy and not noisy", a distinction which does not exist in the corresponding legislation and is not technically valid either. On the other hand, according to the more recent and specific Law 2516/1997, the carpentry workshop, based on its established capacity, which is in excess of 12 kilowatts, was qualified as a small industrial plant and not as a professional workshop. This usage, therefore, is not compatible with the definition of a residential area of Presidential Decree 2302/6.3.87, which specifies the categories and content of land uses.

The town plan defines the area in which the workshop is located as a residential area. The community itself existed before 1923. According to the standing case law of the Council of State, in such cases, the operation of establishments causing even minimum nuisance is prohibited. As an argument in favour of the non-revocation of the operating licence in question, the administrative authorities cited the probability of a compensation claim from the enterprise concerned, which, however, does not constitute legal grounds. Furthermore, they cited article 4, par. 9 of Law 2508/1997, as amended by article 28, par. 1 of Law 2545/1997, which stipulates that "the restrictions envisaged in the previous paragraph do not apply to areas of the urban plan approved at the time of publication of the present law", as an argument for not applying the above land use restrictions of the urban plan.

It is a fact that this specific provision, as interpreted by the authorities in this case and possibly in others as well, is a basis for not enforcing land-use restrictions in the case of town plans approved before the adoption of Law 2508/1997. However, the Ombudsman argues that with this legal provision (amended par. 9 of article 4 of Law 2508/1997), for areas for which there are approved town plans (prior to Law 2508/1997), the conditions and requirements of Law 1337/1983 shall apply, as stated in the explanatory memorandum of the amended paragraph of the above article. The same reasoning, with regard to town plans approved under Law 1337/1983, is also used in decision no. 4047/1999 of the Council of State, i.e. that as of publication of the ministerial decision approving a town plan, only the land uses provided by it will be permitted. To date, the administration has not responded to the request for rescinding the operating licence, or to the more general issue concerning the implementation of the urban plan in general.

4.5.4 PROTECTION OF WETLANDS ON THE ISLAND OF KOS

Agencies: Urban Planning Applications and Environment Office of Kos, Prefectural Government of the Dodecanese

In a complaint addressed to the Ombudsman, an ecological organization reported the illegal construction of a hotel unit on an area of approximately 1,800 sq.m. in the Alyki wetlands, which is a fully protected area on the island of Kos (case 6806/2001). The area in question has been considered as deserving special protection, within the framework of Directive 92/43/EEC (Natura 2000 Network). As early as 1994, the legislator had already endeavoured to protect the area from interventions of this type, with the adoption of two consecutive ministerial decisions, which suspended construction work and the issuing of building permits.

It is important to note, however, that the hotel owner had obtained a building permit from the Kos Urban Planning Office for the construction of shops on a surface area of 600 sq.m., in the period of time which elapsed between the expiration of the most recent ministerial decision on this matter (December of 1996) and the adoption of the presidential decree which determined land uses in the area (November of 1997), i.e. during the period of time when this area was not protected by the law.

The Kos Urban Planning Office carried out an on-site inspection during which the existence of illegal structures in the hotel in question, in breach of the building permit, was confirmed, as well as the arbitrary alteration of the building's use from a shop to a hotel. Subsequently, it imposed the pecuniary fines provided by the law.

In a letter addressed to the urban planning office, which was forwarded to all relevant agencies, the Ombudsman stressed the obligation of the administration to implement the provisions of article 22, par. 5 of Law 1650/1986, according to which, if the use of buildings is found to be other than that provided for in the urban planning regulations applying to that area, the buildings must be sealed.

The Environmental Planning Division of the Ministry for the Environment, Physical Planning, and Public Works underlined, in a document pertaining to this case, that special concern must be shown by the institutions of the state for projects and activities in protected areas, while stressing that when dealing with illegal structures, in addition to the regulations applying thereto, the system of sanctions envisaged in Law 1650/1986 must also be enforced. Furthermore, the Environment and Physical Planning Department of the Southern Aegean Region, to which the Kos Urban Planning Office submitted a question on the implementation

of article 22, was of the opinion that the latter was compulsory. On 30 October 2001, the Kos Urban Planning Office, taking into account the position of the Ombudsman and the above authorities, decided to seal the hotel and stop its operation.

On 31 December 2001, the Ombudsman addressed a further letter to the Kos Urban Planning Office, requesting information concerning the execution of the decision in question. Furthermore, the Ombudsman demanded the immediate demolition of the illegal structures, the examination of the possibility of revoking the building permit and the assistance of all relevant authorities (Ministry for the Environment, Physical Planning, and Public Works, Prefecture of the Dodecanese, Region of the Southern Aegean), to ensure the effective protection of the wetlands.

4.5.5 DISPOSAL OF INDUSTRIAL WASTE IN SKYDRA, PELLA

Agencies: Prefectural Government of Pella; Ministry for the Environment, Physical Planning, and Public Works

The pollution caused by units processing agricultural products in Skydra in the Prefecture of Pella and the serious problems that have been observed in the receiving stream of all liquid industrial waste from the area, i.e. main ditch no. 66, were reported to the Ombudsman (case 11914/2000). In addition, it should be mentioned that according to the documents drawn up by the relevant authorities concerning the water quality in ditch 66, "…the water is polluted by large quantities of untreated waste produced chiefly by the canning plants in the area…".

In light of these facts, the Ombudsman contacted the Environment Department of the Prefecture of Pella and the Water Department of the Environmental Planning Division of the Ministry for the Environment, Physical Planning, and Public Works and submitted to them, *inter alia*, specific questions concerning the quality and quantity of the industrial waste discharged into ditch 66, as well as compliance with the environmental terms approved for the agricultural industries which use ditch 66 as the intercepting stream of liquid industrial waste.

The response from these authorities may have been immediate, but the study of the reply documents revealed the following:

- The specific questions set out above were not replied to.
- The Ministry for the Environment had requested in the past the same parameters, in terms of quality and quantity, which are essential for assessing environmental damage in the intercepting stream of industrial waste, but no official reply was given.
- The Prefectural Government of Pella confirmed that "during the peak period … a significant deterioration of the quality of the water can be observed in ditch 66 … resulting in decay, foul-smelling gases and the disappearance of all water organisms…". It also confirmed that "…the aforementioned problem exists for over two decades". All of this is occurring 17 years after a decision was issued by the Prefect of Pella (Government Gazette 912B/31.12.84), which determined disposal terms for liquid and other waste in this specific intercepting stream.
- The information supplied by the Prefectural Government of Pella is clearly contradictory, since it says that "…the overwhelming majority of industrial processing units in Skydra have systems for the treatment of liquid waste…", and that "…all agricultural industrial units which use ditch 66 as their intercepting stream operate with new integrated anti-pollution systems…", but that "…nevertheless the problem (of pollution) remains…".

Following notification of these facts, the Ombudsman carried out an on-site inspection of

the area in question, during the peak season for these industries, in the course of which he established the seriousness of this long-standing problem. The Ombudsman forwarded his findings to the relevant departments of the Ministry for the Environment, Physical Planning, and Public Works and the Prefectural Government of Pella, pointing out the necessity of immediate and effective measures.

A second round of meetings of the Ombudsman with the public agencies involved and the ensuing evaluation of data submitted demonstrated clearly that, although the permitting procedure for the disposal of liquid waste is fully provided for in the relevant legislation (Health and Safety Regulation E1β/221/65, Law 1650/1986, Ministerial Decision 69269/1990, Ministerial Decision 19661/1999), compliance with these provisions presents serious problems. In addition, the levying of fines involves complicated administrative procedures, as a result of which the measure is not always enforced.

The Ombudsman, however, insists on the existing legislative framework, namely Prefectural Decision no. 3610/1984, on admissible pollutant concentration levels in the intercepting stream, which is the fundamental aspect of the environmental terms that were approved for the operation of the industries in question. Furthermore, he expects the agencies involved to take the specific and immediate measures required before the next period (peak season) and until implementation of a new system for joint treatment of industrial waste. The case is still pending.

4.6 PROTECTION OF FORESTS

4.6.1 DEFINITION OF AREAS AS FOREST OR NON-FOREST LAND IN EASTERN ATTICA, IN ACCORDANCE WITH THE PROCEDURE ENVISAGED IN ARTICLE 14 OF LAW 998/1979

Agency: First-Instance Committee for the Resolution of Forest Disputes of Eastern Attica

Serious problems are caused by the failure of the First-Instance Committee for the Resolution of Forest Disputes of Eastern Attica, for more than three years, to examine the legally submitted objections of citizens against the decisions of the forestry authorities classifying specific areas as forest or non-forest land (cases 1207/2001, 2810/2001).

In a letter addressed to the committee, the Forestry Division of Eastern Attica, and the Secretary General of the Region of Attica, the Ombudsman pointed out the mandatory power of the committee to issue reasoned decisions on objections within three months of their submission. Moreover, failure to take decisions constitutes a failure to act, as the law stipulates, which can be independently appealed against before a court.

The administration justified the delay in question by citing heavy workload and lack of expert staff. It should be mentioned that in 2001, the Ombudsman received a letter from the Minister of Agriculture, according to which "the issues concerning the forestry offices (delays in replying to citizens' requests, on-site inspections) or the committees with regard to the determination of forest and non-forest land, do not fall within the responsibility of the Ministry of Agriculture but rather of the regional governments and the Ministry of the Interior, Public Administration, and Decentralization as their supervising body".

The Ombudsman addressed a further letter (nos 1207.2.3 and 2810.2.3/3.7.01) to the Ministers of the Interior and Agriculture and to the Secretary General of the region, pointing out the problems in connection with the work of the committees and the failure to implement relevant legal provisions. On 5 December 2001, in a document addressed to all ministry departments, the Secretary General of the Ministry of Agriculture underlined their obligation

to reply to the Ombudsman. Among other things, the Secretary General stressed the fundamental duty of the departments, under the provisions of the relevant legislation and the principles of their professional ethics, to reply immediately and swiftly to the requests of citizens and even more so to the Ombudsman, so that "a few cases of maladministration do not cast a shadow on the image of the ministry, thereby giving rise to negative comments".

In the meantime, the objections of one of the two citizens were discussed before the Committee for the Resolution of Forest Disputes, following the Ombudsman's mediation, while the examination of the second citizen's objections is still pending.

4.7 TOWN PLANS – DEVELOPMENT CONTROL ZONES

4.7.1 REQUEST FOR THE WIDENING OF A ROAD AT EXAMILIA, KORINTHOS

Agency: Municipality of Korinthos

Failure to widen an expropriated road in the former Community of Examilia (now Municipality of Korinthos) in the Prefecture of Korinthia led to protests from citizens (case 354/1999), who initially addressed the Municipality of Korinthos, under whose jurisdiction the road now falls. In its reply, the municipality expressed the opinion that "…following the settlement which you obtained on 12.5.1993 before the Single-Member Court of First Instance in your dispute with the former Community of Examilia, the road was widened to 3 m. and further intervention on our part is not called for".

During the investigation of the case, the Ombudsman initially confirmed that a compulsory expropriation had been ordered and that all legal requirements for this had been met. With its decision no. 660/1986, the Single-Member Court of First Instance of Korinthos established provisional unit prices, on the basis of which compensation was paid to the beneficiaries, while the validity of the expropriations was confirmed by the Council of State in its judgment no. 4205/1986, ruling that decisions nos 15/5/20.3.84 and 33/10/21.6.84 of the Examilia communal council on the opening of the road had properly been issued and ratified by decision no. 17981/9.10.84 of the Prefect of Korinthia.

Subsequently, the Ombudsman informed the Municipality of Korinthos of the result of his investigation and requested that, according to the principle of legality and, since the municipality is now the owner of the expropriated road, the boundaries of the expropriated land, as determined in the above administrative decisions and confirmed by the courts, should be respected. Any compromise between the citizens involved in the expropriation and the Community of Examilia, with the aim of modifying these boundaries, could be considered as arbitrary and abusive, since the widening of the road to the appropriate width does not concern private-law cases but ensures, for reasons of public interest and order, that the pupils of the Examilia Primary and Nursery School will be served (Council of State, decision no. 4206/1986).

Subsequently and following continuous mediation efforts on the part of the Ombudsman, the Municipality of Korinthos accepted his views and initiated the procedure for widening the road, whilst at the same time taking temporary administrative measures. On 21 March 2001 the Ombudsman was informed that the road had been widened by municipal construction crews.

4.8 OTHER CASES

4.8.1 EXTENSIVE POACHING AND ISSUE OF A HUNTING BAN IN ATTICA

Agency: Forestry Office of Penteli

In Vari, Attica, there is extensive poaching in a residential area, with poachers using rifles in

the vicinity of homes and hunting in an area which is designated as a wildlife sanctuary (case 1196/2001). The Forestry Office of Penteli did not take the necessary measures, required by the relevant legislation, in time. Furthermore, policing of the area by the authorised ranger, in cooperation with the local police department, was felt to be insufficient and only partly effective.

During the investigation of the case, the Ombudsman addressed a series of letters and was in continuous contact with the forestry office, focusing his proposals on the drawing up of a new map of the wildlife sanctuary area in that specific region of Ymittos Mountain, in conjunction with a ban on hunting. He also requested that a sufficient number of additional signs be set up in the area. Cooperation with the authorities, and especially with the employee responsible for hunting, was good and continuous, since the Ombudsman received similar complaints from many other residents in the area. In addition, pressure was brought to bear on the services involved within the Forestry Division of Eastern Attica and the Region of Attica, in order to expedite the adoption of the scheduled measures by the forestry office. Finally, the Secretary General of the Region issued decision no. 3368/12.9.01, confirming the new ten-year ban on hunting by the Forestry Office of Penteli, which applies to the west side of Ymittos Mountain and is accompanied by an up-to-date map.

The text of the provision and the map accurately reflect the whole area, with respect to its boundaries and locations. This measure is a decisive step against illegal hunting in this area and throughout the Attica region. The Ombudsman forwarded the above documents regarding the full policing of the area to all authorities and agencies involved, so that the information could be relayed to all relevant employees, residents and hunting clubs.

E.4 DEPARTMENT OF STATE–CITIZEN RELATIONS

CONTENTS

DEPARTMENT OF STATE–CITIZEN RELATIONS

1. Subject Matter of the Department

The Department of State–Citizen Relations mainly handles problems associated with the citizens' daily dealings with public services and departments of the wider public sector. The issues it investigates are the individual elements that form the overall image of public administration, as the citizens perceive it.

It is interesting to note that the Department's area of competence covers all aspects of the Ombudsman's mediation role as defined in his founding law (2477/1997). The Department handles, in particular, cases involving all public agencies and services which fall within the Ombudsman's mandate. In accordance with the Ombudsman's Rules of Internal Organization (Presidential Decree 273/1999), the Department handles, *inter alia*, cases concerning the quality of services delivered, as well as the procedures and quality of information and communication, which the public departments concerned provide (or are in a position to provide). Under the law, the Department's competence also extends to matters related to taxation, Local Authorities, public utility corporations, public transport, as well as questions of government procurements, public education, protection of housing and employment, agricultural policy, and agriculture. Such wide area of jurisdiction gives the Department a global view of the phenomenon of maladministration in Greece and the level of trust which citizens have in Greek public administration.

