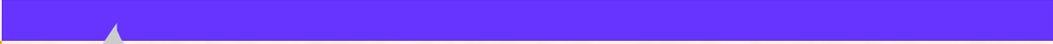




The Greek Ombudsman



**2010 Annual report**  
summary



# 2010 Annual Report

**Summary**

*The Greek Ombudsman* 

This is a summarised presentation  
of the 2010 Annual Report of the Greek Ombudsman.

**Publication coordinator** (English version)  
Athina Koutroumani

**Proof reading** (English version)  
Phoebe Barghouty

**Formatting and layout** (English version)  
Maria Karpathopoulou

All staff members of the Greek Ombudsman institution  
were involved in preparing the 2010 Annual Report.  
More specific duties were undertaken by the following:-

**Coordinators & Editors in Chief**

Yannis Boutselis  
Dimitra Myfilineou

**Editing by Senior Investigators**

Christina Angeli  
Maria Giannakouloupoulou  
Maria Karavolou  
Athina Koutroumani  
Irene Kyriakaki  
Kyriaki Lambropoulou  
Evangelia Markaki  
Eleni Markou  
Dimitra Myfilineou  
Danae Papalouka  
Katerina Papanikolaou  
Stamatina Poulou  
Anna Routsis  
Angela Salamaliki  
Calliope Stougiannou  
Michael Tsapogas  
Katerina Fliatoura

**Statistic Analysis**

Theodore Filios  
Dimitris Vrazos

The Ombudsman's Annual Report for 2010 can  
be found, in unabridged form, on our website:  
[www.synigoros.gr](http://www.synigoros.gr)

## Index

Introduction	4
Legal framework and operation of the Ombudsman institution	6
The year at a glance	10
Human rights	15
Social protection, health and social solidarity	21
Quality of life	27
State-citizen relations	33
Children's rights	38
Gender equality	43
Legislative and organisational recommendations	46
The Ombudsman's international activity	51

## Introduction

The challenge of 2010 for Greek society, the political and administrative system, and of course the Ombudsman, has been the very difficult economic conditions in which our country finds itself. Certainties, expectations and confidence in the future were overturned as a result of both the global crisis and a lack of proactive policy and management in the past. Turbulence on this scale affects the political and administrative institutions responsible for guiding the country and managing public affairs – the Ombudsman included. In a country, however, where trust in institutions has, sadly, always been lacking, the consequences are more severe and pose additional risks to the very nature of liberal democracy. It is therefore crucial to demonstrate benefits deriving from these institutions and to promote respect for the rights and procedures that surround them. It is imperative to intensify the proper function of institutions, ensure adherence to rule of law and respect for democracy. These are the priorities that the Ombudsman is called to serve in the present social and economic environment.

Last year the Ombudsman increased its activities in various fields. For many years, the Ombudsman has adopted the practice of briefing new ministers (coming into office after the 2009 elections) on outstanding issues pertaining to its work. This was also the case in 2010, when the Ombudsman brought to the attention of line ministers, the issues investigated and proposals for resolving them (together with comprehensive supporting data). It also requested a liaison officer in each ministry in order to provide a systematic resolution of outstanding issues. Most ministries responded to this call, and in some cases, meetings were held to discuss the pending issues and relevant recommendations. The evaluation of this collaboration was, overall, positive. Depending on the case, steps were taken to resolve or investigate the issue further. Satisfaction was expressed by the Ombudsman as a significant number of proposals submitted in the past were adopted during 2010; a prime example is that relating to tax administration issues.

The current economic conditions pose a multifaceted challenge to the Ombudsman institution. Citizens' expectations have increased. The Ombudsman has been flooded with complaints, among which are many requests for assistance (indebted households, unemployment, entrepreneurs facing bankruptcy, etc), even issues that fall outside the Ombudsman's jurisdiction. In 2010 the number of complaints remained at about the same high levels of 2009 (with a minimal reduction of 1.89%) and rose by 20% over the period prior to 2008.

The reduction in public spending has widely affected the functioning of the State. Payment delays, operational problems due to inadequate staffing and early retirements, reduced welfare services, delays in awarding pensions and providing other social benefits, thwarted expectations for hiring successful candidates – these are some of the most prevalent issues among citizens' complaints in 2010. In many cases, the attempt to correct irrational past practices shifted the framework in which public services and citizens had become accustomed to.

2010 saw many state reform initiatives. Notably «Kallikratis», the reorganisation of regional administration and government in Greece. Although it will take time for this change to bear fruit, it is an important step towards strengthening local government. This new local government assumes a more important role due to its increased size and critical responsibilities. However, there should be vigilance so as not to reproduce the problems identified previously; the transitional phase poses a major challenge if services are to function smoothly, with continuity and efficiency.

An important initiative is the law on "Diavgeia" (transparency), which faces radical transparency issues in the operation of public services. The Ombudsman has extensive experience in matters of access to public documents, and highlights the difficulties in satisfying this right on an individual basis. The disclosure of such documents not only enhances transparency and control, but also relieves services from similar requests. The Ombudsman, however, considers the prospect of transparency becoming a principle in internal functioning of public institutions an even more important goal; these institutions are expected to internalize accountability and avoid operating in secret.

It is also worth mentioning the reforms concerning the management of financial resources by public bodies. Rationalization of financial management clearly assists in controlling and containing costs. Moreover, it strengthens the pressure for planning and prudent use of public resources.

The 2010 report is pervaded by a deep concern. Under the pressure of circumstances mentioned above, the administration tends to neglect its procedural obligations towards its citizens. Delay, failure to respond, or lack of respect for deadlines appear all the more frequently. These may be related to the embarrassment of the

administration when struggling to meet its obligations. Citizens report certain behaviours on the part of public services to discourage them from exercising their rights, through deficient information, or even by refusing to register applications.

This discouraging behaviour is difficult for the Ombudsman to monitor and control. Combined with the disregard of procedural obligations, it may indicate a withdrawal vis-à-vis what had been achieved by enforcing the Code of Administrative Procedure, and the broader effort for greater responsiveness to citizens' requests. Vigilance of the political and administrative system is required to maintain the successes and achievements of recent years in the field of State operation and its relationship with citizens, in light of the rule of law and citizen's rights.

Greek administration is required to adjust to the new conditions formed by the economic crisis and the recent reforms. Reforms undoubtedly cause turbulence in the way public bodies function as they are expected to operate in a new context and under new specifications.

The Ombudsman must also reinvent ways of intervention and continue to play its role in the new adverse conditions. While the mounting pressures intensify the citizens' expectations towards the Ombudsman, certain aspects of its effectiveness are being limited at the same time. Staffing problems and insufficient funding of services due to the cutbacks, influence the work of mediation and the fight against maladministration.

The Ombudsman is therefore called upon to develop an innovative approach to the problems brought to its attention. It will continue to support the institutional functioning of the political-administrative system, promote consolidation of the principles of legality, rule of law and democracy, and defend citizens' rights, with particular sensitivity towards vulnerable social groups. The Ombudsman's most crucial contribution is to build trusting relationships between state and society, which becomes more essential than ever at this critical juncture in Greece.

Calliope Spanou



Acting Ombudsman  
January 2011

*After the resignation of George Kaminis from the office of Ombudsman in September 2010, the Authority operated under the Deputy Ombudsman, Calliope Spanou.*

## Legal framework and operation of the Ombudsman institution

### LEGAL FRAMEWORK

The Ombudsman is an independent authority sanctioned by the Constitution. It began operations on October 1, 1998 and provides services to all citizens free of charge.

The organization, staffing and operation of the Ombudsman are governed by Law 3094/2003 and the Rules of Operation (PD 273/1999), within the framework set by the Constitution after its revision in 2001. The full texts governing the functioning of the Ombudsman are published on the website: [www.synigoros.gr](http://www.synigoros.gr).

The Ombudsman's mission is to mediate between the public administration and citizens to protect their rights, to ensure the former's compliance with the rule of law, and to combat maladministration. The Ombudsman also deals with the protection and promotion of children's rights.

In 2004, the Ombudsman of Health and Welfare became part of the Ombudsman. Also, with the enactment of Law 3304/2005 for the "enforcement of the principle of equal treatment irrespective of ethnic origin, religion or belief, disability, age or sexual orientation", the Ombudsman's mission included the promotion of equal treatment in public services.

Under Law 3488/2006, the Ombudsman was tasked with monitoring the implementation, in the private and public sector, of the principle of equal treatment of men and women as regards to access to employment, vocational training and promotion, working terms and conditions. Law 3769/2009 (Articles 11 & 14) added to the responsibilities of the Ombudsman to monitor and promote implementation of the principle of equal treatment of men and women in access to goods and services in the public sector.

Law 3896/8.12.2010 was posted on 8.12.2010 (Official Gazette A 207), and removed the legislation hitherto in force (Law 3488/2006, PD105/2003 and PD87/2002) on gender equality in employment and a single coherent legislative text was codified in the spirit and provisions of Directive 2006/54/EC.

Under Article 25 of this law, the Ombudsman's mission is expanded specifically to include promoting the principle of equal treatment of men and women in employment and labor. Also, the Ombudsman's mission is now extended to monitoring and promoting the implementation of the principle of equal opportunities for men and women in labor issues. In paragraph 7 of that article there is a change in the legal framework governing the Ombudsman (Law 3094/2003), as it provides that, specifically only when there is a violation of the principle of equal opportunities and equal treatment of men and women in employment, the

pending before courts, judges or prosecutors, up to the first hearing, or the prosecution, or until the court or competent judicial authority has ruled on the request for interim relief".

The Ombudsman makes recommendations and suggestions to the administration, but may not impose sanctions nor annul the illegal acts of public administration.

Any Greek or foreign citizen living in Greece or abroad and dealing with the Greek administration may appeal to the Ombudsman. Especially with regard to violations of children's rights, the concerned child, parent or relative, and any third person that has direct knowledge of a violation of children's rights may refer the matter directly to the Ombudsman. The same applies to legal entities or associations.

### **The Ombudsman is responsible for citizens' issues with services of:**

- the public administration
- local authorities (municipalities, regions)
- other public law legal entities (public entities - NPDD)
- legal entities of private law (private entities - NPID), businesses and organizations controlled by the state or by public entities

Especially in cases of violation of children's rights and of the principle of equal treatment in employment, the Ombudsman has jurisdiction over acts of private persons, as well as natural and legal entities.

### **The Ombudsman is not empowered:**

- if more than six months have elapsed since the citizen has been informed of the unlawful act or omission of the public administration that concerns him
- for providing information and legal advice
- for private disputes
- for cases involving the status of the staff of public services (except for unequal treatment of employees under Law 3304/2005 and Law 3488/2006), national defense, foreign policy and international relations, state security.
- for cases pending before the courts, except, as noted above, in matters concerning the principle of equal opportunities and equal treatment of men and women.
- for acts of judicial authorities, the State Legal Council, independent authorities, religious public entities.
- for acts of ministers and deputy ministers on policy function management.

## COMPLAINT SUBMISSION AND INVESTIGATION

The Ombudsman office undertakes any matter within its competence, after a signed complaint by any directly concerned individual, legal entity, or association of individuals. Complaints can be submitted in person, by mail, or by facsimile (fax).

The complaints are processed in thematic sections that are organized into six departments: Human rights, Social protection, Quality of life, State-citizen relations, Children's rights and Gender equality. Investigation is assigned to a specialized investigator from the relevant department.

The citizen is informed in writing and by telephone at each stage of the process. The investigation concludes with the production of a document, which the Ombudsman submits to the relevant service.

If, however, if it is required by the nature of the case, the Ombudsman may proceed to conduct a survey, or to refer the case for prosecutorial or disciplinary action.

Finally, where appropriate, an investigation may result in the production of a finding, which is placed under the attention of the relevant minister.

The citizen is informed in writing when it is not feasible to investigate his complaint because it falls outside of the Ombudsman's jurisdiction, or the complaint is obviously vague, unfounded, or exercised in an abusive manner.

### The Ombudsman may:

- ask public services for any information, document or other facts pertaining to the case, examine persons, conduct a survey and commission an expert's opinion.
- set a deadline for the services in which they must inform him of their actions for the implementation of his recommendations, or the reasons why they cannot be accepted.

Refusal by a state officer or public service employee to cooperate with the Ombudsman in the conduct of research may amount, where appropriate, to disciplinary misconduct or breach of duty, or cause for replacement. If it is demonstrated by the Ombudsman's reports that a state officer or public service employee hampers the investigation process for the second time in three years, or refuses without good cause to join in resolving the problem, may suffer the penalty of permanent dismissal. Finally, if there is sufficient evidence of committing an offense, the Ombudsman forwards a report to the prosecution in charge.

## ORGANIZATION AND STAFFING OF THE OMBUDSMAN'S OFFICE

The Ombudsman's organogram is shown in Figure 1. On 31.12.2010 the total number of employees, including six Deputy Ombudsmen, was 201 – 61 men and 140 women.

The scientific staff is 140 persons and the administrative and secretarial support 55 persons.

Of the scientific staff, 38 persons hold a PhD, 79 persons hold a postgraduate degree and 23 persons are graduates of higher educational institutions, domestic or foreign.

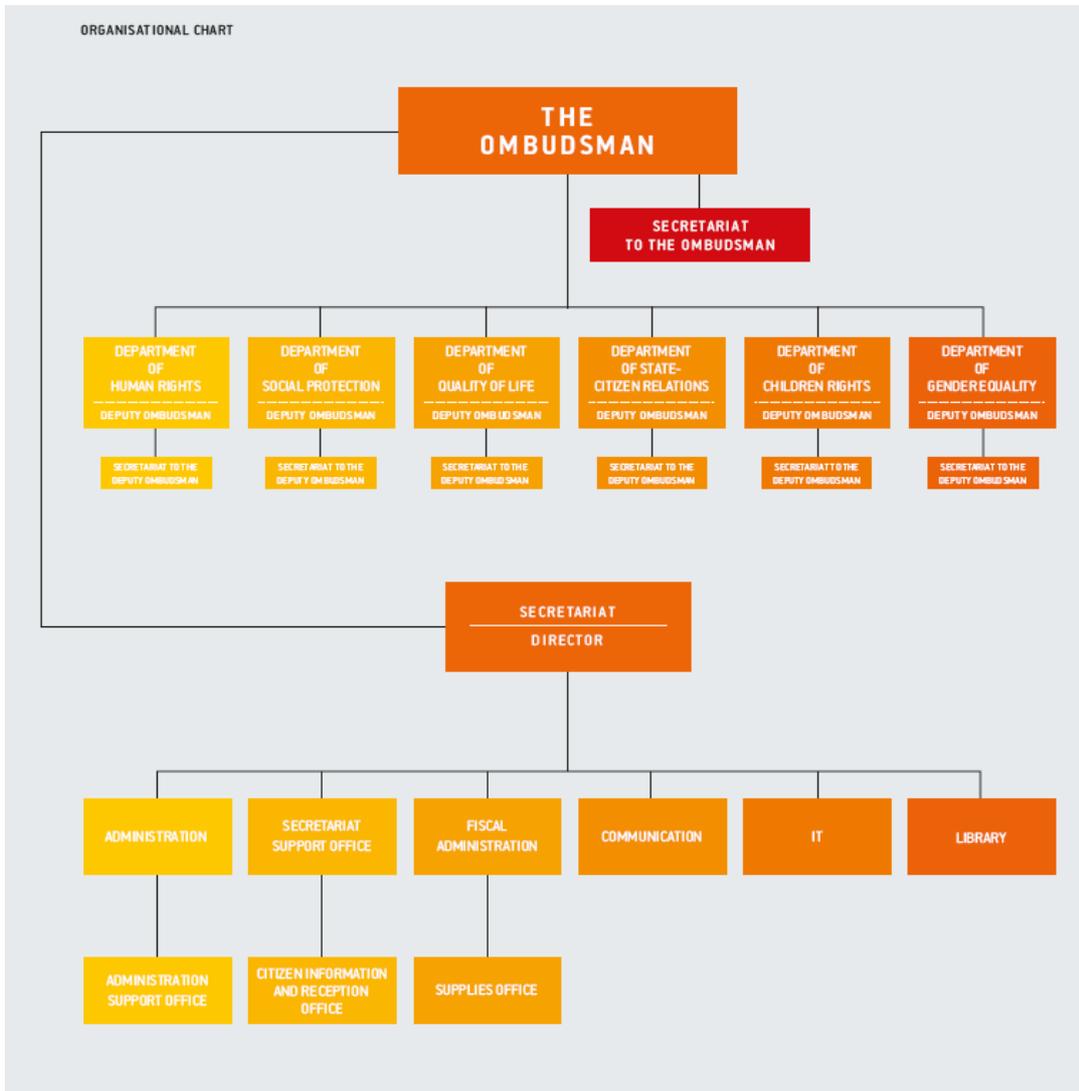
Of the administrative staff and secretarial staff, 14 persons hold a postgraduate degree, 13 persons are graduates of higher educational institutions, domestic or foreign, 4 persons hold a TEI degree, 19 are secondary school graduates and 5 persons are compulsory education graduates.

The scientific and administrative staff spans a wide range of disciplines. Among those who have a graduate or postgraduate university degree include: 85 lawyers, 11 political scientists, 5 philologists, 8 economists, 9 sociologists, 8 archaeologists, 4 communication experts, 4 architects, 5 psychologists, 3 geologists, 3 oceanographers, 3 chemists, 2 civil engineers, 3 educationalists, 2 statistics and actuarial science scientists, 1 doctor, 1 survey engineer, 1 mathematician, 1 urban planning engineer, 4 computer scientists, 1 librarian, 1 electrical engineer, 5 management scientists.

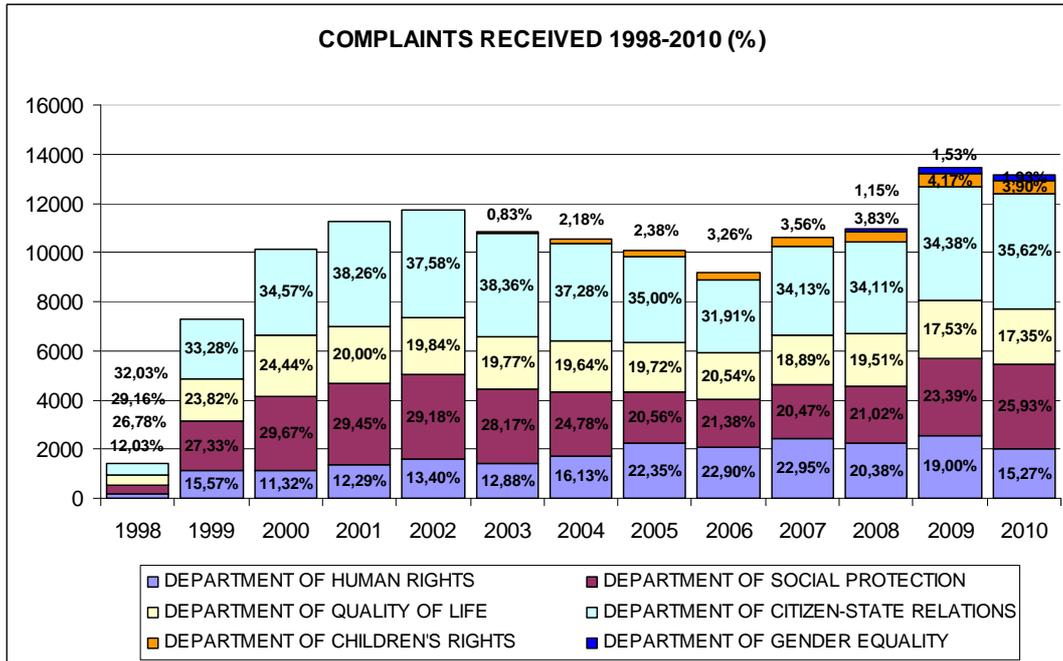
TABLE 1 STAFFING OF THE OMBUDSMAN'S OFFICE PERSONNEL CATEGORIES ON 31.12.2010

1. Ombudsman (Deputy Ombudsman acting as Ombudsman since 24.9.2010): -
2. Deputy Ombudsman: 6
3. Head of Secretariat: 1
4. Senior investigators (scientific staff) (seconded): 24
5. Senior investigators (scientific staff with a private law contract of indefinite duration): 115
6. Assistant investigators (under private law contracts of indefinite duration): 1
7. Ombudsman's and Assistant Ombudsmen's Office Staff: 9
8. Secretariat: 45

Figure 1: Organizational Chart



Graph 1: Complaints received 1998-2010



Year	Complaints received
1998	1.430
1999	7.284
2000	10.107
2001	11.282
2002	11.762
2003	10.850
2004	10.571
2005	10.087
2006	9.162
2007	10.611
2008	10.954
2009	13.433
2010	13.179
<b>Total</b>	<b>130.712</b>

## The year at a glance

### STATISTICAL EVALUATION

*In 2010, the Ombudsman received 13,179 new complaints (see Graph 1). This number is slightly reduced (by 1.89%) compared with 2009, the year in which the largest number of complaints was recorded (13,433) since the inception of the Ombudsman. During the last four years (2007-2010), in fact, a steady increase in citizens' complaints has been noted.*

A percentage of 40.21% of new complaints was archived due to lack of jurisdiction, up by about 9% compared with 2009. This is not surprising, given the large increase in the total number of complaints compared to previous years. Indeed, out of the complaints within the Ombudsman's competence handled during 2010, 53.07% were found to be valid, i.e. the citizen's complaint was justified, and there was maladministration.

