

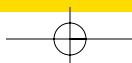


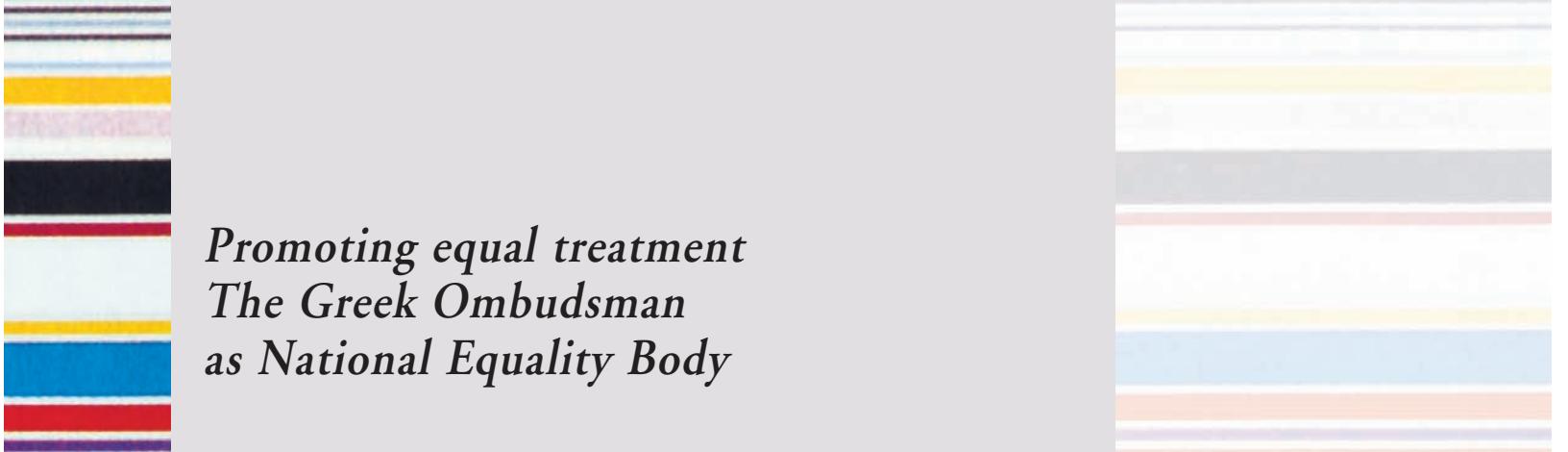
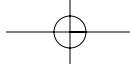
2006 Promoting equal treatment
The Greek Ombudsman
as national equality body

THE GREEK OMBUDSMAN 

ISBN: 960-88525-7-9

NATIONAL PRINTING HOUSE



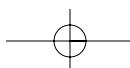


Promoting equal treatment The Greek Ombudsman as National Equality Body

1. GENERAL REMARKS

Two years have elapsed since parliamentary Law 3304/2005 took effect incorporating in the national legislation the EC Directives 2000/78 and 2000/43 “*for the promotion of the principle of equal treatment and the fight against discrimination on grounds of race, nationality, religion or belief, disability, age, sexual orientation*”. During the first year, as it was expected, the institutions involved demonstrated mainly signs of perplexity towards the new institutional tools provided for by the law. This second year, however, the same institutions have been tested on whether they are able to make the best possible use of these tools.

It should be noted that these institutional tools and mechanisms are already in use in several EU countries such as the UK, Netherlands and the Scandinavian countries and have served, together with the jurisprudence of the European Court of Justice, as an inspiration to the EU legislators. Efficiently applying such institutional arrangements in Greece, their relatively novel character aside, is heavily influenced by determining factors such as peculiarities of employment patterns at national level —especially the wide share of atypical or “unofficial” modes of employment in many job market segments—, the margins of tolerance and social acceptance towards publicly demonstrating personal traits or a collective identity, and the efficiency and suitability of structures (state or other) which have been assigned with implementing this framework.



1.1 EFFICIENT COORDINATION AND SYNERGY BETWEEN INSTITUTIONS AND CIVIL SOCIETY IN FIGHTING DISCRIMINATION

This report aims at providing an account of the second year of the Greek Ombudsman (GO) under its capacity as national equality body for the promotion of equal treatment in the public sector. During this period, an increased number of complaints were received, while legislative initiatives expanded the GO's mandate to cover much of the field of gender discrimination as demonstrated below. Yet, before presenting in greater detail GO's relevant activities, it is important to outline the wider institutional context of national agencies, which have been assigned by recent legislation the task of combating discrimination.

