

The Greek Ombudsman's role in the promotion of the principle of equal treatment and the fight against discrimination on the grounds of race, nationality, religion or belief, disability, age and sexual orientation

Annual Report 2008

Introduction

The following report is aimed at presenting the activities undertaken by the Greek Ombudsman in its institutional capacity as promoter of the principle of equal treatment for the last four consecutive years since the official assignment of this task in the public administration sector in virtue of Statute No 3304/2005.

- Findings, estimations and conclusions contained in the preceding reports issued by our Authority preserve their salience and continue to pose serious issues in what regards the efficacy in implementing regulations in force as well as in reference to the actual scope and efficiency of the protection granted by the national and EU legislation. These issues are particularly crucial in relation to the broader spectrum of equal treatment entitlements as well as to the structural character of many types of discrimination taking place in our country. This year is equally characterized by a persistently small number of relevant complaints whereas whenever the principle of equal treatment is being invoked, the relevant applications do not usually fall within the regulatory scope of Statute No 3304/2005 or within the area of competence of our Authority.
- What is particularly alarming is the absence of complaints regarding the discriminatory treatment of persons who in principle are aware of their right to file a complaint (as in cases of discrimination on grounds of sexual orientation or religious beliefs). Fortunately, there is a stable rate of incoming complaints pertaining to other less socially and politically accentuated classes of discriminatory treatment (e.g. on grounds of disability or age). The latter cases are being effectively handled by our Authority.
- What remains unabatedly alarming is the ongoing discrimination practice against citizens of Roma origin. The problem boils down to the deliberate marginalization of the issues raised by this situation which calls for a concerted official initiative in order to appease the angered reactions of local residents. What is more disquieting though is the broad range of discriminatory treatment against foreigners living in our country as evidenced by the fact that while most of these cases can hardly be deemed justifiable, they are not subject to the protection granted in virtue of the ascription of EU citizenship the latter being usually regarded by the Greek legislation as a necessary condition for the enforcement of equal treatment provisions.
- As emphatically confirmed in the Greek Ombudsman's annual report, a distinctive new feature of discriminatory practices is the rising number of protests launched by citizens who have established contact with groups of people suffering from social exclusion of various degrees. This patent emergence of horizontal social tension bears ominous portents as it seems to create fertile ground for manifestations of hatred, diffusion of fear and other phenomena threatening social cohesion. First and foremost the escalating tension is indicative of the lack of mechanisms of public mediation and social appeasement. Moreover from a long-term standpoint what is

being witnessed is the absence of concerted political and social support of the afflicted minorities as well as of those experiencing collateral problems resulting from the implementation of positive support measures. A series of complaints filed by residents of the area of Aspropyrgos regarding the massive encampment of Roma people of Greek or alien citizenship offers an indicative sample of the difficulties experienced by those who happen to have neighborly relations with people of radically different background without any substantial state support.

- Nonetheless, the materialization of realistic and viable plans that serve the public interest while recognizing the inalienability of human rights presupposes the vigilance of citizens in the sense that they acknowledge that even if they are not immediately affected, they should be displaying equal concern for the insufficient protection of socially excluded people. This is precisely what became evident thanks to the active engagement of the Greek Ombudsman, aimed at reducing the social unrest caused by a combination of social exclusion and structural discrimination policies and horizontal social tensions. Given that fundamental rights have a universal character, it is intelligible to assert that any relevant violation affects each and everyone of us and not just an individual rightholder. Awareness of this danger, though, is set aside due to the unease we experience when we try to “identify” ourselves with the victim, especially if the latter belongs to a vulnerable social group whose physical or social traits are radically different from those distinguishing the rest of us. Within that framework, socially visible disparities like those of a racial nature have a desensitizing effect on the public whenever a person of “different” background is being deprived of his / her fundamental rights. In such cases the common rationale behind this lack of empathy is that these types of rights violation are unlikely to affect ordinary people to the same degree. Nevertheless, lack of empathy towards “radically” different (usually minority) people whose fundamental rights are being violated renders those victims more vulnerable to deprivation of their rights and leads to a fragmentation of the social fabric, that is, of the totality of individual rights holders qua persons living together on equal terms and under the protection of law. Granted that we ordinary citizens may be content to acknowledge that we experience difficulties in understanding or supporting the rights of these socially vulnerable people, public administration officials are not allowed to shun their responsibilities by invoking their inability or unwillingness to provide assistance.

2. COMPLAINTS INVESTIGATED BY THE GREEK OMBUDSMAN

In 2008 the Greek Ombudsman investigated 62 cases indicating discriminatory treatment on grounds of the provisions set out in Statute No 3304/2005.

In many cases, however, despite the fact that there had been confirmation of direct or indirect discrimination, enforcing the relevant provision was possible only by means of analogy. The problem stems from the fact that the crucial act or omission on the part of the public agency involved fell within the scope of its authoritative rather than its public service jurisdiction and/or was beyond the regulatory scope of Statute No 3304/2005. Therefore, it was impossible in many cases to utilize the newly revised provision regarding the shift of burden of proof. Nevertheless, it was decided to subsume those cases under the aforementioned statutory provisions on the ground that they were substantially related to mechanisms of administrative public service or formed part of broader mechanisms fostering social exclusion and the reproduction of structural discrimination. Given our Authority’s special concern for structural

discrimination against Roma people either of Greek or of alien citizenship a number of ex officio interventions has taken place within the context of our strategic action plans aimed at their safe encampment.

The vast majority of these cases – apart from those that have been archived as unsubstantiated – are under investigation given that the final response on the part of administrative authorities is still pending. The following tables display all the cases investigated, based on the invoked ground of discrimination and their respective outcome.

DISCRIMINATION COMPLAINTS ACCORDING TO THE GROUND OF DISCRIMINATION	<i>Total of discrimination complaints lodged from 2005 to 2008</i>	<i>Total of new complaints (filed within 2008)</i>	<i>Discrimination in the workplace</i>	<i>Discrimination regarding professional orientation, vocational training, internships</i>	<i>Discrimination in education</i>	<i>Discrimination in the provision of goods and services</i>
<i>Discrimination on grounds of ethnic origin</i>	6	5			1	5
<i>Discrimination on grounds of racial origin</i>	43	23				43
<i>Discrimination on grounds of disability – reasonable accommodation</i>	5	5	5			
<i>Discrimination on grounds of age</i>	5	5	5			
<i>Discrimination on grounds of sexual orientation</i>	1	1				
<i>Discrimination on grounds of religious or other beliefs</i>	2			2		
<i>Total</i>	62	39	10	2	1	48

OUTCOME OF DISCRIMINATION COMPLAINTS	<i>Total of discrimination complaints lodged from 2005 to 2008</i>	<i>Discrimination found</i>	<i>No discrimination found</i>	<i>Discrimination fell within the scope of Law 3304/2005</i>	<i>Discrimination did not fall within the scope of Law 3304/2005</i>	<i>Non-conformity to Greek Ombudsman's proposals</i>	<i>Corrective-reparative measures adopted/ Resolution</i>	<i>Cases still pending</i>
<i>Discrimination on grounds of ethnic origin</i>	6	6			6	5		1
<i>Discrimination on grounds of racial origin</i>	43	43		6	37		6	37
<i>Discrimination on grounds of disability – reasonable accommodation</i>	5		5	1	4			
<i>Discrimination on grounds of age</i>	5	4	1	4	1		1	3
<i>Discrimination on grounds of sexual orientation</i>	1		1		1			
<i>Discrimination on grounds of religious or other beliefs</i>	2	2		2				2
<i>Total</i>	62	55	7	13	49	5	7	43

2.1. DISCRIMINATION ON GROUNDS OF ETHNIC ORIGIN

2.1.1. Education

Awards and scholarships granted to international students by the State Scholarships Foundation (IKY)

A foreign student who has been residing in Greece for a long time applied for undergraduate scholarship based on his excellent academic performance. IKY rejected his application on the ground that the legislation in force does not permit the granting of scholarships and awards to students of non Greek citizenship or origin. In its investigation of the case the Greek Ombudsman found that there was indeed no statutory provision for such a granting to international students. Nevertheless, the exclusion of international students from financial aid aimed at awarding one's performance and not serving as a social service is highly controversial with regard to its adherence to the principle of meritocracy. This principle is not conceptually coextensive with the property of Greek citizenship but with the freedom of development of one's personality which, according to art. 5 para. 1 of the Greek Constitution, applies equally to one and all. Denial of scholarships for international students and *a fortiori* to foreigners who have concluded their secondary education in Greek schools, thus presumably being completely accustomed to the national social environment, may amount to unlawful discrimination against them on grounds of ethnic origin. Even on the assumption that no direct discrimination can be established, according to Statute No 3304/2005, due to the exception for alien citizens provided for by art. 2 para. 2 of the aforementioned statute, the Greek Ombudsman has found that the regulations in force applying to the operation of IKY are:- a) not applicable to EU citizens and b) incompatible with recent EU regulations aimed at the promotion of equal treatment and the smooth social integration of aliens who have established strong and long-lasting bonds with Greece. For the above reasons the Greek Ombudsman submitted a report to the Minister of National Education and Religious Affairs; by means of this report the revision of the current regulatory framework is being expressly called for so that awards and scholarships can be equally granted both to EU and third-country nationals who have established strong and long-lasting bonds with Greece (case 17817/2005).