The founded complaints were largely successful in outcome. Specifically:

- Resolved, that is, the problem facing an individual was eliminated, at a rate of 73.16%.
- Not resolved, despite the mediation, in 10.64% of valid petitions. In these cases, the Ombudsman's recommendations were not accepted.
- For 12.94% of valid petitions, their resolution was impossible for reasons attributable to gaps in legislation or perennial organizational weaknesses and failures of the public administration.
- 3.26% of cases was resolved, without action on the part of the Ombudsman, by the service itself or after the intervention of another entity.

### SPECIAL REPORTS

For issues of major gravity and importance, the Ombudsman prepares special reports to be submitted to the Prime Minister and the president of the parliament and to communicate to the relevant ministers. During 2010, the Ombudsman produced three special reports.

### HELLENIC PUBLIC POWER CORPORATION (PPC)- CONSUMER RELATIONS: THE OMBUDSMAN'S EXPERIENCE

The Ombudsman, in the first eleven years of operation, examined 1,751 complaints concerning the operation of PPC. The citizens' complaints mainly involve issues concerning: a) marketing services (sales) and b) distribution services (network).

The special report lists the problems identified by the Ombudsman, along with general operational issues of PPC, as well as ways of prevention and solutions proposed by the Ombudsman.

The main issues highlighted in the report are:

- claims for compensation for damage caused by the fluctuation of voltage
- allocation to third parties of sums for power consumption made by another person or related to a different supply
- illegal reconnections to the grid
- correction of mistakes in bills
- establishing a committee to review requests from consumers for facilitating payment
- debt arrangements
- damage repair
- replacement of legacy electricity counters
- response to requests for connection to and disconnection from the grid
- issues relating to overall service to citizens, such as timely response to requests, prompt information to consumers, billing

### SPECIAL REPORT ON PROCEDURES FOR GRANTING AID TO PEOPLE AFFECTED BY THE SUMMER OF 2007 FIRES

The Ombudsman found that the function of the administration was put to the test in the process of granting financial aid.

The problems found in operation concern three particular issues: a) the procedure for cash aid to fire-stricken producers, b) the procedure to help them through the Greek Agricultural Insurance Organization, c) the procedure of supporting the fire victims by granting a lump-sum payment.

These are the Ombudsman's recommendations for these specific issues:

- *Regarding the determination of permanent residents, recipients of the aid of 3,000 euros and the way of certifying permanent residence*

The Ombudsman reiterated the recommendation made in a special report in 2009 about the need to establish a special register in which each resident states a single municipality of permanent residence.

#### ■ *Regarding information*

The Ombudsman believes that the requests for information should not be treated as a bureaucratic burden either by the administration, which has to provide it, or by citizens, whom it is intended to enlighten. It is unacceptable to shift the responsibility of accurate information to sources other than public administration.

#### ■ *Regarding the mediation of third parties to the administration-citizen relationship*

The solution introduced by the administration, of an intermediary in its dealings with citizens, in this case banks, proved once again problematic. This choice is legitimate, in principle, in order to avoid overloading the service, to bypass the bureaucracy and to pay out the financial aid promptly. The involvement of banks facilitated the first phase, yet caused problems in some people due to incorrect information for some key parameters regarding the identification of beneficiaries. In this way, the beneficiaries were deprived of the opportunity to receive aid, and conditions of uncertainty and unequal treatment arose.

It is the Ombudsman's permanent view that the intervention of third parties as intermediaries in the administration-citizens relationship (as in this case by credit institutions) should be accompanied by guarantees.

#### **SPECIAL REPORT ON THE CONDITIONS AND PROCEDURE FOR GRANTING THE SPECIAL MATERNITY-PROTECTION BENEFIT: THE APPLICATION OF ARTICLE 142 OF LAW 3655/2008**

The Ombudsman examined a significant number of complaints on the awarding of the special benefit for maternity protection (Article 142 of Law 3655/2008). However, the problems encountered exceed the scope of individual cases that could be resolved by the Ombudsman's mediation and require a legislative intervention, and review of legal positions and interpretations adopted by the administration by issuing the relevant circulars.

#### **EX-OFFICIO INVESTIGATIONS**

The Ombudsman addresses automatically issues deemed particularly grave that fall under his remit. In 2010, he conducted two ex-officio investigations.

#### **EX-OFFICIO INVESTIGATION IN THE DETENTION FACILITIES OF THE POLICE DIRECTORATE OF THE ATHENS INTERNATIONAL AIRPORT**

The Ombudsman decided to conduct an ex-officio investigation in the detention facilities of the Police Directorate of Athens International Airport, after information received by the Ombudsman from the Press and entities dealing with human-rights issues, according to which the aforementioned detention

facilities violated the prisoners' rights, especially as regards their conditions of detention. The investigation had the following objectives:

- To investigate whether the prisoners' rights were respected, and in particular if the living standards were compatible with human dignity.
- To ascertain whether there is violation of legality, as embodied in the Constitution, international conventions and other national legislation.

The overall image of the Police Directorate's detention facilities at the airport made a very negative impression. The detention facilities and living conditions do not meet the requirement for protecting human dignity (Article 2 of the Constitution). Detention for some time in these facilities under the specific conditions can be regarded as inhuman and degrading treatment within the meaning of Article 3 of the European Convention on Human Rights.

Following the findings, it was imperative that immediate action be taken to:

- terminate the existing situation and to ensure the minimum conditions for human life (cleaning, securing premises, disinfection)
- rationalize the practice of detention of both incoming illegal aliens whose deportation is impossible and asylum-seekers, and those who fail to pay the court fees.

A meeting at the Ministry of Citizen Protection ensued, during which representatives of relevant organizations committed to immediately disinfect the detention facilities, to replace the mattresses and to request the Region for the immediate completion of the construction of the new detention facility planned. Specifically, the Ministry of Justice, Transparency and Human Rights immediately pledged to take steps so that aliens serving a suspended sentence are not detained for longer due to their inability to pay the court fees and thus relieve the facilities immediately.

#### **EX-OFFICIO INVESTIGATION OF THE JUDICIAL PRISONS OF LARISSA AND NEAPOLI, AND THE SPECIAL JUVENILE DETENTION FACILITY OF VOLOS**

The Ombudsman visited several prisons in Greece, either on his own initiative (Neapoli, Larissa, Volos) or in response to complaints by prisoners (Chania, Alikarnassos). The aim was to establish whether living conditions meet the standards of human dignity and also to determine whether there is any violation of the law.

In these field surveys and contacts with prisoners and prison administration officials, the main issues identified were: inadequate and dilapidated installations, lack of facilities (e.g. for recreation, visiting), prisoner overcrowding, utter lack of financial resources to satisfy the prisoners' basic needs, and lack of activities, vocational training, mental rehabilitation, and counselling. Confirmed once

again was the poor implementation of the legal framework for granting leaves of absence to foreign prisoners, as well as the need to streamline the framework for the criminal responsibility of minors.

The Ombudsman forwarded his findings and recommendations to the Justice Department to take appropriate measures.

Partly in response to the Ombudsman's recommendations, the state made a new beneficial arrangement (Article 33 of Law 3904/2010, which came into force on 12.23.2010), which abolishes, after the entry into force of the law, the detention of people in prisons who only owe the court fees, or have had fines of up to 3,000 euros imposed on them.

### **DISCIPLINARY REFERRAL**

If, during investigating a complaint, the Ombudsman finds illegal conduct by a governing body, which often involves refusing to cooperate with the Ombudsman, he reports it to the entity that is responsible for the disciplinary control of the offender. Failure to cooperate with the Ombudsman is, under certain conditions, a criminal offense.

In 2010 the Ombudsman utilized his institutional capacity once.

■ Directing the Mayor of Erineos to disciplinary action  
The Ombudsman asked the Secretary General of the Region of Western Greece, to bring the mayor of Erineos to disciplinary control because of non-cooperation with the Ombudsman (non-response to four documents and absence from a scheduled meeting with representatives of the Ombudsman). The Ombudsman found fault in the municipality for arbitrary reconstruction projects, which had been decommissioned by the Directorate of Maintenance Works of Western Greece, for arbitrary land filling and coating of a section of coastline with gravel in order to create a street in the foreshore area for the use of vehicles. The case has been referred to the prosecutor.

### **REFERRAL TO THE PUBLIC PROSECUTOR'S OFFICE**

If during the investigation of the case conclusive evidence arises of a crime by an officer, employee or member of management, the Ombudsman shall forward a report to the prosecution.

In 2010 the Ombudsman utilized this institutional capacity once.

■ *Referral of a case regarding the legal and safe operation of kindergartens in Corfu to the Misdemeanors Prosecutor of Corfu*

The Ombudsman referred to the Misdemeanors Prosecutor of Corfu a case regarding the licensing of public spaces for the operation of a nursery courtyard in the historic center of Corfu. The Ombudsman questions the legality of operation of

the specific nurseries due, amongst other things, to non-compliance with procedures for leasing buildings, lack of permits and approvals from the Planning Office and the Municipality of Corfu and the 21st Ephorate of Byzantine Antiquities, as well as the absence of fire protection planning.

### **FIELD SURVEYS - WORKSHOPS**

The Ombudsman considers field surveys as a very effective tool for resolving cases, especially when it comes to urban planning and environmental issues, questions of personal liberty and personal security of foreign and Greek persons, the living conditions of Roma, issues of healthcare and welfare structures, and the operation of institutions for children.

The Ombudsman, in 2010, conducted about 22 field surveys and 20 workshops.

### **MEETINGS, CONFERENCES**

During 2010, the Ombudsman organized three events.

**Workshop:** *Granting of a lump-sum benefit by the Public Employees Welfare Fund*

On February 22, the Ombudsman organized a workshop on "Problems in the administration of a lump-sum benefit from the Public Employees Welfare Fund: Causes and Solutions". Representatives of trade unions (GSEE, ADEDY), representatives of the Public Employees Welfare Fund and of the Supplementary Insurance Fund for Public Employees and representatives from academia and the Ombudsman attended. The Ombudsman identified the importance of issuing an administrative act within the prescribed period, which will indicate the amount each insured person is entitled to, the deadline intended by law for payment, as well as the time within which the fund is committed to carry out payments. As a short-term solution it was suggested to finance the fund through a bank or the state.

**Event:** *"It's in your hands": Awareness-raising event for corporal punishment*

On the occasion of the world day against corporal punishment of children, the Ombudsman jointly organized, with the Faculty of Education, Aristotle University of Thessaloniki, and the Network Against Corporal Punishment of Children, a two-day event in Thessaloniki (29-30 April). Activities included: Visual-art awareness workshop, theatre plays, poster exhibition, personal-experience workshop for students and a roundtable discussion on "From bringing up children without violence to a society without violence". After action by the Ombudsman, the Ministry of Education, Lifelong Learning and Religions distributed instruction to all schools in Greece, which proposes the last two credit hours on April 30 of each year be devoted to educational events and actions to raise the awareness of this issue.

**Seminar: "Protection of refugees and asylum seekers"**

The Ombudsman hosted a seminar jointly with the United Nations High Commissioner for Refugees and the Council of Europe, entitled "Protection of refugees and asylum seekers under asylum law, refugee law and the European Convention on Human Rights" (October 8-9). The panel discussion focused on the legal developments in the asylum system in Greece and the EU. Specific topics were pursued regarding the management of aliens who enter Greece illegally, or asylum seekers, in the light of the European Convention on Human Rights and the decisions of the European Court of Human Rights.

**THE OMBUDSMAN IN THE GREEK PARLIAMENT**

The Ombudsman appears before parliamentary committees to inform the parliament on specific matters within its competence.

- The Ombudsman George Kaminis and the Deputy Ombudsmen presented the 2009 annual report to the Commission on Institutions and Transparency of the Greek Parliament (19 January).
- The Ombudsman George Kaminis appeared (3 March) before the Committee on Public Administration, Public Order and Justice of the Greek Parliament and presented the views of the entity in matters of citizenship.
- The Ombudsman George Kaminis and the Deputy Ombudsman for Quality of Life Evangelia Balla appeared (19 May) before the Special Standing Parliamentary Committee on Environmental Protection, where they presented the main forms of maladministration in the natural, cultural and residential environment, the problems in the implementation of environmental legislation and the main proposals of the Ombudsman.
- The Deputy Ombudsman for Children's Rights George Moschos attended (18 February and 15 April) the meetings of the Special Standing Parliamentary Committee on Gender, Youth and Human Rights, with domestic violence on the agenda.
- The Deputy Ombudsman for Social Protection Yannis Sakellis appeared (3 March) before the Subcommittee on Disability Issues of the Standing Parliamentary Committee on Social Affairs, during a meeting on "Disability Assessment and Certification Committees".
- The Deputy Ombudsman for Gender Equality Matina Giannakourou appeared (8 March) before the Special Standing Parliamentary Committee on Gender, Youth and Human Rights and spoke at a special workshop on "100 years of Women's Movement: Achievements and Visions"

**PARTICIPATION IN COLLECTIVE BODIES**

The Ombudsman is a member of the National Commission on Human Rights and the National Council for Administrative Reform. It also has an

advisory role in the Central Scientific Council for the prevention and confrontation of the victimization and the criminality of minors, which was established in 2010 by the Ministry of Justice. The Ombudsman participates in committees dealing with matters within its special competence, such as the Committee of the General Secretariat for Gender Equality to promote women's employment.

**VISITS TO REGIONS OF GREECE**

Ombudsman's teams occasionally visit regions of Greece to directly inform the citizens living there on the powers of the Ombudsman and to receive complaints. At the same time, meetings are held with agents of local government and local public services on issues facing the local community. The visits are covered by local media.

- An Ombudsman's team consisting of the Deputy Ombudsman Calliope Spanou, the Assistant Ombudsman Yannis Sakellis and members of the staff visited Amfissa (13 December).

**EDUCATIONAL ACTIVITY**

Members of the scientific staff of the Ombudsman participated in educational and training events designed for diverse public authority services, aimed at benefiting from the experience of the independent authority. Examples:

- Training seminars by the Institute for Training of the National Center for Public Administration.
- Seminar by the National School of Judges on "The principle of equal treatment and non-discrimination in the European and Greek law".
- Workshops and seminars for teachers. The focus was on issues relating to the exercise and protection of children's rights, the prevention and treatment of school and family violence, and environmental awareness.
- Visits and discussions in schools and other educational entities across Greece for children's rights, environment and gender equality.
- Meetings with representatives from environmental education centers of the prefectures of Attica and Thessaloniki.

**COLLABORATION WITH NGOS**

The Ombudsman coordinates the operation of two networks for the mutual information on the protection of rights and social support of:

- Roma
- asylum-seekers and refugees

The purpose of networks is to facilitate the access of members of these vulnerable social groups to mediation services of the Ombudsman to defend their rights and to compensate for the lack of information and specialist knowledge facing many institutions of civil society working in these fields.

Moreover, the Ombudsman works with NGOs active

in key areas, such as environment and health.

## **PUBLICATIONS**

During 2010, the Ombudsman published:

- The proceedings of the Youth Counselors for 2009.
- A brochure entitled *The Ombudsman for the environment and quality of life*.

Finally, the Ombudsman publishes a quarterly digital newsletter.

## Human Rights

### OPENING REMARKS: THE "DANGEROUS RELATIONSHIPS" BETWEEN THE CRISIS AND RIGHTS

The past year was undoubtedly marked by the profound economic and financial crisis, which had a global impact on all socio-economic parameters, including human rights. Issues that had repeatedly concerned the Ombudsman, but not sufficiently so the state, occurred this time with unprecedented acuity.

Specifically the issue of "irregular" immigrants and asylum seekers dominated throughout the year with increasing intensity. The Ombudsman noted in time the complexity and contradictory nature of the phenomenon of social upheaval in the historical and commercial centre of Athens, while stressing the dangers of the long inactivity and withdrawal of the central and local administration. The coordination of services responsible in order to prioritize needs and to manage and resolve problems in a systematic and coherent manner remains a top priority for the immediate future.

Similar things apply for the socially vulnerable group of the Roma, which, despite official rhetoric and taking some positive initiatives, is still subject to social exclusion, which strengthens existing suspicion and scorn against them, as well as the silent and diverse victimization, especially of children and women.

The outlook could be better if the administration responded satisfactorily to its duties and obligations. Yet, as in the past, the Ombudsman found shortcomings and delays in adjusting the institutional framework to the social needs. Moreover, there still remain practices that distort legality in the name of misguided expediency, but also cater to entrenched interest groups and other interests. The situation is exacerbated by the misuse of discretion, which often leads to distortion of the rule of law, rather than act as a safety valve for the flexible and effective resolution of problematic situations. In particular, the lack of adequate reasoning continues to undermine government-citizen relations, fuelling mutual suspicion and creating tensions.

The ongoing economic crisis, which has already become a political and social one as well, places the public administration in front of responsibilities that are now more important than ever. Defending and deepening the rule of law has always been a painful and difficult operation compared to the ease of slipping into the vulgar populism, constantly lurking to undermine the rule of law, and into barbarism,

which always threatens to demolish it. Under extremely adverse conditions and circumstances, the administration is required to contribute to the reconstruction of a coherent social fabric, to meet more complex requirements by the society and by socially vulnerable groups, to take initiatives with flexibility, imagination, and vision. In this direction, and in the critical field of human rights, a key indicator of the legal and political culture, all the more so in every European country, the Ombudsman will remain a supporter while providing constructive interventions.

### SOCIAL EXCLUSION: RIGHTS THAT "COST"

The reality of the economic crisis could not but affect human rights. Particularly acute, however, are the issues that occur in fields related to social-exclusion phenomena, where the effects of the global crisis are already tangible. Vulnerable groups, such as immigrants or Roma, are affected both directly (by decreasing possibilities or opportunities for survival) and indirectly, at least in two ways: First, as the rest of the population feels insecure and is looking for scapegoats, and second, as the administration rearranges its priorities according to purely logistical considerations. Therefore, social problems of vulnerable groups, which for years have concerned the Ombudsman, now take on new dimensions, and the difficulty of dealing with them increases.

### THE HISTORICAL AND COMMERCIAL CENTRE OF ATHENS

After examining a large number of complaints on the rapid deterioration of the area, the Ombudsman conducted field surveys, meetings with citizens and representatives of agencies and entities, made critical observations and submitted recommendations on measures to tackle the problems.

#### The problems of the historical centre

The historical centre of Athens and the surrounding area have changed into a place of massive concentration of "undocumented" immigrants and asylum seekers who live there in conditions below the lowest decent living standards, resulting in severe degradation of the overall capacity of those living or working in the area to enjoy their fundamental rights to health, safety, freedom of movement, and entrepreneurship. *Apart from the lack of overall planning and regulation, there was also found inertia or lack of will, by both the central government and*

local government to carry out their duties according to the provisions of the existing legislative framework. The withdrawal of state from the region inevitably contributes to growing trends of ethnic and social intolerance.

### The proposals for the historical centre

Coordination and monitoring of the implementation of the necessary individual actions and monitoring their effective implementation should be entrusted to an existing state agency or authority that will also have the primary responsibility for accountability. The Ombudsman proposed for immediate steps to be taken to bring:

- Protection of public order and safety by implementing a special police plan tailored to local conditions and activation of Local Councils for the Prevention of Criminality.
- Special care for foreigners living in the region and measures for health care, social care, preventative medicine, and avoidance of ghettoization.
- Recognition of special residence status to those "undocumented" aliens that can not be removed from the country; they should also be registered and secured employment, housing, and medical care.
- Reception of asylum seekers in accordance with relevant national commitments.
- Fight against human trafficking and protection of victims.
- Improvement of living conditions, particularly cleanliness in the area, keeping sanitary conditions, provision of basic health services, and control of nuisance activities.

