

# Combating discrimination

Special report 2015 (art. 20 (3) of Law 3304/2005)

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This Report records the Greek Ombudsman's activity in 2015 as a body promoting the principle of equal treatment irrespective of racial or ethnic origin, religion or faith, disability, age or sexual orientation, according to its competence based on Law 3304/2005. The Report also includes cases in which the institutional tools provided for under Law 3304/2005 were not used, because they did not fall *sensu stricto* within the scope of the law. These cases were examined in the light of the Ombudsman's general competence regarding the protection of rights, as well as its more specific one as the national body promoting the principle of equal treatment (Article 19(1) of Law 3304/2005). Discrimination on the grounds of gender identity has also been included in this Report, despite the fact that this field is not included in the provisions of Law 3304/2005. It was however deemed useful to include them in this section for reasons of relevance and significance.

In more detail, in 2015, according to the above criteria, the Ombudsman investigated 224 cases, where there was alleged discriminatory treatment against one or more persons. From these, the cases pending from prior years are 109. Among all the cases, 42 were closed, as they fell beyond the GO's mandate, were unfounded, or their investigation was terminated due to the lack of sufficient information provided by the interested parties. The outcome of the 70 cases whose investigation was completed in 2015 was initially positive in 32 cases, whereas in 16 cases the Administration refused to comply and in 22 of them it was found that the administration had acted legitimately. The remaining 112 cases are still under investigation.

## INTRODUCTION

The year 2015 marked the 10th anniversary from entry into force of Law 3304/2005. From the first year that the Law entered into force, the Greek Ombudsman highlighted  the positive points of the legislation against discrimination, mostly related with the provision for new institutional tools (reversal of burden of proof, broadness of the competence for promotion of the principle of equal treatment), as well as the serious deficiencies of the relevant framework, both in its branch related to its regulatory range and the choice of assigning the relevant competence to agencies that do not meet the necessary requirements of independence (Labour Inspectorate and Equal Treatment Committee of the Ministry of Justice).

In 2014 the European Commission launched a procedure to investigate the possible violation of Directive 2000/78 of the Council, regarding the independence and effectiveness of the two above bodies during the exercise of their special competence as agencies promoting and supervising the principle of equal treatment. Further to this process, it was found necessary to revise the legislative framework and assign the overall competence against discrimination in the public and private sector to the Greek Ombudsman.

**In view of the upcoming revision of the legislative framework, an opportunity is provided for an overall reassessment of the law, and in particular those provisions that displayed weaknesses over the ten years of their implementation. This is mainly the provision on the exemption of citizenship, the inclusion of Security Forces to the exceptions relating to Armed Forces, the reticence in broadening the fields covered mainly by the transposition of Directive 2000/78, the vagueness regarding the Administration's obligation to sufficiently justify, in accordance with the strict conditions of the law any justifiably different treatment (in particular in cases of discrimination on the grounds of age or disability).**

## Statistics per area of discrimination

	TOTAL OF COMPLAINTS EXAMINED IN 2015	Complaints filed in 2015	Complaints of previous years examined in 2015	Discrimination in employment and occupation	Discrimination in education and vocational training	Discrimination in the provision of goods, services, and housing
Roma	53	21	32	4	14	35
Ethnic origin/racial origin (except for Roma cases)	25	19	6	6	8	11
Disability	87	48	39	25	56	6
Age	33	15	18	26	7	
Sexual orientation	4	3	1		1	3
Religious or other beliefs	22	9	13	4		18
<b>TOTAL</b>	<b>224</b>	115	109	65	86	73

The Greek Ombudsman estimates that the assignment of the overall competence to a single body will rationalise the existing, extremely complex, organisational framework, and will help victims of discrimination access the competent body. Moreover, it will allow for the overall supervision of issues of discrimination, through which structural or systemic characteristics which result in unacceptable exclusions will emerge more easily. In any case, what needs to be ensured is the adequacy of human and other related resources, so that the new single body can meet the increased demands of its role. For the more effective exercise of the relevant competencies, the law under revision has included the very important provision on the services and bodies that will assist the Ombudsman in its work. In addition to the Hellenic Labour Inspectorate (SEPE), which must continue to hold a crucial role in the area of private sector employment (in line with Law 3896/2010 on gender equality), another very important aspect is the specialisation in the law of certain ministry bodies (Ministry of Labour, Education, Justice, Health), and other bodies (e.g. Economic and Social Council of Greece (OKE, General Confederation of Greek Workers (GSEE), Greek Confederation of People with Disabilities, civil society bodies), which will constitute the grid of an efficient institutional mechanism of cooperation in dealing with discrimination.

## DISCRIMINATION ON GROUNDS OF RACIAL OR ETHNIC ORIGIN

### Access to public office

Throughout its history, the Greek Ombudsman has dealt with Greek citizens of non-Greek descent who acquired Greek citizenship through naturalisation and who are treated unfairly compared to Greek citizens who acquired Greek citizenship either by birth as children of Greeks or because they were naturalised as repatriates. These cases pertain to the access of Greek citizens to public offices, and are related to the implementation of the special provisions for the Army or Justice, and either directly exclude those Greek citizens of non-Greek ethnic descent (Article 14(3) of the Code of Military Justice Corps, Law 2304/1995) or lay down additional requirements after the acquisition of Greek citizenship only for Greeks of non-Greek descent (requirement for lapse of five years after naturalisation of Article 36(3) of the Code of Regulations of the Courts and the Status of Court Officers, Law 1756/1988, or in the past Article 3(1)(b) of the former Lawyers' Code, Law 3026/1954). The investigation of these cases leads to the conclusion that even between Greek citizens, the Administration may tolerate differentiations due to ethnic origin, despite the legislative developments that have occurred with Law 3304/2005 and the explicit provision of Article 26, according to which "upon entry into effect of this law, all legislative and regulatory provisions ... contrary to the principle of equal treatment, according to this law, are repealed".