2.1.2. Provision of services

Police certification of the acquisition of Greek citizenship by applicants for the issue of a passport

Numerous citizens have addressed themselves to the Greek Ombudsman complaining about the excessive delay in the processing of passport applications. Investigation of those complaints led to the conclusion that instead of the three days statutory deadline for the issue of new passports valid for ten years, applicants had to wait for months until they acquired their new passports. More precisely, as evidenced by the investigation carried out by the Greek Ombudsman, the Greek Police requests the certification of acquisition of Greek citizenship for Greek citizens who are deemed

distinguishable from so to speak ‘ordinary Greeks’ based on individual traits (e.g. having a surname of foreign origin, presumably having acquired the Greek citizenship by means of naturalization etc). In a particular case, one of the applicants was officially informed by the passport agency that he would be subject to certification on the way he acquired Greek citizenship and hence there would probably be a delay in the issue of his passport (case 12812/2008). Moreover, it was found that this time-consuming confirmation check is not being randomly conducted, which might amount to its being in principle lawful, but is premised on evidence of ‘foreign origin’ such as a foreign surname, thus resulting in placing a deliberate and selective burden upon citizens of foreign origin (even if they have acquired Greek citizenship by birth), naturalized persons (irrespective of their ethnic origin) or children of foreigners (who acquired Greek citizenship through one of their parents). In its report, the Greek Ombudsman drew attention to a specific statutory provision according to which passports are issued within a definite deadline upon submission of the relevant application. Nonetheless, given that police authorities insist on invoking the need to locate and enforce the law in cases of illegal naturalizations, there seems to be no intention, up to this moment, to refrain from following this practice (cases 12812/2008, 6788/2008, 6354/2008, 145/2008, 137/2008).

2.2. DISCRIMINATION ON ACCOUNT OF ETHNIC ORIGIN

2.2.1. Services, Housing – The Roma Case

Identity card issued with the indication “incapable of signing”

A Greek citizen of Roma origin filed a complaint with the Greek Ombudsman claiming that the police had asked him to submit a certificate of education, verifying the level of his literacy, as a necessary document for the replacement of his identity card. According to his complaint, such a certificate is required only in the case of Greek Roma. If said document is not attached in their application or if there is no way of providing the verification needed, their identity card is being issued with the indication “incapable of signing”, which subsequently causes great problems in the individual’s social and everyday life activities. In its relevant intervention the Greek Ombudsman pointed out that this requirement is not provided for by the law, whereas, the tactic of its exclusive enforcement on Roma may constitute a case of discriminatory treatment. Eventually, the competent Police Directorate proceeded in the replacement of the identity card of the complainant without demanding submission of the aforementioned education certificate. (Case No 18706/2007).

Refusal to issue “family status certificate” due to non declaration of child’s given name

A Roma citizen, already registered in the relevant municipality as one of its members, filed a complaint with the Greek Ombudsman claiming that the municipal authorities had refused to issue him a *family status certificate* on the grounds that he had not officially declared the given names of his children. During the investigation of this complaint it was ascertained that the existing legislation on municipal registrations does not require prior declaration of a child’s given name in order to, both, register the child in the municipal roll and/or issue a *family status certificate*. Moreover, in practice, most parents proceed with the formalities of officially naming the child

either at a much later time, subsequent to birth, or they do so simultaneously upon the submission of the baptismal certificate. This practice has not generally caused any complications to the individuals concerned in obtaining a *family status certificate*, which may be used for different purposes. Thus, in its intervention the Greek Ombudsman pointed out to the municipal authorities all the aforementioned and stressed that, on the occasion in which the municipal authorities come across an instance of non proper registration of children's names, they should remind the parents of their obligation to properly register their children. In no case, however, is a municipal authority permitted to refuse the issuing of a *family status certificate* on such grounds. Moreover, the Greek Ombudsman underlined the fact that, refusing to issue a *family status certificate* exclusively to Roma citizens who have not as yet registered their children's given names constitutes discriminatory treatment. Hence the Ombudsman requested that the municipality forward to the Authority all relevant documents pertaining to this case for further examination, especially of the component that this case which could possibly constitute an example of discriminatory treatment. Specifically, the Greek Ombudsman requested that the municipality forward to his Office evidence, pertaining to the issuing of family status certificates, of all the cases in which there had been a request from their part of a prior declaration of the child's given name before issuing such a certificate. The Greek Ombudsman awaits the response of the competent municipal agency. (Case No 11299/2008).

Ascertainment of “permanent residence” status for Roma municipal residents

The difficulties in determining the permanent residence of Greek Roma and the corresponding official recognition of their encampment dwelling as a “permanent residence”, has been an issue which, in the past, had systematically preoccupied the Greek Ombudsman. Several interventions were made in order to facilitate the Roma municipal registration process especially in view of the peculiarities of their settlements. The issue of issuing a “permanent residence” to the Greek Roma was of critical importance during the process of granting housing loans to low income Roma. This has been a housing program launched by the Ministry of Interior. One of its basic requirements was that the perspective applicants should be able to present such a certificate in order to be able to participate in the program. An investigation by the Ombudsman of a case showed that, a Roma individual, who had made an application in order to obtain such a certificate and thus become eligible to participate in the aforementioned housing program, was eventually excluded from the process on the grounds that in the end he was not able to conform with the set requirements. The municipal officials maintained that, despite his registration in municipal rolls, the applicant did not have a “permanent residence” within the administrative limits of the municipality. The Ombudsman pointed out to the competent municipal authorities that, according to the provisions of the Code of Municipalities and Communities, the fact that a person is registered in the municipal registry in principle serves as indisputable evidence that a person has his/her permanent residence within the administrative boundaries of the municipality. In case of doubt, the competent municipal officials must ask for further evidence in order to verify the applicant's true permanent home address. In such an instance the Mayor's refusal to issue a certificate of “*permanent residence*” to the concerned individual must be fully explained or justified on the basis of the in-effect provisions, as required by law. Furthermore, the Ombudsman underlined that, the use of the term “*permanent residence*” in the Joint

Ministerial Decision (KYA), which stipulates the conditions for providing such housing loans, should not be equated with meaning the word “home residence” has when commonly used, since “*permanent residence*” for this specific population group is something quite different from the standard interpretation commonly provided to the notion of home. If, however, the distinctiveness of the situation of the Roma as far as their settlement is concerned is not taken into account, especially in view of the process of implementing a program aimed at, precisely, solving their housing problem, then there are many question that could be legitimately raised as to the effectiveness of the adopted measures. Despite difficulties which emerge in the process of identifying the permanent residence of these people, given the fact of their constant traveling in search for subsistence recourses (peddling, seasonal jobs in rural areas, e.t.c.) as well as their perennial pursuit of better living conditions, the focus on certain elements of stability in their settlement, could provide sufficient and supple evidence, which in turn can be used in order to ensure that the people belonging to this population group will not be deprived of the benefits accruing from the adopted on their behalf favorable regulations. The Ombudsman awaits the competent agency’s response to his aforementioned recommendations. (Case No 9817/2008).

