



## **Gender and Labour Relations**

### **Special Report 2013 (Article 25, para 8, L. 3896/2010)**

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Professional development and gender-based discrimination

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#### **GENDER EQUALITY PROMOTION**

European law is a steadfast major source of progress in tackling gender-based discrimination in Greece. Greek legislation often adopts, albeit belatedly, regulations regarding equal treatment between women and men. Resistance to change hesitation and embedded gender stereotypes hindering this effort, are detected and confirmed by the experience of the Greek Ombudsman in its capacity as the Equality Body designated for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex, in matters of employment and occupation, maternity and family protection, work-life balance as well as access to and supply of goods and services.

The key observation of this report is the variance of the regulations in effect on gender issues in various categories of workers, within the public sector (e.g., between civil servants, armed forces and other armed agencies (police, fire department, coast guard) or permanent staff and fixed-term staff) as well as between public sector employees, private sector employees, and self-employed workers. This differentiation introduces unfair divergence in the protection guaranteed by the Greek Constitution and the European Law and cannot be justified on the basis of any rational criteria that are linked to operational needs.

A second remark relates to equality policy itself. Firstly, gender equality is designated as the primary objective, and each regulation must be filtered through this principle so as neither to introduce nor to perpetuate discrimination, direct or indirect. Maternity and family protection regulations follow. These regulations provide benefits or leaves of absence which have been designated to meet family needs while promoting work-life balance. Be that as it may, the special requisites applying to those regulations may



still reproduce stereotypes, given that, on this level, perceptions on family structure and gender roles tend to overshadow the gender equality principle.

A characteristic example follows: In Article 53, para 3, subpara c, the Civil Servants Code (L. 3528/2007) used to consider as eligible for parental leave only those fathers permanent civil servants who had working spouses while mothers were eligible regardless of the father's employment status.

**In short, the mother's right to parental leave was indisputable while the father was considered an auxiliary parent. It was only after the European Commission had repeatedly underscored that such practice was in violation of European law, that the provision in question was abolished in late 2013 (Article 6, L. 4210/2013) and only shortly before the expiration of the European Commission's deadline to Greece that the case would be referred to the European Court of Justice. However, this particular form of discrimination is still in force in the private sector.**

Provisions which potentially constitute indirect discrimination or do not sufficiently promote gender equality appear in more recent legislation as well such as L. 4075/2012 which transposes into national law Directive 2010/18/EU implementing the revised Framework Agreement on parental leave.. This law, however, does not adopt the Directive's view stating that, in order to encourage a more equal take-up of leave by both parents, at least one of the four months shall be provided on a non-transferable basis. Moreover, it appears that the various state agencies deal with the leave in a different way, which results in the unequal treatment of workers employed under different statuses in the public sector (e.g., military and paramilitary staff).

Finally, Directive 2010/41/EU on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity, was transposed by L. 4097/2012. One of this law's major contributions is maternity benefits (Article 6) for self-employed female workers that would allow them to stop working temporarily for at least 14 weeks due to pregnancy or maternity. Nevertheless, the Joint Ministerial Decision (KYA) necessary for the implementation of these provisions has been issued as yet, therefore the relevant regulation has not gone into effect and maternity protection of self-employed women is considerably lacking, when compared to other categories of female workers.

## **PUBLIC SECTOR**

### **WORK-LIFE BALANCE (WLB)**

It is precisely in this area that the range of divergence in the facilitations provided by the law becomes visible. It depends on the type of employer (narrow or broader public sector, private sector), the employment relationship (permanent public servants, employees with open-ended employment contracts (IDAH), employees of the Public Sector, under fixed-term private contract, full- or part-time private sector employees, employees working under retainer agreement, etc) or the type of employment (dependent employed or self-employed). The differences become particularly obvious



in practice due to the fact that spouses may each work under a different employment relationship.

As early as 2010, the Greek Ombudsman had pointed out to the Ministry of Administrative Reform the problems in the Civil Servants Code with regard to gender equality legislation. Eventually, the recommendations of the independent Authority were adopted through L. 4210/2013, following an intervention by the European Commission which set 31.12.2013 as the deadline for removing direct gender-based discrimination from the Civil Servants Code. It is clear that the European Commission's intervention as well as the involvement of the courts, is due to the Greek state's delay in bringing about the required legislative adjustments.