**It is the Greek Ombudsman's firm position that the particularity of specific offices may allow, in principle, the exclusion of aliens; however, differentiations between Greek citizens on the grounds of their ethnic origin cannot be a fair criterion of discrimination.**

In this context, it has repeatedly raised the issue of the direct conflict between the limitations at issue and the constitutional principle of the equality of Greek citizens, and the principle of equal treatment regardless of racial or ethnic origin, as such is established with Article 13 of the EC Treaty, is specified in Directive 2000/43/EC and is transposed into Greek law with the provisions of Law 3304/2005.

It is noted that the provision of Article 3(1)(b) of the former Lawyers' Code (L.D. 3026/1954), after related interventions by the Greek Ombudsman in the past as well as actions of the Ministry of Justice, stopped being implemented in practice and when the new Lawyers' Code was voted (Law 4194/2013) it was removed (see Annual Report 2013, pg. 139). A similar administrative practice had been adopted by the Ministry of National Defence, where in calls for expression of interest regarding the appointment of teaching staff in military schools, there was no reference, as a formal qualification, to the acquisition of Greek citizenship from birth, as the relevant provision required; however, no initiative has been taken to repeal it legislatively. With the exception however of the above positive developments at administrative practice or legislative initiative level, Administration continues to implement similar provisions, without providing adequate justification.

The case of a naturalised individual of non-Greek descent is characteristic (Case 175919/2013, see *Annual Report 2014*, pg. 117). Despite the Ombudsman's persistent interventions, the Ministry of Justice continues to insist in implementing a provision according to which an individual may apply for the National School of Judges (NSJ) only five years after naturalisation. The Ministry's justification until recently correlated the specific requirement with the particularity of the judge's position, the absence of any relevant case law, and the assessment that successful participation in the School's entrance examinations or the time of studying at the School "... is not sufficient to justify adaptation to Greek circumstances .... or the acquisition of a specialised and deep knowledge of the Greek legal science". In 2015 the Ombudsman returned to this issue with an intervention addressed to the Ministry of Justice's political leadership, asking the ministry to reassess its positions, by also taking into a consideration decision 3317/2014 of the Council of State, which held that the provisions of the ordinary or regulatory legislator that stipulate as a qualification for access to public office, not only Greek citizenship but also Greek descent, conflict with the constitutional principle of equality (Article 4 of the Constitution).

Beyond however the issues of the equal treatment of Greek citizens raised with the above cases and related to special provisions regarding access to special public offices, in 2015 a report was submitted to the Ombudsman, which disputes the legality of the requirement for the lapse of one year from acquisition of Greek citizenship through naturalisation, in order to enable participation in calls for positions in the general Public sector. We note that this requirement is only for Greek citizens with ethnic origin from third countries, as it expressly exempts from this time constraint citizens of EU countries (case 202150/2015).

### **Exercise of trade-union freedom**


The Ombudsman has dealt with the issue of the restriction of the voting rights of third-country citizens, who are members of medical associations, whether they are citizens of an EU Member State or third country citizens since 2008. In 2015 the Ombudsman investigated the complaint of a Nigerian woman, an intern physician in a public hospital and member of the country's medical association, who was not permitted to exercise her voting right due to the fact that she does not have Greek citizenship. This exclusion was based on the provision of Article 4 of the Royal Decree of 7.11.1957, as replaced with Article 3(1) of Law 1425/1984, according to which "Aliens who are entitled according to the applicable provisions to practice medicine in Greece, are mandatory members of the relevant medical associations and have the same obligations as the other members, but do not have the right to vote or be elected. Repatriates, members of Medical Associations, have the right to vote and be elected". The Ombudsman, addressing the General Secretary of the Ministry of Health and chairpersons of medical associations, invoked the constitutional protection of trade-union freedom regardless of citizenship ( Article 23(1)), the legal framework governing the "Free circulation and residence in Greece of European Union citizens" (Presidential Decree 106/2007, the law governing long-term third-country residents, and the relevant Greek legislation (Law 1264/1982) that provides for the right to vote and be elected, regardless of citizenship, on the only condition that the members have settled their membership dues. It further invoked relevant CJEU case law, in a case similar to the case in question (case C-465/01 *European Commission v Republic of Austria*), which found that the exclusion from the right to stand for election in chambers, of citizens of the EU and citizens of third countries that belong to the European economic area, violates the provisions of the EU Treaties and all other special provisions governing Union law.

**In view of the above, the Ombudsman asked for the opinion of the relevant associations and the political leadership of the Ministry of Health, noting that although medical associations are not typical trade unions, due to the public power they exercises, the complete exclusion of members that are third-country nationals must be reviewed in**

**relation to the fundamental principle of equal treatment of EU citizens regardless of citizenship, as well as the enhanced rights that are expressly recognised by the provisions of Directives for third-country nationals.**


After this intervention, the Ombudsman received assurances from the Chairman of the Hellenic Medical Association that its observations have been taken into consideration and a legislative amendment is underway. The issue is being monitored until its final legislative resolution (Case 194759/2014).

### **Discrimination at work on the grounds of racial and ethnic origin**

Complaints relating to discrimination on the grounds of ethnic or racial origin are frequently lodged with the Ombudsman, which cannot be investigated since they pertain to employment in the private sector. The Ombudsman forwards these reports to the body responsible for their investigation, and provides all the necessary clarifications it knows of and which require investigation. An indicative case is that of a Nigerian citizen, holder of an Asylum Seeker's Card, which concerned a breach of a statement of recruitment by a private company in a position for which he had officially been accepted and invited to assume duties, due to his ethnic and racial origin (case 187370/2014) .