Refusal of municipal authorities to cooperate in cases of realty purchases by Roma

The Greek Ombudsman has been aware of similar difficulties arising, in regards to the attitude of municipalities, in cases where Greek citizens of Roma descent ventured to buy homes, or other real estate, within the administrative limits of particular municipalities. Specifically, there are have been cases where it was ascertained that municipal officials refused to collaborate with banks in order to bring to a close the procedure of granting loans to Roma, as it is concretely specified in the provisions of the Common Ministerial Decision (KYA). In a particular area the Municipal officials claimed that there were several Roma residents who had already acquired pieces of land and therefore there was no further space available to accommodate more Roma establishments. On these grounds, municipal authorities refrained from collaborating in the process of home acquisition by Roma. In its intervention, the Ombudsman pointed out primarily the issues of legality which this practice and refusal of municipal authorities to cooperate raises, focusing on the fact that in every instance of a realty transaction, the competent Local Government Organization (OTA), does not have, on the basis of the law, the essential power to control who can own private property within the administrative limits of its territory. Even when its entanglement in the process is legally permitted, albeit a typical one, as it is in this case, this does not mean the municipal authorities may conduct a thorough search into the issue of who is buying the house or the power to limit the freedom of the individual to dispose of his resources and to materialize his life plans. Nevertheless, it has been observed that some Local Government Organizations are engaged in discriminatory practices in regards to the race of the perspective purchasers. Similar issues have attracted the attention of the Greek Ombudsman in cases pertaining to the refusal of municipal authorities to issue a Realty Tax Certificate (a required document, under penalty of annulment, for the notarization of a property transfer contract), when they realize the buyer is a Roma. (Case No 15366/2008).

Persistent refusal of municipal officials to cooperate in cases of realty purchases by citizens of Roma origin – Shift of burden of proof

The persistent refusal of the Municipality of Ano Liosia to issue Realty Tax certificates (T.A.P.) on instances of realty transaction wherein the buyer is a citizen of Roma descent has preoccupied, since 2003 the Ombudsman's attention. According to complaints submitted to the Authority, homeowners who wish to sell their properties are experiencing delays in obtaining these certificates and are encountering inappropriate conduct from the part of municipal officials, when the prospective buyer of their home is an individual of Roma origin. In the past in such cases the issuing the relevant certificate was made possible as a result of the concerted efforts of the Ombudsman. However, in more recent cases of similar complaint, the desired outcome has not yet been achieved, despite the efforts of the Ombudsman and notwithstanding the following opinion of the Legal Council of State in accordance with, the municipal authorities are obligated to provide citizens with such certificates: *"the certificates granted by Local Government Organizations in accordance with article 24 par. 18 of Statute No 2130/1993 confirming that no outstanding Realty Tax exists, falls within its mandatory jurisdiction. Any reservation on this certificate, not directly related to the aforementioned due payment, has no legal effect whatsoever"*. Consequently, the Greek Ombudsman while pointing out to the municipality the aforementioned development requested to be informed about whether the relevant certificate was finally issued the complainant. Simultaneously underlined that the fact that the continuing insistence of the Municipality of Ano Liosia not to respond to the Ombudsman's concrete questions pertaining to this issue, indirectly confirmed the Ombudsman's suspicions of likely discriminatory treatment against members of the Roma community on grounds of their ethnic/racial origin. The Greek Ombudsman awaits a response from the municipal officials (Case No 1587/2007).

Bus route cancellation and segregation of the Roma settlement "Aghia Sofia" – Shift of burden of proof

As has been already mentioned in the Ombudsman's 2007 annual report, the Council of Urban Transport of Thessaloniki has decided to modify the bus line 9 route, which had been serving as the single connecting line between the Roma settlement of "Aghia Sofia" with city of Thessaloniki urban transport network. This cancellation resulted in the settlement being cut off from the route line, and it was justified on the grounds that the bus, during the course of its passage through the settlement, was under attack from minors and unknown passers-by. From the very beginning the Greek Ombudsman pointed out that the removal of an already established bus service, destined by its very conception and planning to serve the specific population residing in the settlement, without any concern or measures as to how to ensure its uninterrupted function, would probably constitute an impermissible indirect discrimination against the Roma people of this area, who are almost exclusively the users of this bus line. It has also been emphasized that an active initiative, aimed at reinstating the past service, would be the appropriate course of action by way of disproving the suspicions of such treatment.

The numerous initiatives undertaken by the Ombudsman in the year 2007, as well as the continuous contacts he maintained with competent officials of all the involved services, i.e., the Council of Urban Transport of Thessaloniki, the Organization of Urban Transport of Thessaloniki, the Municipality of Echedoros, the Police Directorate, the Prefecture of Thessaloniki, the Roma settlers themselves and the NGO who acted on their behalf, together with the Ministry of Interior, resulted in the approval of a new plan for the modification of bus route 9 by the Council of Urban

Transport of Thessaloniki. According to this new plan the bus will continue its route up to the entrance of the settlement of “Aghia Sofia”. The plan has been submitted to the Organization of Urban Transport of Thessaloniki, which in turn launched a research on all the requirements that must be accommodated. This research includes the examining the necessary actions which need to be performed such as undertaking the appropriate infrastructure works, such as the installation of traffic lights, so that the bus can safely drive across the adjacent main road (Pondou str.). The construction work of this project is being financed by the Prefecture of Thessaloniki. The construction plan has been already completed and its has proceeded with the phase of the auction of the work as approved by the Prefectural Committee on the 18.12.2008. The work’s completion is expected to be materialized promptly and the final construction plan includes the installation of traffic lights on Pontou Street and at the entrance of the settlement, so that all citizens may safely cross Konstantinoupoleos street in order to reach the bus stop which is located on the same street. Simultaneously, the Council of Urban Transport of Thessaloniki is proceeding with the modification of the bus route which is expected to be fully operational by early 2009. Moreover, the Municipality of Echedoros has auctioned the works of illumination of the perimeter of the settlement which is adjacent to Konstantinoupoleos street. The works are under construction following the signing of the relevant contract. In view of the aforementioned changes the population of “Aghia Sofia” is expected enjoy safer access to the nearest bus stop found at Pontou street. Finally, the Deputy Prefect of Thessaloniki has conducted an on-site inspection at the settlement and has kept an official record of all the problems people face in the area. The Greek Ombudsman has received attached to the file of the case an official report on these findings of the Prefecture, accompanied with specific proposals for their solution. As it becomes evident from the latest news, the attempt to reconnect the Roma settlement “Aghia Sofia” with the city of Thessaloniki will prove very soon the Ombudsman successful intervention. (Case No 14021/2007).

2.3. THE EXCEPTION OF CITIZENSHIP

The general clause excluding discriminatory treatment on grounds of citizenship from the regulatory scope of Statute No 3034/2005 seems to be favouring – in many cases – discriminatory practices against foreigners on grounds of racial or ethnic origin. The Greek Ombudsman has received relevant complaints which, despite their exclusion from the protective scope of legal statutes prohibiting discrimination on grounds of citizenship, raise suspicions of a latent discriminatory treatment on grounds of racial or ethnic origin. Direct reference to these particular cases within the scope of the present chapter is deemed unnecessary given that some of them have already been included in the present report in the respective thematic section. Nevertheless, it is important to stress that three years after the enactment of Statute No 3304/2005 it is rather imperative to reassess the regulatory framework that pertains to the exclusion of citizenship from statutory regulation, especially in what regards third-country nationals who have been residing in Greece for a long period of time.