A specific example of the divergence between public and private sector rights is the provision by the Civil Servants Code of a parental leave extending to four years of reduced workday, which corresponds to a nine-month parental leave at full pay and benefits. The same period for private sector employees, on the basis of national collective agreements, extends to 30 months of reduced workday or three-and-a-half months of parental leave equivalent to the reduced work day at full pay and benefits.

Law 4075/2012 now provides for all working parents the right to receive four months of unpaid parental leave until the child reaches the age of six. The positive points of this type of leave is it applies to all working parents, employment rights are secured during the leave period, and unfavourable treatment as a result of having taken parental leave is prohibited.

In contrast, self-employed parents are not entitled to any sort of Work-Life Balance policies. In addition, private sector employees, spouses of self-employed women are not entitled to parental leave either, since the provisions of NCA do not recognise self-employment as a form of employment. On that issue, the European Commission has commenced the procedure against Greece for infringement of the relevant European provisions. Greece has been given until 31.12.2013 to resolve that issue.

**The Greek Ombudsman, as the competent equality body, exerts rigorous efforts in all directions so that the relevant rules be clarified and the issue of unequal treatment among working parents be resolved.**

Thus, 2013 brought significant developments in that area, as set forth below:

Additional maternity leave and benefit of the private sector and its relation to the nine-month parental leave provided by the Civil Servants Code (Article 53, para 2).

The Ministry of Administrative Reform, following a consultation with the Ministry of Labour as to the nature of the additional maternity protection leave provided by Article 142, L. 3655/2008, decided to accept the viewpoint of the Ministry of Labour and that of the Greek Ombudsman, i.e., that the six-month leave constitutes maternity leave and not parental/parental leave as it had maintained in the past. Subsequently, the Ministry reviewed its previous position by accepting that the six-month leave taken by the mother should not influence the right in full nine-month parental leave to the father civil servant.



Fathers whose spouses had made use of OAED's (Manpower Employment Agency) six-month additional maternity leave filed complaints with the Greek Ombudsman that their State employers continued to grant them only three months of parental leave instead of the full nine-month leave. The Ministry of Administrative Reform gave no answer to individual queries nor would it issue a relevant circular to all State Agencies, as the GO had recommended. Eventually, an answer was dispatched to a specific civil service (Rio University Hospital) which was also uploaded on the GO's website and served in lieu of a circular. Subsequently, the majority of the agencies concerned began granting to the beneficiaries the remaining six-month leave period owed to them. When it came to the Ministry of National Defence, the GO engaged in a special mediation in order to resolve the problem. Subsequent to the GO's intervention, the HAGS (Hellenic Army General Staff) issued a relevant order which is now implemented by all the other branches of the Armed Forces. With regard to the Hellenic Police (ELAS), despite the GO's relevant document and the issuance of the relevant consultative decision by the HP Directorate of Legislation and Organisation, ELAS decided to request the legal opinion of the NSK (indicatives complaints: 162498, 163077, 164835, 170187/2013).

According to the relevant decision by the NSK (393/2013) which was endorsed by the Minister, a circular was addressed to all police agencies providing that fathers police officers should also receive full nine months of parental leave. (72175/13/2006482/29.12.2013).

### **Parental leave for twin and multiple pregnancies**

The Greek Ombudsman has repeatedly stressed the diversity of parental leaves granted in the cases of twin or multiple pregnancies. That diversity ranges from only one period of parental leave, regardless of the number of infants born, to one leave period corresponding to each infant born. The relevant court judgments also vary from one leave for all children to as many leaves as the children born. The Court of Justice of the European Union (CJEU, Hatzis v.Ministry of Finance, C-149, 16.10.2010) ruled that parental leave is not the right of the child but on of the parent, therefore, it is not possible to take up one leave for each infant born. However, having taken into account the particular difficulties entailed in caring for twin or multiple infants, the CJEU left it to the discretion of the national legislator to allow for additional facilitating provisions. Finally, the Council of the State, by its judgment no 845/2013, regarding judges, granted an additional three-month period of parental leave for each child, following the initial none months within the spirit of the CJEU decision. That standpoint was initially adopted by the Ministry of Education in its relevant circular. Next, the Ministry of Administrative Reform regulated the issue through L. 4210/2013 (indicative complaints 159088/2012, 163280, 167236, 173191/2013).