The conclusions that can be drawn from the total number of complaints examined by the Department in 2001 do not differ much from those contained in the Ombudsman's three previous reports. Once more, therefore, the main problems which have been identified by the Department since the establishment of the Ombudsman still have to do with insufficient and unreliable information that leads to misunderstandings and inconvenience for citizens, narrow, literal interpretation of law provisions, refusal to apply the legislation in the absence of relevant interpretative circulars, poor cooperation between jointly competent services and failure to observe the basic principles of administrative action.

It is also worth noting that in 2001, as part of its mediation work, the Department handled, to a large extent, groups of complaints that were very similar as regards the facts reported by the citizens. As a result, its efforts could be aimed at reducing maladministration and improving citizens' protection in specific areas of administrative action. In the majority of complaints, the cases are still pending, as the agencies involved are refusing to take remedial action in response to the Ombudsman's mediation; this is largely due to the fact that as the number of people who have been adversely affected by violations of the principles of legality and fair administration is quite high, the positive resolution of their case would bring about a radical revision of well-established practices.

2. General Assessment of the Department's Activities

2.1 PROBLEMS OF ADMINISTRATIVE ACTION

In 2001, the Department of State–Citizen Relations mostly dealt with issues of violation of the provisions of the Code of Administrative Procedure (Law 2690/1999), as well as various other problems related to the organization of public services. Failure to respond or late reply to

citizens' requests (8.3% of total complaints handled by the Department in 2001) and delays in issuing administrative decisions (10.9%) remain a daily problem in citizens' dealings with the administration. In most of these cases, the Ombudsman's mediation led to a positive outcome, simply by reminding the services concerned of their obligation to respect the law and the citizens' fundamental rights.

The most serious consequences for the citizens and the credibility of public administration have been identified in instances of violation of the principles of the protection of legitimate expectations (1.4%) and transparency (1.2%). Unavailable, inadequate or even incorrect information (6.7%) also undermine the image of a responsible and efficient public administration. The formalistic, inadequate and responsibility-shunning manner in which public officials handle questions in their field of competence or failure or unwillingness on their part to process citizens' cases could clearly be seen in these instances where organizational and functional problems in the departments (12%), negligence and indifference (0.6%), as well as improper behaviour of concerned civil servants (1%) could be identified. Communication failure and unwillingness of jointly competent departments to cooperate were another source of inconvenience for citizens, in addition to their refusal to move beyond the narrow service context, the formal processing of cases without any concern for effectively satisfying citizens' requests, coupled with the absence of even elementary operational planning and distribution of tasks and duties by department heads, staff shortages, and inadequate space. Despite the different measures that are being introduced, mainly at the organization level, for the improvement of services delivered and although these problems have been repeatedly highlighted, they cannot be effectively resolved because the public sector's inherent problems, such as lack of flexibility and creativity, and poor knowledge of the subject matter on the part of the competent civil servants, still persist.

The Department handled with special care cases concerning administrative irregularities (2.6%), incorrect interpretation of the law (3.6%), infringement of the law (2.1%), omission to act (4%), and non-respect of the principle of fair administration (2.7%). Such problems related to administrative action are extreme examples of maladministration, as they have a direct impact on the legality of procedures, while cooperation among all departments concerned and their supervising authorities is essential for their solution. The frequent occurrence of these problems, however, perpetuates the incorrect and exaggerated but rather widespread image of a public administration that "passes laws" as it sees fit and disregards any violation of the legislation, which it is primarily supposed to respect.

In a similar context, the administration's refusal to enforce court rulings, although limited to a small number of cases (1.4%), is a phenomenon that needs to be carefully monitored, as it represents a highly serious and inadmissible abuse of authority that challenges the very basis of the rule of law, which is a fundamental constitutional principle of the Greek state (article 26 of the Constitution).

2.2 AGENCIES COMPLAINED AGAINST

a. The Ministry of Finance, and tax offices in particular, constitute the subject matter of most of the complaints received by the Department in 2001. This trend, also observed in previous years, is mostly due to the multiplicity of law provisions and complexity that characterize the Greek tax system and to the need for both tax offices employees and tax payers to become familiar with the new "TAXIS" system which, as expected, was not without problems.

b. Local Authorities were also the target of many of the complaints handled by the Department in 2001. This can be partly explained by the fact that these authorities are responsible for many issues that affect the citizens' daily life. The examination of complaints has shown that violations of the Code of Administrative Procedure (failure to respond or late reply to citizens' requests, delays in issuing administrative decisions or taking action) and inadequate information given to citizens are the major source of problems, in particular as regards Local Authorities.

c. The quality of services delivered and objections as to the amounts charged have been identified as the main problem which citizens have with respect to public utility corporations. A number of striking cases, which dealt for example with the absence of water or power supply to newly built settlements and summer homes, or non-payment of compensation for lost packages, late mail deliveries, or even exorbitant phone bills, could be resolved following the Ombudsman's mediation.

d. The general problems that are linked to the operation of the Inter-University Centre for the Recognition of Foreign Academic Titles and delays observed in the payment of fees to professors of vocational training schools were the main issues with which the Department had to deal in connection with the Ministry of Education and Religious Affairs.

e. The majority of cases concerning the Ministry of Labour and Social Affairs focused on the organizational problems faced by the Manpower Employment Organization and serious gaps in the timely and reliable information provided to citizens.

f. The Department also dealt with the construction of public works that fall under the responsibility of the Ministry for the Environment, Physical Planning, and Public Works, as well as state procurements tendered by the Ministry of Culture.

g. Finally, the Ombudsman intervened in a number of isolated cases involving these or other ministries where organizational problems or non-respect of deadlines for responding to citizens' requests or issuing administrative decisions had been observed.

2.3 MANAGEMENT OF COMPLAINTS

2.3.1 COOPERATION WITH PUBLIC SERVICES

The examination of complaints which were processed in 2001 showed a net improvement as regards cooperation with public agencies that were complained against. There was also an increase in the number of properly reasoned replies to the Ombudsman's documents and a drop in the response time to queries for more details and information regarding citizens' cases. The fact that a large proportion of the founded complaints examined by the Department could be solved through simple mediation, i.e. by means of a phone call to the department concerned, or as soon as the Ombudsman had drawn attention to the problem in each case verbally or in writing, is a clear sign of the climate of trust which is gradually being established between public departments and the Ombudsman.

Cooperation with the ministries' political leadership, whenever mediation efforts at the level of the departments concerned did not bring any results, has also improved. However, there were again cases in 2001 where the competent minister entrusted the investigation of the case and the reply to the Ombudsman's findings to the services or agencies which were at the origin of the problem. In most instances, such practice is in fact equivalent to a refusal on the part of the political leadership to intervene, since the department concerned will stick to its original negative attitude.

In spite of the improvement that can be observed in the Ombudsman's cooperation with the administration, there are still phenomena of mistrust and refusal to cooperate that make the Department's work more difficult. These usually occur, though not exclusively, in the context of cooperation with Local Authorities. The Department of State–Citizen Relations wants to contribute to the elimination of such phenomena; it works closely with the political leadership and collective bodies (e.g. the Central Union of Municipalities and Communities) and provides formulated proposals on organization and legislation, aimed at improving the quality of services delivered.

2.3.2 METHODS OF INTERVENTION AND MEDIATION

As the Department handles complaints related to a large number of public departments, it finds itself confronted with a wide range of attitudes and practices within public administration. The seriousness of maladministration cases also varies, ranging from simple organizational problems to the absence of specific legislative arrangements. This variety of issues is clearly reflected in the diversified approach followed by the Department for the examination of individual complaints.

Simple mediation or information provided to citizens on their rights and obligations are the usual and rather effective ways of processing complaints involving the Ministry of Finance's services or identifying violations of the Code of Administrative Procedure. In certain instances, when organizational problems have been identified in the departments concerned, on-the-spot investigations by the Department's staff may be deemed necessary. Meetings with top-level officials or the administration of public agencies are sought in those cases where it is felt that there is room for resolving the dispute, in spite of the administration's refusal to comply with the Ombudsman's recommendations. In addition, when there were diverging views or failure to cooperate among several services, the Department invited representatives of the departments concerned to a joint meeting, with a view to overcoming communication problems and ensuring a proper level of service to citizens.

2.3.3 COMPLAINTS OUT OF MANDATE

Many citizens have addressed the Ombudsman asking for his mediation on issues which are not part of his mandate as defined by the Authority's founding law (2477/1997) and its Rules of Internal Organization (Presidential Decree 273/1999). This tendency should be attributed, first of all, to the image of efficiency which this institution projects and its growing acceptance by the public, three years after its inception. It remains, however, a source of concern as regards proper information of the public about the Ombudsman's areas of jurisdiction and modus operandi.

Moreover, in several instances citizens have requested the Ombudsman's mediation, although there has not been any specific action or omission on the part of the administration, or while their case is still pending before the competent courts.

Finally, some complaints out of mandate, which reached the Department in 2001, either did not meet minimum formal requirements (address, signature) or had been submitted more than six months after the action or omission on the part of the administration. It should be noted, however, that the Department exhausts the time
limits which the law provides. In any event, the citizen is informed as soon as possible in writing, and many times also by phone, on the reasons which do not permit the Ombudsman's mediation.

3. The 2001 Constitutional Revision: Combating Maladministration and the Work of the Department

During the revision of the Constitution in 2001 by the Greek Parliament, the legislator, wishing to enhance the significance of certain obligations of the administration, has elevated them to express constitutional obligations. These obligations, until then, were mostly contained in legislative provisions or arose indirectly from general constitutional principles. The legislator's decision was certainly influenced by the fact that although laid down in law provisions, such obligations were often not respected by the administration.

Indeed, as the Ombudsman's previous annual reports have shown, problems such as delayed replies by public departments to citizens' queries or applications, incomplete information to citizens, or refusal on the part of public agencies to deliver documents from their files to citizens, or to enforce court decisions issued against them, as well as the adoption of administrative measures disproportionate to the objective pursued by the legislator, are clear examples of maladministration that is still rampant within the Greek public administration.

3.1 The right to information and the obligation of public departments to respond within a specified deadline

The conclusions reached by the Department clearly indicate that the Greek public administration is still affected by the operational and organizational problems faced by public departments (17% of admissible complaints in 2000 and 12% in 2001). These problems, however, are indivisibly linked in most cases to other endemic forms of maladministration, such as the delay in replying to citizens' requests (22.9% in 1999, 12% in 2000, and 10.9% in 2001) and the absence of information (20% in 1999, 11.4% in 2000, and 6.7% in 2001).

Apart form the fact that it violates the principle of transparency of administrative action, the absence of information is, in itself, a major problem, as it often leads to citizens being deprived of their rights. It should be stressed that, in a large number of cases, problems could be successfully resolved because reliable information was provided on their nature and legal or statutory context, alternative solutions, if available, were suggested, and citizens were helped in presenting their objections to the relevant administration bodies (administrative scrutiny) against administrative decisions which adversely affected them.

The right to information is closely linked to the refusal, on the part of public departments, to deliver public and private documents kept in their files. This is a form of maladministration which is less spread than the other forms mentioned above (1.5% in 1999, 1.7% in 2000, and 1.2% in 2001). From a qualitative aspect, however, it is just as important, since it reveals a "closed", non-transparent and bureaucratic administration, reminiscent of older times, when the narrow interpretation of public interest served as an excuse for preventing access to information that was essential for handling cases. It is not by chance that such refusal is usually accompanied by the argument that citizens' free access hinders the work of public departments. The same can be said of several law provisions or practices which, for no obvious reason, qualify certain administrative procedures as confidential, in direct contradiction with the need to modernize public administration. Coupled with the delays observed in replying to citizens' queries, these phenomena are a source of daily inconvenience in the latter's dealings with public departments, fostering a widely shared conviction about their inefficiency.

The notion of information and transparency is also closely connected to the concept of the administration's accountability, which refers to the possibility for citizens to control its actions,

on the basis of well-known and clear rules ensuring that the public administration not only abides by the principle of legality, but that it acts in a consistent and therefore predictable and fair way, in accordance with the fundamental principles of the democratic rule of law: proportionality, equity and fair administration. Wider access to official sources of information allows citizens to become more involved, through daily practice, in the process of arriving at administrative decisions and even in the process of elaborating relevant law provisions or decision-making at the level of Local Authorities. In the end, this whole process will have a legalizing effect on administrative action, enhancing respect of the law and the principle of legality. It would also act as a catalyst in establishing relations based on trust between citizens and public administration, as it would daily and tangibly confirm that the administration's mission can be no other than to serve the citizen in a fair, honest, efficient and transparent way.

3.1.1 ARTICLE 5A, PAR. 1 OF THE CONSTITUTION

Article 5A, par. 1 of the Constitution establishes the right to information with respect to all public and private sources. At the same time it provides that restrictions can only be introduced by law and only if they are absolutely necessary for reasons of national security, fighting crime and protecting third persons' rights (e.g. intellectual property). The aim of this new constitutional provision is to consolidate the principle of transparency at the highest possible level. At the same time, however, it reflects a real and legal recognition of the conclusions that have been expressed with emphasis by the Ombudsman in previous reports.

More specifically, before the last revision, article 10, par. 1 of the Constitution had already established the obligation for relevant authorities to respond to requests for information, whenever this was stipulated in the legislation. This obligation, however, was incomplete since a law was needed to activate it. Indeed, Law 1599/1986 (article 16) established the citizens' right to be informed about the content of administrative documents, while the most recent Code of Administrative Procedure (Law 2690/1999) has extended this right to private documents in the files of public departments, on the condition that the applicant has a specific legal interest therein. Therefore, it is clearly the legislator's intent to expand and not restrict the application of the principle of transparency.

The importance of article 5A, par. 1 of the Constitution resides in the fact that it widens the rights of article 10, par. 1, in two ways: first as regards its content, since information has a wider meaning than the request for data, and second as regards the group of persons to whom this obligation applies, as the right to information can also be exercised in respect of private data sources, under article 25, par. 1, which establishes the prevalence of constitutional rights. For the Department of State–Citizen Relations, which often has to resolve problems arising from the refusal of the agencies complained against to deliver to citizens documents in their possession, this constitutional provision imposes a double obligation on the administration towards citizens: firstly as regards the delivery of texts, when qualifying them as "documents" may give rise to doubts (e.g. competition score results), and secondly as regards the delivery of documents by private-law entities, to which the Code of Administrative Procedure does not apply. These include, *inter alia*, public utility corporations, some of which are no longer under state control.

3.1.2 ARTICLE 10, PAR. 3 OF THE CONSTITUTION

The revised provision of article 10, par. 3 of the Constitution has given constitutional validity to the obligation for the competent department or authority to reply to citizens' request within a

specified deadline of 60 days. This obligation had been introduced for the first time in Greek administrative law by article 5 of Law 1943/1991 and is now envisaged in article 4 of the Code of Administrative Procedure (Law 2690/1999). Aware of the fact – which has often been stressed in the Ombudsman's previous reports – that refusal or omission on the part of public services to reply to citizens' requests is perhaps the most frequent form of maladministration, it was deemed advisable to include in the revised Constitution this obligation for public departments, to prevent its possible abolishing by the legislator. In addition, this same article establishes the obligation to pay pecuniary compensation to applicants, which is also contained in article 2, par. 2 of the Code of Administrative Procedure.