**The Ombudsman, assessing that the complaint had grounds, in the light of Law 3304/2005, forwarded the complaint to the Hellenic Labour Inspectorate (SEPE), which is the body responsible for the implementation of the principle of equal treatment due to racial or ethnic origin in the private sector. After the investigation was completed, SEPE imposed a fine on the company for violation of the provisions of Law 3304/2005.**

### **Provision of health services**

Cases relating to the discriminatory treatment of citizens due to their ethnic or racial origin have been frequently investigated by the Ombudsman. In most cases, the reprehensible behaviour concerns their treatment by the police (see the special report on racist violence, 2013 ). However, such behaviours seem to run through the entire spectrum of administrative services, even in the sensitive area of medical or health services. An indicative case is that of a citizen who submitted a complaint regarding refusal by a doctor of the "Korgialeneio - Benakeio" Hospital to examine him, due to his Palestinian origin. The Ombudsman has repeatedly addressed the hospital without, however, any response on their part (case 198395/2015). Similar is the case of an Albanian citizen who submitted a complaint against a doctor of the PEDY Health Unit of Nea Ionia, for a racist attack during an appointment. With a decision of the Administrator of the relevant Health District, a Sworn Administrative Inquiry was ordered regarding the incident and a recommendation was made to the doctor to behave in accordance with the rules of medical ethics (case 199771/2015).

## **DISCRIMINATION ON GROUNDS OF CITIZENSHIP**

A distinct case in the area of discrimination on the grounds of ethnic or racial origin is discrimination on the grounds of citizenship. The general clause of exemption from the regulatory scope of Law 3034/2005 of discrimination on the grounds of citizenship (Article of Law 4(2) of Law 3304/2005), in combination with the various levels of protection reserved by national and European legislation for different categories of citizens (EU citizens, long-term residents, refugees, asylum seekers, third-country nationals), maintains a vague status of protection against discrimination in this area. In these cases the Ombudsman frequently takes advantage of its special competence as the body promoting the principle of equal treatment, in combination with its general competence for compliance with the law and protecting the rights of citizens.

### **The law on citizenship**

Law 4332/2015 is expected to have an indirect but clearly positive effect on the issue of discrimination on the grounds of citizenship (see in detail "The person and the law".) It reintroduced the possibility of acquisition of citizenship by birth and studies, which had been informally suspended after decision 460/2013 of the Council of State.

**To the degree that it allows going beyond jus sanguinis, this law will gradually give to an increasing number of our fellow-citizens access to a series of rights and benefits which they were deprived of up to now, because the corresponding laws lay down Greek citizenship as an inflexible requirement.**

It is still necessary that the legislator revises such outdated provisions, especially in the field of employment, the modernisation however of the laws on citizenship will drastically reduce the number of individuals affected, at least in younger ages. During the consultation that preceded the passing of Law 4332/2015, the Greek Ombudsman noted that the inflexible prerequisite for successful attendance in the new Article 1a of the Greek Citizenship Code, leaves without

Greek citizenship children that have integrated into Greek society but failed in successfully completing the necessary grades due to special educational needs and learning difficulties. It would be useful, in view of the obligation to take positive protection measures, to include alternative prerequisites for this category, e.g combination of simple (not successful) school attendance with certification of learning difficulties by a competent public diagnostic body.

### **Unfair discrimination against EU citizens**

Discrimination on the grounds of citizenship against EU citizens is prohibited in principle, and is allowed only if there is special provision in the law, and this provision does not conflict with the law of the EU Treaties. Despite the fact that, as a general principle, differentiations due to citizenship of EU citizens are not allowed, without prejudice to the above exception, in practice they are seen in a broad spectrum of administrative action. This happens either because EU citizens are often not explicitly included in the relevant provisions or benefits specified in regulatory acts or the law, or due to indirect discrimination that can occur from the implementation of specific, in principle neutral, measures or practices.


An indicative case is that of an EU citizen, graduate of a Vocational School, who applied for participation in a vocational training programme that was co-funded by the European Social Fund. Further to a relevant announcement of the Hellenic Management Association (EEDE), the interested party was accepted, but she was asked to submit a certificate of local residence, which cannot be granted to citizens who do not have Greek citizenship and are not registered in a municipal registry.

**The Greek Ombudsman addressed the Minister of Education and asked for the alternative submission of a certificate of permanent residence, especially for the foreign students who meet the other terms of the call, noting that the requirement for the submittal of a local residence certificate, especially for the specific beneficiaries, constitutes indirect discrimination. The proposal was accepted and permanent residence certificates were accepted for the foreign students.**

However, it was then considered necessary to amend the relevant Ministerial Decision, and the issue remains pending until its issue (case 198398/2015).

The consequences of a possibly involuntary non-explicit inclusion among the beneficiaries of a benefit are also highlighted by the case of an Italian citizen, who complained because the regulatory act that provides for the possibility of free entrance to all archaeological sites, museums and monuments to Greek holders of a valid unemployment card does not provide for a corresponding possibility for EU citizens of the same category (case 199143/2015). The Ombudsman, addressing the Ministry of Culture, noted that the exception of EU citizens from the beneficiaries of this benefit, does not emerge from the relevant legislation, a fact that renders the implementation of this provision unlawful, because it conflicts with a series of provisions that govern EU law (Article 18, EU Treaty and Article 21(2) of the Charter of Fundamental Rights). The Greek Ombudsman's recommendation was accepted and implemented with a Joint Ministerial Decision on 24.12.2015.

### **Discrimination against unemployed third-country nationals**

According to the applicable legislation, if unemployed persons are found to be unavailable due to travel abroad, this constitutes reason for removal from the unemployment register. In order to approve the benefits which the unemployed are entitled to, the Greek Manpower Employment Organisation (OAED) requires display of a public document proving the details of their identity. For Greek and EU citizens, such an identity document is the ID card. In case of third-country nationals, a passport is such a certificate of identity, which could incidentally however prove that they have travelled abroad, and have therefore not been available. The Greek Ombudsman noted that this practice by OAED was not a suitable and objective method to serve an otherwise legitimate purpose, such as the ascertainment of the availability of the unemployed, because this way only the availability of unemployed third-country nationals can actually be checked. Further to the Ombudsman's intervention, OAED committed to provide a clear, complete and objective method for checking the availability of the unemployed, in an impending introduction of a specific framework of obligations and rights for persons seeking employment (case 182672/2014) .