### **Regulation of issues regarding parental leave for teachers**

Teachers filed complaints with the Greek Ombudsman, making reference to multiple problems when attempting to receive parental upbringing benefits (granting the remaining period of an interrupted parental leave, along with a new leave; parental leave for twins or multiple children, parental leave for supply teachers, etc). The GO



maintained the view that the particular nature of the teaching profession (different working hours, specific compulsorily periods of annual leave, etc) does not justify unfavourable treatment under the policies of work life balance. On 12.8.2013 the Ministry issued a circular, dealing with some of these issues. It establishes the granting of parental rights accumulated from a previous child; provides an additional three-month period of parental leave for each child in cases of twins or multiple pregnancies; and stipulates that the six-month additional maternity leave must not be deducted from the nine-month parental leave taken up by the father teacher. Moreover, the Ministry of Education briefed the GO that a circular is forthcoming, regulating the implementation of the provisions of L.L. 4075/2012 on unpaid parental leave, on supply teachers (complaints 160695/2012, 163448, 163573/2013).

### **Maternity leave to lawyer working in the public sector under retainer agreement**

A pregnant lawyer working under retainer agreement at the Ministry of Public Order asked for the Greek Ombudsman's mediation: Her employer rejected her application for maternity leave, on the grounds that her contract stipulated that she "is not entitled to leave or other benefits from the ministry" and her payment was interrupted. The GO recommended to the Ministry that the employee be given the leave explicitly provided by law in cases such as hers. The GO also pointed out that the provisions governing protection of maternity fall under peremptory norm (*jus cogens*) and not under consenting norm (*jus dispositivum*) and therefore cannot not be curbed within the framework of the freedom of transactions (Article 361 CC). The Ministry has yet to revise its decision (case 161994/2013).

### **PROFESSIONAL ADVANCEMENT AND GENDER-BASED DISCRIMINATION**

In 2013, gender-based discrimination in professional advancement focuses mainly on the consequences brought about by motherhood, parenthood and use of maternity and parental leave affecting the professional advancement of women, and especially those in positions of responsibility (managerial posts).

**Since managerial posts differ from ordinary posts in public administration formally as well as substantially –hence they are accompanied by allowances and credits- we must seek the balance between the functional criterion, which regards the actual exercise of managerial duties and the gender equality criterion, which regards the need for enhancement of the presence of women in managerial posts, where they are underrepresented.**

### **Award of credits and allowance for managerial post during maternity and parental leave**

A Head of Section at an agency of the broader public sector, filed a complaint stating that while she was on sick leave due to pregnancy related illness, her employer notified her that, as stated in the relevant law, following a two-month absence from her position, she would be replaced, regardless of the grounds of absence; therefore, from that point onward, both the credits and the allowance accompanying the position would be awarded to her substitute. The Greek Ombudsman contacted the Ministry of Administrative Reform and expressed its viewpoint that, with regard to occupying a



managerial post, in the private as well as the public sector, women are underrepresented and in need of support and that the obstacles women face in their effort to access and retain those positions must be curbed by means of positive measures. The initial standpoint of the Ministry of Administrative Reform stated that when the selected Head of Section is replaced legally due to impediment or absence, the promotion credit system applies both to the person initially selected and the lawful replacement. The General Accounting Office stated that the allowance for a managerial position is severed after a two-month absence of the selected staff, regardless of the grounds of absence and including absence due to pregnancy, maternity or pregnancy related illness. The case has been referred to the Legal Council of State along with the GO's document, for a consultative opinion. The decision is forthcoming. (case 157813/2012).

The payment of the allowance for managerial positions was subject of another complaint submitted by a Head of Section working at a public service. She had received her regular annual leave for 2012 and, following that, her parental leave. Her managerial allowance was severed immediately following the two-month period of absence, including the one month of her regular annual leave. The Greek Ombudsman pointed out that under no circumstances could the regular annual leave be included into the concept of "absence; however, the GAO's answer was identical to the one they have given to the previous similar case. The answer also included a comment that "no grounds exist for granting an exception" (case 164372/2013).