It should also be noted, however, that this phenomenon has also been identified in the Ombudsman's correspondence with public departments. The Office of the Ombudsman is often compelled to send repeated reminders to the department concerned in order to find out its position with regard to a particular case. The communication problems which the Ombudsman faces at the level of public departments constitutes a serious obstacle for the rapid processing of cases. At the same time, it highlights the citizens' weak position vis-à-vis "administrative authority". As there are public departments which delay in responding – or never do so – to an independent authority recognized by the Constitution and whose main task is to control administrative action, one can reasonably surmise how even less willing these same departments will be when it comes to complying with their obligations and replying to the queries of individual citizens.

Practically, every day the Department has to deal with the problem of often excessive delays on the part of public services to respond to citizens' requests and their tacit refusal to pay to the individuals concerned the compensation awarded by the court precisely for this delay. The Department's mediation work is clearly enhanced by the possibility it now has to base its argumentation directly on the Constitution.

3.2 THE PRINCIPLE OF PROPORTIONALITY

Article 25, par. 1 of the Constitution provides that the various restrictions which may be applied against the rights of a human being as an individual and member of a social group, should respect the principle of proportionality. In accordance with this principle, human rights may not be restricted by the state more than what is necessary to protect the rights of others or aspects of public interest enshrined in the Constitution. Although no one so far has questioned the constitutional validity of this principle, which derived from the wider principle of the rule of law, the fact that it is expressly protected by the Constitution dispels any doubts and directly recognizes the need for its application whenever narrow interpretation and rigid enforcement of law provisions adversely affect the principle of "effective justice" and the principle of legality, in the wider sense.

Although the Department has handled a relatively small proportion of cases concerning violation of the principle of proportionality (0.2% in 2001), these have demonstrated the absence of flexibility of the relevant law provisions and their inadequacy in resolving a particular case in an individualized and fair manner. It should also be mentioned that the Ombudsman invokes this principle with extreme circumspection, as there is a risk that he may be considered as the unique source of authentic interpretation of the Constitution and the legislation.

The principle of proportionality presupposes the existence of a proportional relation

between the objective pursued and the administrative action taken to achieve it. It is based on three separate requirements: the ability of the action chosen to contribute to the attainment of the pursued objective, the necessity of the action chosen, in the sense that there must not exist another alternative solution, less onerous for the citizen concerned and capable of meeting the objective pursued, and, finally, the prevalence of the beneficial effects for the state that will result from the attainment of the pursued objective over the adverse effects for the citizen resulting from the course of action chosen. The most usual form of violation of the principle of proportionality by public departments concerns these last two aspects.

Violations of the principle of proportionality can be found at all levels of public administration, more so, however, in the financial services, which are called upon to enforce the legislation based on criteria that are, for the most part, dictated by the logic of increasing state revenues. Tax offices are a characteristic example. Their staff sometimes appears over-eager to ensure that state claims are satisfied, by confiscating assets of disproportionately higher value than the amounts owed by debtors. In one of the cases handled by the Ombudsman (676/2001), the individual concerned had received notice of the compulsory seizure of a piece of land estimated at 12,000,000 drs because he owed 75,000 drs. The Ombudsman stressed the fact that in that particular case the principle of proportionality had been violated and asked that seizure should be lifted and the fine erased. The case is pending, in expectation of the relevant tax office's response.

3.3 THE ADMINISTRATION'S OBLIGATION TO COMPLY WITH JUDICIAL DECISIONS

Revised article 95, par. 5 of the Constitution has reinforced the existing obligation for the administration to comply with the decisions of the Council of State and extended it to the decisions of civil and criminal courts. This obligation of the administration (and of any other litigant for that matter) already derived from the right to judicial protection enshrined in article 20, par. 1 of the Constitution. However, this express provision guarantees its practical application, which is accompanied by the threat of sanctions, as the new article provides that the responsibility of any relevant body and the necessary measures to ensure the administration's compliance are laid down in the law. The constitutional legislator wanted in this way to make sure that citizens enjoyed more effective and unequivocal judicial protection against any negative reaction on the administration's part, an intent that was further strengthened by providing in article 94, par. 4 of the Constitution for the possibility of compulsory enforcement of court decisions against the state and public-law entities, which until now enjoyed special procedural privileges.

Although it has definitely increased, the total number of complaints submitted to the Ombudsman in 2001 which concerned non-enforcement of judicial decisions remains small (0.8% in 1999, 1.2% in 2000, and 1.4% in 2001). This is still, however, an important category both because of its qualitative importance and the particular significance which the above constitutional provision attaches to the elimination of this extreme example of administrative wrongdoing.

With particular reference to the Ombudsman, the new provision of the Constitution considerably improves his possibility to intervene effectively against an administration, which although indifferent to criticism for infringing the law, may prove to be more sensitive in the case of a constitutional violation. The administration's attitude with regard to expropriations is a characteristic example of non-compliance with court decisions.

It is also worth noting that this phenomenon is mostly observed at the level of Local Authorities when dealing with court decisions, which award pecuniary amounts to citizens as compensation.

4. Specific issues

4.1 Implementation of the Road Traffic Code

In 2001, the Department of State–Citizen Relations examined a large number of complaints dealing with the enforcement of the Road Traffic Code. The investigation of these complaints led to the presentation of two findings: on a bill proposal and on the need to speed up the issuing of a presidential decree, in accordance with the Code's provisions. The first point which the Ombudsman considered concerns the enforcement of the administrative measures laid down in the Drivers' Control System (Point System), following acquittal decisions by the Magistrate's Court, in accordance with article 107, par. 3 of the Road Traffic Code, which stipulates that "administrative measures shall be imposed and enforced parallel to and independent from any criminal sanctions". The practice adopted until now by the Ministry of Transportation, in respect of this provision, has the absurd effect that points are charged to the driver (under the Point System) and not erased, even though the driver may have been acquitted by the criminal court.

The Ombudsman had originally expressed the view that the wording of the controversial article cannot mean that administrative measures are enforced whether or not criminal sanctions are imposed and enforced. On the contrary, according to the correct interpretation of this provision, it is only the enforcement of the criminal sanction that is independent from the application of the administrative measure. From the moment that the competent judicial authority admits that a citizen is not responsible and acquits him (if there are no formal reasons for removing criminality, e.g. prescription), this means either that the court has not established an infringement, or that it has established an infringement, but has identified reasons which remove its unlawful character, or, finally, that a wrongful act has been established but the court has identified reasons for not attributing responsibility. So, when the court ruling removes the reason for which an administrative sanction was imposed, the administration must comply with such ruling and rescind the administrative decision against the driver (points charged under the Point System). Moreover, in accordance with the decisions of the Council of State (1799/1987), lawful individual administrative acts from which no rights have been generated for the citizen may be freely revoked.

The Ministry of Transportation's Organization and Information Systems Division, however, considered the wording of controversial article 107, par. 3 of the Road Traffic Code to be clear, and that it provides not only for administrative measures distinct from criminal sanctions, but also for their enforcement, parallel to and independent from the latter. In support of this view, it also referred to the 1980 opinion of the Legal Counsels of the State.

In his findings, the Ombudsman voiced the opinion that the right of citizens to appeal to administrative courts in order to control the legitimacy of a measure does not relieve the administration from its prior obligation to check such legitimacy. This applies, in particular, to those cases where the citizen has in the meantime been acquitted by a criminal court. The administration's persistence in not rescinding administrative measures imposed before the citizen's acquittal is in breach of the principle of unity of legal order, a principle according to which an act that is considered as fair or justified under criminal law may not be evaluated in a different manner by the other branches of law.

Persisting in its original position, the Organization and Information Systems Division of the Ministry of Transportation and Communications affirmed that any different approach to the question than the one followed by it would affect the Point System's provisions. The Ombudsman retorted that charging points under the Point System is not an end in itself, but

that it serves and protects public order from unlawful road behaviour and proposed that any unfair or doubtful interpretation of the Code's relevant article should be corrected by means of a new legislative provision that is presented in detail in chapter F. The matter is pending.

Another major issue that was brought to the Department's attention in relation to the Road Traffic Code concerned the use of technical equipment to establish contraventions of the Code (article 104). Citizens complained to the Ombudsman about the use of optical devices to record contraventions, without prior issuing of a presidential decree. According to article 104, par. 1 of the Road Traffic Code, this decree would specify the technical standards, operation, and evaluation criteria of the above electronic equipment, and in particular "the restrictions to be imposed on their use to ensure that the rights of persons subjected to their action are protected…". While maximizing the possibilities for controlling road behaviour, as well as the collateral possibility of observing other incidents not related to it, through the use of such equipment, the legislator also wants to secure the limits of citizens' defence against the use of this equipment, by empowering the administration accordingly.

The problem is that since the present Road Traffic Code came into force (23.5.1999), and until spring 2001, the presidential decree had not been issued, which means that contraventions recorded until then with the help of technical equipment are cancelable. Expressing the view that the immediate publication of the relevant presidential decree is the only solution to the problem which has arisen as a result of inadequately recorded contraventions by technical means, the Ombudsman completed his investigation with the conclusion that the issuing of Presidential Decree 287, "re: Special Electronic Technical Devices for certifying contraventions of the Road Traffic Code" of 13 September 2001, dealt with the problem effectively.

4.2 RATES LEVIED BY LOCAL AUTHORITIES

The Ombudsman dealt with the issue of rates levied by Local Authorities after receiving a significant number of complaints. These complaints mostly concerned the possibility which Local Authorities have to lawfully impose financial charges. The question whether Local Authorities can legitimately levy rates was one of the particular areas on which the Department focused its activities. The investigation of these complaints showed that there are common features in the problems that have been identified. This requires a global approach to the issue of rates levied by Local Authorities, in order to examine both their possibility to impose financial charges and the procedure and conditions for collecting them. The two important aspects which were investigated covered the levying of municipal rates, that are a source of regular revenue for municipalities, and the possibility for municipalities to levy special service rates.

4.3 PAYMENT OF COMPENSATION FOR EXPROPRIATIONS

The recently revised provisions of pars 2 and 4 of article 17 of the Constitution introduce new regulations regarding compulsory expropriation, and in particular:

- The critical time-period required for calculating the compensation,
- the administration's obligation to include in the decision on compulsory expropriation full justification of the possibility to meet compensation expenses,
- the possibility of paying compensation in kind, by transferring ownership to another property or assigning the right to another property, on the condition, however, that the beneficiary has consented, as well as
- other procedural rules.

The extending of the protection, which the Constitution guarantees to property, makes the Ombudsman's work easier, since he can now examine whether during the application of constitutional provisions the principle of legality is respected, and whether the administration abuses the authority vested in it by the Constitution and the law, as it deals with the citizen from a position of strength. In this sense, delays observed in the payment of compensation for expropriated real property are one of the most important issues handled by the Department.

In most of the cases, the problem arises in a similar way: owners are rapidly expelled from their property for public interest reasons, while they then may have to wait for a long period of time, ranging from two to twenty years, before they receive the compensation to which they are entitled. The existing institutional framework is considered to be adequate. There are, however, malfunctions at the level of application, which adversely affect the right to property. Although expropriation becomes effective with the payment of compensation to the owner, who maintains his rights over the expropriated property until such compensation has been paid, in reality his rights lose any financial or other value, since from the moment expropriation is ordered, the property cannot be transferred, built or developed in any other way. The only consolation for the owner would therefore be a quick and full compensation. The large number of complaints received by the Department, in which owners who have been deprived of their property are claiming compensation, demonstrates the importance of this problem, in particular with regard to Local Authorities, who enforce compulsory expropriation orders, and underscores their inability to meet compensation costs, which is reflected in the non-enforcement of court decisions or omission to act in conformity with the law.

More specifically, article 17, par. 4 of the Constitution expressly provides that if compensation has not been paid within one year and a half from the publication of the decision that determines its provisional or final estimation, the expropriation is cancelled. In practice, however, this provision is violated by repeated expropriation decisions for the same property, the intent clearly being to bypass the deadline specified in the Constitution.

During the investigation of related cases, the Department has emphasized that effective seizure of a citizen's real property – with all its negative effects – realized through successive compulsory expropriation decisions, which are not enforced in the end due to lack of funds, conflict with the very essence of the rule of law; furthermore, that before the procedure is re-initiated, the relevant funds should be secured and citizens fully informed about all the stages of the procedure. Anyway, in conformity with the case law of the Council of State, the possibility which the administration has to order a new compulsory expropriation in the same region, if the previous has of course not been completed, presupposes on the one hand the intention and ability to immediately proceed to a new expropriation through payment of appropriate compensation, and, on the other, that such procedure is required to meet a serious urban planning need. In most of the cases handled by the Department, these conditions were not met.

The Ombudsman discovered, during the investigation of complaints, that the departments concerned refuse to comply with court decisions and is putting pressure to ensure payment of legal compensations. Moreover, the persons concerned often invoke his findings before the courts, in order to obtain satisfaction for their legal interests.

The general problem which these cases have identified is that Local Authorities systematically omit to secure the necessary funds or to include, as a priority expenditure in their budgets, the amounts required for compensations. The problem is more acute today, due to the significant rise in the value of real property. An important dimension is that, because of

the substantial increase in the value of the expropriated property from the time its value is assessed until payment of compensation, the amount of the compensation does not correspond to its true value, since, when payment is made after quite a long period of time, the full amount which would have allowed the owner to replace his property with another of equal value is not awarded to him. It is also a fact that before the payment of compensation, the owners' rights remain in full and their property may not be occupied. The administration, however, often comes to an agreement with the owners for the prior assignment of their property, so that the projects for which the said property was expropriated may be implemented and the constitutional obstacle thus overcome. In this way, the beneficiary is forced to "beg" for the compensation to which he is legally entitled for the expropriation of his property, of which he is immediately deprived, while he has to wait for a very long time until he receives compensation. Local Authorities, on the other hand, try to justify their behaviour, in the name of public interest for which, in their view, private property may be "sacrificed".

Through his intervention, the Ombudsman wanted to raise the awareness of the departments involved on the need to respect and protect the right to property, proposing as the main measure for resolving the problems linked to the payment of compensation the appropriation in the following year's budget of the amounts needed for such compensations, in conformity with the municipalities' obligation to apply the legislation and the Constitution, so as to progressively eliminate this form of maladministration.

5. Presentation of the Most Important Cases

5.1 TAXATION

In 2001, the Department has dealt extensively with issues related to the overall operation of the taxation system. Its mediation work was considerably facilitated by the climate of cooperation and mutual trust between the Ombudsman and the Ministry of Finance. Direct contacts between the Ombudsman's investigators and ministry officials throughout Greece have contributed to this development, as well as the ministry's efforts to provide more complete information to tax payers and simplify procedures, by building on new technologies (income tax and VAT statements may now be submitted via the Internet, a number of tax offices remain open in the afternoon as part of a pilot project, "TAXIS PHONE" services have been established, tax payers may now obtain from any tax office a certificate that they do not owe any taxes, etc.). Moreover, in many cases, the ministry's political leadership has adopted the Ombudsman's organizational and legislative proposals, thus resolving a number of issues with which the Ombudsman has had to deal in the past.