### HOUSING PROGRAMMES FOR ROMA POPULATIONS

The Ombudsman also investigated Roma housing and living conditions in 2010; he realizes that the current financial outlook dims the prospects of these problems being resolved.

Improving living conditions and temporary relocation. The Ombudsman continues to detect inactivity on the part of the authorities in taking necessary measures to ensure suitable housing in decent conditions for the Roma population. *Typical are the cases where the competent services of the local and central government were not only slow in identifying the relocation solutions, but do not take the necessary measures to improve conditions in existing camps.* These failures have contributed to creating conditions that pose a risk to public health and have the additional effect of inciting justified reactions by other local residents. Furthermore, the Ombudsman has received complaints of forced or violent evictions of Roma from camps without taking steps for finding and developing new relocation sites, resulting in the evicted persons to occupy new buildings for settlement. The Ombudsman has highlighted the inadequacy of the existing legislative framework, which envisages the creation of spaces

only for temporary installation of wandering peoples and has stressed the obligation to take measures for the housing rehabilitation of vulnerable social groups.

### Foreclosures of houses acquired by mortgage

The measures taken in recent years for the housing rehabilitation of Roma consist almost exclusively of giving out housing loans. However, the implementation of the loan programme to date indicates that it is largely ineffective, mainly because of difficulties in the process of granting loans and due to the absence of a control and supervision mechanism. The causes of the problems can be identified both in the criteria for qualification for the loan program and the process of disbursement from affiliated banks. A series of complaints to the Ombudsman has been made concerning forced foreclosures due to failure to pay instalments. Already, the Home Office, addressing the Ministry of Finance, recommended taking into consideration "the specific living circumstances of the borrowers, especially when the house to be seized is their primary residence and has been acquired as part of social programs to combat discrimination and social exclusion". However, the admonition is not sufficient unless involved agencies act in a coordinated manner. **It is proposed** to allow the repayment of housing loans in lower instalments for longer periods of time without additional interest, so that houses acquired at the expense of taxpayers may not come into the possession of non-beneficiaries due to a debt that is much lower than the amount of the loan.

### OTHER INSTANCES OF RIGHTS THAT "COST"

In public administration, there are several cases where the financial crunch is transformed into rights issues. In areas such as detention facilities, asylum-seeker reception facilities, or underperforming services, the State recognizes the problems but fails to resolve them, as resources are insufficient or are distributed by priority to higher-popularity sectors. Finally, there appears a strong tendency for part of the State's obligations to be passed on to the shoulders of the service recipients.

### Overcrowding in detention

Field surveys in detention centres throughout Greece revealed that the number of prisoners far exceeds the set limits, thereby creating serious problems both for themselves and for the staff. The situation is deteriorating in many cases due to the age and poor maintenance of buildings and other infrastructure. These conditions threaten public health and burden an already troubled environment, creating a permanent state of tension, as well as feelings of abandonment and devaluation.

### Reception facilities for asylum seekers

In the Greek territory, particularly in border areas, the mass arrivals of immigrants are treated with uniform

practices, as there is no system of separation of incoming individuals based on specific criteria, such as being beneficiaries of international protection. Drafting a proposal for establishing and organizing screening centres has been assigned to a Committee of Experts, formed in early 2010 by the Ministry of Citizen Protection, with participation of the Ombudsman's representatives. However, these ambitious initiatives are endangered by the unfavourable economic environment, with the immediate consequence that the problems observed in the overall management of the migration trend are perpetuated.

### **INSTITUTIONAL MODERNIZATION: DELAYS AND RESISTANCE**

In counterpoint to the current economic crisis, the administration does not have the slightest excuse when it attributes the violation of rights, or their insufficient protection to shortcomings of the legislative framework. *The institutional modernization of sectors suffering from a legislative gap, even after the crystallization of a clear choice on policy, is hampered, however, by two inherent obstacles: first, delay in preparation of legal texts, i.e. in the asylum claims assessment process, second, resistance of established interests, or merely organizational inertia in the implementation of provisions already in force, as in the case of professional rights.*

### **THE ODYSSEY OF PROFESSIONAL RIGHTS**

There is still evidence of systematic failure of the state to regulate professional rights, despite the fact that the state itself had accompanied with plenty of promise the establishment of respective levels and entities of vocational education. Problems occurred with great acuity, affecting both domestic secondary and tertiary education degree holders, as well as holders of foreign qualifications.

#### **Graduates of secondary vocational education**

■ Holders of domestic secondary vocational education degrees, i.e. Vocational Schools and Vocational High Schools of a large number of technical disciplines remain without professional rights. While the first degrees have already been issued, it still remains to establish professional rights by presidential decrees following a proposal by the National Committee for Professional Rights, whose operation, however, has been suspended.

■ Holders of legacy secondary vocational education degrees, i.e. Technical Vocational Schools, are faced with similar problems.

Transposition of Directive 2005/36/EC and setting up the Council for the Recognition of Professional Qualifications (SAEP)

A positive development was the introduction of Directive 2005/36/EC into Greek legislation

concerning the recognition of professional rights to holders of foreign qualifications. The protracted delay in the transposition of the Directive had led to Greece's conviction by the European Court of Justice. The issue of Decree 38/2010 recognized professional rights acquired in a Member State following training that took place in Greece in an institution affiliated with a university abroad. Moreover, the Council for the Recognition of Professional Qualifications (SAEP) was also established, and whose operation is hoped to mark the end of maladministration symptoms, such as excessive delays and ungrounded rejections.

### **REFORM OF THE ASYLUM CLAIMS PROCESS**

The management of the asylum processing system exemplifies the resistance of competent bodies in the implementation of provisions aimed at safeguarding human rights, and the inability of existing structures to respond to pressing situations.

#### **International institutions for protection and failure to implement them at national level**

The intensity of immigration in Greece revealed serious deficiencies in management, both in cases of illegal migration and asylum seeking. The structural failures observed in the management of asylum, however, are not due to the absence or inadequacy of the legislative framework. The integration of EU Directives, which introduced provisions for the reception of asylum seekers and set the minimum requirements for the recognition process of refugee status, provides a sufficient legislative framework. Treating asylum-seeking aliens under the rules of international protection as early as their first contact with the relevant authorities is yet to be achieved.

#### **Peculiarities and prospects for political asylum**

It is well known that the asylum system is under pressure from mixed migratory flows in the border areas. However, no matter how intense the problem may be in terms of numbers, the grave dysfunctions observed in these procedures are due to structural problems. The practice of blanket detention of all aliens entering Greece illegally and the automatic issuing of an expulsion act against them has undermined the very institution of asylum at the critical point of its activation, that is, at the time of initial contact of the asylum seeker with the concerned authorities. Due to the particularities of the situation in Greece, persons needing international protection often lack access to the asylum procedure, while economic migrants try to use asylum procedures in order to legitimize, even temporarily, their stay in Greece. *The selective reception of requests, the lack of information, interpretation, or legal aid all formed the basis for a significant number of complaints. Even after requesting asylum, significant problems are identified in reception conditions and in the level of protection*

*afforded. Finally, a critical finding is that the asylum procedure does not provide the necessary guarantees for a fair and effective consideration of the request.* Given the above observations, the implementation of recent legislative initiatives to reform the asylum system and to establish an independent asylum office remains at stake.

#### **OTHER INDICATIVE CASES OF DELAYS AND RESISTANCES.**

The problems concerning rights that can be attributed to inadequate legal provisions or failure to implement legal provisions by the administration are common. Sometimes, the successive misinterpretation of laws is deemed necessary to be resolved by newer laws, which, in turn, are again likely to be implemented according to varying interpretations, such as in cases of student transfers, or regarding issuing a special certificate of legal residence. Or again, filling the regulatory gap remains a challenge, as in the cases of Greek spouses not residing legally in the country, or the operation of cemeteries. Sometimes, ambitious legislative reforms take the administration by surprise, as in the naturalization processes.

#### **Greek spouses without legal residence before marriage**

The problem remains unresolved of the original granting of a residence permit to third-country nationals, family members of a Greek or EU citizen, who are unable to produce a valid residence document in Greece, or have no valid travel document at the time of request. The issue has already been the subject of the jurisprudence of the European Communities Court, which held that the Directive 2004/38 includes a third-country national who is married to a European citizen and accompanies them, or travels to the host country for the purpose of family reunification, regardless of the place or date of the wedding ceremony and of the way in which the alien entered the host country. The Ombudsman's interventions are in the same direction.

#### **Naturalization**

Ever since being appointed, the Ombudsman has recorded problems created by the institutionalized opacity in the naturalization process, as the lack of reasoning and deadlines made it impossible to attempt any mediation or legality check. This state has radically been changed by Law 3838/2010, which introduces deadlines and the obligation to provide adequate reasoning. However, until the new system becomes fully operational, the Ombudsman monitors the resolution of a great number of outstanding applications, realizing that it will take a long-term process for the complete adaptation of administration to the requirements of a state of law.

#### **DISCRETION: ISLES OF ARBITRARINESS**

The misuse of discretion and failure to provide adequate reasoning are familiar symptoms of maladministration. Especially in matters involving rights, these questionable practices can be classified into three basic categories. First, deviations of decentralization, when decentralized agencies claim that they have a better grasp of local issues in order to avoid supervision, or even to correct the legislator. Secondly, deviations by the local government, when self-governing bodies invoke the lack of institutional control in order to broaden the scope of their regulatory autonomy. Thirdly, deviations in the name of security, when invoking considerations of public safety, which supposedly allow deviation from safeguard provisions.

#### **DEVIATIONS OF DECENTRALIZATION-CONSULATES**

The ingrained alteration of the concept of decentralization of responsibilities can lead to systemic unlawfulness. A good example is consular functions. The consulates, usually backed by the Foreign Ministry, falsely cite the element of a special experiential perception of things as a substitute for reasoning, even in cases where the law leaves no such room.

#### **Entry permit for family reunion or short stay**

According to Directive 2003/86/EC and national laws, the body responsible for examining a request for a family reunification of aliens is the General Secretary of the Region. The consulates are involved only in the preliminary stage to establish the family relationship and supply a reasoned opinion. In practice, however, consulates refuse to issue a visa, either adhering to an initial rejection or carrying out, without any specific justification, a subsequent verification of the existence of a family relationship. Sadly, the Foreign Ministry, citing general concerns about the authenticity of the certificates, expressly refuses to exercise its supervisory powers. It recognizes the consulates' unlimited discretion, exceedingly emphasizing the decisive importance of direct personal contact and ignoring the obligation to state reasons. Similar problems can also be identified in the process of validating a short-stay visa, where some consulates invoke the risk of exploiting the measure, or express broader political and social considerations on illegal immigration, even in cases concerning family members of a citizen of Greece or another EU state.

#### **Determining citizenship**

During the process of determining citizenship, the jurisdiction of the consulates is limited to receiving and passing on the applications and documents. There is, however, a tendency for them to get involved in substance, in excess of their jurisdiction.

Sadly, the Foreign Ministry believes that this involvement by the consulates "is not merely perfunctory, as controlling the content of foreign registration certificates is required". However, any recognition of such power in the consulates would bring the whole citizenship determination system to a complete legal insecurity, in the event that it is demanded from any interested parties to furnish yet more proof of family relationship or origin other than registration certificates.

#### DEVIATIONS OF LOCAL GOVERNMENT–TERTIARY EDUCATION FOUNDATIONS

Regarding tertiary education, the local government gives ground for practices of regulatory autonomy far greater than what the laws actually recognize. However, even against members of the academic community, each University or TEI is still bound by the common rules of administrative procedure, with particular emphasis on those that impose transparency and accountability. In practice, however, the reluctance of the Ministry of Education to exercise its supervisory work significantly reduces the Ombudsman's scope for effective intervention.

##### Justification of faculty hiring

Regarding the selection and evaluation of contracted faculty in universities, a state of complete fluidity and insecurity is noted, resulting from the lack of clear legal provisions. Particularly prominent is the failure to provide information or reasoning for related action.

##### Publishing the regulations for postgraduate programs

Investigating complaints by graduates of post-graduate programs of the University of the Aegean, the Ombudsman found deviation from their legal framework of operation, or even operation of programs without legislative provision, which therefore can not lead to a Master's degree.

##### Jurisdiction of administrative bodies and codes of conduct

Following a complaint for refusal to publish a text by a university professor in the IT network of the foundation, the Ombudsman pointed out that when a question arises regarding the delimitation of freedom of expression for bodies of academic freedom, the opinion of a collective body is required so that the objective and timeless character of the criteria involved is ensured.

#### OTHER DEVIATIONS OF LOCAL GOVERNMENT

Each occurrence of maladministration in self-governing bodies brings back to the fore the issue of supervision: to each self-governing body that misinterprets the scope of its autonomy corresponds

a supervising authority that fails to exercise its powers, or performs them incompletely. In cases regarding lawyers and other professional associations, the sense of self-reliance in an entrenched trade union is reinforced by the self-confidence that comes from the union's members being elected to office.

##### Disciplinary councils of Lawyers' Associations

There was a noticeable increase in complaints that highlight the problems in the operation of disciplinary councils in several bar associations in Greece, which moreover avoid any meaningful cooperation with the Ombudsman. A restructuring of the operation of these councils is required so that the disciplinary proceedings may become reliable and effective, without suspicions of partiality and opacity.

##### Subscription to professional associations

Professional associations often involve considerations of ulterior motives in cases of new memberships. A recent example is the refusal by the National Association of Physiotherapists to grant certificates of registration to a Hungarian university graduates who legally practised their profession since before the founding of the association. The Ombudsman pointed out that the denial lacks a legal foundation and causes moral and material damage.

#### DEVIATIONS IN SECURITY

The Ombudsman has repeatedly been involved with invoking reasons of public law and order as a legitimizing argument for restricting rights or circumventing statutory guarantees. This invocation is not automatically abusive: the legislature has often explicitly provided for the possibility of taking into consideration such reasons, certainly, however, with similar reasoning. However, in many other cases, the administration expects the simple invocation of safety reasons to justify the inclusion of all interested persons in the worst-planned treatment without an individualized assessment and reasoning.

##### Permission to an expelled EU citizen to return

A Romanian citizen who was deported by court order requested from the Minister of Justice to obtain permission to return to Greece for serious family reasons. The application was rejected "because of the nature and gravity of the offenses for which he had been convicted". However, when it comes to EU citizens, there must be "genuine, current, and sufficiently serious threat affecting a fundamental interest of the state," according to a directive; therefore, it does not suffice to invoke the gravity of the offense. Generally, the Ombudsman finds a lack of criteria in the process of issuing expelled citizens with re-entry permits.

**Prisoner manual body cavity search**

In many prisons, according to standard practice, incoming female prisoners are subjected to forced control of body cavities, temporary isolation, and defecation before others or before the camera as a method to ascertain whether any of them carry narcotic substances. The Ombudsman asked for these derogatory practices to stop and for appropriate accommodation to be arranged for the supervision of those prisoners who are deemed justifiably suspicious. After the Ombudsman's intervention, a decision was issued by the Deputy Minister of Justice, whereby the inner-body check or radiological examination will only be carried out hereinafter in cases of reasonable individualized suspicion, ordered by a judicial officer, and performed by a medical doctor.

## SOCIAL PROTECTION, HEALTH AND SOCIAL SOLIDARITY

### SOCIAL RIGHTS IN TIMES OF CRISIS

In *Annual Report 2009* it was noted that the Ombudsman's activity took place in an environment of economic downturn and that "the need for measures to protect citizens' rights, particularly those of vulnerable population segments, becomes imperative". A year later, the overall economic circumstances have deteriorated, and dealing with them required taking severe measures that gravely affected the already fragile or vulnerable financial status of citizens. Moreover, no scope for optimism seems to exist, as unemployment, which is a key factor in developments in social protection, is expected to rise further due to the negative economic growth rate.

The available data on social security spending (old-age pensions, health-care expenditure, disability benefit expenditure, family, housing and social exclusion) indicate that they are at the level of 25% of GDP and consistently close to the EU average.<sup>1</sup> The combined analysis of data has led many researchers to conclude that there is ample scope for improvement in the social protection, health and social solidarity systems by upgrading the quality of the services provided, without necessarily a corresponding increase in funding.

*Based on the above, a fair and free from maladministration operation of the governmental services proves to be extremely important.*

Compliance with the rules of administrative procedure and administrative law principles helps to foster relations of trust between the citizen and the administration and to strengthen the image of good governance to the citizens. The fair, transparent, reasoned and impartial exercise of power provides citizens, among other things, with the ability, first of all, to diagnose whether a specific act that affects them is lawful and to accept it, even if it is not

positive for their demands. Finally, proper and timely adoption of administrative acts for granting pensions, lump sum benefits and sick pay is expected to offset the loss of income brought about by the exercise of fiscal policy. Equally important in this respect is also the smooth operation of public health system agencies, in order to avoid recourse to private health and further economic burden on society.

Therefore, presenting this year's activity of the Social Protection Department has focused on highlighting the importance of both the quality of the legal framework for the proper and efficient operation of social administration and of how this is implemented by public agencies. In order to address the issues posed for investigation, the Ombudsman has initiated – in addition to proposals to address gaps, inconsistencies and ambiguities in the legal framework – interventions to take regulatory or organizational measures to implement the stated legislative will and effective enjoyment of social rights.

### SOCIAL SECURITY

#### OVER-REGULATION OR UNDER-REGULATION AS A SOURCE OF MALADMINISTRATION

Due to the fragmentation of regulation in the area of social security, it is de facto impossible to cover all the cases that might arise; consequently, interested parties lose their social security rights due to lack of regulation. For instance, it has been brought to the Ombudsman's attention that policyholders who continue to receive a pension by the State in their own right after the adoption of Law 3620/2007 were vindicated by their main social security entity (General Accounting Office – GLK) regarding the transfer of 25% of the primary pension of their deceased spouse. Their claim to the *Supplementary Fund for Civil Servants* – by choice – for a double supplementary pension by the State (that is, in their own right and by transfer) was, on the contrary, refused on the grounds that there was no provision in the fund's statutory articles nor any special legislative provision to allow this. A consequence of this is that this class of beneficiaries do not receive the amount of supplementary pension that corresponds to their main pension (cases 126704/2010 and 131907/2010). Another consequence of the complexity and shortcomings of the legal framework in the area of social security is the difficulty of insured citizens to ascertain their rights and obligations. This, coupled with lack of information on the part of the

<sup>1</sup> IKA-ETAM-Social Insurance Institute–Unified Insurance Fund of Employees

OAEΕ-Security Organization of Liberal Professions

ETAA ΤΣΜΕΔΕ–Unified Insurance Fund of Independently

Employed-Engineers' and Public Contractors' Pension Fund

OFA–Agricultural Insurance Organization

TEAYEK–Ancillary Insurance Fund for Retail Store Employees

<sup>1</sup> Hellenic Statistical Authority (EL.STAT), European System of Social Protection Statistics (ESSPROS).

administration, leads to repeated disputes by interested parties of decisions by social security entities. Further, confusion prevails even in the administration itself, thus diverse, even contradictory, interpretations are supported by various administrative bodies regarding the applicable law or even its purport and its implementation is uneven.

A related case was that of a citizen who filed a complaint with the Ombudsman after he had reached state pension age at OAE-TEVE and IKA-ETAM, whereas at OGA, where he continues to be insured, he is eligible for a complete pension when he reaches 65 years of age. In a question posed to OAE-TEVE and IKA-ETAM for the possibility to qualify for a pension by having the period of his military service recognized and paid up, IKA-ETAM gave a positive reply, whereas OAE-TEVE rejected it, noting that, "The person insured to one social security entity who has received, or is about to receive, a pension from another entity may get the period of his military service to count towards his pension age qualification, but this period is valid only for increasing the amount of pension and not towards the pension age". Therefore, for some 25 years now the paradox was in place that some policyholders who had the same claims towards social security with the person who complained to the Ombudsman were entitled to a second pension by having their military service period recognised, simply because they happened to have IKA as their last social security entity, or a different entity, whereas others lack this possibility because their last social security entity was OAE-TEVE (case 19454/2008).