Sick leave due to pregnancy related illness as time of service for supply teachers

On the basis of an opinion from its Legal Counsel, the Ministry of Education issued a circular, according to which supply teachers who take sick leave fall under the provisions of Articles 657-658 of the Civil Code, therefore, "any leave exceeding 15 days per annum cannot count as time of service". The Greek Ombudsman received a number of complaints submitted by supply teachers whose sick leave due to pregnancy related illness was not included in their time of service. The Ministry did acknowledge that supply teachers' contracts remain valid during maternity leave as well as sick leave due to pregnancy related illness; nevertheless, it insisted that only maternity leave can be recognised officially as time of service.

**The Greek Ombudsman pointed out that, according to national case-law as well as the CJEU (C-191/03McKenna) sick leave due to pregnancy related illness enjoys the same protection as maternity leave.**

Subsequently, the Ombudsman reiterated its request to have the circular eliminated, when one of the complainants filed a recent certificate of teaching experience which still excluded pregnancy related illness from service time (cases 160695/2012, 163448/2013).

## **MATERNITY PROTECTION**

### **Placement in reserve duties during the period of maternity protection**

Pursuant to the provisions of L. 4093/2012, public administration posts occupied by public servants, graduates of Junior or Senior Secondary Education, working under



private law open-ended employment contract in Administrative, Accounting, Financial or Secretarial duties, and not hired through the channels of the Supreme Council for Civil Personnel Selection (ASEP), were abolished and the respective personnel was placed on reserve duties. According to the provisions of the law, reserve duties last one year. At the end of the one-year period has expired those on reserve duties that have not been transferred or moved to another post, will be fired as redundant personnel. During the period of reserve, the public servants are inactive and their salaries are subject to a 25% cut.

**The Greek Ombudsman referred to the Ministry of Administrative Reform and maintained that female public servants within maternity protection period, must be exempted from reserve (as of the first day of pregnancy and up to 18 months after giving birth).**

The ministry maintained that placement in reserve is the immediate effect of abolition of the post, therefore the law regarding protection from dismissal cannot be implemented in these cases. Moreover, the Ministry claimed that the remote possibility of dismissal does not constitute an adverse change in employment conditions (cases 159316, 160318, 160786, 160940/2012). Similar issues arose in 2013 in the Ministries of Education and Health. The GO is monitoring developments.

### **Unfavourable treatment and dismissals of pregnant public servants**

In 2012, the Greek Ombudsman had received a complaint by a female worker at a Municipal Benefit Enterprise which was merged under the “Kallikratis” Programme for Local Government. She argued that, while she continued to offer her services without pause to the newly founded legal entity, the chairman of the Board refused to provide her with the necessary documents for payment of the maternity allowance, claiming that the process of transferring employees between legal entities had not been completed.

**The Greek Ombudsman informed both the enterprise and the municipality that pregnancy and maternity are protected as long as an actual work relationship exists, regardless of the validity of the work contract. The GO then referred the case for investigation to the supervising decentralised administration.**

Eventually, disciplinary proceedings were set in motion against the mayor and the chairman of the new legal entity Board (see Annual Report 2012, p.23). for violation of duty and breach of maternity protection provisions (case 148491/2012).

A female worker appointed at a municipality as special collaborator of the mayor was dismissed while she was in the second trimester of her pregnancy. The municipality claimed that the termination of her contract was brought about by the fact that, on the basis of a new law, the municipality had to reduce the mayor’s special collaborators from six to four. When the Greek Ombudsman asked for clarifications as to why that particular civil servant was selected for dismissal during maternity protection, the municipality invoked the need for reduction of the posts as an “important reason”. The GO then expressed the view that dismissing an employee under maternity protection must constitute the last resort (*ultima ratio*) for any employer, something that the municipality did not prove; the dispute is now before the courts which will judge whether an “important reason” existed or not (case 161681/2013).



## **Unemployment and maternity allowances**

An employee who was dismissed during pregnancy applied to OAED (Manpower Employment Agency) for the unemployment allowance. Her application was rejected on the grounds that her dismissal was unlawful. The Greek Ombudsman stressed that whether the dismissal is unlawful or not is something that is decided exclusively by the competent courts. Therefore, OAED's refusal to grant the allowance is arbitrary and leaves the employee without any financial support during a critical period of her life. Moreover, there is no law or internal regulation, granting to OAED discretion to refuse the unemployment allowance to that particular category of workers. The GO awaits OAED's response (case 165880/2013).