The cases presented below identify the problems that citizens continue to face and which, in many instances, are due to inherent weaknesses of the taxation system. On a number of occasions, malfunctions could be observed in the operation of the "TAXIS" system, as well as incorrect or inequitable interpretation and application of tax provisions, problems related to timely and reliable information to tax payers regarding their rights and obligations, and the respect of tax confidentiality; there were also a few cases reported in which, when attention was drawn to mistakes of the administration, "retaliation" practices were used against the citizens concerned.

5.1.1 RIGID APPLICATION OF TAX PROVISIONS

The Ministry of Finance's services often interpret tax legislation in a strictly "collecting" spirit,

without taking into consideration the principle of proportionality and the need to protect citizens' trust. As a result, taxpayers often find themselves in an extremely difficult situation when public departments show excessive zeal and violate the principle of legality.

In the present case (5084/2001), the Ayios Dimitrios Tax Office inspected a company's exhibition space and discovered dispatch notes which had been stamp-dated until 1996. Failure to stamp-date these notes for more recent years was due to negligence. The company rarely used these dispatch notes, whose sole purpose was to replace worn products in its head offices. Five separate contraventions were identified for 1998 and 15 for 1999. The company's agent, when he met the head of the tax office, invoked a tax provision according to which no fine should be imposed on the company and that, in any event, no separate fines should be imposed for each individual contravention. He received verbal assurance that no fines would be imposed.

In spite of this, however, fines for a total amount of 4,000,000 drs were imposed on the company. Its agent requested the Ombudsman's mediation; the Ombudsman contacted the head of the Ministry of Finance's Accounting Books and Information Division, which accepted the Ombudsman's view and referred the case for investigation to the relevant Financial Inspectorate. As a result of the Financial Auditor's intervention in the citizen's favour, the head of the tax office complied, and erased the fine. It should be noted that the representative of the company informed the Ombudsman that a few days after the fine had been erased, a team of tax inspectors from the tax office conducted a surprise exhaustive audit at the company's head offices.

5.1.2 MISAPPLICATION OF TAX CONFIDENTIALITY

Although provisions on tax confidentiality aim at preventing third parties from obtaining knowledge of personal data contained in tax office files, in this particular case tax confidentiality was used against the citizen concerned (case 4950/2001).

Following a written complaint, the Financial and Economic Crime Unit (SDOE) carried out an audit at the premises of a lawyer who was found to have committed a tax offence, as he had failed to issue a receipt for services rendered. The lawyer filed an application through the Prosecutor of the Larisa Court of First Instance to the SDOE, requesting a copy of the complaint against him and of all relevant documents of his case file.

The SDOE, invoking tax confidentiality, refused to supply the evidence requested, disregarding the fact that such rule applies to third parties and not to the taxpayer concerned. Moreover, as regards its refusal to hand over a copy of the complaint, the SDOE did not take into account the opinions of the Legal Counsels of the State, according to which the administration must notify to the person complained against the contents of the written complaint and provide him with copies, especially when the complaint does not fall within the meaning of tax confidentiality. The Ombudsman invited the SDOE to immediately provide the citizen with all the information requested, to which the SDOE complied.

5.1.3 INCORRECT ENTRY OF A DEBT OF 900,000,000 DRS IN THE "TAXIS" SYSTEM

As a result of incomplete information given to tax officials on the central operation of the "TAXIS" system, and the absence of effective cooperation between Ministry of Finance's departments, a citizen could not avoid the adverse effects of an incorrect entry in the system. The complainant, chairman and managing director of a corporation (case 9731/2001) asked

the Vyronas Tax Office to issue him a tax return certificate and was then informed that he apparently owed an amount in excess of 900,000,000 drs. He personally checked this with the Athens Corporate Tax Office and found out that he had incorrectly been entered in the system as the chairman and managing director of another corporation, which did indeed owe the amount of 900,000,000 drs that appeared in his file. The Athens Corporate Tax Office recognized the incorrect entry and issued the appropriate tax return certificate, since "TAXIS" did not allow correction of the entry by the system.

Despite repeated representations to the Ministry of Finance's relevant departments, the citizen never received any reply as to the way in which the incorrect entry could be deleted from "TAXIS". In the meantime, the relevant tax office refused to issue him a tax return certificate, despite confirmation of the error by the Athens Corporate Tax Office, threatening to take compulsory measures against him in order to collect the debt which appeared in the system. Meanwhile, the citizen could not accept the position of managing director in another corporation, because of this debt.

The Ombudsman sought the cooperation of the Ministry of Finance's General Secretariat for Information Systems and was able to establish that, indeed, to ensure centralized control of system entries, only the Records Department of the above secretariat was authorized to delete errors in the "TAXIS" system. For a deletion or correction to be possible, the tax office which made the incorrect entry must send the relevant request with all supporting documents to the General Secretariat's Records Department. The Ombudsman informed the Athens Corporate Tax Office, which took the necessary action, and within 10 days following initiation of the mediation procedure the mistake was corrected.

5.1.4 FAILURE TO CALCULATE AN INCOME TAX REBATE FOR DISABILITY

A pensioner appealed to the Ombudsman (case 2973/2001) complaining that the 4th Thessaloniki Tax Office had not properly calculated her annual income tax for fiscal year 2000. In particular, the individual disability tax rebate to which she was entitled under the law, which she had declared when she presented her income tax statement with the necessary certificates of the competent health commission attached, had not been taken into account. It should be noted that this rebate, which corresponded to 500,000 drs, had been calculated in the 1999 tax clearance clip. The complainant also affirmed that her status of war pensioner had not been taken into account, although this could be clearly derived from her income tax statement (war pension 1,090,458 drs per annum) and confirmed by the relevant information note of the State General Accounting Office. She had presented her case to the tax office in October 2000, but had not received any reply six months later.

Following an intervention from the Ombudsman who, in addition to the serious omissions identified and the social sensitivity of her case, underlined the obligation for public agencies to process citizens' cases within a reasonable period of time, the department concerned responded immediately and settled the financial dispute.

5.2 WORK – EMPLOYMENT

Most problems (63% of total cases) under this category concern the operation of the Manpower Employment Organization (OAED) and mostly focus on the issue of incomplete information as regards the conditions and deadlines for benefiting from the "Grants to Young Self-Employed Professionals" programme. In practice, these problems have resulted from the

sudden change in the participation conditions laid down in the relevant ministerial decisions and the organization's failure to provide timely information to citizens. This fact, coupled with the clear unwillingness to provide assistance, which characterizes many civil servants, resulted in citizens losing their rights and incurring expenses because of the lack of adequate information. Similarly serious problems in the OAED's operation had been identified in the Ombudsman's previous reports, with nothing being done to correct them. The Ombudsman drew the OAED's attention to these issues, emphasizing that grants programmes not only serve a development and social purpose, but also have the aim of boosting the morale of the unemployed.

5.2.1 REJECTION OF APPLICATIONS FOR INCLUSION IN THE MANPOWER EMPLOYMENT ORGANIZATION'S GRANTS PROGRAMMES DUE TO SUDDEN CHANGE OF THE DEADLINE FOR SUBMISSION

A large number of citizens (cases 17430/2000, 7548/2001, 8994/2001, 11026/2001, 11142/2001, 12197/2001, 11721/2001, and others) have complained of the fact that their application to join the OAED's "Grants to Young Self-Employed Professionals" programmes in 2000 were rejected by the organization.

By decision of the Minister of Labour and Social Affairs and an OAED's circular, the date of 30.11.2000 had been fixed as the final deadline for submitting applications and for the start of the programmes' activity. On 14.11.2000, the OAED's board suddenly decided that the deadline for the applications and the start of programmes' activity expired on that very day and this was announced by means of a circular published by the OAED one day after expiry of this new deadline, i.e. on 15.11.2000. This sudden shortening of the deadline deprived many citizens of the possibility to join the programmes. It should be noted that citizens, in compliance with the provisions of the ministerial decision specifying the essential requirements for joining the programmes, had stopped collecting unemployment benefits and had also started up businesses, incurring considerable expenses, given their financial situation. In fact, a few of them had even resorted to borrowing.

The Ombudsman contacted the OAED's management, asking that the applications and objections of citizens who had applied for participation in the programmes within the initial deadline should be accepted, pointing out that the sudden change of the final deadline for submitting applications represented an extreme form of maladministration, much more so given the OAED's social mission to protect the unemployed.

The OAED's management did not accept the Ombudsman's proposal, convinced that it had acted legally. The Ombudsman prepared the relevant findings, which he presented to the Minister of Labour and Social Affairs, asking for his intervention to have the matter settled. The cases are pending.

5.2.2 REJECTION OF APPLICATIONS TO JOIN THE MANPOWER EMPLOYMENT ORGANIZATION'S GRANTS PROGRAMMES DUE TO SUDDEN CHANGE IN FORMAL REQUIREMENTS

Several citizens complained to the Ombudsman that the OAED had rejected their application for inclusion in the "Grants to Young Self-Employed Professionals" programmes for 2001 (cases 10811/2001, 10838/2001, 10878/2001, 10970/2001, 11025/2002, 11087/2001, 11267/2001, 11566/2001, 11599/2001, 11776/2001, 12005/2001, 12451/2001, and others).

Even before publication of the ministerial decision which laid down the procedure and

conditions for joining the "Grants to Young Self-Employed Professionals" programmes for 2001, the complainants had contacted the OAED's local services and management in order to obtain information. The OAED's departments, relying on the conditions that had applied in previous years, instructed the people concerned to inform the relevant tax offices of the start-up of their business in order to avoid delays, and then present their complete file for inclusion in the programmes, immediately after publication of the decision. The complainants followed these suggestions but the ministerial decision that was issued stipulated that the applicant should be in possession of a valid unemployment card when presenting his application. The outcome was that their applications were rejected on the grounds that they did not meet that particular requirement.

The Ombudsman contacted the OAED's management, pointing out that the adoption of new requirements for joining the 2001 programmes, compared to previous years, coupled with the fact that the organization's officials had misinformed the citizens concerned, be it in good faith, was incompatible with the principle of reasonable trust, which should govern administrative action, and asked that the citizens' request should be satisfied by means of a special arrangement. The OAED rejected this view, affirming that its officials had never misinformed the citizens concerned. With the aim of resolving the problem, the Ombudsman prepared his findings, which he submitted to the Minister of Labour and Social Affairs, requesting his intervention. The cases are pending.

5.2.3 REFUSAL TO APPOINT AN INDIVIDUAL WHO HAD SUCCESSFULLY PASSED THE RELEVANT COMPETITION DUE TO INCORRECT INTERPRETATION OF THE LAW

A public department refused to recruit a citizen for a vacant post at the cleaning service of the Municipality of Athens, although he had successfully passed the relevant competition of the Supreme Council for Selecting Civil Servants (case 178/2001). The department did not appoint the complainant because his criminal record contained an old conviction for petty theft committed at a younger age. In order to get the job, the complainant asked for a pardon from the President of the Republic.

The Ombudsman came in touch with the municipality, in order to delay the recruiting procedure so that the presidential decree granting pardon could be published in the meantime. Although the municipality accepted the Ombudsman's proposal and a pardon was granted in the meantime to the citizen, the Region of Attica, which controls the legality of local government appointments, refused to approve the recruitment, on the argument that the effects of a conviction are not cancelled by a pardon. Following the Ombudsman's intervention, it was made clear that the relevant decree granting pardon automatically cancelled the effects of the conviction for recruitment by a public agency and so the complainant could finally receive his appointment.

5.2.4 MODIFICATION OF CONDITIONS FOR OBTAINING A LICENCE TO PRACTISE AS AN ASSISTANT NURSE

Students who had been admitted in 1998 at the "Tzaneio" Hospital's Secondary Technical Vocational School complained to the Ombudsman (case 10841/2001) that Law 2640/1998 on "secondary technical-vocational training and other provisions" had changed the conditions for obtaining a licence to practise as an assistant nurse, which applied at the time of their enrolling in the above school. It is true that, based on provisions in force at the time, these students

could have obtained a licence to practise at the end of their three years of studies, whereas the new arrangements now stipulated that technical vocational training is provided by Technical Vocational Training Centres and that Technical Vocational Schools become "1st-cycle" Technical Vocational Training Centres, adding as a further requirement a 12-month period of practical training.

In his report to the Minister of Health and Welfare, the Ombudsman argued that this sudden change in the legislation goes against the principle of reasonable trust, which the citizen is entitled to have in the administration, and that, furthermore, this principle does not allow new legislative provisions to be applied to real situations which have developed under older laws. The Ombudsman proposed the adoption of a transitional provision for the complainants. The case is pending as the minister had not replied to the Ombudsman by 31.12.2001.

5.3 EDUCATION

As a result of a series of operational and organizational problems which continue to affect a large number of citizens and cover a wide range of maladministration cases, the Ombudsman had again to intervene in 2001 in the matter of the operation of the Inter-University Centre for the Recognition of Foreign Academic Titles. Although these problems had already been identified in the Ombudsman's previous annual reports, they have not been resolved so far.

The Department of State–Citizen Relations also investigated complaints filed by citizens who work in the education sector. The problems of this category, as outlined below, mostly focus on the significant delays in the payment of fees to the teachers of public Vocational Training Schools, a situation that severely disrupts the operation of these institutions and undermines their credibility as providers of initial vocational training.

5.3.1 DELAYS IN THE PAYMENT OF FEES TO THE TEACHERS OF PUBLIC VOCATIONAL TRAINING SCHOOLS

Teachers who had worked since 1998 and until recently at public Vocational Training Schools (cases 17386/2000, 156/2001, 2967/2001, 3205/2001, 4899/2001, 7978/2001, 8222/2001) complained that the supervisory body, the Organization for Vocational Education and Training, had considerably delayed payment of their fees and insurance contributions, due for the spring term of 2000, or, in a number of cases, also for the 1999 autumn term. According to the organization, failure to pay the teachers' fees was caused by the late allocation of funds to the 2nd Education and Initial Vocational Training Programme, which resulted in the organization not receiving its appropriations in time.

The Ombudsman asked the Special Secretary for EU Affairs and the Community Support Framework of the Ministry of Education to speed up the funding of the 2nd Programme, so that the problem could be resolved. The ministry accepted the Ombudsman's proposal and tied up a total amount of 21,400,000,000 drs from the 2001 Public Investments Programme for rapid and global settlement of the above claims.

5.4 HOUSING – HOUSING LOANS

The examination of most of the cases in this category has shown that the Workers' Housing Organization (OEK), which is responsible for implementing social housing policies, acts arbitrarily in certain cases and enforces inequitable solutions, in breach of its statutory obligation to support public housing. In some typical cases, as a result of incorrect or improper

application of the law and ignorance of the procedures that should be followed, citizens were deprived of their right to benefit from favourable arrangements. In other cases, such as transfer of loans for earthquake victims, citizens find themselves involved in intricate red-tape procedures because there are several departments jointly responsible, or the necessary infrastructure does not exist.