Finally, the exercise of pension rights can be ruled out because of failure to comply with the procedure provided by the Constitution. In particular, Article 73, § 2 provides that bills that refer to granting pensions and requirements thereof, are submitted by the Minister of Finance after consulting the Court of Audit. Moreover, it is stipulated that provisions related to issues of pension should be included only in bills specifically governing pensions, rather than laws designed to regulate other matters. The case below was brought to the Ombudsman's attention, and illustrates the problem. Under Law 3585/2007, the body of the Greek rural police force was re-established, and the possibility was provided for of a permanent transfer of certain categories of civilian employees to permanent positions of agronomic staff in the Greek rural police force. Some of the civilian officials who transferred to this service qualified for a pension and submitted a request to GLK to claim a pension. When his pension documents were produced, it transpired that the time he had served in the Greek rural police had not been taken into account. The reason was that the aforementioned Law regulated other matters and was not a specific law on pension made by the Ministry of Finance. Therefore, the period from the transfer of civil servants to this body until leaving it could not be considered as pensionable service,

neither could their pension be calculated according to the earnings defined by Law 3585/2007, as there was no equivalent pension provision. This issue was finally resolved by Article 13 of Law 3865/2010 governing the reformation of the public pension system (case 122380/2010).

### **UNLAWFUL REGULATION OF SOCIAL SECURITY ISSUES BY CIRCULARS ISSUED BY SOCIAL SECURITY ENTITIES.**

The ambiguities and gaps that characterize the legal framework for social security often make it necessary to issue a circular of interpretive guidelines. During his investigation of citizens' complaints, *the Ombudsman found that serious problems are often caused to insured citizens by circulars that modify, rather than specify, the social security law provisions. This practice violates the principle of legality because amending the legal framework can only be effected by a later legitimate formal or substantive law, rather than by a circular of the opposite purport.*

A very characteristic case was that of circular 113/2009 by OAE-TEVE, whose immediate revocation or modification was requested by a large number of members of the organization – some 300 – in their complaints to the Ombudsman. According to this circular, freelancers were subject to mandatory OAE-TEVE social security, although under the current social security law they were not required to be insured by OAE-TEVE if: i. They live in areas under 2,000 inhabitants, and ii. They meet specific income criteria (Article 9 of Law 3050/2002). The Ombudsman's investigation revealed that the OAE-TEVE administration made an unauthorized and unlawful change by a circular to a social security provision that was favourable for some freelancers at the expense of their rights as insured citizens. To comprehensively address the issue, the Ombudsman made an intervention in writing to the OAE-TEVE Commander and the General Secretariat of Social Security and submitted a report to the Minister of Labour and Social Security, recommending the immediate withdrawal of the circular, as any amendments to the relevant law should be effected by law. In these interventions it was emphasized that any new legislation should not contain retroactive provisions regarding the overthrow of provisions that apply to qualifying for social security under OAE-TEVE and should respect the principle of the citizen's justified trust. The competent bodies accepted the Ombudsman's self-evident recommendation and made legislative changes to the current legal framework in line with the contents of the 2009 circular. This legislative amendment is Article 25 of Law 3846/2010. As a result of the Ombudsman's intervention, the said circular of 2009 ceased to apply in practice (related cases include (but are not limited to) 123517/2010, 123645/2010, 123698/2010, 123838/2010, 123896/2010).

## ORGANIZATIONAL PROBLEMS—MALFUNCTIONS OF SOCIAL SECURITY ENTITIES

It is almost a rule for social security entities to exceed the 50-days period provided by Article 4, § 1 of Law 2690/1999 as replaced by Article 6, § 1 of Law 3242/2004, on handling citizens' cases by the administration. The result of the mismatch between the timescales laid down by law and the capability of social security entities to fulfil them is for social security entities to operate under "a permanent state of illegality", in violation of the statutory deadlines, or even failing to issue individual administrative acts, in spite of their statutory obligation to do so.

A typical case of malfunction, which prevents the social security entity from timely responding to the obligations assigned to it, eventually failing to meet them, is the problems encountered in the payment of provisional pension within fifteen days from the submission of the application for retirement due to old age or death, which is equal to 80% of the pension to which the claimant is entitled. Citizens complained to the Ombudsman that *ETAA-TSMEDE* did not apply this provision. Indeed, the social security entity responded in writing to the Ombudsman that in addition to the already large number of pending applications for pensions were added requests for temporary retirement both by people who had already applied and were awaiting the issue of a pension act and by others who submitted a request for the first time. Due to the inability of the fund agencies to meet the additional workload, the fund board illegally decided not to grant provisional pensions (case 14004/2009).

*A vast number of complaints submitted to the Ombudsman continues to concern the problem of delays identified in: i. issuing decisions for granting supplementary pensions, ii. sending the participation time to the relevant funds in the context of successive social security, iii. clearing requests for issuing a certificate of the period of time eligible for a pension and social security compliance, and iv. controlling the data entered relating to employer payment. The delay in many cases amounts to more than two years from application submission, regardless of the type of request, and is even longer in cases of successive social security.*

An instance of this is the case of an insured person who submitted an application for a pension to *TEAYEK* on 19.11.2007, considering that she qualified for a pension. On 8.6.2010, with a 30-month-long delay, she was notified of a decision according to which she must recognize and buy 20 days as supplementary social security in order to complement the general and special retirement requirements. At the same time, the decision included a note to the effect that, "Qualification for a pension arises and the pension is paid from the first day of the month following payment". On 16.6.2010, the insured person paid the amount due and on 21.6.2010 she submitted a request to the fund asking

for her pension to apply from the statutory deadline for clearing the application after submission date (2007). The Ombudsman, in a letter to the fund, stated that if the delay in applying for admission to voluntary social security was due to incorrect information to the insured by the social security entity obligated to provide information, this delay cannot be detrimental to the insured person by shifting the start time of the pension due (case 129761/2010).

## THE RIGHT TO WORK—UNEMPLOYMENT BENEFIT INELIGIBILITY FOR UNEMPLOYMENT BENEFIT

When a plan for group redundancies was implemented by a multinational company operating in Greece, the Ombudsman received complaints by laid-off persons whose request for a regular unemployment benefit had been rejected by *OAED* on the grounds that their employment relationship was terminated by voluntary resignation, rather by termination by the employer. However, the employees' individual "agreements" did not concern the termination of employment itself, and it being a layoff in nature, but the conditions under which it occurred; in both the proposal for entering the program and the contract, the contract termination was viewed as a result of termination by the employer (case 128093/2010).

Interpreting the provisions governing the unemployment benefit, under which granting a benefit is rejected where the contract was terminated by voluntary resignation, the administration, specifically *OAED*, ignores the provisions of labour law that govern the concept of dismissal. Rejection of the policyholders' claims bypasses the—legally and factually—critical fact that the employees lost their jobs against their will for reasons dictated by the business decisions of their former employer. From the point of view of social security legislation, in the case of layoffs for economic reasons, the occurrence of the security risk is, more so than in any other case, distinct from the insured individuals and their actions.

## NON-PAYMENT OF SPECIAL UNEMPLOYMENT AND SOCIAL AID BENEFITS TO REDUNDANT EMPLOYEES

To address the social risks facing employees after termination of their contract, legislation may proceed under benefit administration and the welfare state to take special measures and confer rights. *Issuing regulatory acts does not suffice for the implementation of these measures and the effective exercise of rights by beneficiaries; fiscally appropriate recording of related expenditures is also required.*

■ A typical case of failure by the administration to take the required steps and of undermining the will of the legislature is that of former employees of Olympic

Airlines S.A., Olympic Airways – Services S.A. and Olympic Aviation S.A., currently investigated by the Ombudsman. As soon as these companies had been placed under special liquidation status and employees' contracts were terminated, the legislature stipulated a lump sum payment of social assistance for severance pay, which the liquidated companies were unable to pay. This amount, the amount of which varied per beneficiary based on the monthly salary and years of service, was due for payment by local OAED agencies within two months of the beneficiaries' submitting their applications. On repeated reminders by the unemployed, OAED responded that it would pay the benefit after the transfer of related funds from the state budget.

The Ombudsman pointed out in writing to OAED that non-payment entails an omission of expected legal action and creates conditions for civil liability. Following the Ombudsman's remarks, a joint ministerial decree was issued and all the redundant persons were paid the amount of 15,000 euro, which falls short – in most cases – of the total amount provided by the legislature to be paid to all redundant persons once. The beneficiaries' right was further undermined by adding to the initial provision of the law of a provision for the possibility to fulfil the requirement with Greek bonds according to the conditions and procedure to be established by a decree, which has not yet been issued (case 12555/2010).

## HEALTH SICK PAY

*The completeness and efficiency of social security coverage for sickness depend on the quality of the legal framework, combined with its implementation by the administration, as regards their actual enjoyment.*

■ Specifically, because of the content of related provisions a class of persons may not be provided for as beneficiaries of certain benefits, or, similarly, the extent of provided benefits may be limited in certain categories of beneficiaries.

A case in question, of unjustified and therefore unlawful, in the Ombudsman's opinion, exclusion of a beneficiary class is the provision of maternity benefit access only to spouses of IKA members and not to their single minor daughters. Although single minor daughters qualify as family members of an insured or retired person for full and equal access to the medical care otherwise provided by the fund to the indirectly insured, a special form of which is delivery care, administered in the form of childbirth benefit, the fund refuses to satisfy related requests (case 124011).

■ As for limiting the extent of provided care, for instance there is no coverage of the total hospital cost by OAEE for hospitalization due to childbirth after abnormal development of the pregnancy. In

these cases, a childbirth benefit is awarded only for the first four days of hospitalization and the standard medical fees apply for the following days. However, in cases where pregnancy and childbirth develop complications, with symptoms beyond the usual symptoms whose gravity verges on disease, the treatment should, according to the Ombudsman, be similar in scope of social security coverage to cases of hospitalization due to sickness (case 124184).

In addition, implementation of the obligation of state care for its citizens' health is compromised when the existing legal framework is specialized and applied by management based financial criteria.

■ Indicative case is that of determining the lump sum OGA of 180 euros to be paid for medically necessary use liquid oxygen, regardless of the amount used or the cost that has been requested (case 15782/2009). To determine this amount is typically a claim by OGA, abstract criteria such as the "average market price" and "sample of thousands of policyholders." Moreover, the definition of such a small amount compared to the actual cost, which in some cases may be closer to 1,000 euros per month, touches the core of the rights of policyholders and pensioners of the organization.

## PROBLEMS OF HEALTH CARE SERVICES

### Transplant units

The malfunctioning of health services in the field of organ transplantation is particularly critical due to the limited number of available transplants and the severity of the health status of patients awaiting transplantation. Among other things, a licensed transplant unit must have an organ reception team, and consequently a transplant implementation team, constantly on standby to be able at all times to allow continuous evaluation and utilization of available grafts for the benefit of the candidate recipients, who, having exhausted all previous therapeutic methods, wait for the appropriate graft to be identified and received. The implementation of this obligation is permanent and not subject to variations depending the time period or sufficiency of the human resources of the units. *Monitoring the transplant units to detect failures and take steps to remedy them is therefore critical.*

### Organisational problems of ambulance services (EKAV)

Under normal procedures, conversations carried out by the EKAV coordination centre, which manages calls and coordinates the movement of ambulances in its area of responsibility, are recorded. However, producing a transcript of these calls can be very difficult for technical reasons. During investigation of a complaint it emerged that the reproduction of calls by the ambulance coordination centre was not feasible due to the failure of the recorder, which could not be repaired by the supplier, because this model had been discontinued (case 6308/2009).

Also, during transportation of patients by EKAV ambulances and mobile medical units, the crew and the on-board doctor fill out specific forms – either an individual sheet of transportation by ambulance or a patient transportation card by a mobile unit. The nursing service is responsible for maintaining documents relating to the transportation of patients by ambulance, the daily movement of vehicles, the incident management by the head office and any other documents relating to its activities; the medical service, which maintains the relevant archive, is responsible for providing copies of the forms filled out by EKAV doctors. Because of this, confusion may arise in the person concerned regarding the status of the requested copy and the agency responsible for providing it, which is wrongly invoked to justify excessive delay in meeting such requests. Finally, in the context of an investigation of a complaint it emerged that the document requested had been lost. As no satisfactory justification was given in writing for the incident, the Ombudsman called for an administrative investigation into the circumstances of the loss, which is pending (case 123016/2010).

### PROBLEMS OF HEALTH CARE PROFESSIONALS

The Ombudsman became especially involved as concerns the age limits as a qualification for applying for medical positions in NHS (ESY). Specifically, the secretariats of the recruitment and assessment boards do not convey the files to the rapporteurs so that they may prepare their proposals, and the boards do not process the dossiers of candidates who are over 45 years of age at the time of the deadline for application submission. However, the age limit provision is against article 26 of Law 3304/2005, which incorporated into Greek legislation the Directives 2000/43/EC and 2000/78/EC of the Council of Europe on the principle of equal treatment in employment and occupation in both the private and public sectors. The Ombudsman has approached the leadership of the Ministry of Health about this, asking for the reform of the legal framework in line with the requirements of equal treatment in employment and occupation (cases 5817/2009, 8516/2009, 18892/2009, 124018/2010, 124748/2010, 126398/2010, 128555/2010).

### SOCIAL SOLIDARITY

#### SOCIAL SOLIDARITY BENEFIT FOR PENSIONERS (EKAS)

All low-income old-age, disability and death pensioners who are members of the main social security entities and NAT, except for OGA, and whose annual income does not exceed certain thresholds (income criteria) are eligible for EKAS. The administration of EKAS to retired state employees was enacted by a legislative act, which was ratified by Law 2453/1997. The amounts related to the income

criteria are adjusted by a Joint Ministerial Decision (JMD) on an annual basis, taking into account the increase of retirement income, with reference to the income corresponding to a pensioner who receives a full minimum-level age retirement from IKA without any added benefits. The fact that the amount of EKAS has been kept at 2008 levels, coupled with the non-payment, after Laws 3845/2010 and 3847/2010 came into effect, of one additional allowance as a Christmas benefit and half as an Easter benefit, gravely and disproportionately affect low-income pensioners of this category compared to other income groups.

Another problem is the delay noted, especially in recent years, in the adoption of the JMD mentioned above. Thus, there is delay in paying benefits to new beneficiaries, who consequently are deprived for a long period of time a key source of their livelihood, even though they retroactively receive it starting from the beginning of the year. Moreover, failure to adopt the JMD, which is required in order to award the benefit, results in new beneficiaries being unable to benefit from paying a lower contribution for pharmaceutical care, which is provided for the beneficiaries of EKAS.

Finally, the difference in the retroactive payment of benefits ranges from two to five years, depending on the laws governing each organization, a fact that highlights the need for a uniform treatment of this issue by all involved entities. Specifically, a legislative initiative is needed, along the lines of how the issue has been resolved by the largest social security entity in Greece, IKA-ETAM. By circular 55/2002, this social security entity has agreed that all claims for eligibility for EKAS are barred after five years.

#### TOTAL-DISABILITY BENEFIT FOR AGE PENSIONERS

While investigating a complaint, it was found that the legislative framework governing eligibility for total disability stipulates that only pensioners for disability and death are eligible, excluding old age pensioners (except for the blind) without specific reasons, even if they qualify for total disability. Therefore, the criterion for eligibility for the total-disability benefit is not the status of total disability, but, rather, the reason for retirement. Consequently, the Ombudsman recommended the amendment of Article 42, §.3 of Law 1140/1981<sup>2</sup> so that – taking into consideration the constitutional requirement for equality of all Greeks before the law (Article 4 of the Constitution) – the benefit be extended to all pensioners, regardless

<sup>2</sup> Specifically, it was recommended (see *Annual Report 2008*, p. 137) to amend this article as follows: "The sum of the pension awarded to pensioners of funds under the Ministry of Employment and Social Protection is augmented by 50% if the pensioner is, according to a decision of the competent health care committee, constantly in a state that necessitates regular supervision, care and support by another person (total disability)".

of reason for retirement, who, faced with serious health problems as certified by the competent health committees, have the same needs for supervision, care and support by another person. The Actuarial Division of the General Secretariat for Social Security replied to the Ombudsman's related document that, "The annual economic burden only for IKA-ETAM, without including the cost of other entities, is estimated at 70.4 million euro". With this reply, the focus shifts to the fiscal facts; other aspects of the issue, which must also be taken into consideration, are overlooked (case 6718/2007).

## Quality of life

### THE ENVIRONMENT AND QUALITY OF LIFE UNDER A FISCAL CRISIS

*The Greek economy faced a deep recession and a major fiscal crisis in 2010. This affected the entire range of cases that the Quality of Life Department investigated.* The Ombudsman's diachronic findings regarding administrative weaknesses caused by understaffed public services and insufficient resources are currently confirmed and enhanced given that the main negative effects of the economic crisis on the quality of life are:

- Inadequacy of funding for compensation of citizens in cases of expropriation or freezing of property and also lack of funding to support staffing and operational expenses of public services
- The reduction of governmental funding for environmental protection projects and quality of life improvement. Moreover, the reduction of private investments in environmentally friendly technologies and in taking measures to achieve compliance with the approved environmental terms.

### THE INSTITUTIONAL REFORMS IN AN UNCERTAIN ECONOMIC ENVIRONMENT

The promotion of new institutional reforms represents an important change. The administrative reform which reordered the levels of local and decentralized administration extended significantly the responsibilities of local administration regarding environmental issues and improvement of citizens' life quality.

In addition, promoting a new development model based on "green growth" led to the establishment of a new law concerning the acceleration of renewable energy sources (RES) development. At the same time, another law was enacted in order to regulate the illegal uses of semi-open building spaces. The investigation of relevant cases and a careful reading of the two laws, revealed various deficiencies in enforcement of these laws and general problems of legality.

#### ■ Photovoltaic (P/V) Stations

During the investigation of cases regarding the installation of photovoltaic (P/V) stations, a main problem was the administration's failure to process the necessary licensing approvals in a timely manner. One representative case, which had a positive outcome after the Ombudsman's intervention, was the delay of the Santorini Planning Agency to issue "a

building permit for a small-scale project" in order to install a P/V station in an un-zoned area (outside city

limits). The Ombudsman noted that accelerating development of renewable energy sources is a national objective. Therefore, the Planning Agency should work towards speeding up these processes, instead of unjustifiably delaying the evaluation of submitted requests by prospective investors.

#### ■ Semi-open spaces

The new law seeks to address the widespread illegal conversion of semi-open spaces to spaces of main use. The Ombudsman received a small number of complaints regarding this issue, which reflects the reduced number of owners who went through the legalization procedure by the end of 2010. The main issues faced in these cases were the failure to issue clarifying instructions in a timely manner and the weakness to deal with cases that are not clearly foreseen in the legislative framework.

### THE LAST YEAR COURSE VIA THE QUALITY OF LIFE DEPARTMENT ACTIVITIES

The urban environment proved to be, once again, the most extensive thematic category of the submitted complaints. The main issues of concern included urban planning as well as problems arisen from illegal construction and building permits.

Regarding illegal construction, delays are observed in the:

- Responsiveness of planning services in conducting on-site inspections
- convening of the committee for complaints or failure to form it
- prosecution, certification and submission of fines imposed to the appropriate tax authorities.

Besides the delays, other important problems are:

- the inadequate justification of the field-survey reports. Thus, the risk of being annulled by the courts is possible and consequently the necessity to repeat the process
- the repeated postponements which lead to the excess of the deadlines given for the examination of complaints
- the weakness to set up demolition crews on the grounds of lack of credit.

Regarding the natural environment, most of the complaints are related to water resources and

drinking water quality. Other problems include delays in carrying out acts of classification by forest services, systematic disposal of excavated material and waste water in streams, and degradation of foreshores and beaches due to illegal activities, in addition to delays in the defining of foreshore and beach zones.

In addition, the Ombudsman held workshops with the Ministry of Infrastructure, Transport and Networks in order to promote his proposals. Furthermore, he corresponded with the Ministry of Culture and Tourism to resolve the long pending cases.

■ The Ombudsman implemented an action for environmental education in primary and secondary schools, within the framework of the project "*United Nations Decade of Education for Sustainable Development*". The main goal of this action is, through the Ombudsman's experience, to inform and raise the awareness of students regarding their right to a clean environment as well as their obligation to protect the environment.

The Quality of Life Department proposed three main topics: i. public- communal spaces ii. Solid-waste and wastewater management, and iii. Water quality. Information regarding the Department's activity in these areas was posted on the website for the environment.

## **FIELDS OF ACTION**

### **THE RIGHT TO A HEALTHY ENVIRONMENT: THE PROTECTION OF HUMAN HEALTH AND THE ATTITUDE OF THE STATE**

Considering the correlation between environmental pollution and its negative impact on health, the Ombudsman aims not only to reveal maladministration but also to raise awareness of the competent authorities in order to take immediate and effective measures for protecting human health. The most important relevant cases that the Ombudsman investigated in 2010 are related to the quality of air and water resources. A general conclusion is that although the nature of the problem and the form of maladministration are usually found on time, there is difficulty in achieving an ultimate solution for the problems and taking corrective action.