A number of self-employed women filed complaints with the Greek Ombudsman because they could not obtain their maternity allowance provided by Article 6, para 1, L. 4097/2012. Although the law had been published as of 03.12.2012, the Joint Ministerial Decision which would describe the conditions under which these allowance would be granted, has not been issued yet. The GO has referred the issue to the Ministers of Labour and Economics twice. Both times the GO underscored that the omission on behalf of the administration to proceed with the Decision required, obstructed the exercise of a right provided by law, which must be exercised within a limited period of time (around childbirth) or else it is lost. The competent Insurance Directorate of the Ministry of Labour replied that the matter is under investigation and that the service will seek the views of the social partners. The same service also emphasised that the entire issue must be investigated on the basis of a feasibility study. The GO is closely monitoring developments (indicative cases 167003, 168427, 168767, 171431/2013).

## **PRIVATE SECTOR**

Most private sector complaints investigated regarded termination of contracts during pregnancy or during the 18-month protection period, sexual harassment in the workplace, unilateral adverse modification of employment terms. The complaints regarding the job rotation status did decrease but, in contrast, another phenomenon appeared that entailed non-acceptance of work by women who were returning to their positions after the 6-month additional maternity leave (OAED).

**With few exceptions, there has been a significant improvement in the collaboration of the Greek Ombudsman with Attica Labour Inspectorates. The presence of a GO representative during the discussion of complaints brought before the Labour Inspectorates seems to contribute to the positive outcome of the cases examined.**

In any case, contact of GO representatives with both sides always contributes to more accurate representation of the situation and to optimum cooperation between the two sides. Nevertheless, it is still difficult for the GO to be present at Labour Inspectorates of the remaining territory due to economic hardship.

## **UNILATERAL ADVERSE MODIFICATION OF EMPLOYMENT TERMS**



A modification is considered adverse when it brings about direct or indirect material or moral damage. Being demoted or being obliged to shoulder additional work is an example of such cases. The concept of damage is interpreted broadly and, as such, personality abuse also constitutes moral damage.

### **Personality abuse**

The employee in a trading company filed a complaint with the Labour Inspectorate arguing that, as soon as she informed her employer of her pregnancy, she was told that her employment would be terminated. The complainant returned to her work the next day, having been informed that her employer was prohibited by law to fire her on the grounds of pregnancy; however, he began exhibiting particularly insulting behaviour towards her. He forced her to take the stairs to the first floor on the grounds that the lift should be used by supervisors and customers only; some time he reduced her salary. As the weeks went by, he began to verbally abuse her using insulting remarks about the changes her pregnancy had brought to her physical appearance; she was obliged to change office but neither her computer nor her files were available in her new office. Moreover, her employer stopped assigning any tasks to her throughout her work day despite the fact that she would ask him repeatedly to have tasks assigned to her.

During the meeting that took place at the Labour Inspectorate, the company's representative maintained that there had been no intention to insult the employee and even claimed that there had been no intention to dismiss her. A few days after that tripartite meeting, the complainant's pregnancy leave began. The Greek Ombudsman sent its findings not only to the parties involved but to the Labour Inspectorate as well so that the employer would be officially informed that his actions constituted a violation of the law. The GO's aim was to avoid a repetition of those actions once the complainant returned to work after the expiration of her maternity leave. Further, the GO informed the complainant's employer as to the consequences (imposition of fine) should he fail to comply with the law (case 166773/2013).

Another private sector employee filed a complaint with the Greek Ombudsman regarding her employer's insulting and oppressing behaviour towards her following her announcement that she was pregnant. Her belief was that her employer was forcing her to resign. The GO informed her employer that treating an employee less favourably on the grounds of pregnancy or maternity constitutes a violation of the law. Moreover, the GO informed the employer that, according to case-law, disrespect shown by an employer to the personality of an employee constitutes infringement of employment terms. Subsequently, the GO was informed by the employee that her employer's behaviour towards her changed dramatically for the better (case 142712/2011).