5.4.1 LOSS OF THE RIGHT TO DEDUCTION ON REPAYMENT OF A HOUSING LOAN BECAUSE THE PROCEDURE WAS NOT FOLLOWED

The complainant (case 3298/2000), who had obtained a loan for building a house, was informed that a recent law (article 11 of Law 2873/2000) gave citizens the possibility to repay housing loans which had become due with a 40% deduction, provided that the amount due was paid in full by 28.2.2001. On 31.1.2001 she went to the National Bank in order to pay the amount she owed and asked for the 40% deduction, which corresponded to 1,047,000 drs. At the bank she was told that she first had to pay her debt in full and then ask the amount of the deduction from the OEK. When she went to the organization, however, she was told that she was not entitled to a deduction because she should have first submitted the relevant application to the OEK and then repaid her loan. The complainant presented her delayed application to the organization for full repayment of the loan.

The investigation of the complaint showed that this particular case falls under a different provision than the one notified to the citizen, and that she therefore should have followed a different procedure, i.e. presented the application for the deduction by 27.3.2001, obtained the OEK's approval, and then repaid the loan. It is clear that there was confusion as to the procedure to be followed, while the information provided to the citizen by the departments concerned was incomplete and incorrect. The Ombudsman argued that the object of the provision is to give incentives to the debtors of the organization for faster settlement of their debts, and since, in the case at issue, this object had even belatedly been achieved, it would be reasonable and fair to allow the citizen to benefit from the deduction.

The OEK accepted the Ombudsman's proposal and refunded to the citizen the amount of 1,047,000 drs.

5.4.2 LOSS OF THE RIGHT TO TRANSFER A LOAN FOR EARTHQUAKE VICTIMS DUE TO THE ENFORCEMENT OF THE "KAPODISTRIAS PLAN"

The beneficiary of a reconstruction loan (case 10685/2000) in a community affected by the earthquake who wanted to transfer his loan to another area, obtained the necessary building permit, as soon as his loan was approved in 1997 by the Office for the Rehabilitation of Earthquake Victims of Konitsa, after completing all formalities and paying a sum of about 10,000,000 drs. However, as a result of the unification of municipalities and communities ("Kapodistrias Plan"), there were problems for the loan transfer. In particular, when the citizen submitted the relevant supporting documents in 1999, he was told that he could not transfer the loan to the municipality of his choice because, as a result of the unification process, the community where his house was situated remained as a separate community for historical reasons and, under a ministerial decision in force at the time, no transfer could be made from a smaller to a larger local authority. On those grounds, the relevant rehabilitation office rejected his application for a loan transfer.

Following the Ombudsman's intervention, the Ministry for the Environment amended the

relevant ministerial decision in November 2000, realizing the need to take account of all the cases where, as a result of the unification process, many beneficiaries found themselves in a difficult situation. The Office of the Ombudsman also informed the complainant of his right to transfer the loan, and as a result his application was re-examined by the relevant rehabilitation office and he was granted a loan for an amount of 15,600,000 drs in March 2001.

5.5 TRANSPORT

5.5.1 QUALITY OF TRANSPORT SERVICES

Problems have been identified in the transport sector which, as shown by the following case of defective operation of a border railway station, are related to the quality of transport and, more specifically, to train and passenger services.

The complainant (case 998/2001) had repeatedly discovered, when arriving at the Orestiada train station at her regular hour (23:30), that the station building was closed, that there was no railway employee to serve passengers, or a phone booth from which passengers could call a taxi if they wanted. During the investigation of the case, it turned out that the station's staff were not sufficient in number to cover the last evening daily train service, as a result of which the station building remained closed for security reasons and passengers could not get service.

Based on the above, the Ombudsman contacted the managing director of the Greek Railways, underlining the fact that, as the station is situated in a border region where there are many military personnel and students, it handles a large number of passengers, and it is therefore important that it operates properly. He also pointed out that this situation is not compatible with quality of service and good operating standards, which the Greek Railways should strive for. The Railways responded positively by approving overtime compensation to extend staff's working hours so that the station could operate normally until 23:30.
In addition, the phone booth, which was located inside the station, was moved outside, so that passengers could use it on a 24-hour basis.

5.5.2 OPERATIONAL PROBLEMS FACED BY PUBLIC DEPARTMENTS

The investigation of a number of cases, a typical example of which is presented below, showed serious failings in the running of the departments involved, such as inadequate filing systems, unwillingness on the part of the officials to serve citizens, who thus find themselves confronted with rigid procedures, and irrational distribution of joint competences among several departments.

The complainant (case 17953/2000) protested because he had not been able to complete the procedure for selling his car at the Transport Division of the Athens Prefectural Government, because their computer system showed the car as having been "out of commission". The car, however, had never been out of commission, it was still in regular circulation and had passed technical control in July 2000, while the necessary transfer charges had been paid to the Argyroupoli Tax Office. In November 2000, the citizen submitted an application to the above department, to which he never received a reply. Following the Ombudsman's intervention, the department established that the problem was due to an incorrect entry by the Ministry of Transportation's Organization and Information Systems Division, which was finally corrected with the issuing of a new registration licence, and the complainant was thus able to sell his car.

5.6 LOCAL AUTHORITIES

The Department of State–Citizen Relations handled a large number of cases in 2001 that dealt with issues related to the operation of Local Authorities. In addition to the complaints concerning the payment of compensation for compulsory expropriation and the legality of service rates levied by local government authorities, the Ombudsman also investigated isolated cases of maladministration, of which some typical examples are given below.

5.6.1 DOUBLE IMPOSITION OF A SPECIAL MUNICIPAL RATE

The owner of a water sports business (case 15062/2000) had concluded a project contract with a hotel complex for delivering services to its customers.

The Municipality of Gouves, Crete, legally collects a special rate from establishments renting pleasure boats, providing tourist services and selling tourist articles, which is charged to the customer and refunded to the municipality by the businessman. The hotel collected this rate for the services provided by the owner of the business from its clients and refunded it. The municipality, however, also asked the businessman to refund the rate, which hotel clients had to pay for his services, claiming in this way the same rate from two different sources. Following the Ombudsman's intervention, who pointed out that double imposition of this rate was illegal, the owner of the business was relieved from a debt of 2,400,000 drs imputed against him.

5.6.2 REFUSAL TO ISSUE THE SPECIAL FREE PARKING STICKER TO A PERMANENT RESIDENT ON THE GROUNDS THAT HE HAD NOT BEEN INCLUDED IN THE LAST CENSUS

A permanent resident of the Municipality of Volos (case 7370/2001) appealed to the Ombudsman because in 2001 the municipality had rejected his application for a special free parking sticker for his vehicle, on the grounds that he had not been included as a resident of the area during the last census of 18 March 2001. It should be noted that until then he had been regularly issued the special sticker each year. The Ombudsman intervened, impressing on the municipal authorities that their actions were not compatible with the principle of legality. The result was that the municipality revoked its earlier decision and issued the free parking permit to the applicant.

5.6.3 RESTITUTION OF A REQUISITIONED PROPERTY TO ITS OWNERS

The investigation of a case concerning the requisition of a building for fifteen years by the prefectural authorities revealed a serious violation of the right to property, which is enshrined in the Constitution.

The owners of a piece of land of about 12,000 sq.m. requested the Ombudsman's mediation in order to put an end to the requisition of their property, on which a camp had been established after the 1986 Kalamata earthquake (case 11199/2000). As the reasons for which the property had been requisitioned no longer applied, the Prefect of Messinia decided that the requisition order should be lifted, and set as the final deadline for the restitution of the property to its owners the date of 15.12.2000. In spite of this, however, the municipality refused to enforce the prefect's decision and remove the facilities. The Ombudsman invited the municipal authorities to enforce the prefect's decision in order to restore the property to its previous condition and return it to its rightful owners. The restitution of the land occurred in the spring of 2001.

5.7 PUBLIC UTILITY CORPORATIONS

The Department, when investigating complaints concerning public utility corporations, takes into consideration the constant changes which are taking place in their system of operation as a result of the liberalization of certain sectors such as telecommunications, energy, etc. Such changes not only imply the end of their monopoly status and the listing of their shares on the Athens Stock Exchange; coupled with other, more recent provisions on their property status, administration and subsidizing by the state, a totally new environment is emerging for the operation of these enterprises.

Although a number of utility corporations are no longer state-run, such as the Greek Telecommunications Organization, the Public Power Corporation, Olympic Airlines, the Hellenic Post, and others, and are no longer subject to specific provisions like those, for example, which introduce the right to gain knowledge of administrative documents or deadlines for processing citizens' cases, the Ombudsman has impressed on them the need for complying with their obligations, as they arise from the Constitution (articles: 5A on the right to information, 10 on the right to petition, 25 on the principle of proportionality), and handling their affairs in conformity with their charter of obligations to consumers, which they themselves have drawn up.

5.7.1 PUBLIC POWER CORPORATION

A major problem with which the Ombudsman has also dealt in the past, and which was presented in detail in the *2000 Annual Report*, concerns the Public Power Corporation's refusal to indemnify consumers for damage caused to their home appliances by over-tension due to defective cables. As the Ombudsman's proposals on this matter were not accepted by the Public Power Corporation (DEI), and as there were a significant number of complaints on that same issue in 2001, the Department presented its findings to the DEI's chairman in June 2001.

Following the negative response of the DEI's managing director, a meeting was held with the company's top executives during which the DEI argued that EU standards as regards the quality of supplied electric power were complied with, and that it would only pay compensation if its staff were at fault as a result of network extension or maintenance operations. The Ombudsman stood firm on his original position, claiming that one should consider in each case whether there are conditions of force majeure or just fortuitous circumstances involved, in order to identify those in which the damage was caused by poor network maintenance, a fact which constitutes an infringement of the DEI's contractual obligation towards consumers. He further recommended that satisfaction should be given to all complainants, that consumers should be informed about the measures they may take in order to protect their appliances from an increase or decrease of power tension, and that the possibility of insuring citizens against such risks should be examined. The case is pending.

Another important issue that has been identified in relation to the cases presented below concerns the arbitrary interpretation of the company's rights and obligations vis-à-vis consumers, which often results in their not being treated as equal partners.

5.7.1.1 CHARGING ON A PUBLIC POWER CORPORATION BILL OF AMOUNTS NOT RELATED TO POWER CONSUMPTION

A private-law entity (case 10971/2001) was forced to pay to the DEI an amount of 706,036 drs, following a final court decision that was served to it three years after its publication. Invoking

a special provision of article 10, par. 2 of Law 489/1976, as interpreted by the Supreme Civil Court (decision no. 1130/1996), the public-law entity refused to pay the amount on grounds of prescription. The DEI did not serve the execution order provided by the Code of Civil Procedure, but expressed its intention, in an extrajudicial statement, of including the amount in the electricity bill of the entity's offices, in accordance with article 8, par. 3 of the power supply contract, threatening to cut off power supply if the private-law entity failed to comply.

Under the above article, "the Corporation has the right to add to its electricity bills, issued by virtue of this Contract, any other amount owed by the Consumer to the Corporation, arising either from a previous Contract or from any other cause, and mainly from power consumption related to a building from which the Consumer has moved. Should the Consumer fail to pay the above amounts, the Corporation reserves the right to immediately cut off his power supply, and should he ask to be reconnected to the network, to charge him with all relevant costs".

Relying on the interpretation rules of the Civil Code (articles 173 and 200), the Ombudsman concluded that under the above contract term, the obligation which arises from another cause is only one of the obligations that are derived from the DEI's contractual relation with its consumers. Consequently, "any other cause" does not mean consumer obligations generated by a relation other than that of supplying electricity. Moreover, this contract term which, as a general term of the contract entered into is probably invalid, may not under any circumstances abolish mandatory law provisions, such as those contained in the chapter on compulsory enforcement of the Code of Civil Procedure. On these grounds, the Ombudsman asked the management of the DEI to take the above into consideration and satisfy the complainant's request. In its reply the DEI assured the Ombudsman that its claim against the legal entity had not been nor would it be included in the electricity bill, in response to the relevant request.

5.7.1.2 COMPENSATION FOR DAMAGED FOOD DUE TO A POWER FAILURE

The power was suddenly cut off in the complainant's home because he had not paid his bill. As was established later, however, the citizen had paid his bill before it became due, but power supply was restored eight hours after he had contacted the DEI's competent branch office, which confirmed the mistake (case 16789/2000). The citizen asked the Halandri DEI branch office for compensation because the power cut had damaged the food he kept in his refrigerator. His claim was not accepted because the office felt that during this period of time there couldn't be so much damage caused.

The Ombudsman argued that public utility corporations should operate in a responsible manner and should deliver service to citizens as if they were customers as well, and asked that the request should be re-examined and compensation paid to the consumer. The DEI accepted the Ombudsman's proposal and returned to the consumer a symbolic amount of 15,000 drs through his electricity bill, without asking for any supporting documents or food purchase receipts.

5.7.2 GREEK TELECOMMUNICATIONS ORGANIZATION

The Ombudsman has received a significant number of complaints from citizens who protested for having received exorbitant telephone bills. In such cases, the Ombudsman informs the persons concerned of the procedure they should follow in order to submit their

objections to the Greek Telecommunications Organization (OTE) and often intervenes for the resolution of such problems.

5.7.2.1 EXCESSIVELY HIGH PHONE BILLS BECAUSE OF TECHNICAL PROBLEMS

A citizen (case 18532/2000) complained about his excessively high phone bill, which reached the amount of 800,000 drs. He refused to pay this amount and wrote to the Tripoli OTE Commercial Department, asking for a technical check of his line and the revision of his bill. His request was not accepted.

In his contacts with the OTE, the Ombudsman pointed out that the citizen had an analogue line, which made it technically impossible to check the calls made. He also stressed the fact that during the technical inspection, the external distribution frame was found open and cables positioned rather low, which meant that his phone line could possibly be tampered with. As these technical problems had been identified in an area under the OTE's responsibility, the Ombudsman asked the organization's Disputes Settlement Committee to re-examine the request, with due consideration to the principle of equity. The OTE accepted the Ombudsman's proposals and, using as a yardstick the citizen's average two-month billing, readjusted the complainant's bill to the amount of 20,000 drs.

5.7.3 WATER SUPPLY COMPANIES

The Department dealt with cases involving both the central Athens and Thessaloniki water supply and sewage companies and the municipal ones. Because of the different operation structure of these companies, the problems which the Department was called upon to handle varied. In the first group of cases, problems were mostly related to overbilling, while in the second group problems mostly arose as a result of the decisions taken by the management appointed by local government authorities, and concerned the right to be connected to the water and sewage network and billing of connection and repair charges, as in the following case.

A citizen complained (case 5728/2001) because the Community of Kalamos, Attica, refused to repair a breakdown in the water supply network's main pipe, as a result of which her summer home was left without water. The community asked the complainant to meet the repair costs, which amounted to 100,000 drs approximately, despite the fact that she had already paid network repair charges on her water bills. In his contacts with the Ombudsman, the president of the community affirmed that the local government was not able to meet the high repair costs, as the main pipe was situated at some distance (50 m.) from the house.