According to the professed aims of the anti-discrimination legal framework, combating discrimination and promoting the principle of equal treatment necessitates the cooperation and coordination of as many state agencies and social institutions as possible. After two years of application, it is now possible to attempt a preliminary assessment on the activation of institutional and social bodies, the involvement of which is dictated by the law.

First, it should be reminded that there are two bodies with similar responsibilities both assigned with combating discrimination in the private sector: the Labour Inspectorate (SEPE), whose competence covers ordinary employment contracts, and the Equal Treatment Committee (ETC) of the Ministry of Justice, whose competence covers the rest of the private sector.

However, while attempting to collaborate with the ETC, the GO has noted (and the national Economic and Social Committee's yearly report concurs explicitly) that its operation has been restricted to a small number of its members' meetings aiming at formulating an opinion rather than investigating cases of discrimination; besides, this investigation would have been a very hard task since ETC has been significantly understaffed. In addition, ETC's composition—the chair is *ex officio* held by the Secretary General of the Ministry and the majority of its members are public servants of the ministry—has been debated ever since its establishment in regard to its suitability for the work to be carried out, and above all, in regard to its necessary independence.

As far as combating discriminatory treatment in the private sector is concerned, it seems that the intervention mechanism of Labour Inspectorate has been of limited efficiency too. In this case, however, as the cooperation of the GO with the Labour Inspectorate showed on dealing with specific complaints, the problem lies on the fact that the assignment of new special responsibilities has not been fully understood yet by low- and middle-ranked executives; thus, cases falling under the new regulatory framework had not been investigated or were not even registered as such while the main institutional tool provided by the new framework (namely the “shift” of the burden of proof) had not been even activated. It is expected, however, that the involvement of the Labour Inspectorate jointly with the GO in the field of protection against discrimination on grounds of sex (see 2 below) will make these new tools known to the wider public and will lead to their broader and systematic activation.

It should be noted, however, that institutions of public dialogue between the social partners, such as the Economic and Social Committee of Greece, as well as of collective representation of workers such as the General Confederation of Greek Workers (GCGW-GSSE) have demonstrated greater interest in activating the new legislation and, mostly, disseminating the new tools provided for in two directions, that is a) towards reaching individuals who are being discriminated against, and b) towards civil society agencies working in this field. The General Secretariat for Equality (GSE) of the Ministry of the Interior is expected to play an

active role as it has already played in the past an important role in drafting the national legislation for gender equality.

However, making the best possible use of these institutional tools by state or civil society bodies that are active in promoting the principle of equal treatment has been exceptionally weak: only two complaints have been filed with the GO with the active participation or encouragement of NGOs. On the contrary, civil society bodies seem to be more interested in the EU funded —through the Ministry of Employment— activities for raising awareness and building structures for disseminating information. The guidelines given by the competent DG for Employment on suggested actions were not oriented towards specific modes of action. So the social bodies interested were given the opportunity to insist on well expected and “easier” projects, eschewing thus the difficult and expensive task of mediating between individuals who have been discriminated against and the institutions protecting them. This is another indication that in Greece civil society has a long way to go.

The need to establish regular contact with those groups of the population who suffer systematically from discriminatory actions and exclusion has been pressing and this is the reason why the GO was lead to plan and launch a pilot open-communication network with NGOs and other civil society bodies involved in protecting and supporting the Roma. This initiative aims at encouraging the mediation by these bodies between the targeted population group and the GO, the dissemination of critical information related to institutional tools and know-how and the gathering of information on the vital problems these groups faced; yet, above all, the main objective has been the joint coordination of action for the participating bodies.

Mutual coordination seems to be a demand of primary significance for the national authorities in the EU member states that have been assigned with fighting discrimination and promoting the principle of equal treatment. The collaboration among these authorities in exchanging information, know-how and best practices has been made possible through the Equinet Network, the GO being one of its full members. The European Commission has acknowledged the critical role of this horizontal network in the effective implementation of community legislation and in reinforcing the actions for forming a common legal and political culture of equal treatment; it has also taken the initiative to invite the national authorities for the promotion of the equal treatment of men and women to come into contact.

Nevertheless, the most important event this year in fighting discrimination was the long awaited for enactment Law 3488/2006 on the “*Implementation of the principle of equal treatment of men and women in relation to access to employment and occupation, vocational training and promotion, in the conditions and terms of employment*”.

1.2 LAW 3488/2006 ON GENDER EQUALITY AND THE NEW RESPONSIBILITIES OF THE GREEK OMBUDSMAN

The provisions of Law 3488/2006 aim at mapping systematically a comprehensive regulatory framework implementing in the most effective way the principle of equal treatment of men and women in employment through a system of expanded legal protection and innovative legal tools. This law incorporates Directive 2002/73/EC of the European Parliament and the Council that modified the Council’s Directive 76/207/EEC “*on the implementation of the principle of equal treatment for men and women as regards access to employment and occupation, vocational training and promotion, and working conditions*”.