#### **Drinking water quality**

The Ombudsman has often stressed that the resolution of cases related to the quality of drinking water requires regular and systematic monitoring of water quality, implementation of technical projects and allocation of funds to improve infrastructures. Goals like the abovementioned seem to be reached only after a long-term mediation. An additional positive result of the Ombudsman's mediation is that the public health authorities conduct faster the necessary sampling and analysis to evaluate water

quality and perform sanitary identification projects. However, a major problem remains the excessive delay of the municipalities to implement restorative measures.

#### **Representative cases**

- The Municipality of Kithira overcame the microbiological pollution problem of the water which existed in many communities by installing filtration and disinfection equipment and restoring the failures of the watering network.
- The Municipality of Oinofita improved the effectiveness of the rapid-refinery water plants by the improvement of its operational monitoring and the change of the filler material.
- Special difficulty is observed in the effectiveness of water quality monitoring on the islands due to the excessive delays in the shipment of samples, since the water analysis is conducted by the Central Public Health Services instead of being conducted locally.
- The water supply problem of Santorini Island was related to a legal difficulty that did not allow the positioning of a seawater desalination plant, which was the only recommended solution. According to the legal framework, specific restrictions are set regarding the siting of industrial plants on the islands. Thus, only non-disturbing facilities are allowed to be set while desalination plants are considered as low- or medium-disturbance facilities. The Ombudsman proposed to accelerate the amendment of the legal framework in order to allow the siting of desalination plants in Santorini. Taking into account the economic crisis in Greece, the Ombudsman pointed out that promoting the development through infrastructures implementation with respect to the environmental legislation should be a top priority.
- Another important issue under investigation is the legality of the environmental terms approval of a photovoltaic station situated within the protection zone of Lake Yliki that constitutes the water supply for Athens. The relevant legislation regarding the protection of the water supply for the capital sets specific restrictions for implementing projects within the protection zone and only after the approval of the competent authorities. In this specific case, the environmental terms were approved without taking into account the negative opinions of the competent authorities and as a consequence there was a law violation. The Ombudsman, citing the Precautionary Principle, pointed out that the potential pollution of a valuable resource, such as the water supply, makes the siting of a P/V station inside the specific zone a high-risk installation. This is due to the fact that any possible failure of the project may have a major environmental impacts. In addition, the Ombudsman insisted that the construction of a project in an area protected under a specific legal framework should be allowed only if two critical requirements are fulfilled: i. the project should be completely safe for the environment and human health and ii. Excessive examination of the

alternative solutions should have proved that the construction of the project in another location is impossible.

### Air quality

The Ombudsman has highlighted the lack of a reliable mechanism for the monitoring of air quality. He has also recommended the installation and operation of air quality monitoring stations under the responsibility of State and the need to increase staffing of the competent authorities. Although this issue seems to remain a low-priority for the State, there were some positive results at the local level. For example, in Kozani and Florina prefectures some measures were taken to deal with the significant air pollution problem due to the operation of power stations by the Public Power Corporation S.A. The administration's actions were:

- Heavy fines were imposed to the Public Power Corporation (PPC)
- Kozani Prefecture conducted systematic audits to the Power stations in order to check if they operated in compliance with the legal requirements
- State funds were given for upgrading the Air Pollution Monitoring Network in the Kozani prefecture in the framework of a project for the period 2007-2013
- There was a positive response by the Western Macedonia Region to undertake the operation and supervision of the pollutants measurement network belonged to PPC
- An epidemiological study was elaborated for the Kozani prefecture

## ILLEGAL OPERATION OF ENVIRONMENTAL INFRASTRUCTURE FACILITIES

### Wastewater Treatment Plants

*The main problems of these projects are related to the permitting procedure and the lack of compliance with the approved environmental terms.* Moreover, the administration's refusal to provide environmental information to the citizens usually indicates an attempt to conceal the real problems.

### Representative cases

- Following the Ombudsman's intervention, there was a partial improvement in compliance with the approved environmental terms of the wastewater treatment plant in Oinofita municipality.
- The wastewater treatment plant in Keratea-Lavreotiki municipality did not have an operational permission. Its operation was also not in compliance with the environmental terms and as a consequence the prefect imposed a fine to the competent authority. Moreover, the environmental terms were not renewed in time after their expiration.
- There was a three-year delay to issue a permit for the disposal of wastewater produced by the North

Kynouria treatment plant. In addition, a difficulty in evaluating the degree of sea pollution was observed due to the fact that sampling analysis was not conducted with the required frequency. The Ombudsman recommended the coordination of relevant authorities in order to identify alternative ways of wastewater disposal until the problem is resolved.

### Port infrastructures

There are several cases regarding illegal port facilities in which permitting procedure starts after their construction. For example, the port of Volos operates without approved environmental terms while administrative sanctions have been imposed due to violation of environmental legislation regarding air pollution, disposal of solid waste and hazardous waste management. In other cases, such as the illegal small port at Vromopousi in Keratea, ex-post legitimacy was impossible. The only solution would be the demolition of illegal facilities, which unfortunately was extremely delayed.

### Positive development

The Elefsina Port Authority issued recurrent permits allowing tankers to remain anchored in Pachi Bay of Megara. This occurred despite the fact that the Supreme Court had forbidden tankers to anchor until a special regulation would be enacted dictating specific requirements for environmental protection. Following the Ombudsman's intervention, the port authority complied with the judgment, until the issuance of the Special Regulation for the Port.

## DEGRADATION OF URBAN LIFE: VIOLATING THE RULES FOR COHABITATION

The Ombudsman's experience for upgrading urban life shows that in many cases it is necessary to review existing land uses and permitted activities. Regulatory and legislative arrangements are also required for a comprehensive settlement of a district's problem which demands states legal initiative and political decision.

### Athens historical centre

The Ombudsman's investigation highlighted the following problems:

- Misuse of approved land uses
- Difficulties of downtown businesses to operate in a safe environment due to increased crime and illegal activities
- Illegal operation and the authority's inadequate control regarding a significant number of establishments of sanitary interest (public health issues) that may be gathered in specific areas,
- Depreciation of urban equipment and public (communal) areas, lack of social infrastructure and inadequate maintenance of the existing ones
- Inadequate hygiene and sanitation conditions due to the increase number of homeless people, and

immigrants who stay in large groups in small apartments.

In order to improve day to day life, the standard of living within the historic centre of Athens, and the gradual restoration of the area, the Ombudsman recommends:

- Strict and systematic controls for the elimination of illegal activities and audit operation of establishments of sanitary interest in order to impose any kind penalties if necessary
- Immediate cessation of activities that violate health and urban planning legislation
- Regular maintenance of urban equipment and intensify the cleanliness and sanitation of public-communal areas.

In addition, it is necessary to promote legislative and regulatory measures and incentives, in order to upgrade urban environment, strengthen social cohesion and foster the economic regeneration of the area.

The Ombudsman also recommended the revision of building regulations and land uses in order to encourage and support citizens to become permanent residents of the city and consequently discourage activities that promote social exclusion and ghettoization.

### **The historical centre of Kos**

The Ombudsman's ongoing investigation evaluates the legality of operation of establishments of sanitary interest in the historical centre of Kos Island. The investigation revealed:

- violations of approved land uses
- lack of required approvals by the responsible Archaeological Service
- poor cooperation between regional Ministry of Culture & Tourism agencies and the Municipality of Kos
- unsystematic control of establishments that do not cope with the operating terms and
- ineffective policing of the area.

### **Illegal installation of billboards**

*The Ombudsman considers that it is necessary to adopt specific criteria for the installation of billboards based on traffic safety and landscape aesthetics. It is also considered that the law should be specific for the fine that has to be imposed for illegal installation of billboards and foresee a specific penalty for maintaining illegal billboards.*

The main problems found are:

- The illegal placement and maintenance of a large number of billboards
- Administrations negligence and/or inaction to **a.** initiate legal provisions and dismantling-removal of illegal billboards as required, **b.** impose the fines

required by law, which is an obligatory and not optional responsibility (used as an excuse by administration), **c.** justify decisions that impose the fine, otherwise they may be cancelled by the administrative courts.

In addition administration, should impose fines that are in accordance with (ie. substantial the advertising agencies profit to enhance the preventive effect of the fine.

There was a positive response by the Attica and Central Macedonia regions, which committed to dismantling illegal billboards in the areas of their responsibility. Positive responses also came from some municipalities regarding dismantling billboards and imposing fines. The Municipality of Athens responded positively and recorded the illegal billboards and forwarded the relevant list to all the competent authorities.

### **ASPECTS OF ADMINISTRATIVE PATHOGENESIS**

Issues that affect service within the Ombudsman:

- Understaffing and inadequately trained staff
- Lack of automation and logistical means
- Unsatisfactory training of personnel
- Ineffective communication among the responsible authorities
- Overregulation and complexity of existing legislation

The following are some characteristic examples from various public services:

#### **Urban-planning Agencies**

*Main problems observed are the delays in issuing permits for building constructions and initiating the procedure for illegal buildings and constructions due to:*

- the complex and confusing legislation for urban planning, which allows conflicting interpretations and seemingly legal arbitrariness
- shortage of information from services
- incomplete registration and delineation of areas that are protected with special provisions
- delays in the implementation of urban and land use planning
- human resources and informatics shortages

As a result of the above low-quality services are provided to citizens. This is even more crucial since legislation has been altered significantly and thus public services are not ready to deal with the new challenges and help citizens.

#### **Forest Services**

The Piraeus Forest Service showed an excessive delay in issuing decisions characterizing the areas nature which would dictate if it is a forest area or not. The delays were due to the lack of staff, increased responsibilities, excessive workload for the few remaining employees and poor mapping of forest land. The pending decisions were finally issued after

the Ombudsman's intervention.

### Archaeological Service

The responsible Archaeological authority had delayed, for years, to conduct excavations on a specific property located at the boundaries of an ancient cemetery in Thermi at Thessaloniki. The authority cited as an excuse for the delay, the lack of statutory criteria that would determine the time limits for concluding an excavation in a private property. After the Ombudsman's mediation a positive outcome was achieved. A ministerial decision was issued that gave more time to the relevant Archaeological Service to implement this excavation.

### Authorities with shared-joint responsibilities

Lack of cooperation and inactivity of the public services are often observed in cases of authorities with shared responsibilities.

An indicative case under investigation is the illegal construction of various facilities of a fishing shelter with buildings and roads inside the limits of a Natura 2000 area in Cephalonia Island. In this area there was a building designated by the Ministry of Culture as a piece of art. The inactivity of the involved services as well as their tolerance towards the illegal constructions caused negative environmental effects. Some of these were pollution and environmental degradation, erosion of the beach and formation of a cavity beneath the abovementioned protected building.

A positive development occurred following the Ombudsman's intervention:

- violations were confirmed, and decisions were issued for the demolition of illegal constructions
- compensation was estimated for the opening of the beach area
- funds were found for the demolition of the illegal constructions
- the Ombudsman's proposal was approved regarding the elaboration of an environmental study for the protection of the area

### Land-Registry Cadastral-survey Offices

The complaints mainly concern:

- correction of the original cadastral surveys concerning legal and geometric data errors
- operational problems of the cadastral survey offices, especially regarding the provided information to citizens.

In order to assist citizens and achieve faster response, the Ombudsman notifies the Ktimatologio S.A. for every mediation letter he sends to the cadastral survey offices. Moreover, during a case investigation, the Ombudsman held an important meeting in Mytilene, after which the Ktimatologio S.A. committed to:

- develop correction procedures
- suggest an alteration of the relevant legislation to the competent Ministry in order to complete

necessary corrections without further delays and financial burden to the citizens.

The Ombudsman intends to observe the implementation of the above commitments and the effectiveness of the proposed legislative regulation.

## THE OMBUDSMAN'S CONTRIBUTION TO THE PROTECTION OF CULTURAL HERITAGE AND THE RIGHT TO PROPERTY

Three main administrative problems were identified in complaints related to the Ministry of Culture and Tourism:

a) the Ministry's fails to respond promptly and effectively regarding the:

- payment of compensation amounts adjudged due to expropriation of property for archaeological purposes
- full compensation in cases of substantial decrease or permanent deprivation of property use

b) delay in responding to citizens' applications

c) lack of qualified staff

The Minister of Culture and Tourism responded positively to the Ombudsman's recommendations, as he:

- set criteria for the time priority of the pending cases, such as the significance of the findings, the possibility to preserve them, as well as the time of the freezing of property?
- asked for the justification of all relevant decisions and opinions
- committed to reform the legislative framework regarding the designation of the properties located outside the town plan limits
- decided to cease the Committee for Expropriations
- ordered the acceleration of the opinion-giving process
- decided to also take into account the non-disturbance of social and economic life in cases of delineations or revision of delineations of areas,
- decided to create a joint committee of the two competent Ministries (the ministry for Environment, Energy and Climate change and the ministry of Culture and Tourism). The goal of this committee would be to determine building and land uses requirements in Zones B, as well as to clarify responsibilities of the competent authorities for archaeological and planning issues
- established compensatory measures for cases of land deprivation (e.g. exchange, establishment of a land fund, tax benefits)

### Jewish Synagogues

In the case of the Synagogue of "Ioanniton" in Athens, the Planning Service recalled, after the Ombudsman's intervention, the building permits that had already been issued allowing interventions in the synagogue. The permits were recalled because there was no previous approval of the project by the competent archaeological authority, as the building was older than one hundred years. When the

Ombudsman noted that the Municipality of Athens should undertake the expenses for restoring the interior space, the Planning Service did not recognize the need to restore it. At the same time, the planning service claimed that the original building permit was issued before the completion of one hundred years. Thus, the previous approval by the competent archaeological authority was not required. This allegation however was in contradiction with service's previous documents.

In the case of the Synagogue in Veroia, the competent archaeological authority asked for a technical justification of the implemented actions among with the submission of a study for the restoration of the monument. The authority committed to proceed to the necessary arrangements if there was no other response.

### **Freezing of property without financial compensation**

The Ministry for Environment, Energy and Climate Change had committed for 36 years the historic monument of the Orta Mosque in Veroia, without compensation to the owner. After the Ombudsman's intervention, a joint ministerial decision for expropriation was finally issued without taking into account the minimum value set by authorities (αντικειμενική αξία ακινήτου, objective value of the property of the expropriated property).

### **Prohibition of house building within a declared archaeological site**

The competent archaeological authority approved, after the Ombudsman's intervention, a house construction within a declared archaeological site, under specific conditions. In addition, the Ombudsman asked the Ministry of Tourism and Culture to issue a joint ministerial decision laying down the restrictions and conditions for building construction and land uses in zone B of the archaeological site in order to ensure its protection.

## State-Citizen Relationship

In the State-Citizen Relations department during 2010, complaints concerning a financial issue showed a significant increase as a result of worsening domestic economic circumstances. Many complaints involved requests for help and support by citizens who entered a phase of severe financial distress, and/or failure.

During the previous year, moreover, the Ombudsman noted with satisfaction the inclusion in the recent tax reform provisions (Law 3842/2010) of several proposals made by the Ombudsman, among them issues relating to procedural rights in spouse taxation. Of all the complaints within this department examined in 2010, 20% concerned taxation, 17% public utilities, 13% the transport sector (with an emphasis on issues arising in the process of old-technology car scrapping) and 9% other economic activities (including public procurement and issues related to responsibilities of the state). The 17% of the complaints investigated by the department concerned general issues of public administration (mainly case-handling issues).

In the next sections is attempted a synthesis of the issues highlighted by the economic crisis, as well as of the adjustments that have now begun to be introduced in economic management. Also highlighted are the standing weaknesses in various areas of economic activity, as documented by the Ombudsman through the investigation of related cases.

### ECONOMIC CRISIS: CHALLENGES AND OPPORTUNITIES

Among the existing problems aggravated by the unfavourable economic climate of the last year is the delay by the State, public entities, the local government, and other public bodies to pay their debts, whether these relate to contractual obligations or benefits to citizens, or arising from other reasons (e.g. expropriations).

However, the pressure from the economic juncture resulted in streamlining troublesome processes that had been identified by the Ombudsman in the past. Thus, economic governance until recently suffered from a lack of planning, method and rigour, as regards the conditions under which financial obligations were assumed, on the one hand, and expenditures were carried out, on the other. Reforming economic governance in the context of Law 3871/2010, as well as extending the control of the Court of Audit to all local authorities (Law 3852/2010) both entail more stringent cost control

and sanctions both on persons and on the validity of administrative acts. Moreover, the scope for the common, until recently, practice of looking for additional credit is significantly restricted. A consequence, however, of this necessary streamlining is that the only recourse for the citizen is to resort to litigation, seeking compensation from the administration by filing a claim for unjust enrichment.

On the other hand, the delay in payment may have further consequences, including the risk of prescription of the claim. Furthermore, the Ombudsman notes that in cases of delay in payment by the administration it is necessary to strictly adhere to the provisions of the Administrative Procedure Code, such as a prompt and timely response regarding the reasons for the delay, or an assurance that, at least according to the entity, there are no problems concerning the legitimacy of the expense. Failure to comply with a judicial decision is a further cause of mismanagement and a flagrant violation of the Constitution and other international and European commitments.

Special mention should be made, however, of the issue of hiring suspension for 2010 and reduction in hiring in the public sector for the coming years (not limited to cases 127440/2010, 127099/2010, 128456/2010). The Ombudsman has investigated cases where it was found that there was a failure to take due legal action by the administration regarding the completion of the recruitment and appointment procedures for the persons concerned before the entry into force of Law 3833/2010. It was argued that such cases are not subject to the hiring prohibition/suspension enforced, since the relevant provisions of law referred to above are not retroactive, but apply since its publication (15.03.2010).

Finally, in October 2010 it was decided to absorb, in the second half of the year, all successful applicants in procedures for the appointment/hiring to services and public bodies for which final results were issued on or before 31.12.2009.

As regards further issues of tax administration, it should be noted that the adverse economic conditions both reinforced the tendency for rigid interpretation and application of tax provisions and substantially limited the scope and conditions of the Ombudsman's mediation, especially given the finality of the acts to determine taxes, impose increases, fines and other penalties.

On the other hand, while intensifying the processes for taking coercive measures to recover outstanding debts to the public (foreclosures, auctions), the number of citizens to claim financial hardship grows. However, they may not qualify for inclusion in the regulations regarding the removal, total or partial, of debt (Law 2648/1998).

The Ombudsman, however, mediates, informing and guiding citizens to make use of the institutional provision of assistance and the arrangements in place regarding overdue debts to the state (Article 14, Law 3888/2010 et al.).

Finally, the decision to suspend VAT refunds to companies prior to a temporary or regular tax audit (POL 1016/2010 and POL 1072/2010) to tackle abuse of the VAT refund provoked strong reactions by labour and trade representatives in the country. Related complaints were also received by the Ombudsman. However, this issue was settled by a new decree (POL 1108/2010).

## **ECONOMIC ACTIVITIES AND STATE-CITIZEN RELATIONS**

In the field of economic activities, related cases are not directly related to the crisis, but concern standing administrative weaknesses. This category includes procurement contracts and construction projects, social or developmental interventions, the regulation of the requirements for economic activity, as well as the entrepreneurial activities of the State involving public utilities.

### **THE STATE AS THE RECIPIENT OF PRIVATE ENTREPRENEURSHIP: SUPPLIES & PUBLIC WORKS**

■ **During the stage of the tendering process** for procurement and construction projects, the administration is required to strike the right balance between efficiency and transparency. The Ombudsman's mediation is limited by the need for rapid completion of the procedure, as well as by the existence of rights of third parties involved. Often, however, the agencies involved comply with the Ombudsman's recommendations.

■ In a hospital tender, a company appealed to the Ombudsman complaining about failure to respond to a plea for rejecting a rival company because the letter of credit that it had deposited was less than that stipulated by the tender notice. Following the Ombudsman's intervention, the hospital responded with a delay of two months. The Ombudsman reminded of the obligation of the administration to provide timely and well reasoned response to citizens' questions. He also stressed that the economy of the tendering process requires immediate response, very short deadlines are provided for the pursuit of legal remedies. Excessive delay in response therefore implies a violation of the right of petition

and the right to judicial protection. In his conclusions, the Ombudsman proposes to draw up a mandatory public register at each stage, in which to record all complaints-requests, responses and reception evidence, before the start of the next stage of the process.