When the Ombudsman suggested to the community that the main pipe was only four meters away from the complainant's home and that the section where the breakdown had been located was only half a meter distant from the house's water meter, the president proposed to bring down the amount to "basic" costs, i.e. to 30,000 drs. The Ombudsman stood firm on his original position, emphasizing the fact that water bills also covered repair costs. In the end, the community took over the total repair costs.

5.8 CONTRACTUAL LIABILITY OF PUBLIC BODIES

The obligation of public bodies to abide by the principle of legality, i.e. subjecting all administrative actions and practices to existing law provisions, also applies to contracts to which the administration is party. As the following cases have shown, the administration violates its contractual obligations either by obstructing the progress of the procedure by

invoking formal non-contractual impediments, or by not implementing the law provisions which apply to the commitments it has undertaken. The refusal of public bodies to comply with the general principles of law, such as good faith, business ethics, and non-abusive exercise of right, mostly results from an erroneous perception of the power relation which presumably develops between the two parties, the state and the citizen. This perception has led, in several cases, to the non-respect of the rights of the other party by the state and to the non-satisfaction of their rightful demands.

5.8.1 DELAYED FINAL ACCEPTANCE OF A STUDY

The Prefectural Government of Aitoloakarnania refused to accept a project, in breach of the legal procedure, and raised demands which were not foreseen in the relevant agreement (case 18920/2000). In particular, in the context of the 2nd Regional Operational Programme, the Technical Assistance Management Company commissioned the complainant to draw up a study on the development of the tourist resources and potential of the Prefectural Government of Aitoloakarnania. Whereas the contractor respected the agreement's terms and delivered in time the two phases of the study to the three-member acceptance committee, one of the members of the committee, an official of the prefectural government's Technical Services Division, obstructed the progress of the procedure, arbitrarily demanding that the first phase of the study should be redrafted, in total disregard of the committee chairman's request to close the matter. As a result, the final acceptance of the study was delayed for almost one year.

The Ombudsman invited the prefectural government to immediately replace the third committee member, pointing out that the unjustified delay for final acceptance and payment of the completed project had caused serious financial damage to the contractor. The above department adopted the Ombudsman's proposals and the acceptance committee drew up the final acceptance protocol for the study.

5.8.2 NON-PAYMENT OF INVOICES FOR THE HOUSING OF EARTHQUAKE VICTIMS

Case 5850/2001 concerns a shipping company which provided one of its ships for housing the victims of the earthquake of 7 September 1999 in Attica. The jointly competent ministries, however, failed to make the necessary arrangement for payment of its services. More specifically, in November 1999 the company issued an invoice to the Ministry of Mercantile Marine for an amount of 36,720,000 drs. The ministry did not pay the invoice, on the grounds that it did not have a specific line in its budget for that purpose, and forwarded it to the Ministry for the Environment's relevant Service for the Rehabilitation of Earthquake Victims.

Since the end of 1999, and despite constant reminders in writing or by phone from the complainants and the Ombudsman, the service did not take any action until May 2001, when the relevant decision of the Minister for the Environment, which approved the amount for paying the invoice, was issued. The minister's decision, however, had not been implemented until 31.12.2001 because, according to the service, there is no relevant line in the ministry's budget.

5.9 TRADE

The Ombudsman investigated complaints that showed that although there were no maladministration phenomena or non-respect of the principle of legality, which would justify the Authority's intervention, there existed, however, a legislative gap regarding the resolution

of these cases, which led to a negative reaction of the administration. As a result of this gap, citizens' business activities were prevented or seriously impeded.

5.9.1 FAILURE TO ISSUE A LICENCE FOR THE OPERATION OF A PLAYGROUND

In November 1998, the complainant of case 17266/2001 had submitted to the Ministry of Health and Welfare an application requesting an operating licence for a children's playground. The ministry replied it had no competence in the matter and she would have to address her application to the municipality. In May 1999, she asked the Municipality of Athens to issue a licence to operate a "cafeteria in a playground", after having had a similar application, which requested the licence for a "milkbar – public meeting hall" rejected. The municipality gave its preliminary approval and asked her to submit the necessary supporting documents, i.e. the control reports from the Fire Department, the Health and Safety Services, etc., in order to finalize the approval. This she did by May 2000. Yet, the municipality did not proceed to issue the licence as, in the meantime, it had submitted to the Ministry of the Interior a written question, regarding a clarification on certain aspects concerning the operating licences for playgrounds, and was waiting for a reply. The complainant presented a similar question to the Ministry of the Interior, which in turn asked for the opinion of the Ministry of Health and Welfare. In October 2000, the municipality informed the citizen that it would give her a licence to operate a cafeteria in a playground, provided she brought the licence required to run a playground, which, however, no department appeared to be authorized to issue under the law. In November 2000, the Ministry of the Interior's General Division for Local Government replied to the citizen and the municipality that it would form a working group to examine the matter.

The Ombudsman contacted the ministry's secretary general, drawing his attention to the absence of provisions concerning playgrounds and emphasized the risks associated with the operation of playgrounds under different licences, none of which foresee any special measures for the safety and protection of the children.

In its reply, the ministry informed the Ombudsman that the working group had been set up and that as soon as it had completed its work, the relevant arrangements would be introduced.

5.9.2 IMPOSITION OF A 2% RATE ON ESTABLISHMENTS SERVING TAKE-AWAY FOOD

Under existing regulations, "pizzerias" are not classified as take-away food establishments serving food to passing customers and are, therefore, obliged to pay a 2% additional tax to local government authorities, as required by provisions of Law 2539/1997. The problem was identified following a complaint filed by a "pizzeria" owner who sells only take-away pizzas (case 11187/2001).

During the investigation of the case by the Ombudsman, the absence of relevant law provisions was established, as a result of which the Health Division of the Prefectural Government of Piraeus had qualified the establishment as a "pizzeria" with a capacity of four movable seats. Such qualification is derived, in particular, from the wording of the relevant ministerial decision, which defines a "pizzeria" as "an establishment offering food to seated or passing customers", although this type of establishment is not provided for by any other law provision. On the contrary, the same ministerial decision does not include "pizzerias" in the category of "establishments which serve food and beverages (only) to passing customers for on-the-spot consumption" and which do not have to pay the 2% rate. In addition, the

operating licence issued by the municipality has kept the original qualification, as a result of which this particular establishment falls under provisions of Law 2539/1997, allowing the municipality to collect the above rate, since "under their licence (the establishments) provide benches or tables and chairs inside or outside their premises". In this way, the 2% rate can legally be imposed on a large range of establishments, without taking into account developments and changes in their mode of operation, since the time the original ministerial decision was published (1983).

The Ombudsman contacted the Prefect of Piraeus, as the authority responsible for issuing operating licences, in order to hear his views on this and possibly on other related matters. The case is still pending.

F.

PROPOSALS FOR LEGISLATIVE AMENDMENTS AND ADMINISTRATIVE REFORMS

PROPOSALS FOR LEGISLATIVE AMENDMENTS AND ADMINISTRATIVE REFORMS

The present chapter contains a series of legislative, operational, and administrative proposals aimed at improving the operation of public administration, which were made by the Ombudsman, since, in his opinion, resolving some of the problems he has identified would either require the amendment of existing legislation or the restructuring of the organization and operation of relevant departments.

At the end of the chapter, proposals are presented which have been formulated by the Ombudsman in the annual reports of previous years, in special reports, or in his findings relating to specific cases, and which have either been partly or fully implemented.

Ministry of the Interior, Public Administration, and Decentralization

1. SUBJECT: *Residence permit for the spouses of Greek or EU citizens*

Directives 90/364/EEC, 68/360/EEC, and 73/148/EEC, which have been transposed into Greek legislation by virtue of Presidential Decrees 278/1992, 499/1987, and 525/1983, specify as the minimum validity of duration of residence permits issued to foreigners, who are family members of an EU citizen, a period of five years, while there are special provisions (procedural facilities) for the foreign ascendants or descendants of the foreign spouse.

However, par. 1 of article 33 of Law 2910/2001, in combination with par. 1 of article 71 of the same law, provides that a residence permit for a maximum duration of five years may be granted to the foreign wife of a Greek or EU citizen. Furthermore, Law 2910/2001 contains no specific provision on the foreign family members of an EU citizen, who are treated as all other foreigners. Finally, the application for obtaining the relevant permit must be made together with the payment of a fee of 150,000 drs, an amount which prevents many persons from applying and raises obstacles disproportionate to the aim of achieving a normal family life, with all family members living in the same country.

IT IS PROPOSED THAT:

The arrangements of the above presidential decrees should come back into force, whilst making sure that they also apply to the foreign family members of Greek citizens.

2. SUBJECT: *Procedure for examining citizenship cases – Amount of payable fee for the examination of naturalization requests*

The time-consuming investigations needed for obtaining Greek nationality do not justify the delays, often lasting for many years, in the examination of the relevant applications, since there is no preset deadline. Combined with the other malfunctions of the Citizenship Department of the Ministry of the Interior, such delays put an unjustifiable burden on the parties concerned. Moreover, the fee of 500,000 drs required by Law 2910/2001 for a naturalization application goes well beyond the legitimate objective of restricting the number of applicants and mostly affects financially impoverished groups, such as people of Greek descent from Eastern European countries, various domestic underprivileged population groups, such as the stateless and, of course, those who were born and live in the country, usually as relatives of Greek citizens.

IT IS PROPOSED THAT:

- A long deadline (eighteen months or two years) should be set, together with the express provision that should this deadline expire without any action being taken, the citizenship application shall be rejected.
- There should be more rational administrative organization and use of information technology, in order to cope with the other failings of the Citizenship Department of the Ministry of the Interior, Public Administration, and Decentralization.
- The fee of 500,000 drs required for the naturalization application should be drastically reduced.

3. SUBJECT: *Exclusion of women from cleaners' jobs at the Municipality of Vyronas in Attica*

Pursuant to the Constitution (article 4, pars 1 and 2) as well as EU law (Directive 76/207/EEC), the exclusion of women from a municipality's cleaners' jobs is contrary to the principle of equality and non-discrimination on grounds of sex, with regard to the right of access to public-sector jobs. As the relevant case law stipulates, the exempted activities and conditions for performing them should be laid down in specific law provisions, whilst appropriate criteria fully justifying such restrictions should also be adopted.

IT IS PROPOSED THAT:

The vague provision of article 10, par. 3 of Law 1414/1984 on local government staff should be replaced by a specific provision, describing the specific duties of municipal employees and the conditions for performing such duties, so that women may be excluded from these posts solely on the basis of appropriate criteria. In addition, it is recommended that the regulations of the Municipality of Vyronas should clearly specify the jobs for which women cannot be hired, with express reference to the specific duties from which they may be excluded, on the basis of appropriate criteria.

Ministry of the Interior, Public Administration, and Decentralization – Ministry of Agriculture

SUBJECT: *Classification of land situated within areas under reforestation as forest or non-forest land*

On the whole, forestry offices will unreservedly classify as forest or non-forest land, land and plots situated within areas under reforestation. Usually, this is followed by objections filed to the relevant committees for resolving forest disputes. However, when plots which, according to the reforestation decisions, should be considered as forest land, are qualified as non-forest land by the forestry office, this provides the possibility of putting unlawful pressure on the services involved and, as held by the Council of State in its recent case law (in particular decision no. 178/2000), it undermines the constitutional protection afforded to forests and forest land.

IT IS PROPOSED THAT:

Circulars should be issued, making it clear that in areas under reforestation the temporary resolution of forest disputes and, in general, the procedure of article 14 of Law 998/1979 do not apply and, in any event, if already instituted, their progress and outcome shall be impeded.

Ministry for the Environment, Physical Planning, and Public Works

1. SUBJECT: *Environmental impact assessment studies*

Several environmental impact assessment studies do not contain all the elements required to

make them complete. Furthermore, the team conducting the study does not always include members having the necessary expertise. Finally, the possibility of granting permits to industries without the express approval of the environmental impact assessment study submitted within the legal deadline is contrary to the constitutional protection of the environment. At the same time, by decisively restricting the possibilities for citizens to obtain information and participate in the relevant procedure (through objections and petitions) their right to information, which is enshrined in the constitution, is also violated.

IT IS PROPOSED THAT:

- Specifications for drafting environmental impact assessment studies for each type of activity should be determined, with special reference to the impact on water, air, etc., and that such impact should be compulsorily re-evaluated at specific time periods, depending on the activity or the project.
- The qualifications of the consultants, who, depending on the type of activity, are required to participate in the elaboration of the environmental impact assessment studies, should be determined.
- There should be a separate invitation to tender and commissioning of environmental studies for each project.
- Environmental terms, as part of the general terms and conditions laid down for implementing a project, should be monitored, in particular by means of a sampling process, and part of the related costs should be covered by the owner of the project or activity.
- A special public laboratory should be created for sample collection and analysis.
- There should be regular control of respect of environmental terms by an independent committee, or even an independent authority.
- Par. 9 of article 4 of Law 1650/1986 and par. 4 of article 7 of Law 2516/1997, which provide for the tacit approval of environmental impact assessment studies should be abolished and, instead, the administration should be required to issue a reasoned opinion, within a given deadline, the expiration of which shall amount to tacit refusal.

2. SUBJECT: *Control of noise sources*

Although noise is a source of pollution, existing legislation and, in particular, Presidential Decree 1180/1981, does not contain sufficient measures for controlling and reducing noise pollution.

IT IS PROPOSED THAT:

Specifications for sound insulation studies, to be drawn up by specialized engineers in possession of a special degree, should be determined by law. In addition, it is also proposed that different admissible noise levels for day and night should be set out, as well as provision for cases of sound pollution caused by periodic banging or noise.

3. SUBJECT: *Malfunctions in the registration and demolition of illegal buildings*

During the implementation of legislation on illegal construction, the administration's indifference to often irreversible, destructive intervention by private individuals is evident, even after final judicial decisions. Amongst the most serious reasons for this situation are inadequate information of the staff of the services involved, serious deficiencies in the computerization and material and technical infrastructure of these services, lack of financial

resources but also of cooperation between the competent public agencies (Ministry for the Environment, Physical Planning, and Public Works, regional and prefectural governments), as well as the absence of political will, which is often apparent when existing provisions on this particularly sensitive issue need to be implemented.

IT IS PROPOSED THAT:

- Officials should receive ongoing training and information concerning implementation of the highly intricate relevant legislation.
- Small urban planning offices, which have been under-operating for many years, should be closed and their staff transferred to larger units.
- All urban planning services should be computerized and an electronic network for direct communication between services should be created, to ensure that all similar cases are handled in a uniform way.
- Procedures for extending town plans should be accelerated and summary procedures established for the control of any decisions legalizing illegal buildings, in accordance with articles 15, par. 2, and 16, par. 1 (as amended) of Law 1337/1983.
- Exclusive authority for the demolition of illegal construction should be taken away from elected bodies, and possibly a special agency set up, on the initiative and under the supervision of the Ministry for the Environment, Physical Planning, and Public Works and the Ministry of the Interior, Public Administration, and Decentralization, which shall operate in the region concerned and act in cooperation with the municipalities.
- Illegal construction in natural protected areas or areas of particular cultural interest, with special priority given to the Natura 2000 Network areas, should be mandatorily demolished, with the authorization of the relevant ministers and within a specified reasonable deadline.