A clerk complained that when she returned to work after her maternity leave, she realised that another person had been hired in her place. What is more, her employer assigned to her external tasks almost exclusively, instead of duties relevant to her expertise. During the tripartite meeting at the Labour Inspectorate, the company's legal representative acknowledged that the newly hired employee was engaged in the field of work that used to be the complainant's before the maternity leave. After having been briefed on the provisions governing adverse modification of employment



terms, the company's legal representative made a commitment that, from that point on, the complainant would provide the services she had provided before her maternity leave and would not be assigned to inferior duties. That commitment has been kept (case 162363/2013).

### **Modification of employment terms**

One of the Greek Ombudsman's investigations entailed the transfer of an employee during the period she was under maternity protection to another store, away from her place of residence. It also entailed a change in her working schedule from a continuous to an intermittent one. As soon as the maternity protection period had expired, the company terminated her employment contract. The GO concluded that the company did not provide sufficient evidence that it had not violated the principle of equal treatment for men and women on the basis of Article 24, L. 3896/2010 (shift of the burden of proof), had directly discriminated against its employee by adversely modifying her employment conditions for the worse during the maternity protection period (case 161618/2013).

### **Transfer of business**

An employee complained that, before her returning to work from the six-month additional maternity protection leave, she realised that the landlines of her employer company had moved to the premises of a different company under another name. She also presented a document of her employer to its clientele, announcing its cooperation with the new company. However, when the employee returned to work, the new company refused to accept her services. They claimed that there had never been any transfer of business and, therefore, they had no relation to the rights and obligations of her previous employer towards her. As it was proved, the initial company had transferred its clientele, equipment, and materials to its successor, while the successor had retained the services of 8 out of the 15 employees of the previous employer.

When the GO asked for explanations, the transferee could not prove that the business transfer did not exist, nor, could it prove that it had not entered into the status of a succeeding employer. In essence, the succeeding company was challenging the Greek Ombudsman's jurisdiction to investigate the case. The GO's conclusion was that, in this particular case, there was sufficient evidence corroborating the transfer of the initial business to the new one which was now under the status of a belated employer (in breach of due fulfilment of its obligations towards the employee). The GO called upon the new company to accept the complainant's services (case 157135/2012).

## **DISMISSALS AND REFUSAL TO ACCEPT SERVICES DURING THE MATERNITY PROTECTION PERIOD**

Regrettably, it must be noted that pregnancy and maternity protection provided by law, has had a negative impact on the employment of women of reproductive age as well as the overall manner that category of women is treated by employers.

**Nevertheless, due to the Greek Ombudsman's intervention, employers seem willing to abide by their obligations.**



The cases indicated below, highlight the importance of the Greek Ombudsman's intervention and of the protection grid it activates.

### **Compliance of employers who were in violation of the provisions of labour legislation**

An assistant accountant filed a complaint with the Labour Inspectorate reporting that her employer dismissed her as soon as she returned from her six-month maternity protection leave, during the maternity protection period of 18 months after childbirth, without maintaining a reason for dismissal, not related to maternity.. During the two meetings that took place at the local Labour Inspectorate, the employer was informed of the relevant labour legislation . Following those meetings, the employer revoked the complainant's dismissal and the working relationship took a normal turn again (case 163357/2013).

A pregnant salesperson filed a complaint with the Labour Inspectorate, stating that, during her few days sick leave , taken in full compliance with legal prerequisites, her employer filed with OAED a « Statement of Voluntary Discharge”, claiming that the complainant's absence was unjustified. During the meeting that took place, the employer invoked a misunderstanding and their employment relationship resumed its normal course (case 162055/2013).

### **Refusal of employers to comply**

However, in other cases, employers refused to comply with the law, therefore, the GO activated its competence to make a recommendation for the imposition of fines.

A publishing house dismissed three of its employees during their maternity leave, with no serious reason, not related to maternity. After a series of postponements on the part of the employer, the Greek Ombudsman addressed the company in writing, informing it about the protection the complainants had from being dismissed. The GO also stressed that the company had not complied with the formal prerequisites foreseen when terminating an employment contract in such cases. Additionally, the GO asked for explanations in writing on the termination of employment contracts called on the company to continue the complainants' employment. Receiving no answer from the employer, the GO recommended to the local Labour Inspectorate that an administrative fine be imposed (cases 158880, 159332, 160324/2012).