■ A company that participated in an ELTA S.A. (Hellenic Post) tender requested a copy of the decision that all bids should be rejected and cancelled the competition. Initially, ELTA refused. The Ombudsman objected that according to the last revision of the Constitution the right of access to documents is highly enhanced. Its scope is extended to the wider public sector, but also in purely private relationships, in which the right appertains (principle of third party action). Undoubtedly, therefore, businesses such as ELTA, whether publicly owned or exercising delegated public agency, or are a public company, or public utility, are bound by it. Inter alia, the obligation to supply a copy of the decision also stems from the principle of transparency. The ELTA eventually issued a copy thereof.

■ The Ombudsman pointed out to a municipality the merits of the complaint made by a company because a tender for equipment procurement violated the fundamental freedoms of movement of goods, persons and services of the European law. In particular, the obligation for demonstration of the equipment only within the Greek territory, excluding other Member States of the European Union, is a covert form of discrimination in contrast to the smooth operation of the Single European Market. The municipality accepted the Ombudsman's recommendations and proceeded to correctly re-tender.

■ A company complained to the Ombudsman because, in a hospital tender procedure, it was found that the hospital had distributed differing versions of the notice to the interested parties. The Ombudsman noted that there is a violation of the principles of transparency and healthy competition. The hospital immediately responded to the Ombudsman's recommendations, cancelled the contest and held a repetition so that the correct notice text be administered to all concerned.

■ **During the process of completing a procurement or construction project tender**, problems of internal coordination and cooperation, as well as weaknesses in previous stages of the process often have a significant impact. Among other things, poor financial planning results in significant delays in repayment. These problems affect, often in a critical way, healthy entrepreneurship and are not necessarily linked to the current economic climate. Notably:

■ The Ombudsman pointed out mismanagement caused by undue delay in drafting the final delivery protocol for a municipal work that had already been paid off and delivered since 2006. However, the delivery committee members failed for years to write a mutually acceptable delivery protocol. This delay meant that the letter of guarantee of good performance of the Engineer and Public Work Contractor Pension Fund (TSMEDÉ) could not be returned. In 2009, the contractor died, and his family received 100 euro a month less from the TSMEDÉ pension for maintenance costs of the guarantee letter. Because the intervention was unsuccessful, the Ombudsman drew a conclusion addressed to the municipal authorities.

■ A citizen complained about the delay in payment of an invoice for service provision because the agency never sent the file for approval to the Audit Office. It moreover repeatedly refused to respond to the citizen's appeals, and to the intervention documents submitted by the Ombudsman. For this reason, the Ombudsman wrote to the Ministry, which finally granted the credit required to repay the debt.

■ A joint venture of companies appealed to the Ombudsman for the payment of an Olympic project executed and delivered in 2004. The Administration cited lack of funds and pledged to pay when the relevant funds had been received. Part of the debt has already been paid.

## REGULATORY INTERVENTION IN ECONOMIC ACTIVITY

Weaknesses are also identified at the level of regulatory intervention in economic activity through incentives, grants, loans to meet specific economic, social and development targets.

The Ombudsman was once again occupied with the role of intermediaries in the administration-citizen relationship in response to the activity of the Guarantee Fund for Small and Very Small Enterprises (TEMPME). In his conclusion, he pointed out the administration's objective liability regarding the harmful activities of banks, to which it assigns part of its responsibilities. There were meetings with the president of TEMPME and bank representatives. Noted was the participants' will to cooperate to ensure citizens' rights (timely and complete information, respecting the principle of priority).

A significant number of complaints were submitted regarding granting financial incentives for scrapping old-technology cars and buying new clean-technology ones. A number of problems and failures were identified during the process, both in the choice of the extraordinary legislative measure of the Order for adopting the measure and the process of implementation of the measure of withdrawal and

granting financial incentives. In addition to these, the sudden removal of the measure also contributed to creating conditions of confusion and uncertainty of justice for interested citizens.

Moreover, there is delay in payment of grants and aid business investment plans, with significant consequences for economic growth. For example, the lengthy delay to certify completion of 50% of a project, a term required for paying the first instalment of the grant. The Ombudsman intervened in order for the appropriate Regional Audit Body to convene. In another case, a citizen had not received the first instalment of a grant due to lack of resources. The Ombudsman noted that the well-meaning citizen counted on the receipt of payment in order to meet operating expenses and to complete the investment, and called for an immediate update on the progress of disbursement of necessary funds. Finally, the aid was paid out.

Finally, major dysfunctions were also noted in exercising social policy through the operation of the Deposits and Loans Fund as a mechanism for financing loans for construction or completion of a first housing to public employees and retirees. The Ombudsman focused on administrative or organizational failures that are passed to bona fide borrowers. Notable among these cases is the omission of information by the Fund for ceasing to service the loan without any fault on the borrower's part, or the inflexibility of the Fund in adjusting the conditions of the loan agreement in obvious cases of failure to pay due to force majeure.

## TERMS, PROCEDURES AND CONDITIONS FOR PROMOTING ENTREPRENEURSHIP

The role of administration in formulating and adhering to the standards of economic activities and related rights is undoubtedly critical. Sometimes, however, the administration requires additional conditions and guarantees that have no legal basis.

■ As an example, as far as financial agencies are concerned, a tax compliance certificate is required for exercising various rights, primarily economic in nature. A denial or delay of a few months have major implications for businesses, because the tax compliance certificate is indispensable for collecting fees from the broad public sector, participating in tenders, and more. Therefore, the measure of withholding tax compliance should be used with caution. However, a Tax Office (DOY) refused to provide a company with tax clearance due to its debt to a public agency, although after the opposition the Lower Court had cancelled the related individual certificate of debts. The Tax Office argued that it expected the outcome of the appeal. The Ombudsman counterclaimed that, according to settled-case law and an opinion of the Legal Council

of State, after accepting an opposition in the first instance, the refusal to grant a clearance certificate is not lawful. The Tax Office maintained its position.

■ In other cases, too, Tax Offices have appeared to maintain very narrow views, without adequate legal basis. One example is the unlawful refusal of a Tax Office to review a private document. Under tax law, all contracts of businesses and professions should be reviewed within ten days by the competent Tax Office. Therefore, the cooperation of Tax Offices is essential for the smooth functioning of trade. However, a Tax Office refused to review an amendment to a company's statutes, considering that it violated commercial law. The Ombudsman pointed out that according to settled-case law the obligation to review private agreements aims solely at curbing tax evasion, so that citizens can not rely on such agreements for tax benefit (e.g. to deduct expenses from their taxable income). Therefore, the tax authorities can not refuse the review, which in no way constitutes a validation of their legitimacy. Since the review was necessary in order to include the amendment of statutes in the archives of the Lower Court, the Ombudsman also suggested a direct appeal before the Lower Court Registry. Indeed, the Chairman on duty accepted the Ombudsman's position and ordered the registration of the disputed private agreement without approval of the Tax Office.

■ **Oversights or excesses of current legislation**, with a disproportionately negative impact on economic activity of individuals are also identified in interventions by other agencies.

■ A chemist requested the Ombudsman's assistance for the renewal of a trade permit for plant protection products he had held since 1999. This is because in 2000 a presidential decree was issued that stipulated as a prerequisite for granting the license an agronomist's degree, excluding chemists in the future. The possibility to renew was provided for for those who already had a license; however, inadvertently, the right to renew was limited to licenses issued up to 1998. The Ombudsman asked the remedial interpretation of the disputed provision, noting settled law under which you may not deny the possibility of continuing professional activity to persons who have already practised it for long. Among other things, the Ombudsman noted that the damage from the deprivation of a means of livelihood today is very heavy for the citizen and hence violating the principle of proportionality. The citizen's trade permit was ultimately renewed.

■ Twenty Albania-based taxi drivers complained to the Ombudsman for a circular by the General Secretary of the Ministry of Infrastructure, Transport and Networks. According to this circular, customs retain registration documents of vehicles upon entry

into Greece, on the grounds that they apply to only one passenger route from Albania to Greece. The Ombudsman noted that this is not provided by law. With the imposition of the obligation to provide new registration documents in every itinerary in the Greek territory, it appears that it is attempted to limit the practice of a lawful activity. The Ministry eventually withdrew the circular.

## THE STATE AS ENTREPRENEUR AND PUBLIC UTILITIES: NATURAL GAS

The Ombudsman investigated issues related to natural gas supply companies. In several cases there was found a substantial deficit of essential public information concerning this new form of energy, both in terms of pricing and regarding the requirements and connection cost.

In March 2010, the Ombudsman released his intervention on the pricing of the Gas Supply Companies (EPA) in Thessaloniki and Thessaly. Specifically, the price of gas was more expensive than that of oil despite the fact that gas was advertised by the media as 20% cheaper. The Ombudsman pointed out to all stakeholders – Thessaloniki and Thessaly EPA, and the Regulatory Authority for Energy (PAE) – that since 1995 Greek legislation provides that EPA natural gas distribution licenses should explicitly include the obligation to disclose transparent tariffs, related in particular to prices of competing energy forms, such as oil. In practice, this consumer right was never secured because the responsible entity for its enforcement, i.e. PAE, was launched after the adoption of the regulatory framework of EPA activity, that is, after gas distribution permits had been issued. The Ombudsman suggested to PAE to recommend to the Minister for a related term to be integrated into existing permits, so that even fifteen years after its introduction this citizen right might finally be ensured. PAE has not accepted the Ombudsman's position.

The requirements and cost of connecting to the gas network were another group of subjects. Some cases concerned the insufficient development of the gas network, that is, when it comes to areas not included in the current network development plan. The distribution license granted to EPAs does not require the construction of a network in every area covered by the license, but an obligation to construct a specified number of kilometres (for example, in Athens a 1,500-km network). Therefore, in areas not covered by the network that the relevant EPA has chosen to construct, consumers face problems. The Ombudsman's intervention for inclusion of citizens' houses in the network plan has yielded results in Thessaloniki. Conversely, in the Attica region, the scope for intervention is limited, as the EPA has already built the minimum network extension stipulated as mandatory and now asks consumers to

cover the cost for the extension required for them to connect to the network.

Moreover, the particular delay in finalizing the areas eventually to be included in the 1,500-km network required to be constructed created problems. Characteristically, an interested citizen submitted in 2005 a connection request. Since her property lay only 40 meters away from other buildings already connected, she was satisfied with verbal assurances that her case would be taken care of and she installed a natural gas central heating system. Since then, she has been covering her heating needs with air-conditioning or liquid gas at a very high cost. The Ombudsman noted the responsibility of the EPA, which should be aware of the network development plan from early on and should have informed the person concerned. The problem remains unsolved, as the citizen is unable to pay for the construction of the necessary network expansion, which amounts to 6,000 euro.

Finally, the imposition of extremely stringent contractual terms has been noted. For instance, in order to attract new customers in areas where it constructs a natural gas network, the Attica EPA offers a deduction of up to 100% at the connection charge, provided that the internal installation be completed and activated within three months from the placement of the meter. Otherwise, though not using the gas network, citizens under contract are required to pay the connection charge on the one hand and a fixed monthly fee on the other. The Ombudsman feels that the obligation undertaken by citizens sometimes exceeds what is reasonable. Specifically, a citizen signed a contract for two properties in his apartment building (house and ground floor store). He completed in time the internal gas installation in his house. As regards the store, however, he informed EPA that he would not proceed to construct it due to economic hardship. EPA demanded the connection charges as well as the monthly service fees for the connection of the store. The Ombudsman noted that since the execution of the contract is impossible the citizen should not be burdened by the expense of maintaining it. He then instructed the interested citizen to request cancellation of his contract and a settlement of the charges due with the security deposit paid when he signed his contract.

## Children's rights

### THE CHILDREN'S OMBUDSMAN: ACTIVITIES AND FINDINGS

The year 2010 was a period of particular concern in Greek society for both the present and future status of social benefits, including benefits for children. The economic crisis and the reduction of expenditure in the public sector caused, as a natural consequence, a contraction of spending on social benefits and services for children. The State is now faced with the challenge to design the restructuring of its services so as to improve the effectiveness of child care and protection while at the same time saving resources, without detriment to the exercise and protection of children's rights.

In practice, a unified National Plan of Action for Children's Rights is still lacking, one that would include cooperation amongst ministries, with an operational plan and timetable for implementing measures and policies. The Ministry of Health and Social Solidarity in March 2010 invited for consultation the child protection entities in order to prepare a draft of horizontal networking and cooperation amongst them, but the outcome was not presented to the public.

Based on the cases handled, the initiatives taken, and the information obtained from his communication with agencies and professionals, as well as with children in schools and institutions of child protection, the Children's Ombudsman reached the following conclusions:

In **education**, there was a positive response by the Ministry of Education, Lifelong Learning and Religious Affairs to the Ombudsman's organizational proposals. However, difficulties are identified in effectively addressing issues related to school housing, the adequacy of teachers for pupils with special educational needs, the equal participation of Roma children in education, as well as in supporting teachers to effectively handle incidents of school and domestic violence, the training of teachers on students' participation in crisis and conflict management at school.

Regarding **welfare and mental health**, the Ombudsman's findings involve inadequate staffing and organization of social services in local authorities and institutions of child protection and care of children with disabilities and chronic illnesses, lack of a national registration system to tackle child abuse, lack of planned Children's Psychiatric clinics in hospitals and of care centres for adolescents with behavioural problems and mental disorders.

In **justice**, substantial shortcomings are identified in the way complaints and testimonies regarding child abuse are handled by the police. There is a shortage of District Attorney's social agencies for minors,

problems in implementing legislation for the protection of children witnesses and victims of violence, serious shortcomings in the implementation of the planned reforming and therapeutic measures for juvenile offenders, poor conditions in prisons and juvenile detention centres, and an almost nonexistent support system for juveniles released from prison.

The Ombudsman was invited by the competent Parliamentary Committee to submit his findings on the phenomenon of violence against children. Moreover, he presented his experiences and views in the context of an international consultation organized by the U.N. Office of the High Commissioner. He noted the need for a holistic and systematic reference to the rights of children, for extensive awareness raising for professionals, parents, and children themselves with respect to the international and national child legislation, and for the establishment of clear procedures for addressing the relevant bodies as appropriate.

### PROMOTION OF CHILDREN'S RIGHTS

Recent years have seen significant progress in legislation on child rights in Greece. Nevertheless, the legislative provisions are not always accompanied by the necessary steps to inform the competent bodies and services. For this purpose, the Children's Ombudsman organized meetings, events, and seminars, visited places of education and accommodation of children, met professionals who work with children, and distributed information material.

In 2010, the Children's Ombudsman continued his awareness-raising activities: He met and discussed with 50 student groups, participated in 90 workshops, seminars and events around Greece, visited 12 child protection institutions and detention facilities, and made 25 visits to various cities in Greece. He also participated in a substantial number of international meetings and conferences in his capacity as member of the European Network of Ombudspersons for Children.

### LISTENING TO CHILDREN'S VIEWS

#### Youth Advisory Panel – Evaluation and perspective

In 2010, the Youth Advisory Panel of the Children's Ombudsman participated in discussions on school violence, in elaborating proposals for its prevention and treatment, and in drafting proposals that fuelled

the ENYA (European Network of Young Advisors) meeting in September 2010 in Strasbourg.

At the end of 2010 the two-year term of the Youth Advisory Panel came to a close. The group consisted of teenage boys and girls who came from different social strata and regions, and included foreigners, young people with disabilities, and adolescents who reside in child protection bodies. The group activity was presented in public at a special event, and the group's first progress report was posted online and printed in 1,000 copies.

The increased interest of students for participation in the advisory bodies of the Children's Ombudsman has led to the decision to expand the Young Advisors Community, which consisted of all adolescents who had applied to participate in the group. This gave an opportunity to other young people, whom the Ombudsman meets during his visits to schools and institutions around the country, to join the community and to participate in discussions on children's rights with their peers.

### **The European Network of Young Advisors to Ombudspersons for Children – The international dimension**

In 2010, the European Network of Ombudspersons for Children decided for the first time to create a Network of Young Advisors, aiming to foster communication and dialogue between members of adolescent advisory groups operating in peer institutions in Europe. To this effect, an online forum was created, on which teens discuss among themselves issues of interest to the Ombudspersons for Children and the latter are informed and take into account the views of adolescents.

On October 6-9, 2010 in Strasbourg, 35 teenagers-members of the Young Advisors Group from sixteen countries, including Greece, participated in a discussion with Children's Ombudspersons from across Europe. Teenagers expressed and presented their views and proposals to protect children's rights to education, health, protection from violence, use of the Internet and new technologies. The Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, participated in the discussion.

### **AGGRESSION AND VIOLENCE AMONG STUDENTS – MEASURES TO PREVENT AND COMBAT THE PHENOMENON**

There are increasing complaints lately of outbreaks of school violence. The Ombudsman finds that the occurrence of this phenomenon is related to problems of the children themselves, both aggressors and victims, and their families, yet schools and faculty often seem unprepared to handle it and report that they lack appropriate training and support. The issue is of great concern to the students

themselves; it is for this reason that the Youth Advisory Panel of the Children's Ombudsman suggested it to be one of the issues on which the group's discussions would focus during the year.

### **Communication with school faculty and pupils and documentation of good practices**

The Children's Ombudsman, in cooperation with the Ministry of Education and Health Education Officers, invited secondary schools across the country to record and send information on any interventions and special programs for the prevention and treatment of aggression and violence among students. A total of 43 schools responded to the Ombudsman's invitation.

Utilizing the material from his contact with pupils and teachers, and from his work with health education programs, the Children's Ombudsman in December 2010 sent to the Ministry of Education a report, summarizing the practices recorded on preventing and combating violence, as well as his original recommendations. The Ombudsman is contemplating to further investigate the issue and expand data collection to primary education in order to prepare his final report to the ministry.

### **Collaboration with other agencies and participation in networking activities**

The Children's Ombudsman participated in a special committee set up by the National Commission on Human Rights for the study of group violence and aggression in schools, tasked with drafting an overview of conclusions and recommendations, which was included in a related publication.

The Ombudsman also participates in the preparation of a national network against violence among students, whose aims will include collecting and make available online scientific data, methods, and the best practices for preventing and combating all forms of violence among children, to help train and support teachers and to raise awareness of all members of the educational community regarding these issues.

## **CHILD-FRIENDLY JUSTICE**

### **The Council of Europe Guidelines**

On November 17, 2010 the Committee of Ministers of the Council of Europe adopted a Guideline for child-friendly justice. The Guideline was the product of dialogue at the European level, in which the Children's Ombudsman participated, through the European Network of Ombudspersons for Children. The text highlighted serious issues relating to the protection of the rights of juvenile offenders and victims during the administration of justice, which have already concerned the Ombudsman. The Guideline needs to be coupled with institutional reforms, training of professionals in the justice system,

and awareness-raising activities throughout society, a direction in which the Children's Ombudsman is already active.

### **Examination of juvenile witnesses in cases of abuse**

The Children's Ombudsman found that the repeated taking of statements from child victims and witnesses of acts of abuse poses serious problems in both the psyche of children and the administration of justice; he visited the General Police Directorate of Attica in order to monitor the methods of examination of underage witnesses and the problems in law application. The Ombudsman found limited application of the practice to record testimonies of minors in electronic audiovisual media, and no evaluation on the part of the police of the degree of success of this measure. Moreover, no post for child psychologists was provided for in the Sub-Directorate to prepare child witnesses for giving statements. The Ombudsman raised the issue to the Ministry of Citizen Protection. Towards the end of the year the ministry announced that fifteen psychologists were recruited to staff the services of Sub-Directorates of Juvenile Protection in the Security Directorates of Attica and Thessaloniki.

### **REFORM OF CRIMINAL LAW FOR MINORS**

The Ombudsman submitted his proposals on the draft law on juvenile delinquency to the Ministry of Justice. The Children's Ombudsman proposed to establish completion of 16 years of age as the minimum limit for imposing pre-trial detention and penal correction to minors. He also proposed supporting the proper implementation of all planned reform measures and making them enforceable also for minors who go to trial after becoming adults. He requested the development of care facilities (accommodation, shelters), the specialization of judges for minors, the financial support of Societies for the Protection of Minors (EPA) and the operation of social service in them.

### **OPERATION OF THE CENTRAL SCIENTIFIC COUNCIL FOR THE PREVENTION OF AND COMBAT AGAINST VICTIMIZATION OF MINORS AND JUVENILE DELINQUENCY (KESATHEA)**

The Children's Ombudsman participated in meetings and a working group by KESATHEA in Thessaloniki. The council, established by Law 3860/2010, coordinates and organizes actions, proposes recommendations and advises the Ministry of Justice on treatment and prevention of victimization and juvenile delinquency. The Deputy Ombudsman for Children's Rights may participate in board meetings without right of vote. The Children's Ombudsman informed KESATHEA of his concerns about the operation and staffing of the accommodation by the Societies for the Protection

of Minors, and shortcomings in the application of the rehabilitation measures provided by law. He also stressed the urgent need to create temporary and permanent shelters for adolescents with behavioural problems and healthcare facilities for addicted adolescents in order to strengthen the services to the community which judicial decisions may target, rather than imposing custodial sentences on juvenile offenders, which has proven ineffective.