## **DISCRIMINATION AGAINST THE ROMA**

### **Social exclusion and exacerbation of social tension**

The various expressions of the social exclusion of the Roma and their link to structural characteristics that exacerbate discrimination against this racial group have been repeatedly pointed out in the Greek Ombudsman's Reports. In 2015

things remained stagnant as regards actions or initiatives by the Administration to improve living conditions and address the critical problems which this population group has to face. In this context, there are several cases pending related to the housing issue of the Roma in many regions of Greece (indicative cases 193004/2014, 200442/2015). Inversely proportional to the stagnation of the Administration's actions is the increasing social tension, and the number of complaints by neighbours of Roma settlements who protest about the effects which the living conditions of the Roma have on them (indicative cases 200608, 203391/2015). The Greek Ombudsman is working on these issues and intends to publish a related central intervention with its findings and proposals within 2016.

### **Fines by the city planning office to Roma settlements**

The method for calculating city planning fines for illegal makeshift constructions aiming to meet housing needs has been in the Greek Ombudsman's focus many times in the past, because the implementation of a measure in a consistent way in cases that are substantially different may have disproportionately adverse effects and constitute discrimination. In 2010, in response to a case where city planning fines were imposed to Roma (case 129730/2010, Kranidi, Argolida),

**the Ombudsman had noted the need to calculate the fines for irregular constructions aimed to cover immediate housing needs with the use of makeshift and cheap materials, based on the reduced coefficients for makeshift construction materials, as the law at the time stipulated.**

While reviewing a later case for a Roma settlement in Sofades, Karditsa, the Greek Ombudsman noted that the single method for calculating the fines, whether they concern makeshift shacks with cheap materials or permanent conventional constructions, raises issues of legality. After persistent interventions, in 2014 the Ombudsman was assured by the General Secretariat of Spatial Planning and Urban Environment of the Ministry of Environment, that the possibility of a special legislative regulation is being examined. In May 2015, the Ombudsman addressed the responsible minister, noting that its proposal for the legislative regulation at issue aims to restore legality and regulate in an objective manner substantially different categories of urban planning violations, a fact that will remove, in an objective and impersonal way, the extremely adverse impact of the relevant fines on families housed in makeshift shacks, whether they have specific racial characteristics (Roma) or not (case 143770/2011).

### **Education of Roma children**

Since its establishment, the Greek Ombudsman has investigated a significant number of reports pertaining to the education of Roma children (indicative cases 164851, 165718, 175856/2013, 183013, 196623/2014, 200514/2015). These cases pertain to:

- school integration and attendance of individual children, in combination with the responsibilities of both their parents and members of the educational system
- the difficulties and deficiencies related to the vaccination of the children, their healthcare coverage and living conditions, and the subsequent refusal of schools to enrol Roma students, in combination with reactions by the parents of other children
- the method for integration of the children at school and helping them relate with the rest of the student population (shortages in induction classes, isolation of these students in separate classes, operation of ghetto schools)
- problems related to the transportation of the children to school
- the inadequate implementation or absence of support programmes (e.g. related to the performance of the programmes being implemented for the education of Roma children, the provision of support materials, such as stationary, meals, etc.)
- the municipal status (registration of name, registration in municipal registries), and the exercise of their custody
- school attendance of older Roma minors (15-18 year-olds) who have not graduated from primary school
- the payment of a benefit for school attendance by students with very low income, which to a great extent include Roma students.

**After investigating these reports, it was found that the problem of the exclusion of Roma children from the educational procedure remains current and complex, despite the State's proclamations over time and the implementation of educational and support programmes to attract and keep Roma children in school.**

The Greek Ombudsman submitted specific proposals to the Deputy Minister of Education for addressing the problems it ascertained (see "Legislative and organisational proposals").

## **DISCRIMINATION ON GROUNDS OF DISABILITY**

## **The contribution of the UN Convention on the Rights of Persons with Disabilities**

The degree to which Law 3304/2005 managed to introduce improvements in the area of eliminating discrimination on the grounds of disability in work and employment appears to be unclear, and in any case not satisfactory. The issue at stake seems to continue to be the functional connection of the principle of equal treatment, as formulated in Directive 2000/78 and transposed in national law with Law 3304/2005, with the UN Convention for the rights of persons with disabilities that was ratified with Law 4074/2012, and mainly with their combined application in practice.

An indicative, but not typical case, where this combined use had a positive outcome is the case of a student with mental disability, certified by a Disability Certification Center (KEPA), whose request for transfer was rejected, because mental illness has not been included in the health reasons that allow transfer, according to the relevant laws (case 195651/2014). The Ombudsman has repeatedly intervened with regard to this issue, when the drastic revision of the transfer system in 2004, excluded mental illness from the health reasons that justify transfer. These interventions were not met with positive response and serious cases of abuse discovered in the past were brought up. With the opportunity of the above case, the Ombudsman returned to the subject, invoking specific provisions of the UN Convention for the rights of persons with disabilities, that pertain to the right of equal treatment and the obligation to take measures of reasonable accommodation for individuals with mental disability and noted that irregular transfers in the distant past with abusive invocation and certification of mental disease cannot be a reason for the absolute prohibition and complete deprivation of a right to students with mental disability.

**In this context, the Ombudsman asked that the conditions that certify the validity of a mental disease be specified, and that the use of measures of reasonable adaptation be allowed, as in this case the possibility of transfer, in order to make possible the completion of studies of this category of students on equal terms. Further to this intervention, a Ministerial Decision was issued, which included mental disability as a health reason that allows transfer, if certain conditions are met.**

## **Exclusion of reasonable accommodation measures**

The Greek Ombudsman has shown systematic interest in the issue of reasonable accommodation measures and the outline of their content. In 2015, the issue was raised whether permanent employees or employees under an indefinite term relationship of private law of the Citizen Service Centers (KEP), who have been appointed with allocation of points due to locality, can ask to be transferred before they remaining in the position for ten years, if they have a disability. Given that there was a similar question in 2011 (see *Annual Report 2011*, pg. 108), the Ombudsman once again expressed the opinion that the complete exclusion of the possibility of the transfer of employees with disability violates the obligations of the Greek State as an employer for taking measures for reasonable accommodation in accordance with Article 10 of Law 3304/2010. The complete exclusion of the examination of the substance of relevant requests by employees with disability, in combination with their mandatory stay in the place from which they request to be transferred due to their disability, obstructs their full and productive participation in working life on an equal standing with the other workers, for example because they are deprived of close and specialised medical care and follow-up and/or the support they need from their family and friends in their day-to-day needs. Therefore, the relevant legal framework provides a margin of discretion to the Administration, to reject any abusive requests and to examine each request for the secondment or transfer of a KEP employee with disability weighing the existing service needs in each case (case 203348/2015).