2.4. DISCRIMINATION ON GROUNDS OF DISABILITY

2.4.1. EMPLOYMENT

Discriminatory treatment in the workplace on grounds of disability

A female doctor employed as the only pathological anatomist in a public hospital contacted the Greek Ombudsman complaining that due to her disability (deafness) she is being discriminated against on the part of the hospital's administration. More precisely, the complainant cited as an instance of discriminatory treatment the fact that she had not been assigned on-call duty as frequently as the rest of her colleagues. Moreover, she invoked the fact that she received a written demand to respond to her duties in a timely fashion followed by a special warning of disciplinary prosecution in the opposite case. In its relevant intervention, the Greek Ombudsman focused on the investigation of two pieces of evidence and asked for : a) the number of on-call duty assignments to the complainant as compared to those incumbent upon colleagues specialized in the same field (pathological anatomy) and working in the same hospital before the complainant officially began performing her service, followed by an official justification of any plausible differentiation and b) an elucidation as to whether similar written orders are being addressed to other hospital employees in similar cases. In his response the hospital manager questioned the jurisdictional right of intervention of the Greek Ombudsman invoking the fact that no prior petition had been submitted to the hospital management. The Greek Ombudsman forwarded a new document containing the attachment of documents drawn from the complainant's report file that provided sufficient evidence to that fact that she had indeed reverted to the hospital manager before resorting to our Authority. As a result, the Greek Ombudsman officially reminded the hospital officials of their duty to cooperate. In response to this document the hospital manager replied in writing to the initial questions posed by our Authority. More specifically, he affirmed that the complainant was indeed less frequently assigned on-call duties as compared to her predecessor, however, he dissociated this disparity from her disability by attributing it to the fact that there had been an increase in the number of doctors employed. Furthermore, the hospital manager clarified that individual notification of work obligations accompanied by a warning of disciplinary measures is a common practice applied to all staff members of the hospital, medical and administrative alike. Following these official clarifications, the Greek Ombudsman decided to refrain from any further investigation of the case and notified the complainant of its resolution (case 7363/2008).

Favorable treatment by service heads of civil servants carrying the burden of the care of disabled persons

Civil servants carrying the burden of the care of disabled persons in their immediate family environment contacted the Greek Ombudsman asking for facilitations on the part of their service heads so that they can provide better care to their relatives. During the investigation of these cases it was found that Council Directive 2000/78 as incorporated into Statute No 3304/2005 does not render obligatory any facilitation in favor of employees assigned with the care of disabled persons but only in favor of the latter persons themselves. It should be noted that in a recent ruling the European Court of Justice (ECJ Judgment 17.07.08 on the case C-303/06, cf. especially deliberation No 39) ruled that the provisions of Directive 2000/78 are equally applicable to employees who are not themselves disabled but are assigned with the care of disabled persons provided that there is sufficient evidence for their being discriminated against

on the ground that they are the caretakers of disabled persons. Nevertheless, in the same judgment it was ruled that article 5 of the Directive being a special provision pertaining to specific obligation of employers to provide reasonable accommodation for disabled persons cannot be applied in cases of employees who are disabled themselves. Keeping track of the above the Greek Ombudsman notified the complainants of the aforementioned judgment and requested additional evidence in order to conduct an investigation as to whether they had been discriminated against due to the special needs of their relatives. Finally, the investigation yielded the following findings : a) in what regards the two complaints, the content of the dispute was about the possibility of extending the application of the Code of Civil Servants to teachers so that the latter may be entitled to a work timetable of one hour less if they are providing care to a disabled person. Such a possibility though cannot be derived from the special statutory framework on teachers. Moreover, there was no evidence that the complainants were discriminated against for reasons related to the special needs of their relatives (cases 6902/2008, 6930/2008), b) one of the complaints was simply requesting the provision of information on the complainant's rights (cases 16103/2008) and c) in one case a civil servant alleged that he was discriminatorily relocated not on grounds related to the special needs of his relatives but to his service status thus making it impossible for the Greek Ombudsman *qua* institutional promoter of the principle of equal treatment to claim jurisdiction over the case (case 21632/2008).

2.5. DISCRIMINATION ON GROUNDS OF AGE

2.5.1. Employment

Exceeded age limit – Rejection of application for taking the bar association exam

A candidate lawyer contacted the Greek Ombudsman complaining that his application was rejected by the statutorily appointed exams committee authorized to conduct the bar association exams of the District of the Court of Second Instance of Thrace during the First Exams Period of 2008. His application had been rejected on the ground that the he had exceeded the statutory age limit of 35 years pursuant to art. 3 para. 3 of Statutory Decree No 3026/1954 entitled 'on the Lawyers Code'. The complainant asked for the mediation of the Greek Ombudsman so that in the upcoming second exam period of 2008 he could avoid having his application rejected for the second time on the same grounds. Moreover, he alleged that he was being discriminated against on grounds of age. In its communication with both the examination committee and the competent Legal Practice and Court Bailiffs Board of the Ministry of Justice, the Greek Ombudsman emphasized that since the enactment of Statute No 3304/2005 article 3 para. 3 of Statutory Decree No 3026/1954 providing for the age limit of 35 years as the threshold of admission to the legal profession has been *ipso jure* abolished (art. 26 of Statute No 3304/2005) to the extent that the age limit set out hereinafter lacks proper justification in accordance with the conditions set out in art. 7 ff. of the statute. Moreover, the Greek Ombudsman invoked the relevant case law of the Greek Council of State (decisions 413/1993 and 527/2003). Based on the above arguments, our Authority clarified that any further rejection by the examination committee of the complainant's application could no longer be premised on art. 3 of the Statutory Decree 3026/1954 as presently enacted due to the effect of the provisions of Statute 3304/2005 and the relevant case law of the Greek Council of

State. Following the mediation of our Authority the examination committee accepted the complainant's application (case 6809/2008).

Age limit provision in employment advertisement regarding the hiring of new staff members falling under the class entitled 'Tertiary Education 2' (PE2) of Air Traffic Controllers of the Civil Aviation Authority (I.P.A.)

Candidates for a permanent position participating in a written examination conducted by the Civil Aviation Authority pursuant to the 2Γ/2007 advertisement of the Civil Service Staffing Council (ASEP) (advertisement issue number ASEP Government Gazette No - ΦΕΚ 462/30.11.07) were excluded from the procedure on the grounds that they had exceeded the upper age limit of 30 years set out in the relevant advertisement with regard to staff members falling under the class entitled 'Tertiary Education 2' (PE2) of Air Traffic Controllers. The aforementioned age limit was expressly provided for in the Ministerial Decision ΔΙΠΠ/Φ.ΗΛ/1/2894/04.03.05 (Government Gazette No - ΦΕΚ Β' 341/16.03.05). Initially the Greek Ombudsman reverted to the Civil Aviation Authority (I.P.A.) requesting that it be notified of the content of the special justification – provided for by Statute 3304/05 - that formed the grounds of the aforementioned ministerial decision. Moreover, our Authority made special reference to the proper content of the requested justification that is supposed to substantiate the claim that the statutory imposition of an upper age limit for the admission to the relevant profession is deemed reasonable and necessary, serves a legitimate purpose and constitutes a substantial condition attributable to the very nature of the relevant professional duties. The Civil Aviation Authority forwarded to our Authority its No Δ9/Α/4524/1281/09.02.05 document in which it is expressly stated that “respecting that age limit is deemed necessary due to the peculiarity and the distinctive nature of the duties pertinent to the abovementioned class which are directly related to the safety of people, the latter duties being defined according to the high degree of specialization, the long-lasting vocational training of the servants and the rolling timetable (shift work)”. Judging that the justification provided was inadequate, the Greek Ombudsman communicated a new document to the Minister of Interior and the Minister of Transport and Communications clarifying that the imposition of an upper age limit may be regarded justified only on the jointly applicable conditions that a) the measure be objectively necessary, b) serve a legitimate purpose and c) be proportionately implemented. The need for a long-term vocational training of these staff members could in principle justify a different treatment on account of age pursuant to art. 11 para 1c of Statute 3304/05 on condition that it provide a precise determination of the duration of training for those specific staff positions. Moreover, an indefinite invocation of reasons justifying permission only to persons under the age of 30 to effectively perform their duties cannot be regarded as providing an adequate reason for imposing this specific age limit. Furthermore, it was not established that the relevant purpose can only be served by means of imposing an upper age limit instead of alternative measures. By means of document No ΔΙΠΠ/Φ.ΗΛ./35/15096/30.06.08 the Ministry of Interior endorsed the arguments brought forward by the Greek Ombudsman and asked from the Ministry of Transport and Communications to provide clarification on that matter. The Greek Ombudsman awaits the official opinion of the relevant agencies (cases 3186/2008, 3530/2008).