## **SPECIFIC SUBJECTS**

### **EDUCATION: THE PROTECTION OF THE RIGHTS OF MINORS IN SCHOOL**

As in previous years, this year, too, education involved the largest proportion of complaints filed with the Children's Rights Department (35%). The main issues concern student-teacher relationships, and access to school and special education.

#### **Alternative school placement**

The Children's Ombudsman has investigated a number of cases involving alternative school placement for pupils of secondary school as a disciplinary measure. It was found that the main problem concerns the decision making process and that recourse to this measure is without first having exhausted other educational measures. The Ombudsman then wrote to the Ministry of Education, proposing:

- To inform schools and higher authority on their obligation to follow the provisions of the Administrative Procedure Code (prior hearing, specific and adequate reasoning), and to evaluate the necessity and appropriateness of this measure.
- The ministry to take measures for guidance and support to teachers, so that this penalty does not constitute an example punishment for other pupils and is not imposed due to the school's inability to deal with a pupil's behavior problems.
- To provide for the legal status of school regulations
- To amend the Presidential Decree 104/1979, in order to enable schools to use more alternative methods to achieve the "compliance" of students.

The Ministry of Education then issued a circular which, adopting the Ombudsman's key recommendations includes instructions for teachers.

#### **Special education**

The Ombudsman investigated a significant number of complaints on issues encountered in schooling by children with severe special educational needs and/or disabilities in special schools and related to the implementation of Law 3699/2008. His

investigation of cases showed that the needs of the Special Education Schools (SMEA) in permanent staff are not met, and the placement of teachers and ancillary staff is done with delay, or not at all. The consequence of this is delays, or even the suspension of the opening of schools and shortages in appropriate educational support for pupils.

Besides handling individual cases, the Ombudsman pointed out to the Ministry the need to take measures to: i) improve coordination between central and regional education public agencies as regards the staffing of SMEA, ii) provide sufficient funding for the real needs of special schools, iii) the timely start of the school year, and iv) provide adequate educational support for children with severe special educational needs. The Directorate of Special Education of the Ministry of Education replied that it requested the electronic recording of the needs of SMEA and the integration sections in order to hire staff immediately. It also stated that a "school card" would be introduced to record the requirements in teachers, so as to enable continuous monitoring and adequate response to the human resource needs of pupils.

#### **Undocumented pupils' access to education**

The Ombudsman has received several complaints by unaccompanied minors who, in the absence of any evidence to prove their identity, were unable to enrol in secondary education. The Children's Ombudsman argued that no child should be denied of the right to education for reasons of his or her residence status in the country, in accordance with Article 28 of the International Convention on the Rights of the Child. Following this proposal, an opinion was issued by the Greek Council of State, which was accepted by the competent minister, permitting admission for unaccompanied undocumented minors to high school. The deliberation argues that the lack of qualification, according to which it is possible to be admitted to high school, will be dealt with, for pupils who come from countries where the situation is unsettled, by a qualifying examination carried out by a teacher committee, and the issue of specifying a guardian for communication with the school will be treated in accordance with the relevant provisions of the Civil Code (Case 17446/2009).

#### **Separated parents and children-pupils' rights**

The Children's Ombudsman investigated several complaints concerning the school's treatment of parents who do not have custody of their children.

■ To safeguard the rights of children-pupils, whose parents take the quarrels among themselves to the school, the Ombudsman asked the Ministry of Education to issue circulars. He stressed that the teacher who must address the problems that arise when a pupil's parents fail to implement their commitment to working together in their parenting role, should encourage the maximum participation

of both parents in the education of their child, ensuring the protection of the child's vested rights, taking into account the child's view and taking into account his or her interests.

In particular, the Ombudsman asked for the clarification of issues such as the parent-child communication in the school, the information provided to the parent who has no custody of the child, the involvement of a parent who does not exercise the custody of the pupil at the collective bodies, and the reception of the child from school. The Ministry of Education, adopting the Ombudsman's positions, issued a circular permitting the communication of the parent deprived of custody with the underage child within the school premises, if it does not hinder the educational process.

#### **MINORS' TRAFFICKING – EXPLOITATION**

The Ombudsman received a complaint from an undocumented minor prisoner seeking to stay in Greece after her release, although there was no consent of her parents. The minor was exploited by the family environment and did not wish to return to her country. In investigating the case, the Ombudsman cooperated with the prison social service, the responsible prosecutor officer, and the competent Directorate of the Ministry of Justice. Moreover, following the Ombudsman's encouragement, the social worker contacted the private organization *EPANODOS*, supervised by the Ministry of Justice, whose staff assisted the minor in her release. Data that confirmed the financial exploitation of the minor by relatives were then identified in her file.

These were placed under consideration of the Anti-Trafficking team, Public Security Directorate, Ministry of Citizen Protection, and the minor was recognized as a victim of trafficking.

The complainant remains in Greece, hosted at a shelter under the protection of the Greek state, which, in accordance with the provisions of Law 3064/2002 and the Presidential Decree 233/2003, provides assistance for housing, food, and living expenses, health care, psychological support, provides a legal counsel and an interpreter, and ensures her access to school.

#### **ADOPTION**

##### **Interstate adoptions: The Ombudsman's proposals and Ministry of Health response**

The Ombudsman had expressed publicly and to the Parliament his position that Greece took too long to ratify and implement the "Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption." The convention was signed at The Hague in 1993 and was ratified by the Greek Parliament by Law 3765/2009, specifying 1.1.2010 as date of entry into force. The aim of this regulation is a

valid assessment and support of interested adoptive parents, to protect the rights of adopted children, and to combat the illicit trafficking of infants, which is encouraged by the uncontrolled implementation of private adoption in Greece.

The Ombudsman has requested information from the Ministry of Health as to the readiness and provision of infrastructure for the implementation of the convention. The ministry informed the Ombudsman that it presses ahead with legislation establishing a stand-alone department with the responsibilities set out in the provisions of the aforementioned law. Moreover, a circular of clarification and guidance was issued to all competent agencies.

## **WELFARE - CHILD PROTECTION**

### **Caregiving conditions at KEPEP in Lechaina, Iliia**

The Ombudsman held a series of visits to the Children's Health Care Centre (KEPEP) in Lechaina, Iliia; he started a correspondence with its administration and with the Ministry of Health and Social Solidarity and followed for more than one year the steps taken to improve the welfare of minors and adults with chronic diseases and disabilities who receive care at the centre. The Ombudsman then drafted a finding with his remarks and suggestions. In it he stressed the need to provide a sufficient number of nurses at the institution so as to avoid practices such as extensive use of sedative medication, keeping children restrained with straps and, what's worst, patients living in wooden cubicles, and not to overlook that the ultimate goal should be to provide alternative care for children in small family-type structures and to eliminate institutional-type care for children and adolescents. After the Ombudsman's intervention, the centre management made significant efforts to improve matters, yet the dramatic shortages, especially in nursing staff, which had proved impossible to meet until the end of the year, resulted in many of the original problems remaining, and anxiety and professional burnout of the existing staff increasing even further.

## GENDER EQUALITY

### Introductory remarks

■ In 2010, the Ombudsman's role as the agency for monitoring and promoting equal treatment of men and women in matters of employment and occupation was significantly strengthened and its jurisdiction expanded to include equal opportunities as well. The legal basis for this development is the new law 3896/2010, which replaced law 3488/2006. This law transposed Directive 2006/54/EU into Greek law, after a two-year delay. According to it, the Ombudsman shall cooperate with public administration, social partners, enterprises and NGOs, seeking a more active role in promoting change and fostering a new mentality in the workplace. In addition, as regards gender discrimination complaints, the Ombudsman's intervention is not hindered by pending lawsuits on the case under investigation, but continues his mediation up to the first hearing in court or until the issue of judgment on a petition for injunction.

This institutional strengthening of the Ombudsman's role comes at a very adverse economic juncture, which has already influenced the Ombudsman's work in the sensitive area of discrimination in the workplace. The complaints of gender discrimination in the private sector had an impressive increase of 19% during the last year. Moreover, the financial crisis highlighted the difficulty for public administration as well as the broader public and private sector, to comply with legislation implementing the principle of equal treatment of men and women on parental leave.

For 2010, the GED<sup>3</sup> reported the following key statistics:

- 78.48% of the complainants were female and 21.52% male.
- 64% of the complaints comes from the public sector and 36% from the private sector (an impressive 19% increase).

As to the type of discrimination:

- In the public sector, discrimination due to parental leave continues to emerge as the most important upward-trending form of discrimination (21.81% vs. 10.45% in 2009), mainly regarding the father's right to take parental leave.
- In the private sector, discrimination related to pregnancy and maternity leave is recorded as the most prominent form of discrimination (about 16% in total).

- There is a significant increase in the percentage of direct discrimination (39.5% approx.), which reflects the rapid increase in the number of complaints for pregnant women's dismissal.
- The percentage of complaints for sexual harassment doubled compared to 2009 (12.28% vs. 5.97%).

The positive developments for GED in 2010 include:

- i. A substantial improvement of the Ombudsman's cooperation with both the administration and the Labour Inspectorate (SEPE).
- ii. The dialogue that has begun with the Legal Council of the State (NSK).
- iii. The productive exchange of views with equality counterparts from other Member States through the European Network of Gender Equality Bodies.

Successful intervention by the Ombudsman in the cases below:

- The minimum height requirement for women's access to military academies was decreased by law.
- The right to parental leave was expanded to male military personnel.
- All universities grant parental leave to Faculty regardless of gender, each university adapting its by-laws to the relevant Ministry of Education circular.

The challenges faced by the Ombudsman in 2010:

- a. Mediation proved difficult in cases of income loss for civil servants, in particular deduction of benefits during maternity and parental leave since the Ombudsman's proposals required additional cost to state budget;
- b. Any possibility of success in opening up the span of beneficiaries of state allowances was ruled out in advance; even in cases where the administration agreed on the need for regulation, no progress was made due the Greek Manpower Employment Organization's (OAED) and/or the Social Security Foundation's (IKA) lack of adequate resources.

The main problems identified by the Ombudsman in the complaints submitted in 2010 are the following:

1. Citizens and public administration officials both, are unacquainted with the legislation implementing the principle of equal treatment between men and women in the access to and supply of goods and services in the public sector;
2. Legislation as well as collective labour agreements reflect an obsolete perception on gender roles in family and work with respect to parental leave;
3. The financial crisis has highlighted and exacerbated an evident setback in protecting women's labour rights.

<sup>3</sup> Gender Equality Department

4. In times of financial crisis, the public administration tends to interpret the law that governs maternity benefits narrowly, limiting the mother's insurance coverage during maternity leave.

### **Major Cases**

#### **EQUAL ACCESS FOR MEN AND WOMEN TO PUBLIC GOODS AND SERVICES: NEW COMPETENCY, NEW RIGHTS (Law 3769/2009)**

- The Ombudsman mediated in a case of discrimination against a man carer of a disabled person while accessing a centre for creative occupation of children with special needs. The Ministry of Labour informed him of the joint ministerial decree under which people with elderly dependents incapable of fully looking after themselves, or people with disability, may be included in an action under OP "Human Resources Development 2007-2013", for their creative occupation.
- The Ombudsman mediated when a pregnant asylum seeker was denied admission to a public hospital, achieving her admission. Childbirth was successful for mother and newborn.

#### **PREGNANCY AND WORK: CONFLICTING RIGHTS IN TIMES OF CRISIS?**

- The Ombudsman's mediation between employer and employee at a meeting organized by the Labour Inspectorate resulted in rehiring the employee, who had been fired after the six-month maternity protection leave, on more favourable terms.
- A 10,000 euro fine was imposed on a private sector employer for dismissal of a pregnant employee after the Ombudsman's Findings Report was forwarded to the Labour Inspectorate (SEPE).

#### **ISSUES RELATED TO ADDITIONAL MATERNITY PROTECTION LEAVE AND BENEFIT (AMPLB): SHRINKING BENEFITS, LIMITATION OF RIGHTS**

- Several categories of working mothers are excluded from this benefit, based on incorrect interpretation of the law by the administration.
- Problems are noted in the procedures for providing this benefit by the Greek Manpower Employment Organization (OAED).
- For the above issues, the Ombudsman continues to contact the relevant bodies in writing and by phone, sometimes with a successful outcome and sometimes to no avail. The Ombudsman's actions so far have led 12% of the individual complaints on the amplb to a successful outcome.
- The Ombudsman received complaints for refusal to grant maternity benefit in cases of premature birth and infant death up to 2005 by IKA, due to incorrect interpretation of relevant provisions, because IKA

issued a circular in 2006 adding an arbitrary condition that childbirth should have taken place after the 28<sup>th</sup> week of pregnancy. The Legal Council of the State in its conclusion sided with the Ombudsman's proposals. The relevant circular by IKA is expected to be amended.

- There were complaints for maternity benefits rejected by IKA and OAED for late application submission. The Ombudsman pointed out to the competent authorities that, under IKA's Statute Law, all cash benefits and those benefits in kind that are convertible into cash are disqualified six months after they become due. IKA's local administrative committee accepted the request and granted the maternity benefits.

#### **PARENTAL LEAVE: A RIGHT FOR BOTH PARENTS?**

##### **Parental leave in the public sector**

At the European level, the equal participation of both parents in the child's upbringing is promoted. However, the Greek reality is quite different. The Ombudsman has investigated more than 70 complaints by public officials focusing on the failure to grant the nine-month leave to male employees whose spouse is either self employed or unemployed. The Ombudsman addressed specific findings and recommendations to the Minister of Interior, Decentralization and E-Government, from which he received an inadequate response.

The issues raised during the investigation of complaints related to parental leaves in the public sector are discussed in detail in the second special report on the implementation of Law 3488/2006, which the Ombudsman issued in February 2011.

##### **Granting parental leave in the public and private sectors: omissions and ambiguities**

■ The Ombudsman received complaints from fathers employees of the Hellenic Telecommunications Organization (OTE) that their employer refused to grant them parental leave for 3, 5 consecutive months, equivalent to 30 months of reduced working hours, as provided by the National General Collective Labour Agreement (EGSSE). The reason was that the spouse was self-employed and therefore unable to produce a certificate by her employer that she does not take the leave herself. The Trade Unions Confederation GSEE brought the issue to the representatives of the employers at the negotiations for signing the new national collective agreement, but there was no positive response, partly due to the difficult financial circumstances.

- A male nurse in a private hospital, spouse of a self employed mother, applied for the 3, 5 months of parental leave, provided by article 9 of NCA 1993 EGSSE on full pay. The employer initially refused, citing the inability of the wife to provide an employer's certificate. The hospital personnel management accepted the Ombudsman's view that the employer's discretion to grant the leave or

not depends on their evaluation of the operational needs and viability of the enterprise, but must be adequately justified otherwise the refusal can be considered abusive, according to the provisions of the Civil Code. The complainant was eventually granted parental leave.

- Discrimination (deprivation of the executive position previously held as well as the relevant allowance) against a Hellenic Post employee was noted after her absence from work due to parental

leave. The Ombudsman asked the Hellenic Post administration to restore the complainant back to her duties and her previous salary, and to amend the relevant provision of the Hellenic Post Personnel Collective Labour Agreement (ESSE), explicitly excluding discriminatory treatment against employees returning to work after maternity and parental leave. Hellenic Post responded positively to the Ombudsman's request and proceeded directly to restoring the complainant's position and salary.

## Legislative and organizational recommendations

### LEGISLATIVE PROPOSALS

The Ombudsman proposed:

#### MINISTRY OF JUSTICE, TRANSPARENCY AND HUMAN RIGHTS

##### **For the criminal treatment of non-labile and criminally insane persons**

- The modification of the existing legislative framework for the imposition and lifting of the measure of retention of the criminally insane.
- Enabling the non-labile to participate in rehabilitation programmes for addiction from narcotic substances.
- Rationalization of the criminal treatment of involuntarily hospitalized mental patients who are fugitives or indictees.

Related issues have been referred to special committees drafting legislation to overhaul the provisions of the Criminal Code and the Code of Criminal Procedure.

##### **Regarding ceasing to detain individuals due to their failure to pay court costs**

- The release of persons detained due to failure to pay court costs. The proposal was accepted under the relevant legislation.

##### **For the criminal treatment of juveniles**

- Increasing the age limit to 16 years for the possibility to impose penal correction to minors.

- Clarifying the institutional framework for community service as a reformatory measure, namely the determination of requirements for social security eligibility of minors to whom the measure is imposed, seeking the consent of their parents and the introduction of standards of fitness for facilities and the identification of the duration and object of their employment.

##### **Other issues**

- The modification of the procedural provisions concerning delivery of documents by bailiffs, either with the express prohibition of delivery to minors or with regulations that introduce restrictions taking minor status in consideration and require use of a sealed envelope in all cases.

#### MINISTRY OF LABOUR AND SOCIAL SECURITY

*To the General Secretariat of Social Insurance*

- To introduce the obligation of medical doctors of IKA and health committees to grant certification

and/or certificates of sports fitness of the insured and school children.

- The conversion of fixed-term contracts of disabled persons recruited under the OAED programmes for providing incentives for the creation of new jobs to permanent contracts, in view of the special constitutional protection afforded to this population group.

- The amendment of existing legislation in order to activate the option also in the supplementary pension between personal eligibility and eligibility due to transfer of a deceased person's pension.

- The granting of maternity grant under the provision of obstetric care also to juvenile unmarried daughters that are insured as family members of insured or retired members of IKA-ETAM.

- Full coverage of obstetric care in all cases of abnormal development with serious implications beyond the normal symptoms of pregnancy and verging on the disease.

##### **Other issues**

- The introduction of special leave during the procedure of medically assisted reproduction.
- The regulation of the issue that has arisen due to the non-provision for insurance of sickness during the period of special protection for motherhood.

#### MINISTRY OF INTERIOR, DECENTRALIZATION AND ELECTRONIC GOVERNANCE

*Directorate of Immigration Policy*

##### **For family members of Greek or EU citizens who do not have a valid residence permit**

- To provide the ability for family members of Greek or EU citizens that cannot prove their legal entry into the country or do not have a residence permit to obtain one.

- To modify the existing legislative framework to enable the unemployed foreigners who receive a benefit from OAED to be provided with a special certificate of legal residence while renewing their residence permit. The latter will include specific labeling of their obligation to provide a valid employment contract whenever practicable and in any case until the end of the time during which they legally enjoy the benefits they are eligible for.

**Other issues**

- The receipt of all of the legally provided continuous parental leave by the adoptive parents in place of the equivalent part-time work time, even when the adopted child is beyond the age of four years and until the age of eight years, and the extension of this right to employees in the private sector.
- The removal of information of the country of origin in certificates from the National Registry. The proposal was accepted.
- The granting of leave for raising a child to a father who is a civil servant when his spouse is not employed.

**MINISTRY OF MARITIME AFFAIRS, ISLANDS AND FISHING - MINISTRY OF ENVIRONMENT, ENERGY AND CLIMATE CHANGE**

- The transfer of responsibility for dealing with events of pollution of the marine environment from shipwrecks from the Municipal Port Funds to the central agencies of the ministries (Ministry of Maritime Affairs, Islands and Fishing, and Ministry of Environment, Energy And Climate Change), or to the new regional government.
- The introduction of a mandatory production of an environmental risk assessment study of shipwrecks, taking into account criteria such as the displacement of the ship that has sunk, the type of load and the environmental importance of the shipwreck's location.

**MINISTRY OF ECONOMY, COMPETITIVENESS AND SHIPPING**

- The activation of the Greek Standardization Organization in carrying out controls for the compliance of "adventure" entertainment activities to standards harmonized with the Greek national standardization.

**MINISTRY OF FINANCE - MINISTRY OF ECONOMY, COMPETITIVENESS AND SHIPPING**

*To the General Secretariat of Commerce*

**Regarding the entry of minors to internet service provision businesses (internet cafés and internet stations)**

- Establishing an age limit for the entry of minors and an appropriate way for the business management to check it.
- Limiting stay in these businesses to 11 pm.
- The imposition of administrative penalties for shopkeepers for infringements of these provisions.
- Creating a system for certification of these businesses.