## **Partial reversal of burden of proof**

The issues of reversal of the burden of proof in cases of discrimination highlight the lack of the Administration's familiarity with the relevant mechanism. An indicative case is that of a person with disability, a ministry employee, who was eligible based on her ranking to be Head of Directorate, according to the pre-existing organigram, and was not chosen in the end (case 193841/2015). In implementation of the partial reversal of the burden of proof, in accordance with Article 14(1) of Law 3304/2005, in cases of omission to promote an employee with disability who holds an eligible position on the relevant ranking list, and meets the legal requirements, the service bears the burden of establishing whether the fact that this person was not selected is not causally related to the disability, or that it is related, but this different treatment can be justified for reasons related to the professional requirements of the position that needs to be filled (Article 9(1) of Law 3304/2015). The service must therefore refer to the elements based on which an employee with disability is evaluated as less capable of undertaking a specific position compared to the employees that were selected in the end.

**In this context, the reference by the service of the criteria according to which the supervisors according to the new organigram were selected, in combination with the statement that the selection was made without a comparative evaluation of the candidates and without taking into consideration health issues, are not sufficient to establish that**



**there was no direct discrimination due to disability in violation of the principle of equal treatment, in accordance with law 3304/2005.**

### **Appointment of teachers with disability**

According to the applicable laws, teachers with loss of vision or hearing or who are quadriplegic - paraplegic, with a disability percentage of 67% or above, and are capable of teaching, are hired as full time or part time substitutes under a private law fixed term employment relationship, only in Special Education Schools (SMEAE) and Inclusion Classes, and are therefore excluded, for instance, from parallel support (Article 3(2) of Ministerial Decision 128005/Δ2/14). Moreover, Articles 22 and 23 of Law 3699/2008 give priority to teachers with disability of 67% and above in special education teacher appointments, expressly exempting those suffering from mental illness. According to the Greek Ombudsman, ensuring that teachers are able to meet the special circumstances of special education can reasonably be considered a fair objective, capable of justifying deviations from the principle of equal treatment during the appointment of teachers with disability, provided that the principle of proportionality is observed (Article 9(1) of Law 3304/2005). Therefore, deviations must be measures on the one hand suitable for serving the above objective (that is to actually have the intended result), on the other hand necessary (i.e. not to be more burdensome than required for achieving the objective). Meeting these conditions requires ad hoc specialisation of the capability of candidate teachers to respond, depending on the nature of their disability and based on the conclusions of pedagogical science, to the special conditions of Special Education each time, that vary depending on the nature and gravity of the students' disability. These weightings are in fact the subject of assessment of the mechanism described in Article 7(2) of Law 3528/2007, i.e. of the opinions of: a) a pathologist or general practitioner and b) a psychiatrist, of either the public or the private sector, based on the referral document, in which the service describes the duties of the position that will be covered. On the contrary, when the deviations are established en bloc, completely excluding from special education structures teachers with specific disabilities (loss of vision or hearing or who are quadriplegic - paraplegic) without any correlation with the disabilities of the students and without any margin for the assessment of their capability, we cannot consider that the principle of proportionality is observed. In the framework of these observations, the Greek Ombudsman recommended that these regulations are revised (as well as any other similar ones there may be) by the Ministry of Education, in the direction of respect of the principle of equal treatment according to Law 3304/2005 (case 194835/2014).

### **Children with chronic conditions or disabilities**

Non-discrimination on the grounds of disability is ensured with the establishment and implementation of special measures that eliminate or minimise those conditions that obstruct the equal enjoyment of rights and lead to de facto discrimination. The inadequate introduction or lack of such measures, and in particular their inadequate implementation, even when provided for by law, has been in the Ombudsman's focus over the years, and also emerges from the cases investigated in 2015. Provisions such as individualised support with parallel support of children with autism, the special auxiliary staff for children with restricted mobility, the school nurse for children with a chronic condition such as insulin-dependent diabetes, the parallel support teacher specialised in hearing-loss and blindness for children with sensory disabilities, as well as related technical aids frequently appear as provisions without any practical relevance. This fact, in combination with the repeatedly inadequate staffing of schools with substitutes each year, the constantly delayed appointment of teaching, special education and auxiliary staff in Special Education Schools (SMEAE), which are attended by students with severe and complex disabilities, the failure to assure the transportation of students to the special education schools, and the deficient staffing of the Differential Diagnosis and Support Centres (KEDDY), compose the grid of obstacles that objectively hinder the equal access of children with disabilities and/or special education needs to education and constitute a de facto discrimination (indicative cases 196163/2014, 201226, 203037, 204710, 205449/2015, see also "Education").