An employee at a branch of a pizza delivery franchise in Thessaloniki was dismissed during her maternity leave period. The employer invoked that the branch was closing down and that the remaining employees had also been dismissed. The competent Labour Inspectors attempted to find the complainant work at another branch of the franchise. However the employer refused to employ the complainant, initially claiming that the other branch was overstaffed, served completely different comestibles, and applied a different culinary know-how. In a subsequent answer, the employer changed its position stating that the specific branch did not employ cooks. In the end, the company never re-hired the dismissed employee. The GO deemed that the employee's dismissal was null and void as it was violating L. 3896/2010, Article 281 CC, the principle of proportionality and the *ultima ratio* principle. The GO then recommended that a fine be imposed on -employer (case 168535/2013).



A complainant working under an open-ended employment contract since 2007, reported that on 13.03.2009 her employment contract was terminated despite the fact that she was pregnant; however, the employer was unaware of her pregnancy. When she notified her employer of her pregnancy, she was re-hired but this time until 18.10.2010 at which point her employment contract was terminated anew, although she was again pregnant and again unbeknownst to her employer. Her employer proceeded to revoke that second termination of her employment contract. The employee was eventually dismissed on 12.12.2012 when she was no longer under the 18-month maternity protection period. The employee reported her dismissal as void, alleging discrimination on the grounds of family status. The Greek Ombudsman concluded that the last dismissal took place at a time when she was no longer under the protection of maternity. On the contrary, the company proved in writing that it had attempted to find her employment elsewhere and, therefore, had not violated the *ultima ratio* principle (case 162920/2013).

## **SEXUAL HARASSMENT**

During 2013, the Greek Ombudsman continued to receive and process complaints for sexual harassment in the workplace, be it in the private or in the public sector. With the experience it has accumulated on that issue, the independent Authority has verified how difficult it is to handle such cases either because their investigation suffers from lack of evidence or because of the inability to document them substantively. However, the main difficulty lies with shifting the burden of proof which, must be based on the likelihood of real incidents.

An employee of a multinational company filed a complaint for sexual harassment against a colleague, with whom she had been romantically involved in the past. The Ombudsman asked the complainant to provide evidence of her claims. She furnished a testimony by her life partner. Next, the GO contacted the employer asking for the measures they had taken in trying to resolve the situation. The company claimed that it had proceeded to the following actions: psychological support of the complainant, temporary removal of the respondent from the workplace, and a proposal to the complainant to move to another floor. As the investigation into the case unfolded, the GO asked the complainant to provide supplementary data (written messages/texts) which was crucial in proving her claims. However, she failed to furnish such evidence. The GO filed away the case considering that her complaint for sexual harassment had not been proved. As to the claims of the complainant that her employer had never taken the appropriate measures to protect her, the GO deemed that the measures taken by the company within the framework of the employer-duty-of-care principle were adequate and thorough (case 163866/2013).

An employee of an agency belonging to the broader public sector, filed a complaint that she had been sexually harassed by her supervisor during a business trip. Upon their return, she called on him to apologise. Instead, he brought against her disciplinary action for conduct unbecoming towards a superior. What is more, the service transferred her to a different administrative unit (case 158236/2012). The Greek Ombudsman asked the public service for information on the disciplinary action and the transfer. When the employee was officially reprimanded, the GO began its own investigation as to the claims by collecting testimonial evidence. The GO's findings came to the following conclusions: (a) the real incidents described in the



complainant's claims were not verified; (b) The claims of the respondent that the complaint against him was a fabrication by the complainant did not convince the GO beyond the shadow of a doubt; and (c) the service did not investigate into the incident after receiving the relevant document by the GO.

**The specific complaint aside, this case revealed that public services have not established anti-harassment policies regarding gender-based harassment and sexual harassment in the workplace.**

## **OUTSIDE THE WORKPLACE: DISCRIMINATION ON THE BASIS OF GENDER IDENTITY**

The Greek Ombudsman also received a number of complaints from transgender individuals. Those complaints were investigated in accordance with European Law which considers discrimination on the basis of gender identity as gender-based discrimination, over and above this vulnerable group's fundamental rights in human value and dignity. The investigation of those cases revealed the importance that information and awareness-raising have in matters of respecting diversity (otherness). It also revealed the significant role played by civil society and by the communities that are active in protecting LGBT equal rights. Bringing potential victims in touch with public agencies is made easier through these communities, and the essential cooperation for furthering the fight against complex issues and situations is facilitated.