Upper age limit restriction in military advertisement for the enlistment of permanent interpreter officers in the Hellenic Army

After having submitted an application pursuant to the 04.04.08 advertisement issued by the Hellenic Army General Staff, a female candidate for the post of Permanent Interpreter Officers of the Hellenic Army contacted the Greek Ombudsman after being excluded from the procedure on the grounds that she had exceeded the upper age limit of 28 years provided for by the advertisement above. The Greek Ombudsman communicated in writing with the Hellenic Army General Staff emphasizing that provisions of Statute 3304/05 on the application of the principle of equal treatment are not applicable to the armed forces and the security corps; they apply only on condition “that [the permitted discrimination] pertains to different treatment on account of age or disability relevant to the Service” (art 8 para. 4 of Statute 3304/05). Granted that interpreter officers seem to be assigned with the performance of administrative duties, the Greek Ombudsman asked for information as to the precise reasons for which it was deemed necessary to impose an upper age limit of 28 years for the aforementioned procedure of enlistment of permanent interpreter officers in the Hellenic Army. Moreover, our Authority enquired about the precise way in which this condition is related to the needs of the service. Pursuant to a response from the Hellenic Army General Staff dated 22.10.08, the enactment of the aforementioned age limit as a criterion of eligibility of candidates for the post of Permanent Interpreter Officers serves a public purpose and is directly linked to the requisite training for these specific positions as well as to the need for a reasonable period of employment before retirement (art. 11 of Statute 3304/05). The Greek Ombudsman considered the official response as adequate in conjunction with the fact that art. 8 para 4. of Statute 3304/05 on the application of the principle of equal treatment stipulates that this principle is not applicable to the armed forces and the security corps (case 10117/2008).

Upper age limit restriction in an announcement regarding the relocation of civil servants to Directorates of the Greek General Accounting Office

The Greek Ombudsman received a complaint from a civil servant according to which an upper age limit of 42 years was stipulated in an official advertisement regarding the relocation of civil servants for the staffing of Directorates of the Greek General Accounting Office. The Greek Ombudsman communicated a document to the competent agency enquiring about the statutory framework regulating the relevant relocations and asked for the provision of a special justification as to the necessity of this specific age limit. In its response the agency involved maintained that “the relevant work conditions are particularly aggravating whereas successful performance of the relevant duties requires frequent relocations of our staff members all across the country. It is a fact that younger civil servants are much more apt in responding to these conditions as compared with their elder colleagues. Our Agency is already facing frequent problems whenever relocating its elder staff for inspection purposes is called for”. The Greek Ombudsman was not convinced by the above arguments and by means of a new document, referred to the condition on which imposing an age limit is considered legitimate. More precisely, the Greek Ombudsman maintained that the particular prerequisite should be absolutely necessary for the proper performance of the tasks involved whereas any milder alternative condition for the performance of this particular professional activity must be proven to be inadequate for serving the

desired purpose. Therefore, the justifiability and legitimacy of imposing an age limit is conditional upon its being objectively necessary for accomplishing a legitimate purpose and its being proportionately applied pursuant to the requirements of appropriateness, necessity and relevance. Moreover, the Greek Ombudsman emphasized that the rule of law whose main tenet is the protection of fundamental rights stipulates that “any limitation, even if it is appropriate and necessary, should not cause more detriment to civil rights but rather it should serve in a positive fashion the public or private interests which it is supposed to safeguard”. The General Accounting Office conveyed on the phone its intention to provide a response to the Greek Ombudsman including particular information on the problems encountered in the past by many civil servants over the age of 42 during the performance of the duties set out in the advertisement thus forcing the agency to impose this age limit. The Greek Ombudsman has forwarded its aforementioned document to the Representation of the European Commission in Greece which has consequently been forwarded to the EU Directorate General of Employment, Social Affairs and Equal Opportunities. In the meanwhile the General Accounting Office responded in writing to the Greek Ombudsman offering the following argument “out of 27 civil servants above the age of 42 positioned in the Directorates of Business Plans Programming and Inspection, six, that is 23%, requested to be exempted from inspection work or from being relocated to other Directorates of the General Accounting Office. The reason for this is that due to their frequency and demanding nature (inspection delegations are being sent to insular Greece, mountainous areas, dams, very long itineraries, ports, adverse weather conditions, changing many means of transport) these inspections are exhausting, strenuous and aggravating for their health” (case 7540/2008).

2.6. DISCRIMINATION ON GROUNDS OF SEXUAL ORIENTATION

2.6.1. Statutory provision permitting only partners of different sex to conclude a civil union

In its response regarding the question of whether Greece violated EU legislation prohibiting discrimination on grounds of sexual orientation on the occasion of the recognition (Statute 3719/2008) of the right to conclude a civil union only in favor of partners of different sex, the Greek Ombudsman provided to the complainant the following information. According to the current EU legislation (Directive 2000/78/EC) the prohibition of discrimination on account of sexual orientation is confined to the employment sector and does not extend its regulatory force to the family status of persons, which continues to constitute a subject matter regulated by national legislatures. Consequently, the omission on the part of Greek legislature to include same-sex couples in the regulatory scope of Statute 3719/2008 would not violate *eo ipso* the provisions set out in the aforementioned Council Directive. The right to free circulation and stay for family members of EU citizens within the territory of member states (Council Directive 2004/38/EC) is conditionally applicable to both “spouses” as well as to “partners”. Given that persons of the same sex (as already enacted by some EU member states) are conceptually contained in the term “spouses”, that is persons married to an EU citizen pursuant to the statutory provision of their member state of origin, the application scope of the aforementioned directive pertains to them too provided that they relocate to another member state. Consequently, any refusal on the part of a competent state official of the state of

reception (that is, Greece) to apply this directive to same-sex couples would amount to an impermissible omission to apply the directive. For the purpose of applying the aforementioned directive to “partners” irrespective of their sex with whom an EU citizen has established a “relationship registered as civil partnership pursuant to the legislation of the member state” it is necessary that the member state of reception recognize this relationship as “equivalent with marriage”. It is not clear whether according to the provisions of Statute 3719/2008 our country has in fact granted civil partnerships equal status with marriage. For a proper investigation of this issue, a citizen of another EU member state should file a complaint enquiring about the legitimacy of a particular administrative act or omission on the part of the competent public agency pursuant to Directive 2004/38/EC. In any case, whereas the lack of official recognition of same-sex civil partnerships in Greece, in contrast with other EU member states, impedes the application of Directive 2004/38/EC to *de facto* partners of Greek citizens in cases of relocation to another EU member state, it does not violate *eo ipso* the rules pertaining to the application of EU law on the ground that their invocation presupposes a prior recognition, based on the legislation of the member state of reception, of a right that continues to be held irrespective of whether the rightholder moves to another member state of reception (case 20914/2008).

2.7. DISCRIMINATION ON GROUNDS OF RELIGIOUS OR OTHER BELIEFS

2.7.1. Employment

Level of studies, undergraduate degree classification and professional rights of minority teachers

The “Special Teaching Academy of Thessaloniki” (EPATH) was founded (by virtue of Royal Decree 31/69) for the purpose of educating minority Muslim teachers of Greek citizenship whereas its graduates are employed in the public primary minority education sector. The Greek Ombudsman enquired into the level of studies and the classification of the degrees granted on the occasion of complaints filed by graduates regarding their exclusion from appointment to any other civil servant sector than primary education. More specifically, the case regarded the exclusion from civil servant posts in Citizen Service Centres located in the region of Thrace. While investigating those cases, the Greek Ombudsman found that the initial cause of the problem regards the perpetuated indifference towards upgrading the level of studies offered by EPATH. At the time of its establishment it was considered as typically and substantially equivalent to the common Teaching Academies offering biennial studies (at that time). Gradually though, the latter were upgraded as to the duration and the curriculum of studies and their alumni were given the opportunity (Presidential Decree 130/90) to upgrade their degrees by attending special courses. The Ministry of Education refuses to subsume the EPATH graduates under the equivalence recognition regulation alleging that this school has “special traits” and its graduates can work as minority teachers without any obstruction. This argument, however, is inadequate on the grounds that the stipulation of a “purpose” in the founding charter of a school does not *eo ipso* predetermine the professional options of its graduates. The Ministry of Interior is in fact forced to exclude EPATH graduates from access to positions requiring a university or technical school degree not only due to the lack of

statutory stipulation of the classification of their degrees but also due to the inadequate level of studies which is a factual element prohibiting the upgrade. The same Ministry, though, forbearing to respond in a timely manner to relevant questions posed by Municipalities of the region of Thrace, has contributed to the loss of employment positions for EPATH graduates who were being employed in Citizen Service Centres for many years. In that way the Greek State treats incongruously not only EPATH graduates but indirectly the Muslim minority for the reason that it has kept its teachers at a much lower vocational level in comparison to the education offered to other primary education staff (who are already holding a university degree or at least an officially equivalent one). Moreover, being confined by an unclassified degree precisely because of their capacity as minority members, these teachers are not capable of attaining a “professional reorientation”. The latter fact clearly amounts to unequal treatment on grounds of ethnic origin or religious beliefs as stipulated in Statute 3304/2005. In consideration of the above situation the Greek Ombudsman urged the Ministry of Education to take measures aimed at the academic equalization of former EPATH graduates. Moreover, our Authority has invited the Ministry of Interior to create personified positions for those EPATH graduates who lost their jobs at the Citizen Service Centres in the region of Thrace due to the inadequate information received by the competent municipal authorities (cases 11362/2007, 12417/2007).