**MINISTRY OF EDUCATION, LIFELONG LEARNING AND RELIGIONS**

- The legislative provision for the requirement to produce a school regulation.
- The legislative provision for enabling the introduction of alternative methods for student discipline.
- Providing the opportunity for transfer students to participate in team sports at school.
- The explicit provision for the re-evaluation of primary school students who are obliged to repeat the grade, as is the case for secondary education students, where there is no parent consent.

**MINISTRY OF ENVIRONMENT, ENERGY AND CLIMATE CHANGE - MINISTRY OF RURAL DEVELOPMENT**

- To accelerate the adoption of joint ministerial decisions laying down the criteria and method of classification into categories of high-productivity agricultural land and the boundaries of these zones. The proposal was accepted.

**MINISTRY OF CITIZEN PROTECTION**

- To extend the child rearing leave to the male military personnel of the Greek Police.
- The reduction of the minimum height (1.70 m.) for entrance of women to the Greek Police academies.

**MINISTRY OF HEALTH AND SOCIAL WELFARE**

*To the Public Servant Health Care Organization*

**Regarding special dietary formulations**

- Changes to the participation by 25% for the specific category of members and providing for zero participation for purchase of dietary formulations for chronic metabolic diseases.
- The elimination as arbitrary of the age limit of two years for covering the supply of milk and special dietary formulations in case of allergy to cow's milk, so as to reimburse also in cases of certified medical necessity over the age of two.

**For the state price list**

- The revision and updating of the State price list.
- The extension of the obligation of adherence to the State price list for hospital fees in every case of transference from the *Korgialenio-Benaki General Hospital* to the *Henri Dunant Hospital*, through the internal bridge, if not through transfer via ambulance, if the patient does not come directly to the *Henri Dunant Hospital*.

**Other issues**
**Regarding supervision of transplant units**

- The provision of explicit legislative competence of the National Transplant Organization to oversee the operation of the transplant units and intervene to investigate any malfunctions.

- To make specific and fully activate the coordinating and assistive role of the National Transplant Organization to the related Ministry, both in strict compliance with the commitments already provided for and on the other with the provision of new specific commitments.

#### **For inter-country adoptions**

- The creation of an institutional framework for the implementation of international adoptions in a way that ensures children's rights.

#### **MINISTRY OF INFRASTRUCTURE, TRANSPORT AND NETWORKS**

##### **Regarding the regulation of the establishment of private Vehicle Technical Control Centres (KTEO)**

- The clarification of the legal framework regarding the establishment of private KTEO centres in urban residential or city centre zones across the country, especially in the prefectures of Attica and Thessaloniki. There was a commitment to accept the proposal.

### **ORGANIZATIONAL RECOMMENDATIONS**

#### **The Ombudsman proposed:**

#### **MINISTRY OF JUSTICE, HUMAN AND TRANSPARENCY RIGHTS**

##### **Regarding forced inspection of body cavities of women prisoners**

- The abolition of the practice of subjecting to a special strict short isolation regime, forced inspection of body cavities and surveillance of all incoming female prisoners, or at least those detained for offenses related to drugs. A recent decision of the Deputy Minister of Justice, Transparency and Human Rights stressed that these practices are terminated and thereafter only if there is reasonable cause that justifies a forced inspection of body cavities, then this will be carried out subject to order from the competent judicial officer and only by a doctor.

#### **MINISTRY OF LABOUR AND SOCIAL SECURITY**

##### *To the Agricultural Insurance Organization*

##### **Regarding the reimbursement for treatment with liquid oxygen**

- Express justification for decisions, in grade A and B, of the OGA bodies if outside the medically recommended daily requirement of the patient in liters of liquid oxygen, and the explicit mention of the daily and total amount finally approved.
- The explicit listing of the average price per liter (as a measure of calculation) to determine the daily cost of the amount finally approved and the total amount to be reimbursed by the organization.

#### **Other issues**

- The detailed and regular updating of pensioners, by distributing leaflets or newsletters, regarding the facts and reasons which result in an interruption of family member increase of the pension and which cause the obligation for a pensioner who receives it to notify the security fund.

#### **MINISTRY OF EDUCATION, LIFELONG LEARNING AND RELIGIONS**

##### **Regarding issues of children and students**

- Providing access to education for unaccompanied minors without the production of documents.
- A written update to all heads of schools and authorities regarding their obligation to follow the provisions of the Code of Administrative Procedure, as to the imposition of the disciplinary measure of changing schools and the non-disclosure of the measure.
- The coordination between central and regional departments of education in regard to the issue of permanent or timely staffing of schools in Special Education, the provision of funds catering for the real needs of special schools, the timely start of the school year and the sufficient educational support of children with severe special educational needs in these units.
- To issue a circular to allow communication of the parent deprived of custody with the underage child in the school premises, if not hindering the educational process. The proposal was accepted.
- The need to clarify the legal framework of experimental schools of the universities. The proposal was accepted.
- Issuing a clarifying circular to make it clear that changes made to the student's identity due to adoption, after final judgment, are not made public, as an exception to the provisions in regard to issues of data change in graduation certificates.
- The introduction into the educational system of information on the benefits and risks of using the Internet, as well as publishing and distributing a guide for parents on safe Internet use by children.

##### **Regarding the operation of DOATAP**

- The reform of administrative structure and the decision-making mechanism.

#### **MINISTRY OF CULTURE AND TOURISM**

##### *To the General Secretariat of Sports*

- The inclusion to the lists of top performers, and consequently the recognition of the benefits provided by law, for individual sports athletes that present a certificate from a recognized federation and a distinction from participation in a championship, even if they were not included in the lists of national teams that associations submit for prior approval by the General Secretariat of Sports.

**MINISTRY OF HEALTH AND SOCIAL WELFARE****Regarding cooperation between Korgialenio-Benaki General Hospital and Henri Dunant Hospital**

- To review the legality of cooperation between the two hospitals, or otherwise the express suspension of their cooperation.
- To identify areas of cooperation and define its contractual terms and obligations arising from it, and the express provision of the terms, conditions, process and type to be followed for any modification or discontinuation thereof.
- Investigating the presence of a coordinating body, else the appointment of a member of management or an official of the Korgialenio-Benaki General Hospital by a decision of the Board, to coordinate the cooperation between the two hospitals, monitoring adherence to the conditions of cooperation and the fulfillment of obligations arising from this for both parties.
- The clarification of adherence to the condition of transfer via Ambulance (EKAV), which has been provided as collateral to ensure transparency and signals the activation of cooperation with the obligations arising from the parties involved.

**For health committees**

- Drawing up a special form in which the relevant health committees will be invited, in addition to describing the condition and state of the person concerned, as already required, to fill in the designated areas ("boxes") if the person concerned falls, or not, under one of the cases under current law entitled to benefit for paraplegia/quadruplegia as uninsured or insured in the public sector.

**ACCEPTANCE OF PROPOSALS FROM PREVIOUS YEARS****Of the proposals made by the Ombudsman in the past, the following were accepted:****MINISTRY OF DEFENCE**

- The increase in duration of alternative service in case of any offense and not automatically the rejection from the alternative service and receiving a military obligation status.
- The extension of the leave for child rearing to the male military personnel of the armed forces.
- The reduction of the minimum height 1.65 m for the introduction of women to the Higher Military Education and Higher Military Schools for NCOs.

**MINISTRY OF INTERIOR, DECENTRALIZATION AND ELECTRONIC GOVERNANCE**

*Directorate of Immigration Policy*

**Regarding deadlines and fees for naturalization**

- The legislative provision for specific deadlines for the naturalization process, with detailed rating for each phase of the process, and the reduction of the fee involved, with an even more substantial reduction in cases of resubmission and for special categories of applicants.

**Regarding the determination of the type of specific certificate issued to nationals of third countries, to whom an interim suspension order has been issued, or a suspension has been issued by the Administrative Court**

- The granting of a special certificate of legal residence also where the temporary order or judgment suspension involves refusal of a request for an initial residence permit. A special certificate of legal residence is now valid for an annual (rather than six-month) period; it may be renewed for an equal period each time until a decision on a pending application for annulment by the administrative court, and gives the holder the privileges appropriate to the type of residence permit that has been revoked, not renewed, or was never granted.

**MINISTRY OF MARITIME AFFAIRS, ISLANDS AND FISHING**

- The extension of a leave for child-rearing to the male staff of the Coast Guard.

**MINISTRY OF FINANCE**

The Ombudsman, in cooperation with the tax administration, particularly with the headquarters of the Ministry of Finance, addressed in recent years several proposals to amend the provisions of tax legislation. During the recent tax reform of 2010, the Ombudsman was satisfied that some of these suggestions were incorporated in legislation. Namely:

**Issues of gender equality before the tax administration**

- The award of a copy of a joint tax return and clearance to spouses who are separated or divorced.
- The ability to separate (from the joint return of the spouses) an acknowledgment for tax revenues attributable to each spouse and the separate liability for payment.

**For the extraordinary levy**

- The abandonment of the possibility of discretionary income inclusion and adherence to the principle of limited retroactivity of the tax. In particular, the extraordinary levy was initially called an extraordinary one-off contribution of social responsibility, which exempted individuals. Yet then, due to the economic crisis, with Article 5 of Law 3833/2010, an

extraordinary financial contribution was imposed also to individuals with a high income, over € 100,000.

**Regarding the exemption from transfer tax for a first home of an estranged spouse who has custody of a child**

- The exemption as married from the first-home transfer tax of the spouse who is separated and has filed for divorce at least six months before the time of purchase and has custody of the minor children of the family. If the marriage is not resolved by divorce within five years from the purchase, the exemption granted is removed and the tax in question is paid.

**For the exemption from transfer tax to buy a primary residence for foreigners**

- The granting of this tax exemption to several foreigners residing permanently in Greece, namely: a) Greeks from Albania, Turkey and the former Soviet Union, b) nationals of EU Member States, c) recognized refugees under Presidential Decree 96/2008, and d) third-country nationals who enjoy the status of long-term resident in Greece, under the provisions of Presidential Decree 150/2006.

**Other issues**

- The provisional determination of market value of a property from the Head of Tax to avoid future detection of inaccuracy in the statement of inheritance tax and additional tax and penalties under 200% during investigation, which is usually performed before the expiration of the limitation, that is, ten years after the declaration.

- Exemption from VAT for the provision of medical services performed in the exercise of medical professions and services provided by psychologists, midwives, nurses, physiotherapists, speech therapists and occupational therapists.

**MINISTRY OF EDUCATION, LIFELONG LEARNING AND RELIGIONS**

- The right to transfer also for health reasons of a student's spouse, by analogy with existing provisions for health reasons for parents, also for TEE graduates admitted to TEI.
- The adaptation of Greek legislation to the provisions of Directive 2005/36/EC of the European

Parliament and the Council of 7 September 2005 on the recognition of professional qualifications.

- The establishment of the National Committee for Determining Professional Rights.
- Granting child-rearing leaves also to male faculty members of universities.

**MINISTRY OF ENVIRONMENT AND CLIMATE CHANGE**

- The creation of the necessary institutional framework for the recycling and reuse of waste from excavation, demolition and construction both in private and public works.

**MINISTRY OF CULTURE AND TOURISM**

**For the clarification of the priority of pending expropriation cases**

- Establishing criteria for the priority of pending cases regarding commitment of properties, such as the importance of findings, the possibility of preserving and enhancing them, and particularly the duration of commitment.
- The written and detailed listing of the criteria for the essential evaluation of proposals for expropriation, for reasons of transparency.

**For the characterization of off-plan property as farming property**

- The reform of the legal framework for an off-plan property to be designated as farming property on the basis not of its position within or outside of the urban zone, but the designated use by legislation for this area.

**Regarding the operation of the Expropriation Commission**

- The abolition of the Expropriation Commission, as according to Law 3028/02 the body responsible for advising on the merits of the feasibility of expropriation is only the Central Archaeological Council.

**MINISTRY OF CITIZEN PROTECTION**

- The extension of the child-rearing leave for also to male staff of the Fire Brigade.

## The Ombudsman's international activity

During 2010, the systematic cooperation of Ombudsman with foreign institutions continued, aiming to enhance the Ombudsman's international orientation. Key points of this activity include:

### PEER ENTITIES AND THE EUROPEAN OMBUDSMAN

The Ombudsman participates in the electronic networking system of the offices of peer entities of EU Member States by exchanging information on matters of common interest. It also provides material for the semi-annual journal published by the European Ombudsman and participates in conferences organized every two years by the aforementioned entity.

- At a conference held in Brussels (5-6 June), a representative of the Ombudsman presented the Ombudsman's experience on the recognition of professional rights to holders of qualifications awarded by other EU Member States.

### "TWINNING" PROJECT WITH THE OMBUDSMAN OF SERBIA

The Greek Ombudsman leads a project for twinning to strengthen the corresponding institution in Serbia. The project is implemented in cooperation with the Dutch Ombudsman and the European Public Law Center for the period 10.2009-9.2011.

The project aims to support the Serbian Ombudsman in an effort to improve its operational capacity and consolidate it in Serbia as well as in the international community of Ombudsmen. The first phase having already successfully completed, the project goes further in developing the potential of the Serbian Ombudsman as an independent and impartial authority that controls the administration and promotes human rights and civil freedoms towards an effective and democratic state of law in Serbia.

To achieve the objectives of the project, training activities, visits, conferences, public events and workshops with experts and scientists from peer institutions from Greece, Holland, Slovenia, Austria, and Spain are carried out. Moreover, an experienced member of the Greek Ombudsman based in Belgrade coordinates its implementation.

The Code of Good Administrative Conduct in Serbia is among the most important activities of the twinning project conducted in 2010. The new Code was based on the relevant Code of the European Ombudsman, and the version for Serbia was prepared jointly by the European Ombudsman and the Serbian Ombudsman. It was presented and delivered to the Speaker of the Serbian Parliament in a public event and conference in June 2010, in which the European Ombudsman, Nikiforos

Diamandouros, participated as keynote speaker and the "ambassador" of the Code.

### NETWORK OF OMBUDSMEN OF THE MEDITERRANEAN AREA

The Ombudsman actively participates in the Network of Ombudsmen of the Mediterranean Area, established in 2008 on the initiative of the Ombudsmen of France, Spain and Morocco. The network is intended to create a permanent structure for dialogue and cooperation between the entities and their respective countries, and to promote democratic principles of governance and respect for human rights. The objectives of the network are achieved through training programmes and exchange of experience, comparative studies for Ombudsman entities, actions to inform citizens and to strengthen the local Ombudsmen, contributing to the consolidation of newly established Ombudsmen.

- In the fourth meeting of the members of the network (14-15 June) in Barcelona, on "Immigration and Human Rights: A Challenge for Ombudsman Institutions", the current state of affairs regarding immigration in each State that participated in the investigation was presented.

### PEER TO PEER PROGRAMME

The Ombudsman also participates in Peer to Peer programme, which is implemented by the Office of the Commissioner for Human Rights, co-financed by the European Council and the EU. The programme aims to create an active network of independent national cooperation structures for human rights, with particular emphasis on EU non-Member States. The main tool of the programme is the organization of seminars, bringing together scientists specialized in national institutions for human rights, in order to exchange information on legal principles and practices used in Europe in the field of human rights.

- Specialists from the Ombudsman participated in seminars held in Padua (June) and Bilbao (November).
- A representative of the Ombudsman participated in the annual meeting of the Contact Group of the programme, which took place (3 December) in Strasbourg.

### THE GREEK OMBUDSMAN IS A PARTNER IN THE SUPPORT PROGRAMME FOR THE OMBUDSMAN OF GEORGIA

Following an international competition, the Greek Ombudsman was selected by the Ombudsman of the Republic of Georgia as part of a team to implement a programme of technical support for

strengthening this peer institution. The Greek Ombudsman's Office provided assistance in strategic planning, working with government departments and agencies to improve compliance of services, and communication. This partnership involves the European Public Law Organization (Greece), Raoul Wallenberg Institute (Sweden), the Civic Development Institute (Georgia) and Human Dynamics (Austria).

### CONFERENCES, MEETINGS

The Ombudsman, the Deputy Ombudsmen, and the Ombudsman's scientific staff participate in conferences, seminars and meetings to exchange experience and expertise in order to improve service to citizens.

Examples of the Ombudsman's activity are below:

#### Conferences – Day Meetings

- A conference of the European Institute in Florence (29-30 January), entitled "Evolution in Quality and Law Theory". The Ombudsman, George Kaminis, presented the institution's experience in gender issues and made comparative observations on anti-discrimination legislation.
- Event of the European Public Law Organization in Athens (5 February) on "Public Administration in the Balkans - from Weberian Bureaucracy to New Public Management". The Ombudsman, George Kaminis, made an address to the event, organized under the Jean Monnet Project: South-Eastern European Developments on the Administrative Space in Balkan States.
- Conference at the European University of Cyprus (11-12 February). The address of the Ombudsman, George Kaminis, was titled "The promotion of public accountability and transparency through independent agencies".
- Symposium of the European Union Agency for Fundamental Right in Vienna (7 May) on "Strengthening the Fundamental Rights Architecture in the EU", with the participation of the Ombudsman, George Kaminis.
- Day meeting of the Bureau of European members of the International Ombudsman Institute in Athens (18 June), which discussed the planning of activities of the institute.

There was a significant international activity by the Ombudsman for the protection and promotion of children's rights. The Deputy Ombudsman for Children's Rights, George Moschos, and members of the Department attended:

- The meetings of the European Network of Youth Advisors (ENYA) in Malta (4-7 June) and Strasbourg (8-9 October).
- A consultation of experts organized by the High Commissioner for Human Rights in Geneva (30 September-1 October) on "Child-Sensitive Counseling, Complaint and Reporting Mechanisms".

- The annual conference of the European Network of Ombudsmen for Children (ENOC) in Strasbourg (6-9 October) and a meeting of the Steering Committee in Paris (12 January).
- The 5th European Forum on the Rights of the Child in Brussels (14 October).

The Ombudsman continued to pursue systematic cooperation and exchange of expertise with foreign bodies involved in gender issues. Also, as a promoter of the principle of equal treatment, the Ombudsman is a member of the European networks Gender Equality Bodies, Network, and Equinet, actively participating in workshops and seminars.

Examples of this activity include:

- The Deputy Ombudsman Stamatina Giannakourou participated in a high-level legal seminar of the European Network Equinet on "Legal Developments and Concepts in the Field of Equality and Non-Discrimination in Europe", held (1-2 July) in Brussels.
- A specialist from the Department for Gender Equality participated in the Roundtable by the EU's Fundamental Rights Agency (FRA) on "Combating stereotypes and hate crime due to sexual orientation", held (12-13 October) in Naples.
- The Deputy Ombudsman Vassilis Karidis spoke on "Combating Discrimination in the Workplace", at the Equality Summit, held under the Belgian EU Presidency (15-16 November) in Brussels. It was attended by representatives of national organizations promoting the principle of equal treatment for the implementation of Directives 2000/43/EC and 200/78/EC.

Finally, the institution was represented to other events outside of Greece. Some examples:

- The Deputy Ombudsman Kalliopi Spanou represented the Ombudsman at the day conference organized (1 February) in Paris by the French Ombudsman, in cooperation with Johns Hopkins University and University Paris II, on "Human Rights: Universal Principles and Regional Guarantees", in the context of the Arab Charter of Human Rights and the European Convention on Human Rights.
- The Deputy Ombudsman Yannis Sakellis presented a paper on "Health and Social Protection in Greece: Issues of maladministration" at a day conference organized (10-12 February) by the European University of Cyprus on "Management - Republic - Accountability" in Nicosia.
- The Deputy Ombudsman Evangelia Balla presented the work and contribution of the Greek Ombudsman to the implementation of environmental legislation, in particular waste management, at the international symposium INSINUME 2010 "International Symposium on In Situ Nuclear Metrology as a Tool for Radioecology" organized (20-23 October) in Russia at the International Centre for Research in Dubna.

**Meetings**

The Ombudsman held meetings with representatives of international and European institutions and organizations. Examples include:

- With a delegation of the European Council for the Prevention of Torture (CPT); discussion focused on the conditions of detention in prisons, police detention centers, and reception of asylum seekers, and the legal framework for inspection and accountability of the police (18 January).
- With EU Commissioner Thomas Hammarberg; the Deputy Ombudsman for the Rights of the Child George Moschos also participated at the meeting on "Human Rights of Asylum Seekers and Minorities in Greece; Police Complaints Mechanism and Relevant Legislative Developments" (10 February).
- With the UN Special Rapporteur on Torture, Manfred Nowak, in a fact-finding mission to monitor practices of degrading treatment, especially in places of detention (11 October).