## **DISCRIMINATION ON GROUNDS OF AGE**

### **Justification of discrimination on grounds of age**

**Despite the explicit limitations laid down by Law 3304/2005 and despite the very strict approach adopted by the CJEU regarding justified age discrimination, the Greek Ombudsman has dealt with systematic practices by public sector**

**bodies which set age limits to processes of staff recruitment, employee mobility, retirement, participation in professional organisations, registration in professional associations, without providing specific justification for these limits, as the relevant legislative framework requires.**

Thus, despite the general prohibition of age discrimination in the public and private sector introduced by Law 3304/2005, maximum age limits appear frequently in related vacancy notices, as being more or less self-evident, while there is a tendency of introducing them in an arbitrary and abusive manner, either accompanied by inadequate justification or lacking any special justification regarding the necessity of the age criterion. Since Law 3304/2005 entered into force the Ombudsman has received a significant number of complaints, on the subject of the unjustified use of age criteria for access to employment, vocational training and official or professional advancement, however, in a very limited number of cases did its intervention result in these limitations being removed. An exception to this general rule is the case of removal of the age limit of 50 at a swimming instructor school (case 191898/2014), the case where the Hellenic Chamber of Shipping recalled an announcement about the transfer of administrative employees that set a maximum age limit (see *Annual Report 2014*, pg. 126), the case of the cancellation of the disenrollment of a student from the Military Academy (SMY), with the justification that he exceeded the permitted age limit (see special report "Combating discrimination, 2009, pg 18), the acceptance of the application of a candidate lawyer for participation in examinations, which had initially been rejected by invoking that the legal age limit was exceeded (see special report "Combating discrimination" 2008, pg. 14), and finally the acceptance of the appointment of an individual in a position of guard in a detention center, regardless of her age (see special report "Combating discrimination" 2007, pg. 12).

### **Special justification and ascertainment of discrimination**

Phenomena of inadequate or complete absence of special justification, as regards the use of age as a criterion for access to work, employment and vocational training, are systematically repeated also in the current year. In these cases, the Ombudsman asks for the special justification of each case in order to investigate whether discrimination has occurred and to familiarise Administration with its obligation to provide justification. An indicative case of age discrimination is that of an employee of the Diplomatic Branch of the Ministry of Foreign Affairs, who had to leave his service when he reached the age of 65, without however having completed 35 years of actual pensionable public service. The mandatory retirement was the result of the implementation of the organisation's relevant provision, which does not however apply for the other branches of the ministry, where a different regulation applies, and specifically, the option of remaining in the service until completing 35 years, but not beyond the 67th year of age. The Ombudsman addressed the Ministry of Foreign Affairs, asking for clarifications about the exact reasons that impose the above differentiation between the employees of the Diplomatic Branch, and the employees of the other sectors of the Ministry (case 203998/2015).

In a similar case, the Ombudsman addressed a Municipal Enterprise for Water Supply and Sewerage (DEYA), noting that the rejection of an employee's application for conversion of his contract into an indefinite-term employment contract by virtue of special beneficial provisions (Article 56 of Law 4186/2013), by invoking the selection of a younger individual, constitutes discrimination on the grounds of age, to the extent that the reasons that this candidacy was selected are not specialised with criteria pertaining to the comparison of the qualifications of the candidates and their capability of meeting the duties of the positions they hold. The body's response is pending (case 203546/2015).

Finally, a characteristic example of setting a maximum age limit, lacking any special justification, is the case of University Education and Technical Education staff positions, of various specialisations, in the Public Power Corporation, on the basis of Notice No. 1K/2015 of ASEP (Supreme Council for Civil Personnel Selection), which set the maximum age limits in implementation of a ministerial decision, which had however been issued before the introduction of Law 3304/2005, and did not contain the required special justification proving that age is a substantial and definitive condition for the discharge of the professional duties of the positions to be filled. A similar case is the Notice of the Hellenic Electricity Distribution Network Operator S.A. (DEDDIE) (see *Annual Report 2014*, pg. 127). With the opportunity of this case, the Ombudsman addressed the Minister of Administrative Reform once more, noting that the problematic practice of setting age limits without special justification must be eliminated and guidelines must be provided for compliance with the requirements of the Community directive and Law 3304/2005 to all public bodies (case 199520/2015).

### **Vocational training**

Even though the possibility of direct or indirect discrimination and the justification of any justified age criterion would be expected to be taken into account during the issue of the relevant regulatory acts, in administrative practice it appears that the direct or indirect introduction of age criteria is more or less considered self-evident. An indicative case is that of a student, whose application for admission to a public Institute of Vocational Training (IEK) was rejected, with the justification that he had not graduated from secondary education recently. Even though recent graduation was in fact a

condition of the relevant regulatory act, in order to examine whether this requirement indirectly introduces possible discrimination on the grounds of age, because it exempts individuals of an older age from access, the Greek Ombudsman asked the competent Directorate of the Ministry of Education to provide specific information proving the necessity of introducing this allocation of points to younger individuals, as well as information that may pertain to other compensatory measures for older age groups, potentially at the level of post-secondary vocational training level (case 198422/2015).

### **Discrimination on the grounds of age not falling within the scope of Law 3304/2005**

The Ombudsman has systematically used its general competence, as provided for under Law 3094/2003, in order to address issues of discrimination in fields beyond those included in the regulatory scope of Law 3304/2005 or in order to engage the bodies or services that are responsible for investigating them. In this context, it has examined a case related to the establishment of a maximum age limit of 28 years, as a condition for participation in a scholarship granting procedure by the State Scholarships Foundation (IKY), informing the competent body of its obligation to specialise the reasons that justify the introduction of an age limit, in accordance with the principle of proportionality (see *Annual Report 2011*, pg. 110-111). Similarly, when the Ombudsman was informed of a maximum age limit (30 years) that was set for participation in a notice of the National Bank of Greece, it attempted to engage the Hellenic Labour Inspectorate (SEPE) to investigate the legality of this condition. Also, with the opportunity of an investigation of a complaint about a maximum age limit in a notice of a Life-long Learning Center for recruitment, the Ombudsman urged the General Secretariat of Life-long Learning, as the competent supervising body, to take into consideration the provisions that apply on the prohibition of discriminatory treatment when preparing the imminent rules of procedure of private Life-long Learning Centers (both, *Annual Report 2014*, pg. 126-127).

In a recent intervention to the General Secretary of the Ministry of Education and the General Secretary of State Assets, the Greek Ombudsman requested the investigation of the issue of introducing age limits in scholarships. The case of the exclusion of a 45-year old student of the National Technical University gave rise to the intervention, since he was found to be eligible for a trust's scholarship, but he could not receive it because of a related regulation setting the 36th year of age as the age limit.