3. CAPITALIZATION OF THE INSTITUTIONAL CAPACITIES OF THE GREEK OMBUDSMAN AS THE OFFICIAL AGENCY FOR THE IMPLEMENTATION AND PROMOTION OF THE PRINCIPLE OF EQUAL TREATMENT

3.1. Complex strategic action for the Roma housing

The serious problems of subsisting in intolerable living conditions in conjunction with the various forms of exclusion experienced by a large number of Greek Roma on a daily basis in regards to their participation in the social, economic and political aspects of social life have been made reference to in all our Annual Reports on Equal Treatment. The experience gained from our investigation of cases demonstrates that the perplexed attitude of administration and the reluctance to take immediate effective measures to a long standing social problem not only perpetuates this problem but it also nourishes the tension and the social opposition amongst the Roma who live in makeshift settlements and the citizens who reside adjacent to these camps. As a result, the systematic inaction from the part of state officials to solve the chronic problem instead of creating a climate of compassionate understanding of the plight of Roma people to their neighbors and an interest to assist them in improving their living conditions, are causing their frustration, driving them to persistently demand the relocation of the Roma settlers, as a way of evading the problems they encounter. Even when things appear to have reached a critical point, the central and regional administration officials appear hesitant to adopt drastic or to decisively coordinate the actions to be assumed by each of the public agencies involved. Local government frequently transfers the blame for its inaction to the central administration, on the grounds that the problem needs to be holistically and centrally confronted, thus absolving itself of any shared responsibility or competence. To this perplexing stand of the central and local public administration should be added the ambivalent attitude

of the police authorities which also seem to be reluctant to effectively control the delinquent behaviour displayed by some members of the Roma community, thus accentuating the general feeling of insecurity and tension. The following cases, as well as the follow-up on cases previously mentioned in our annual reports, testify to the truth of these ascertainties.

3.1.1. Social discontent due to citizens' protests against Roma settlements within their borders of their town.

Presence of intolerant associations in the Municipality of Nea Kios

In September 2008, the Municipality of Nea Kios, in Argolida, officials called for a gathering of its residents into a protest meeting, speaking of an uncontrollable delinquency existing in their area, which they exclusively presumed to be associated with a “*group of Roma people*”, referring to a general feeling of insecurity of the people caused by a sense of inability to “*protect themselves and their property*” and stressing the there was a “*visible danger of citizens being forced to take the law in their own hands*”. In its intervention the Ombudsman impressed upon the competent municipal officials its concern about the nature of this type of activities, especially as regards the use of particular words in this speech. More precisely, the Ombudsman pointed out that despite the fact that in the speech reference is made to specific teams their designation in purely racial grounds could induce thoughts for prejudicial action against the particular group implied. Moreover, it was highlighted that, although municipal authorities are entirely free of any suspicion of instigating the type of action that could lead to taking the law into ones hands, nevertheless the fact that it was presented as such a possibility, that is, as an inevitable consequence of the existing delinquency, it stood far from expressly denouncing such type of conduct or from implementing the necessary measures in preventing the occurrence of such deviation. In its intervention to the competent Police Directorate, the Greek Ombudsman drew attention to the fact that the duty of the police is to guarantee the safety of both, municipal residents and Roma inhabitants in the settlements, as well as to the need to avoid any kind of aggressive, threatening or offensive behavior that could be perceived as collective persecution or prejudice. Moreover, the Ombudsman recommended the development of mediatory action and the utilization of any offer of assistance provided by the communal representatives of the Roma people themselves, who in case they existed they could act as mediators. The Ombudsman reminded the statutory provisions which draw up the boundaries on the implementation of repressive measures or on deprivation of individual liberties, such as controls, researches, taking into custody and other relevant police proceedings or interrogatory acts. Emphasis was placed on the constitutional protection of home, which applies to every type of lodging independently of its type, permanence or even legality. It pointed, however, that although respect towards a socially sensitive group requires the adjustment of police methods to particular circumstances, that in no way invalidates the responsibility of the police to combat crime. No racial origin or other social trait may offer immunity or justify exemption from the correct enforcement of law (Case No 16718/2008).

Disruption of social cohesion in the Municipality of Messini

According to local press publications many residents of the Municipality of Messini feel extremely frustrated due to the, allegedly, systematical infringement upon their rights by the delinquent behavior of individuals of Roma origin, a consequence which they view as downgrading the whole area and as a constant deterioration of their living conditions. Based on the information the Ombudsman has received, the residents of Messini are mobilizing in their dealing with the local authorities, and are intending to escalate (within the boundaries of the law) their activities (among which is said to be their formal appeal to the Greek Ombudsman) requiring the sustenance of public order and the cracking down of the impunity of lawbreakers in the area. The Ombudsman has established contact with the Mayor of Messini and the Director of the Messini Police Department in order to be properly informed of the relevant case and to develop a full picture as for the expediency of his potential ex officio intervention.

Resolving problems between neighboring communities: the example of the Roma encampment in the Nea Artaki

Similar problems seem to arise in the area of Nea Artaki on the isle of Evia, as it becomes evident from a recently lodged complaint by residents of the area. In their complaint the concerned citizens highlight the problems which they claim are caused by the illegal encampment of Roma people who they observe to live under horrid conditions. The attached documents to the citizens' complaints however give rise to assumption that the municipal officials involved intend to "displace" instead of solving the problem as required according to the legal provisions in force, an issue which will also be investigated by the Greek Ombudsman (Case No 20485/2008).

Exacerbation of the perennially critical situation in Aspropyrgos

By means of his letter (dated 18.2.2008) addressed to the Secretary General of the District of Attica, the Mayor of Aspropyrgos and the Ministry of Interior the Greek Ombudsman wished to convey his concern about the unresolved, long-lasting problems in the area, caused by the illegal, anarchic, encampment of Roma people, and the subsequent persistent negligence on the part of state officials to take appropriate measures. In its relevant intervention the Ombudsman outlined some of the measures that must be adopted by the Administration if any progress, at least gradually, could be made in what is admittedly from all quarters a situation of unbearable living conditions. To this moment, however, none of the recipients of the Ombudsman document has officially replied in writing; while at the same time, there has been no substantial change on the ground a fact which perpetuates the existing problems and ignites even further the bad relations among the Roma settlers and the local residents. There is no doubt that the living conditions of Roma settlers in Aspropyrgos, as well as their subsistence activities, are having an adverse effect on the area. The adverse affects of their illegal activities to their own health as well as that of the general public health and to the quality of life of the rest of the population are self-evident (Case No 10960/2008, 10962/2008, 10964/2008, 10966/2008, 10967/2008, 10971/2008, 11002/2008, 11004/2008, 11006/2008). Moreover, the tolerance displayed by state officials towards the livelihood activities of Roma settlers, such as the burning of tyres, and other type of polluting that occurs during the process of extracting metal from garbage with the Roma utilize within the camps, constitutes a further affliction for the area (Case No 10961/2008, 10963/2008,

11003/2008). Moreover, police authorities are often not conducting a thorough investigation of cases of thefts, attributed to members of the Roma community, that occur in businesses and other property establishments owned by professionals working in the area (Case No 10968/2008, 13896/2007). This situation, despite its being a limited phenomenon, causes the impression that the Roma communities are generally engaged in criminal activities. The latter impression is being reinforced due to the uncontrolled and often uninhibited drug use and trafficking within the camps (Case No 10969/2008). Further concerns are raised, as it appears from recent new complaints filed with the Greek Ombudsman by the “Attiki Odos” corporation, with regards to the problem of rising number of thefts/damages to the provider cables across the highway of Attiki Odos and the Suburban railway line. Moreover, this particular complaint includes allegations concerning the sabotaging of the electrical power stations of Attiki Odos. All the aforementioned incidents are being attributed to members of the Roma community residing in the area, whereas it became evident that such events may possibly put people’s lives in danger, including the lives of the individuals committing those criminal acts together with all users of the aforementioned services and transport networks. As a result, tension is rising and local residents are militantly expressing their indignation (Case No 6048/2006, 15891/2007, 17489/2007, 18454/2007 and 18892/2007).