4. SUBJECT: *Legalization of illegal constructions on the basis of article 22 of Law 1577/1985*

In many cases, following the drafting of an on-site inspection report concerning an illegal building and imposition of a fine, the building is legalized under a law provision (par. 3 of article 22 of Law 1577/1985, as replaced by par. 3 of article 19 of Law 2831/2000), which stipulates that a building erected without a building permit may be legalized by means of a later permit, on the sole condition that urban planning provisions have been respected.

This provision encourages the construction of illegal buildings. Furthermore, it also involves retroactive approval of the study submitted, in order to have the building legalized, without taking into consideration that it may have been built without a study, or that, even if a study had been made, there was no legal supervising engineer. In this manner, guarantees of primary importance for the safe construction of buildings are, in practice, dispensed with.

IT IS PROPOSED THAT:

The provision of par. 3 of article 22 of Law 1577/1985 (Building Code), as replaced by par. 3 of article 19 of Law 2831/2000, should be abolished with regard to the legalization of buildings built without a permit. Alternatively, it is proposed that this same paragraph should be amended to allow own-initiative full control, with a complete file of supporting documents ("x-rays", etc.), of the safety of the buildings already constructed, at least with regard to materials used and overall structural resistance. Finally, it is proposed to include an express reference in the permit that it is issued for the purpose of legalizing the building concerned.

5. SUBJECT: *Gaps in the new law provisions on the coastal zones and shores*

The new legislation on the coastline and coastal zones (Law 2971/2001) does not include any provision for individual listed buildings, traditional settlements, and those dating before 1923, part of which is situated in coastal zones or on shores, nor does it provide any firm specifications for the conservation of buildings.

IT IS PROPOSED THAT:

- In settlements prior to 1923, where there is a town plan, the coastal zone should be extended, at most, as far as the boundary of the nearest building line. In the absence of a town plan, the buildings which existed in 1923 or when Law 2344/1940 was issued, should be preserved only if their existence can be adequately substantiated by aerial photographs, topographical surveys, photographs, engravings, or, additionally, by sale–purchase contracts.
- These measures should also apply, by analogy, to individual listed buildings or old buildings of an industrial character, warehouses, and buildings assigned by the state.
- For the conservation of buildings which have not been listed under the usual procedure, a compulsory explanatory report should be presented, describing the identity of the area and its history, proposed public-benefit uses, as well as the absence of any negative impact on the environment from these buildings.
- Buildings that will not be demolished should be ceded for a symbolic price to their present owners.
- In delimited traditional settlements, the coastline should be determined, irrespective of the building line and any existing buildings (without, however, affecting ownership), with the exception of cases of project construction or issuing of new building permits.
- New constructions between existing traditional buildings on coastal zones should be allowed only when they concern densely built areas of the settlement and on condition that the building line will correspond to that formed by the existing buildings, with reference to the notion of dense construction of article 8, par. 8 of Presidential Decree dated 2.3.1981.
- There should be express legislative provision to the effect that no building shall be allowed on the shore, which shall remain in its natural state, while the same prohibition should be extended to the development of the surrounding area.

Ministry of Education and Religious Affairs

1. SUBJECT: *Request for special permission to found and operate places of worship*

The existing provisions (of Laws 1363/1938, 1369/1938, and 1672/1939, and of Royal Decree of 20.5/2.6.39), which govern the establishment and operation of places of worship, call for special prior permission, thereby diverging from generally applicable conditions and conflicting with the constitutional dictate of "unrestricted" exercise of religious practices. The Constitution only allows for after measures, in the interest of preserving public order and decency, or in order to deal with potential proselytism. The European Court of Human Rights has reached similar conclusions ("Manousakis et al. versus Greece", judgment of 26.9.1996), ruling that the system of prior permission is not compatible with article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, albeit to the extent that it aims at controlling the concurrence of formal conditions.

IT IS PROPOSED THAT:

The aforementioned provisions should be amended, thus ensuring that the authority

granting the permit may not be influenced by any expediencies when deciding on the "true need" to build a temple, and that the erection of places of worship is subject only to strictly construction-related prior controls (urban planning, hygiene, and the like).

2. SUBJECT: *Amendment of the conditions applying to graduates of secondary Technical Vocational Schools in order that they may practise their profession*

Law 2640/1998 stipulates that technical vocational training is provided by Technical Vocational Training Centres (TEE), and that by virtue of a decision of the relevant minister, all Technical Vocational Schools are converted into "first-cycle" Technical Vocational Training Centres. Subsequently, and thereby radically changing the conditions, based on which those registering at a TEE or a Technical Vocational School in 1998 had made their choice, with the aim of obtaining a licence to practise their profession after three years of studies, Presidential Decree 210/2001 provides for a twelve-month practical training as a prerequisite for obtaining a licence to practise a profession for the students of "first-cycle" Technical Vocational Training Centres. This provision is contrary to the principle of justifiable confidence of the citizen in the reliability and consistency of government action, a principle, which, if the law should be amended, excludes the possibility of new unfavourable regulations applying to real situations, which have been created under former legislative arrangements.

IT IS PROPOSED THAT:

A transitional arrangement should be provided for, by virtue of which it will be possible to obtain a licence to practise a profession, according to the conditions in force in the year when the citizens concerned registered at the former Technical Vocational Schools.

Ministry of Labour and Social Affairs – Social Security Organization for the Self-Employed – Professionals and Craftsmen's Insurance Fund

SUBJECT: *Selection procedure for doctors under contract with the Professionals and Craftsmen's Insurance Fund*

According to the provisions of article 17 of Law 2747/1999, social insurance institutions can entrust the supervision of the medical and pharmaceutical care of persons insured by them to doctors, under a one-year contract. However, the lack of a specific procedure allowing for a reasoned and comparative evaluation of those concerned makes it impossible to monitor the legality of this specific administrative action, thus naturally giving rise to suspicions and lack of transparency.

IT IS PROPOSED THAT:

The procedure and selection criteria for doctors with whom the TEVE concludes an annual contract for controlling medical and pharmaceutical care provided to its members should be determined and that a written selection report should be announced to those concerned.

Ministry of Labour and Social Affairs – Agricultural Insurance Fund

SUBJECT: *Provisional award of invalidity pensions*

The invalidity pension paid to those insured with the OGA, under Presidential Decree 334/1998, for the period of time during which the persons concerned are deemed to be incapable of working, is finalized, regardless of the age of the beneficiary, only when the relevant health committees conclude that this inability to work is permanent and lifelong. Until such time, the persons concerned are obliged to submit themselves to the inconvenience

and expense of compulsory medical examinations. On the other hand, in accordance with article 6, par. 3 of Law 2458/1997, as amended and extended by the provisions of article 9 of Law 2747/1999, invalidity pensions for those insured with the OGA under the main pension branch and who receive their pension on the basis of Presidential Decree 78/1998 and of Law 2747/1999 become final. However, in this way, the right to equal treatment of pensioners belonging to the same category is violated.

IT IS PROPOSED THAT:

Equal treatment should be provided for all OGA invalidity pensioners, by completing the relevant provisions of Law 2458/1997, as presently in force and amended by Law 2747/1999.

Ministry of Labour and Social Affairs – Workers' Housing Organization

SUBJECT: *Distribution of tickets for social tourism by the Workers' Housing Organization*

In order to deal with problems of transparency in connection with the procedure of distributing tickets for social tourism by the offices of the Workers' Housing Organization,

IT IS PROPOSED THAT:

A protocol should be kept of all announcements posted by the organization in its individual offices, which shall serve as proof of the precise location and date of posting and the removal of each announcement and as evidence that those concerned have been informed; that a taped message should be recorded on the public information line, with specific information about the organization's programmes; that information should be provided to those concerned about the possible distribution of tickets through other bodies (e.g. via the Open Centres for the Protection of Senior Citizens), to prevent them from suddenly finding that there are no more tickets available.

Ministry of Public Order – Ministry of Mercantile Marine – Ministry of Health and Welfare – Ministry of the Interior, Public Administration, and Decentralization

SUBJECT: *Coordination of the reception of economic immigrants and political refugees*

In contrast to what is prescribed in the Greek Constitution (article 2, par. 1, article 5, par. 1, article 7, par. 2, article 22, par. 3), international law (article 3 of the European Convention for the Protection of Human Rights) and Greek legislation (Law 2776/1999, Law 1975/1991, and Presidential Decree 61/1999), and despite the recent judgments against Greece of the European Court of Human Rights ("Dougoz versus Greece" of 6.3.2001, and "Peers versus Greece" of 19.4.2001) concerning conditions of detention, which amount to humiliating treatment, the temporary accommodation facilities for immigrants entering Greece illegally remain inadequate, access to the procedure for obtaining political asylum is particularly difficult, and finally, the protection of asylum seekers is clearly insufficient.

IT IS PROPOSED THAT:

A central coordinating body should be established for a uniform approach to problems concerning the treatment and detention conditions of immigrants entering Greece illegally and the question of political asylum.

In particular, with reference to the reception of immigrants entering Greece illegally, the following is suggested:

- The creation of reception centres and, in the meantime, the improvement of existing detention facilities,

- a law provision for a subsistence allowance to be given to those detained by port authorities, as is the case for police detainees, and
- regular medical examinations and health care for immigrants at the time of their arrest, as well as during detention.

With reference to the procedure for granting political asylum, the following is suggested:

- Facilitation of access to the asylum procedure by providing an interpreter and promoting a considerate attitude on the part of the police and port authorities,
- broader application of the quick examination procedure for asylum requests,
- compliance with regulations concerning the ban on detaining asylum seekers who have been provided with the corresponding documents, and
- separation of the authority responsible for matters of asylum requests and the authority responsible for the arrest and detention of immigrants entering Greece illegally, in accordance with the relevant draft Directive of the European Union.

Ministry of Public Order – Fire Department

SUBJECT: *Unequal treatment of women in job announcements by the Fire Department*

The Fire Department's regulations, according to which women are entitled to apply for only a percentage of all administrative and other announced positions (positions for computer technologists, musicians, etc.) conflict with the provisions of Law 2713/1999 and are contrary to the principle of equality of all citizens (without discrimination on grounds of sex) with regard to access to public-sector jobs (article 4, par. 1 of the Greek Constitution and Directive 76/207/EEC). Furthermore, the absolute restriction in article 12 of Law 2713/1999, which reserves forest firefighting duties only for men must be re-examined because, following the revision of the Constitution, any discrimination against women must be removed (article 116, par. 2), and in order to do away with the contradiction which exists between this restriction and the training of women for volunteer forest firefighting service.

IT IS PROPOSED THAT:

- Job announcements for administrative and other positions in the Fire Department should not contain any sex restrictions, and
- article 9 of Law 2713/1999, reserving forest firefighting duties for men only, even when women with the necessary experience or prior volunteer service apply for these positions, should be re-examined.

Ministry of Transportation and Communications

SUBJECT: *Implementation of administrative measures under the Point System despite the existence of acquittal court decisions*

According to article 107, par. 3 of Law 2696/1999 on the Road Traffic Code, administrative measures under the Point System are imposed and enforced, independently of any penal sanctions. The practice of the Ministry of Transportation with reference to the application of this provision results in a situation where the decisions imposing points on drivers are irrevocable, even if they are followed by an acquittal decision by a criminal court ruling on the same factual circumstances. This practice is obviously incompatible with the right to judicial protection, as enshrined in article 20, par. 1 of the Constitution.

IT IS PROPOSED THAT:

A second section should be added to par. 3, article 107 of the Road Traffic Code,

stipulating that "a potential acquittal decision issued at a later time by a criminal court ipso jure rescinds the points charged under the Point System".

Follow-up on legislative and organizational proposals

The procedure of examining, adopting and finally implementing proposals for the improvement of public administration is time-consuming in itself, especially when it calls for a legislative initiative on the part of the relevant ministry. This is why the response of the administrative authorities to individual proposals from the Ombudsman does not become visible until a long time after they are initially submitted. However, now that three years have elapsed since the submission of the first proposals in March of 1999, when the first annual report was published, it is possible to draw more reliable conclusions.

The acceptance of over a third of the legislative and organizational proposals put forward by the Ombudsman following the first three years since this institution was introduced in Greece, is principally a positive development. Indeed, the fact that the better part of these proposals was accepted during 2001 gives rise to reserved optimism as to the prospects for a constructive, multi-facetted and effective dialogue between the Ombudsman and individual public agencies. The progressive strengthening of this dialogue and the dynamic momentum it is likely to develop have two further positive effects: firstly, they lend increased prestige to the mediation dimension of the Ombudsman's work; secondly, they generate reasonable hope for a further deepening and extending of this cooperation, with the goal of dealing with the structural problems of public administration.

On 31.12.2001, the acceptance rates for proposals put forward by the Departments of the Office of the Ombudsman were as follows: Department of Human Rights 36.1%, Department of Social Welfare 33.1%, Department of Quality of Life 21.1%, and Department of State–Citizen Relations 54.5%. With regard to the results achieved to date, it should be pointed out that the acceptance rates of the Ombudsman's proposals by the relevant ministries varies from Department to Department, depending, above all, on the expenditure involved, but also on the wider structural changes and the political cost which a proposed change in the operational framework of the administration frequently implies. A good example is the Department of Quality of Life, which is also the only Department of which a small number of proposals met with the explicit refusal of administrative authorities. However, let us not forget that the percentage of direct refusal of proposals from the Ombudsman by the relevant administrative authorities remains very low indeed (2% of the total) whilst, on the other hand, up until 31.12.2001 there was still no response or opinion expressed by the administration on 63.5% of the proposals submitted.

It is the intention of the Ombudsman to discuss these pending cases again with the relevant ministries during 2002.

Ministry of Defence

1. By virtue of article 18, par. 3 of Law 2936/2001, a proposal from the Ombudsman included in a special report (1999) on alternative civil service was accepted in full (see *1999 Annual Report*, E.1, 3.1.4.2); it referred to a different calculation of the length of this service, in order to extend to it (not directly, but proportionally to the much longer period of time involved) the application of favourable legislative provisions on the length of military service for members of large families and other vulnerable members of the society.

2. Furthermore, article 27 of Law 2915/2001 reflects the acceptance in full of a proposal from the Ombudsman for retroactive deletion from individuals' criminal records of all sanctions imposed on conscientious objectors for evasion of military service before Law 2510/1997 came into force, as a result of which they are excluded for life from certain professions.

Ministry of Economy and Finance

1. A proposal from the Ombudsman (see *1999 Annual Report*, E.4, 4.1.1) concerning the regulation of the procedure for the reimbursement of property transfer tax unduly collected, in the light of the corresponding case law of the Council of State, was adopted by the amendment of circular no. 1080792/1428/0013/πολ.1162/10.7.89 of the Ministry of Economy and Finance.

2. The implementation of a proposal from the Ombudsman concerning the pension rights of widowed male spouses of civil servants is being dealt with in the framework of the pending revision of the pension system for civil servants.