The case of an adult male to female transgender, student at a public evening school, is indicative indeed: The individual's complaint filed with the Greek Ombudsman stated that she was being subjected to discrimination due to her gender identity; further, she was facing a hostile climate not only by her classmates but also by the teachers and the Principal. The complaint was supported by two NGOs active in the field of tackling homophobia and transphobia in education. After a series of meetings and contacts with all parties involved, the GO recommended to the Teachers' Board specific measures of actual support and acceptance of the transgender student's identity: address her with her female name, respect her dressing preferences and respect her right to use the female restroom facilities. The GO's recommendations were accepted unanimously by the Teachers' Board. Additionally, experiential-training interventions for the school's teachers and students took place, by a group of specialists, under the supervision and participation of the competent Directorate of Health Education of the Ministry of Education. The transgender student successfully completed her studies in compulsory education and went on to upper secondary education (case 160173/2012).

Subsequently, the Greek Ombudsman recommended to the Ministry of Education to use this example as best practice in order to expand similar actions in other schools facing problems with accepting otherness and tackling discrimination.

## **ACTIONS PROMOTING EQUAL TREATMENT FOR MEN AND WOMEN**

### **Cooperation with the European Commission**



In 2013, the Greek Ombudsman managed to resolve three categories of problems regarding gender equality, in cooperation with the Equal Treatment Legislation Unit of the European Commission Directorate-General for Justice (see also, “Reconciliation of professional and private life,” in the present chapter). The relevant issues entailed:

- The legal nature of the six-month additional maternity protection leave provided by OAED on the basis of Article 142, L. 3655/2008; and the leave’s relation to the nine-month parental leave of Article 53, L. 3528/2007 (Civil Servants Code).
- The problems arising from parental leave for teachers, for which the Ministry of Education had been given by the EU a compliance deadline within the first semester of 2013.
- The amendment of Article 53 CSC, to reflect the abolition of gender-based direct discrimination against fathers, for which the Ministry of Administrative Reform had been given by the EU a compliance deadline until the end of 2013.

### **Cooperation with Equinet**

Following the admission of the European Network of Gender Equality Bodies into Equinet (see Annual Report 2012, p. 128), the Greek Ombudsman also joined Equinet’s Working Group on Gender Equality (WG Gender) and participated in the following annual events:

- Two meetings of the working group (Paris, April 18-19; and Lisbon September 20).
- The training seminar “Gender Equality in the Labour Market: The Role of Equality Bodies” which was held in Brussels (June 27). The Greek Ombudsman made a presentation on sexual harassment at the workplace and on the role played by equality bodies.
- A two-day training event on issues regarding equal pay for men and women which was held in Lisbon (September 18-19).

The Greek Ombudsman also participates in the collection of material and the compilation of relevant reports on that working group’s proceedings.

### **Cooperation with the National Centre of Public Administration**

The Greek Ombudsman participated in the compilation and evaluation of the files regarding two training programmes about to be implemented:

- A Training Programme for Trainers of Labour Inspectors on issues of equal opportunity and equal treatment for men and women in employment.
- A Training Programme for Labour Inspectors (SEPE) on gender equality issues in the workplace.

The Greek Ombudsman also participated in the assemblage of educational/training material to be used during the implementation of those two programmes.

### **Cooperation with the Ministry of Justice**



The Greek Ombudsman participated in the Working Group operating under the auspices of the General Secretariat for Transparency and Human Rights of the Ministry of Justice. The group worked towards drafting and monitoring the implementation of the National Action Plan for Human Rights, and focused on the specific area of “Gender Equality – Combating Gender-based Discrimination”.

#### **NSRF actions in support of the Greek Ombudsman as Gender Equality Body**

In 2013, a relevant public tender was launched and its sub-project 4 “Actions of networking and awareness-raising” is already under way. The sub-project belongs to the Horizontal Act “Support of the action by the Greek Ombudsman as the agency monitoring and promoting implementation of the principle of equal opportunity and gender equality in public policies”. Furthermore, the process of the tender leading to the selection of a contractor/sponsor for sub-project 1 is almost complete. Sub-project 1 is themed “The public services’ perception as to the role of the Greek Ombudsman as Gender equality body and study on implementation of the relevant legislation”.