3.1.2. Latest news on issues of encampment, relocation and general living conditions

Indications of mobilization for the relocation of Roma settlers in the Votanikos area

After repeated appeals to all agencies involved regarding the critical issue of the relocation of the Roma settlers in the Votanikos area, the Greek Ombudsman received a response from the General Directorate of the District of Attica, with the relevant minutes of the 05.03.2008 meeting of the Committee (established by article 2 par. 1 of the Common Ministerial Decision (KYA) 23641/2003) attached to it. According to the aforementioned KYA the Committee may order the Municipality of Athens, within the jurisdiction of which the camp is located, and which as of today has not recommended suitable space for the relocation, “*o draw up a planning proposal to the Committee indicating suitable relocation sites for the Roma settlers, provided that it has taken into consideration the standards set out in the relevant ministerial decision, as well as the emerging health factors*” (Case No 13986/06 and 12036/07). The negative or inert stance on behalf of the competent agencies to the problem of the relocation of the Votanikos camp constitutes a firm indication that the solution to this problem is far from imminent.

Roma relocation in the area of Etoliko

In the area of Etoliko, in the region of Etoloakarnania, there are two Roma camps (one at the town’s entrance and one in the stadium area) in which settlers are living under squalid conditions. This situation too raises serious issues concerning on the one hand the inability of the state to secure decent living conditions for the Roma settlers and on the other hand the severe environmental pollution and neighborly conflicts, between the Roma people and the local residents, which are generated by the life sustaining activities of the Roma. The Greek Ombudsman has been informed about

the action plan initiated by the municipal officials in order to tackle this problem and achieve the social integration of the Roma people. The aforementioned plan involves two stages of implementation: first stage concerns the purchase of a land necessary for the relocation of the campers, while the second stage concerns the construction of the necessary infrastructure for the purpose of improving the living conditions of permanent Roma settlers in the area. Nevertheless, the Greek Ombudsman has not received any further update as to the progress of the implementation aforementioned action plan (Case No 12807/2006 and 9901/2006).

Latest news from Roma camp sites in the area of Kranidi

There seems to be a revival of the issue regarding the living conditions of the Roma settlers in the area of Kranidi and Ermioni. In a previous appeal of the Greek Ombudsman to the Mayor of Ermioni regarding the illegal encampment of Roma people and the squalid living conditions of their community members, the Mayor of Ermioni has refused to take any initiative towards solving the problem. Recently a new complaint has been lodged. This complaint refers to the problems revolving of the encampment itself, the living conditions and the education of Roma settlers in the area of Porto Heli, situated within the administrative borders of the Municipality of Kranidi. The Greek Ombudsman shall continue its efforts to improve the life all the citizens in the area, insisting that the local government should take measures aiming at improving immediately the living conditions and ending the exclusion of the Roma population residing in that region of Argolida (Case No 20489/2008 and 13625/2005).

The relocation of Roma settlers in Kalamata

The relocation of Roma people residing in the area of Kalamata to a specially designated space in the area of Birpita is under way (Case No 19755/2005 and 12425/2006).

Negative development for the relocation of the Roma settlers in Agrinio

An adverse situation has arisen in what regards the expropriation of a property land in the area of Voidolivado, a place near the city of Agrinio, which has been illegally settled by a group of Roma. By means of a relevant document the Municipality of Agrinio has informed the Greek Ombudsman that there is no plan for self-financing the expropriation of land. The Directorate for Development Programs of the Ministry of Interior, according to the municipality, has not approved the relevant funding request. The Greek Ombudsman is planning to take the appropriate steps in the direction of ascertaining the real facts, while simultaneously insisting on its request to the municipal authorities to provide him with the necessary data concerning the size of the Roma population in the area, their municipal registration status, the medical care provided to the Roma (and precisely the the operation of a medical centre), as well as, the participation of Roma in educational procedure and the actions of the local authorities in safeguarding social peace in the area (Case No 8410/2006 and 1970/2007).

Positive feedback from the area of Xanthi

The inclusion of the Roma settlement of Drosero, near to the city of Xanthi, in the urban planning of the city of Xanthi is still pending. The expected inclusion is estimated to contribute to the amelioration of the living conditions of the people of Drosero, since it will mean the creation of effective infrastructure, the settling of property and house construction disputes, the operation of school and kindergartens, as well as of the construction of a medical centre. Moreover, positive news is emerging in regards to the connection of the camp with the urban transport network, as a result of the relevant intervention made by the Greek Ombudsman. The positive development on this issue came from the Prefecture of Xanthi. This particular connection of the Drosero settlement with the grater area of the city of xanthi is expected to drastically facilitate the transfer of Roma students who study in the broader area schools (Case No 16576/2008 and 4639/2007).

Standstill of initiatives in Alexandroupoli

No significant progress has been made in regards to the living conditions, the private land/property ownership status and the operation of schools, kindergartens as well as of a medical centre, in the area of Avas in Alexandroupoli. The reason for this deadlock is the fact that the inclusion of the settlement in the urban plan has not yet been completed (Case No 6174/2007).

3.13. Protection from violent expulsion – mandatory relocation of homeless Roma settlers

The situation of the Roma in the city of Kos

The Greek Ombudsman received a complaint regarding the illegal demolition of Roma dwellings located in a camp at the entrance of the town of Kos without prior recommendation to the Roma as to the area that would have been suitably available for their relocation. Moreover, there has been a complaint about the refusal of Kos municipal authorities to provide rudimentary, at a minimum, assistance to the Roma, so as comfort the people that were put in this dire position. The Greek Ombudsman conducted an onsite investigation in the in the island of Kos, assessed the situation and made specific proposal for the integration of the Roma of Kos in all aspects of social life. Today the Ombudsman awaits the response of the involved services to the proposals made. (Case No 1464/2008).

Protection of homeless Roma in Argostoli-Kefallonia

The Greek Ombudsman received a complaint from the “Greek Helsinki Monitor” who acted as the official representative of a Roma family, whose dwelling in a camp located in the area of Krania, in the Municipality of Argostoli, on the isle of Kefalonia, was destroyed by fire. The complaint placed emphasis on issues of legal validity of initiatives undertaken by public services in what regards the provisional accommodation and the assistance offered to the aforementioned family during its temporary stay in the house provided by state officials. Investigation of the facts yielded various issues that called for further examination and, in particular, a) the need to provide immediate assistance to the victims of fire and more precisely to the provision of power and public water supply, b) the monitoring of the performance of duties of the public agencies involved for the purpose of providing all necessary

services c) the general living conditions pertaining to the health and sanitary infrastructure facilities utilized by the settlers, d) the operation of a slaughterhouse in the same area. In regards to these issues the Greek Ombudsman addressed a letter to all services involved, and subsequently performed an onsite investigation the results of which are to be made public very soon. As far as the situation of the particular fire victim is concerned, the information that we have is that, for the time being, he resides temporarily in the house the municipality reconstructed in the settlement in Krania while, having already been granted a housing loan by the Directorate for Development Programs of the Ministry of Interior, is looking for a suitable house to buy (Case No 5730/2008).

3.2. INITIATIVES FOR AWARENESS-RAISING, VOCATIONAL TRAINING AND KNOW-HOW ACQUISITION

3.2.1 Training of Greek Ombudsman executive staff and provision of education

During 2008 the Greek Ombudsman continued to invest in intensive cooperation and know-how exchanges with other agencies in and outside Greece engaged in the implementation and promotion of the principle of equal treatment. Moreover, by capitalizing on its knowledge and expertise, the Greek Ombudsman has participated in a number of training seminars aimed at providing information and raise awareness on issues regarding the combat of discrimination in the workplace.