**The Ombudsman recognised that the intention of supporting young students who meet the economic and social requirements that impose their aid with a scholarship is fair in principle. It noted however that this does not negate the respectively fair demand to remove inflexible exclusions of older students from similar benefits.**

If older students fulfil the demands of their studies and meet specific economic and social requirements, their exclusion from benefits, especially those connected with their performance or studies, cannot be automatic. In view of the above, the Ombudsman asked for the opinions of the responsible General Secretaries, as well as the actions they should have taken or intend to take to regulate this issue, since the provisions at issue will apply until the necessary presidential decrees and regulatory acts which have been pending for a long time are issued (case 199893/2015).

## **RELIGIOUS OR OTHER BELIEFS**

Further to the initially positive assessment of Law 4301/2014 (see *Annual Report 2014*, pg. 127-128), which modernised to a great extent the legal form of religious communities and organised the procedure for their recognition, the Greek Ombudsman must note that since the entry into force of this law, not a single complaint by a religious community has been brought to its attention regarding the implementation of the new procedure. This does not mean of course that the various parallel pending issues have been eliminated, especially as regards whether registration of a religion in the "designated public book", is a necessary condition for exercising a range of rights in various areas of Administration. This problem remains unsolved, especially in the case of registrations, since the registry offices refuse to enter stated religions if they consider them novel, and the Ministries of Interior and Education have not yet ventured to recommend the independent evaluation of the capacity of certain beliefs as "religious" or not, that is, independently of the inclusion of the corresponding association of persons under the procedures of Law 4301/2014 (case 193943/2014). With regard to the issue of the spatial planning and approval of Cremation Centers, there was no significant progress recorded: at an institutional level, the issue of Joint Ministerial Decision 152442/5.10.2015 on the standard environmental commitments of the Cremation Centers is viewed positively, however at the level of the actual preparation there are no encouraging developments.

### **Religious education and exemption procedure**

Since early 2015, the issue of the procedure for the exemption from the religious studies course, which the Greek Ombudsman had repeatedly addressed in the past, took on new dimensions.

**The Greek Ombudsman claims that religious freedom imposes that this exemption is not accompanied by any indirect sanction or burdensome requirement, whereas the requirement that the student reveals his or her religious**

**beliefs could be considered as such. It is not considered correct from a constitutional aspect that the validity of the statement for exemption is accompanied by any form of declaration of religion, whether positive or negative.**

Thus, the right of exemption should be recognised for any student who declares (himself if an adult or his parents on his behalf) that he wishes for an exemption invoking reasons of conscience, because the State's constitutional obligation to provide religious education does not exclude the option for any student without exception to be exempted, for reasons of conscience, from a course that maintains its confessional character, in accordance with article 1(1a) and 6(2a) of Law 1566/1985. The Greek Ombudsman is fully aware of the teachers' effort to address the phenomenon of the abusive exercise of the exemption right, however the relevant requests must not be rejected in a manner that violates the country's international obligations and is inconsistent with the necessary respect for the personal right of religious freedom of those applicants that sincerely have reasons of religious conscience which impede them from attending the class. For this reason, the Greek Ombudsman recommended to the Minister of Education to revoke circular No. 12773/Δ2/23.1.2015 (see "Legislative and organisational proposals"), underlining however that in parallel the school principal is entitled to investigate the seriousness of the solemn statements that are submitted with the application for exemption from the religious studies class (indicative case 198231/2015).

### **Granting use of archaeological sites**

A case connected to discrimination on the grounds of religion is that of a Non-profit Civil Company which had submitted an application for the concession of the use of the archaeological site of Olympion in order to organise an event to honour Zeus (case 177943/2013). The Ministry of Culture rejected the application on the grounds that serving a religious purpose is not included in the cultural or other events that are considered compatible with the character of the ancient monument. Invoking Article 46(1) of Law 3028/2002, and the Ministerial Decision issued under its authorisation ("can be conceded for cultural or other events compatible with their character as monuments, such as .... honorary or anniversary ... must stand out for their qualitative, aesthetic and artistic value"), the Greek Ombudsman noted that the Ministerial Decision indicatively specifies the compatible events and focuses on terms and conditions for the protection of the monument from added installations or other harmful uses, without entering into their ideological, religious and general world view and nature, regarding which they stipulate the aesthetic value as their only criterion, as such value is defined according to what is generally accepted based on domestic and international related experience.


**The Greek Ombudsman's intervention resulted in a new decision being issued, which, even though it insists that "the monuments of classical and Roman antiquity... do not serve religious purposes", did however partially approve the request for granting the use of this site for intangible events, prohibiting material acts of a religious nature.**

### **Discrimination on grounds of ideology**


Despite the clear statistical prevalence of religious discrimination compared to "other beliefs" according to the terminology of Law 3304/2005, we should not disregard the obligation for the protection of non-religious beliefs. The Greek Ombudsman had the opportunity of addressing this rarer, and by definition difficult to prove, phenomenon, in the context of its intervention for the interview of candidates for naturalisation, a procedure which, based on Law 3838/2010, is now accompanied by a justification obligation. In a specific case, which is presented in more detail in the relevant chapter (see "The person and the law"), the Naturalisation Committee supported its rejection not on the adequacy of the knowledge of the candidate, who was a citizen of FYROM, but on her ideological alignment with the national narrative of her country of origin, and not of Greece, at least as members of the committee perceived it. In the Ombudsman's view, the Naturalisation Committee must only assess the knowledge and familiarisation with the fundamental historical and cultural information of the Hellenic Republic, and not whether the candidate agrees with them (case 199539/2015).

## **SEXUAL ORIENTATION AND GENDER IDENTITY**


### **The law on the civil partnership agreement**

The passing with a qualified majority vote of Law 4356/2015 on the civil partnership agreement without distinction between same-sex and heterosexual couples, is viewed as a particularly positive development. This demand in fact had been the subject of a public intervention by the Greek Ombudsman in 2014 .