Ministry of Economy and Finance – Ministry of Culture

In response to a proposal from the Ombudsman concerning the payment of a lump-sum allowance to retired civil servants for distinguished services in the field of arts and letters, the Ministry of Economy and Finance (General Secretariat for Fiscal Policy – State General Accounting Office) responded by invoking the exclusive competence of the Ministry of Culture (article 1, par. 2 of Law 2435/1996). However, it mentions in addition that the matter of pensions for authors/artists is being promoted within a set of new draft provisions.

Ministry of Economy and Finance – Ministry of Health and Welfare

With Joint Ministerial Decision 2/17961/0020/27.1.00, a proposal from the Ombudsman (see *1999 Annual Report*, E.2, 3.3.2) was adopted concerning the increase, to a substantially higher level, of the benefits paid to large families. Already, by virtue of article 50 of Law 2972/2001, the level of income of beneficiaries no longer constitutes grounds for non-payment of these benefits.

Ministry of Development

With its document no. 17775/7.9.01, the Deputy Minister of Development declared his intention to adopt a proposal from the Ombudsman (see *2000 Annual Report*, F) concerning the amendment of the provision of Law 1804/1988 on the compulsory registration of degree holders with the Union of Greek Chemists, so that the law also provides for voluntary withdrawal from it. The administration of the union, which was contacted on this matter by the Deputy Minister for Development, referred this issue to a future meeting of its highest representative body.

Ministry of Labour and Social Affairs

With document no. Φ53/οικ.2323/12.12.01 issued by the Deputy Minister of Labour and Social Affairs and forwarded to the Ombudsman concerning a proposal drawn up by the Ombudsman (see *1999 Annual Report*, E.2, 4.1.4), insurance organizations are called upon to investigate the possibility of extending the benefits to paraplegics and tetraplegics to other categories of insured persons, amongst others to those suffering from diseases with the same or

more serious effects, such as serious forms of muscular disorder, resulting in total loss of mobility of the lower limbs, amputation of the upper thighs and phocomelia of the lower limbs.

Ministry for the Environment, Physical Planning, and Public Works

1. In recent Law 2971/2001 on "coastal zones, shores, and other provisions", three of the proposals put forward by the Ombudsman in previous annual reports were taken into consideration. More specifically, the new law stipulates that:

- It is compulsory to determine the coastline and the area of the shore and beach prior to any construction activities or building plans within an area of 100 m. from the coastline;
- a study of the hydro-geological elements must be drawn up for the purpose of determining the coastline; and
- a clear explanatory memorandum should be issued by the committee responsible for determining the coastline.

2. The ministry gave a positive response to the proposal from the Ombudsman concerning the reassessment of rent paid for requisitioned buildings, in accordance with the provisions on professional leases, and, in particular, based on the current inflation rate (see *1999 Annual Report*, E.3, 5.4). In its document dated 5.2.2002, the Division for Organization of the Ministry for the Environment, Physical Planning, and Public Works stated that a relevant legislative provision is being examined within the context of the "Politeia" programme for the Ministry for the Environment. As mentioned in the same document, the possibility of a legislative arrangement prohibiting favourable-term loans for illegal buildings, which have suffered damages or have to be demolished as a result of natural disasters, will be examined in that same context.

3. With reference to the proposals from the Ombudsman on the restriction and compulsory expropriation of real estate, the Surveys and Organizing Divisions of the ministry informed the Ombudsman that:

- The proposal which refers to the granting of low-interest loans by the Local Authorities (see *1999 Annual Report*, E.3, 5.3, and *2000 Annual Report*, F) does not concern the ministry, and that
- the competent Expropriations and Surveys Division has submitted proposals to the monitoring committee of the "Politeia" programme, with the aim of speeding up expropriation procedures.

Ministry of Education and Religious Affairs

1. With the issue of Presidential Decree 210/2001, full implementation of the Ombudsman's proposal for accelerating the procedure for issuing presidential decrees as envisaged in par. 3, article 6 of Law 2009/1992 was achieved, in order to protect the professional rights of diploma holders in the field of health care at the level of post-secondary vocational training, as well as secondary technical vocational education.

2. With regard to transportation for primary school pupils to schools located at a great distance from their place of residence, the Ombudsman had drawn up a proposal suggesting that the cost of accompanying the pupils should be covered by the department which arranges for the renting of the vehicles in question. In his letter of 3.12.2001 to the Ombudsman, the

minister confirmed that the opinions of the Authority are being taken into serious consideration, in the context of the re-examination of the corresponding legislative provisions.

Ministry of Agriculture

Following a proposal in this matter from the Ombudsman seeking to ensure that producers who have suffered damage are duly advised of the procedure for obtaining financial assistance (case 7395/2001), the Division for Political Planning in Emergency Situations of the Ministry of Agriculture informed the Ombudsman that the damage rehabilitation tables drawn up by the relevant verification committees will be posted for a period of ten days in the individual municipal or community offices, so that the producers concerned can put forward any objections they may have, within those ten days, which will then be judged by differently composed committees.

Ministry of Mercantile Marine

By virtue of Ministerial Decision Φ3342/37/2001, the ministry adopted a proposal from the Ombudsman in favour of having the local port authorities collect the fee of 10,000 drs required, *inter alia*, for the endorsement of permits for professional cruise ships. The previous regulation (Ministerial Decision 3122.1/53/1999, Government Gazette 2287/31.12.99), whose application proved to be a major inconvenience for those concerned, stipulated that irrespective of where the vessel was moored, the fees in question had to be collected by the Special Capital Account of the Port Police under the Piraeus Port Authority, which then distributed them to the beneficiaries.

G.

OUTREACH ACTIVITIES

OUTREACH ACTIVITIES

The Ombudsman's visits outside Attica, to other parts of Greece, as well as the conferences, meetings, and seminars organized or attended by his Office, serve the purpose of informing the citizens about his mission and promoting regular cooperation between the Office and public services. Through this communication policy, the Ombudsman wishes to highlight new social concerns and contribute to the development of a new administrative mentality in the operation of public services, that will improve the quality of services delivered to citizens.

The Ombudsman's Visits to Cities Outside the Region of Attica

The Ombudsman visited Thessaloniki and Komotini in 2001, in the context of his standing policy of maintaining regular contact with citizens living in cities outside Attica.

- The visit to Thessaloniki, from 31 October to 2 November 2001, was the Ombudsman's third visit to that city, which, as the second largest in Greece, unavoidably faces some major problems related to the operation of public services, while being a city whose population has a strong interest in the Authority's mission, scope of mandate, and effectiveness of intervention.
- The Ombudsman's visit to Komotini, on 6 and 7 June 2001, was connected to the large number of complaints submitted to the Authority by people living in the area on a range of issues, but was also aimed at enhancing the institution's role in a border region like the region of Thrace.

Conferences – Meetings – Seminars

The Ombudsman, the Deputy Ombudsmen and members of the Authority's scientific staff took part in a large number of meetings and seminars, as well as other events organized by the Office of the Ombudsman for the evaluation or promotion of its work.

Marking the Authority's First Three Years of Operation

On the occasion of the institution's first three years of operation, the Ombudsman organized an event at the premises of the Authority, on 27 September 2001, which was attended by Prime Minister Kostas Simitis as the keynote speaker, ministers, members of Parliament, representatives of political parties, judicial authorities, social agencies, and scientific bodies, as well as members of the academic community and other independent authorities, and officials from ministries, regional departments, local government authorities, and other public entities.

In his speech, Prime Minister Kostas Simitis expressed his satisfaction about the Ombudsman's progress during these first three years and reaffirmed the government's active and full support to the institution. In his evaluation of the Authority's work, the Greek Ombudsman, Professor Nikiforos Diamandouros, emphasized the chronic malfunctions of public administration that encumber the attempts to improve and modernize it.
He underlined, however, the special significance of the tangible positive results achieved by the Authority to date in its efforts to curb such resistance.

Organization of Meetings in Cooperation with Other Agencies

Mutual exchange of information and cooperation continued in 2001 at meetings organized by the Office of the Ombudsman jointly with public departments and services, which find themselves involved in a large number of cases handled by the Ombudsman.

As the Ombudsman has already gained much experience of pension-related issues, which are the result of the ambivalence or lacunae of applicable provisions, he felt that it would be very useful to discuss the most important of these during a one-day meeting, on the topic of "Problems and Solutions in Social Insurance Issues", that was organized in Athens on 11 May 2001, in cooperation with the State General Accounting Office.

Finally, the meeting held in Athens, on 19 November 2001, in cooperation with the Agricultural Insurance Fund (OGA), on the topic "Cooperation between the OGA and the Ombudsman for the Improvement of Social Insurance Services", was an opportunity to exchange views on the best way to handle serious problems of interpretation of the relevant legislation, paving the way for a more permanent cooperation, which is expected to be mutually beneficial.

H.

APPENDICES

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

SPEECH OF THE GREEK PRIME MINISTER

Prime Minister Kostas Simitis was the keynote speaker at the event marking the first three years of operation of the Authority that was organized at its premises on 27 September 2001. The Prime Minister expressed his satisfaction about the Ombudsman's progress and reaffirmed his active and unequivocal support to the Authority.
This is the text of the Prime Minister's speech.

Ladies and Gentlemen, Dear friends,

You have often heard me speak about the top, the full priority that we give to the radical improvement of citizens' relations with the state. You have certainly also heard me say that it is not just a matter of the quality of everyday life, but of the citizens' dignity. For it is clearly a matter of respect and dignity for the citizen to be able to deal with a public administration that is not oppressive, a public administration that is friendly and not hostile, an administration that is truly there to serve him. Even at times when our lives are darkened by tragedy and international tension, the struggle to strengthen the citizens' position vis-à-vis the state continues unabated. And it is important that it continues, because it constitutes an essential requirement for our society. A citizen with more potential, more rights, and more freedom. It is, therefore, a special pleasure for me to be here today, at the Office of the Ombudsman, three years after the establishment of the institution, for an assessment of its work. The Ombudsman's mission is to assist every citizen in his daily contacts with the administration and to act as his support. Due to the conditions that still prevail in Greece, this is by no means a simple or easy task. Our experience of the way many public services work is often not a pleasant one. Sometimes it may be down-right traumatic. Problems related to health, welfare, and urban planning – to quote only these three examples – are often solved after long delays and inconvenience for the citizens concerned. However, since 1996, we have been steadily promoting a programme for the modernization of Greek society. The reform of public administration is a major aspect of this programme. Man is always at the centre of our efforts, and serving his needs better remains our priority. The modernization of the public administration requires a vision on our part and imagination in the choices we make. This means that we had to adopt a new approach, formulate constructive proposals, and establish new institutions, in order to respond to the needs of our demanding times. This was not an easy task. We had to rid the administration of obsolete and counterproductive structures, fight bureaucracy, combat the inertia of the system. It was also important to strengthen the sense of responsibility of civil servants, help them realize how important their mission is, and make them truly aware of the need to respect the citizen and his rights.

Ladies and Gentlemen, Dear friends,

The Ombudsman represents an important initiative for the modernization of public administration. His mission is, on the one hand, to improve the conditions for resolving the

problems and protecting the rights of citizens, and to combat maladministration phenomena, on the other. The Ombudsman, since he took office – I am convinced of it – has justified the deeper essence of his mission, i.e. his independence, in two ways.
By gaining the citizen's trust, while at the same time creating the conditions for his constructive cooperation with the administration. He laid down the conditions for the development, promotion, and acceptance of a new administrative culture. It is also true that he did not hesitate to reveal and handle, with wisdom and determination, chronic failings of the public administration, which tended to become endemic. I will just mention the most important: bureaucracy, low productivity, lack of contact with reality, absence of transparency, the ease with which legality is bypassed or violated, in short, maladministration. These are all symptoms that have no place in a modern society and a law-abiding democratic state.
I would also like to stress the fact that the Ombudsman operates in practice not merely as the citizen's support, but as a valuable collaborator of the administration. He often becomes, I should say, a source of guidance and inspiration for the administration. In what way? By identifying malfunctions and pathogenies and formulating proposals to correct them. His aim is to overcome existing difficulties, develop new practices capable of meeting citizens' demands and even – whenever this is felt to be necessary – to obtain the amendment of the legislation. In this difficult task we shall give him every possible assistance, with all appropriate means.

Dear friends,

The Ombudsman operates in the context of our society. For that reason he is very much aware of its needs and immediately informed of citizens' problems. During the short period of his operation, the Ombudsman has taken significant initiatives. I wish to mention, in particular, the team from his Office which visited the areas of Attica that were hit by the earthquake of 7 September 1999. The team worked with the relevant administrative authorities and effectively contributed to the solution of many pressing problems faced by the victims. Acting on his own initiative, the Ombudsman also dealt with critical issues when the protection of human rights seemed to be threatened. His reports on conscientious objectors and the detention conditions of aliens are typical examples. Their findings have shown us that we should intensify our efforts in certain areas in order to reach the level of protection which a modern democratic society should guarantee, especially for those belonging to vulnerable social groups. I should also note that the Ombudsman's relation with the administration is not as it may appear at first sight, antagonistic. It is rather a relationship, in the context of which both the Ombudsman and the administration compete for the same final goal, that of serving the citizen. This does not mean, of course, that there is no tension between them on occasion. But these are isolated occurrences, which cannot affect their cooperation.

Dear friends, Ladies and Gentlemen,

The government highly appreciates the Ombudsman's work. I am convinced that this institution has won a special place in the conscience of our fellow-citizens. At the same time, the administration has gained a valuable partner in its complex and difficult mission. I wish to stress that the establishment and recognition of the new institution did not

require a lengthy period of time. Three years only after its operation started, it is fulfilling its mission with very good results, it enjoys wide acceptance and becomes firmly implanted in our administrative and political system. The Ombudsman has now entered the phase of consolidation. In such a short time interval, he has quickly moved to a new phase, during which he should intensify his efforts, improve his practices, expand his activities to all the regions of this country, and enhance his international presence. As he works towards these goals, the government will support him in every possible way.

Dear friends,

Improving the operation of public administration and the citizens' position vis-à-vis the state is not an easy task. It requires relentless efforts, a new awareness on the part of public officials and, of course, the citizens themselves will have to realize their rights as well as their possibilities. This is a battle that we owe it to ourselves to win. Thank you.

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)

PERSONNEL LIST

Department of Human Rights

DEPUTY OMBUDSMAN

KAMINIS Yorgos

SENIOR INVESTIGATORS

BAKOYANNIS Kostas
DELLI Alexandra
GEORGITSI Metaxia
HATZI Chrysa
MONIOUDI Isavella
MOSCHOS Yannis
SIMOPOULOS Haralambos
TAKIS Andreas
TSAPOGAS Michalis

JUNIOR INVESTIGATORS

LYKOVARDI Kalliopi
MATANA Anastasia
PAPADOPOULOU Andriani
PIZANIS Emmanuel
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 Eftychios
GALINOU Paraskevi
GRIVAS Athanasios
KALANTZI Spyridoula
KONDOGEORGOPOULOU Pavlina
KOSTIS Ioannis
MARIDAKI Adririni
MARKETAKI Katerina
PAVLOU Miltos
PREVEZANOU Konstantina
VAVOUYIOU Anna

JUNIOR INVESTIGATORS

GOGOU Eleni
MANTA Evangelia
MARKAKI Evangelia
PAPALOUKA Danae
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