3.2.2. Participation in national and international network activities for the combating of discrimination

The year 2008 is the fourth consecutive year the Greek Ombudsman is actively participating in the European network Equinet which aims at the horizontal connection and coordination of official agencies for the purpose of implementing Council Directives against discriminatory practices in EU member states as well as in accession states. More specifically, our Authority plays an active role in the second bank of the Network which deals with the exchange of information on the means and action strategies employed by the national agencies assigned with the implementation of Directives for the purpose of attaining a more effective and global performance of their task beyond individual cases. Within the context of finding solutions to individual cases our Authority has been actively engaged in the activities of the Network in order to enhance the efficacy of its intervention methods with regard to complaints about the violation of the principle of equal treatment for the further purpose of covering legislative lacunae. The undertaking of those activities aims at achieving a continuous exchange of data concerning cases and effective methods of dealing with them by means of electronically circulating questionnaires and frequent meetings.

Moreover, the Greek Ombudsman is a member of the National Working Group established in 2005 by the program entitled “For Diversity / Against Discrimination” which is the product of the initiative taken by the European Commission's Directorate-General for Employment, Social Affairs and Equal Opportunities. This programs is targeted on the coordination of activities undertaken by national agencies assigned with the monitoring and promotion of

the principle of equal treatment as well as with the motivational support of organizations representing socially vulnerable groups that are subject to discrimination so that they can be effectively engaged in providing information on the new legislative anti-discrimination measures as well as on emerging good implementation practices.

During 2008 the Greek Ombudsman has also participated in:

- The annual session of the Equinet network on discrimination that was held in October in Brussels
- The annual meeting of the working group of Equinet and more specifically Working Group 2 “Strategic Enforcement” in Brussels on the topic of final activities planning for the year 2008 as well as conducting a survey on the extrajudicial resolution of disputes regarding discriminatory practices falling within the application scope of the relevant Council Directive.
- A training seminar held by Equinet in Rome on the topic “How do we understand Multiple Discrimination and how can we tackle it”.
- A training seminar held by Equinet in Sofia on the topic “Solving equal treatment cases – a comparative law approach”.
- A conference held within the context of the EQUAL initiative on the topic “Variety in Workplace and Society – Investing in the Future” including a presentation on the role of the national Ombudsmen as instruments for the promotion of the principle of equal treatment.
 - An international survey conducted by the Danish Ombudsman on discrimination on grounds of sexual orientation.

4. ISSUES PERTAINING TO THE APPLICATION OF THE NEW STATUTORY FRAMEWORK – PROPOSALS

The triennial application of the new statutory framework on the combating of discrimination and the promotion of the principle of equal treatment is conducive to drawing conclusions and formulating proposals aimed at optimizing responsiveness to institutional challenges as well as elucidating regulatory provisions.

Based on this experience, it is imperative to subsume under the protective scope of the Directive (as incorporated by means of the Statute 3304/2005) third-country nationals who are staying in Greece for a long period of time. It should be noted that in principle, the exception of citizenship as introduced by art. 4 para. 2 of Statute 3304/2005, renders legitimate discriminatory practices on grounds of citizenship reserving for the member states the discretion to define the legal status applying to the entrance and stay of third-country nationals. **Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents – as incorporated by means of the Presidential Decree 150/2006 – grants high protection to this category of foreign citizens. More specifically, article 12 para. 1 of the Presidential Decree stipulates that a long-term resident shall enjoy equal treatment with nationals as regards particular fields such as: a) access to**

employment and self-employed activity, provided such activities do not entail involvement in the exercise of public authority, b) education and vocational training, including study grants, c) recognition of professional diplomas, certificates and other qualifications, d) social security, social assistance and social protection, e) tax benefits, f) access and supply of goods and services made available to the public and to procedures for obtaining housing, g) freedom of association without prejudice to the national provisions on public policy and public security. Special restriction provided for in the above article regard: a) access to employment and self-employed activity statutorily restricted to Greek citizens or EU or EEA (European Economic Area) citizens, b) access to education and vocational training on condition of authorization of language qualification and c) access to tertiary education pursuant to legislation in force. Thereby, it is inferred that third-country nationals who are long-term residents enjoy a high level of statutory protection and rights in areas covered to a large extent by the regulatory scope of Council Directives 2000/43/EC of 29 June 2000 and 2000/78/EC of 27 November 2000. Nevertheless, these provisions are practically inert to the extent that the administrative authorities display an unwillingness to endorse them on the ground that national legislation reserves a different regulation. One of the most characteristic examples is the case of the Greek State Scholarships Foundation which has not yet modified its charter pertaining to the granting of scholarships so that third-country nationals who are long-term residents acquire the right to receive scholarships as provided for by Presidential Decree 150/2006. The Greek Ombudsman has requested the extension of rights pertaining to long-term residents who hold permits of stay issued for an indefinite period of time, Moreover, our Authority maintains that it is necessary to include this category of third-country nationals into the application scope of Statute 3304/2005 at least to the extent that its provisions are co-extensive with the protection granted by the Presidential Decree 150/2006. Such a move will decisively enhance their rights protection status and effectively safeguard the promotion of the principle of equal treatment.

It should be noted that there has been an extension of the concept of discrimination as well as of the holders of the right to equal treatment within the protective scope of Council Directive 2000/78/EC of 27 November 2000 pursuant to the ECJ 303/06 Judgment of 8 July 2008. According to the latter judgment a civil servant who had been subject to discriminatory treatment due to the special needs of her child falls under the protection scope of the Directive even if the grounds of discrimination do not regard her personally. More specifically, according to the deliberation (no 38) of the Court: “it does not follow from those provisions of Directive 2000/78 that the principle of equal treatment which it is designed to safeguard is limited to people who themselves have a disability within the meaning of the directive. On the contrary, the purpose of the directive, as regards employment and occupation, is to combat all forms of discrimination on grounds of disability. The principle of equal treatment enshrined in the directive in that area applies not to a particular category of person but by reference to the grounds mentioned in Article 1. That interpretation is supported by the wording of Article 13 EC, which constitutes the legal basis of Directive 2000/78, and which confers on the Community the competence to take appropriate action to combat discrimination based, inter alia, on disability”. Moreover it was ruled that “those objectives, and the

effectiveness of Directive 2000/78, would be undermined if an employee in the claimant's situation cannot rely on the prohibition of direct discrimination laid down by Article 2(2)(a) of that directive where it has been established that he has been treated less favourably than another employee is, has been or would be treated in a comparable situation, on the grounds of his child's disability, and this is the case even though that employee is not himself disabled". From the above it can be inferred that provided a discriminatory practice is established in the workplace on grounds of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation the special protection scope of Council Directives 2000/43/EC of 29 June 2000 and 2000/78/EC of 27 November 2000 is applicable even if the grounds of discrimination do not regard the employee personally but his or her relatives.

Finally one should stress the limited regulatory scope of Statute 3304/2005 as this relates to the intensity and dimensions of discriminatory practices, within the ambit of the public and broader public sector wherein the monitoring capacity of the Greek Ombudsman is authorized. More precisely, as was previously emphasized, the majority of cases of illegal discrimination investigated by our Authority, either by means of an individual complaint or *ex officio*, falls beyond the limited application scope of Statute 3304/2005 either because they regard areas of administrative activity beyond the limited ambit of employment and the relevant sectors of social protection, education and vocational training, or because they pertain to the authoritative rather than the public service jurisdiction of the State. The normative correlation of the general provisions of the aforementioned statute (as well as the relevant provisions of the Council Directives incorporated by the Greek legislation) with other fundamental rules of our national law, especially with the principle of equality stipulated by art. 4 of the Greek Constitution, makes it possible to capitalize on their merits in terms of specifying and promoting equal treatment in other fields, apart from those exclusively provided for in this particular statute. This discretion should be particularly recognized with regard to the analogical application of the concepts of direct and indirect discrimination. The analogical nature of this application, however, prohibits the extension of application of the new rule regulating the allocation of the burden of proof without a specific statutory provision. Taking into account the fact that the regulatory scope of Statute 3304/2005 is limited and that, for the aforementioned reasons, many types of discrimination in our country display structural features - thus requiring a combined intervention in more than one field of administrative activity which falls beyond the statute's regulatory scope - it is necessary to proceed with a drastic statutory extension of its application scope beyond the employment sector, the social protection sector, in the narrow sense as well as the educational / vocational training and service sector. European legislation has expressly granted this capacity to national legislative organs.