**The Ombudsman's steadfast position is to recognise for same-sex couples rights that heterosexual couples have, since it is the State's primary obligation to ensure equity and to protect the private and family life of all citizens.**

However, the provisions of the law do not establish rights for the children born or adopted before or after entering into a civil partnership agreement, even though it is an existing social fact, especially in cases of cohabitation of same-sex couples, where the children cannot be legally covered in any other way. Many cohabiting same-sex couples have given birth or adopted children before or even after the start of their cohabitation. These children, whether natural or adopted, cohabit with the same-sex couple, regardless of the legal recognition of the specific type of cohabitation and regardless of the degree of social acceptance. Under the provisions of this law, these children will continue to face various legal and actual problems from the lack of a legal relationship with the partner of their legal or natural parent, since he/she will not have the legal capacity of ensuring their interests in the framework of any procedure. For this reason, and until the broader reform of the family law system that will allow the issue to be addressed more adequately, the Greek Ombudsman, with a public intervention during the bill's consultation stage recommended at least the partial coverage of the legislative gap with an intermediate regulation, not in the area of adoption but that of custody. This is a small-scale legislative intervention proposal, but it is absolutely critical with regard to the social fact it is called upon to address. This proposal did cause a public discussion on the issue, but was not accepted in the end .

### **Gender identity and legal protection**

As the Greek Ombudsman has already noted (see *Annual Report 2014*, pg 116), a positive development is the fact that sexual orientation and gender identity have been included among the things that require the protection of Article 1 of the law against racism (Law 4285/2014), as well as Article 81A of the Criminal Code, according to the provisions of which homophobic or transphobic incentives constitute aggravating circumstances when calculating the sentence. The above reforms are especially important, because the inclusion of these incentives in acts that incur criminal sanctions and penalties, are expected to effectively activate the competent administrative or judicial bodies in the field of the implementation of the law. This legislative protection is of greater importance for transgender individuals, since it is the first time that gender identity is protected by a law, a fact that is expected to gradually contribute to the improvement of the position of transgender individuals, beyond any existing stereotypes and prejudices. The issue however for the equal recognition of rights, remains the legal recognition of gender identity, that is, the self-perception of each person about their gender identity, regardless of the information on their police ID card or other identity documents and the establishment of quick, transparent and easily accessible procedures for changing the information on the police ID card and other identity documents of transgender individuals (resolution 2048/2015 of the Plenary of the Parliamentary Assembly of the Council of Europe) .

### **Abusive behaviour by police officers**

Despite the modernisation of the relevant legislative framework and the above developments, members of the LGBT community continue to suffer discrimination and become the victims of negative stereotypes, prejudice and even violent attacks, a fact that has been recorded in a public intervention by the Ombudsman . In the context of investigating complaints related to the abusive behaviour of police officers against LGBT individuals, relating to illegal arrests, degrading treatment or even violence especially against transgender persons (indicative cases: 183561/2014, 197845/2015),



**in an intervention to the Chief of the Greek Police, the Greek Ombudsman asked that the complaints are thoroughly investigated and initiatives are taken for actions to raise awareness and inform police officers about the special characteristics of transgender individuals, in order to ensure the impartial exercise of the officers' duties with respect for their rights and to familiarise them with the particularities and protection needs of each category.**

The Greek Ombudsman made a similar intervention to the competent police authorities while investigating a complaint for homophobic violence by police officers (case 190702/2014).

Further to these interventions, the Ombudsman was invited to make a series of speeches on the subject of "Greek Ombudsman, Human Rights and Police Action", where special reference was made to issues of racism, as well as issues related to the sexual orientation and gender identity of the victims. Members of the Ombudsman delivered an especially focused speech on the subject of the protection of LGBT individuals in March of 2015 at the Officers' School of the Greek Police. The training seminar for police officers-members of the Racist Violence Department were especially successful, organised by the Sexual Orientation and Gender Identity (SOGI) unit of the Council of Europe, in cooperation with the Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe (OSCE/ODIHR), the Greek Ministry of Citizen Protection, the European Gay Police Association (EGPA) and the Ombudsman, in which the President of the Transgender Association herself participated as a trainer.

Besides, the participation of the LGBT communities in the training procedures for members of Administration has been a standing demand of the Greek Ombudsman.

## **ACTIONS TO PROMOTE EQUAL TREATMENT**

The Ombudsman, under its capacity as a body that promotes equal treatment, participated once again in 2015 in the campaigns against racism with the presence of a team, and the distribution of informational material in Syntagma Square (21 March) and a special radio message against intolerance . Also, a team of Ombudsman members carried out a targeted action aimed at informing and raising the awareness of the public on the Authority's competences, in the area of the old Municipal Market of Kypseli, focusing on the protection against racism and intolerance (17-19 March) .

### **Training and cooperation with Greek and international bodies**

In 2015, building on its knowledge and experience, the Greek Ombudsman participated in a series of training seminars, aimed at informing and raising awareness on anti-discrimination issues. At the same time, the intensive cooperation and exchange of know-how between the Ombudsman and other bodies that are active within Greece and abroad continued on issues of implementation and promotion of the principle of equal treatment (see "The year's activities"). Representatives from the Ombudsman participated as trainers in numerous training seminars. For example, we note the ongoing cooperation of the Ombudsman with the Hellenic Police Continuing Education School, as well as the National School of Public Administration, where the Ombudsman provides training on the subjects of rights and equal treatment.

Finally, the Ombudsman remains an active member of the European Network of Equality Bodies (Equinet), a network for the horizontal connection and coordination of the official bodies for the implementation of the community Directives against discrimination in EU countries and accession countries. The Ombudsman participates in all the working groups of the network and is systematically represented in the meetings held annually to organise the work of the groups and exchange information on issues of discrimination, in the context of the group's actions in each case. In October of 2015, a representative of the Ombudsman was elected on the network's BoD.