The scope of this regulatory instrument has been expanded to cover not only people already employed but also those seeking employment or vocational training, in all forms of

employment in the public or/and the private sector, self employment included. Also, it is the first time that national legislation includes the term “sexual harassment” and redefinition of the concepts of “direct”, “indirect discrimination” and “harassment” (Article 3).

This new piece of legislation ensues in a profitable way Law 3304/2005 acknowledging, that is, to trade unions and other legal entities as well as associations with similar legitimate interest the right to exercise, with the approval of the party offended, his or her rights before administrative or independent authorities and to engage on his or her behalf in judicial procedures (Article 12, paragraph 2). Also, in case the principle of equal treatment has been violated on grounds of gender, the right to judicial protection is extended to after the employment relation under which the discrimination has taken place has ended (Article 12, paragraph 1). Indeed, the “*shift*” of the burden of proof has been provided for in the area of discrimination on the grounds of gender as far as civil proceedings and complaints to other competent authorities are concerned (Article 17) according to which the complainant should bring to the attention of the competent body facts from which it is possible to infer that an instance of discrimination has taken place while the defendant should fully prove that no such discrimination occurred.

In addition, the unequal treatment on grounds of gender (Article 4, paragraph 3), the unfavorable treatment of a woman due to pregnancy or maternity as well as of a parent making use of parental leave for the child’s upbringing (Article 5, paragraph 3) are defined as forms of discrimination on grounds of gender. It is also provided for a working parent, after the end of their period of maternity or paternal leave, can return to their job or to an equivalent post on terms and conditions which are no less favourable to them and should benefit from any improvement in working conditions to which they would be entitled during their absence (Article 5, paragraph 3). The definition of “remuneration” is extended to include not only wages but any other benefits provided by the employer because of or due to someone’s employment (Article 7, paragraph 2). It is also established that trade unions and associations have the obligation to inform their members as to the content of the law and the measures taken to implement it as well as to the equal pay and treatment of men and women; on the other hand, employers have the obligation to promote equal treatment for men and women in the workplace in a planned and systematic way (Article 11).

Law 3488/2006 reinforces and extends the role of the Greek Ombudsman. The Greek Ombudsman is the competent body for monitoring the implementation of the principle of equal treatment of men and women in the field of employment as well as a mediator between the party offended and the person allegedly responsible for discriminatory treatment on grounds of gender in both the public *and* the private sector. As for the later, the GO cooperates with the Labour Inspectorate that, contrary to the GO, has the right to impose administrative sanctions. Because of this complex cooperation of the two bodies it is necessary for the local Social Inspectorates to inform directly the GO on the complaints related to violation of the equal treatment principle and submit the results of their inspections. According to the new legislation, the GO is responsible for formulating the final conclusion of a complaint in all cases (Article 13) on the basis of the Labour Inspectorate report or the material collected through its own investigation. This procedure ensures that the equality bodies responsible for the implementation and the promotion of the equal treatment principle enjoy the prescribed independence.

Assigning the supervisory role to an equality body guarantees the coordinated handling of cases in the public and the private sector since, in this way, closely associated competences are not dispersed in numerous isolated departments and organizations. However, implementing and promoting the principle of equal treatment in the private sector is a rather complicated

issue that even at this early stage has already provoked serious questioning and caused significant delays. Nevertheless, the GO is determined to make the best possible use of all experience and specialized knowledge acquired in the field of fighting discrimination in the public sector, and the Labour Inspectorate seems willing to contribute significantly with its own long experience of interventions in the private sector.

Although this new Law has been produced through a hasty legislative procedure since the country had not yet adopted the respective Directive and the time limit set had long expired, compared to Law 3304/2005, it is more comprehensive and this should perhaps be attributed to the contribution of the General Secretariat for Equality (GSE) and women's organizations.

In this case, too, however, critical legal concepts and procedures, as *par excellence* the concepts of *indirect discrimination* and *harassment*, sexual or other, as well as the *mechanism of "shift" of the burden of proof* are as vague as it is usually the case with Community Directives. Although there are instances of clearer formulations compared to those of Law 3304/2005, the remarks made by GO in the 2005 Report are still valid. Thus, it remains a standing responsibility of GO and the Labour Inspectorate or other body responsible for the implementation of these provisions such as the national courts, to clarify and specify these. Despite all these, it should be acknowledged that, given the vast variety of social matter covered by these new arrangements, this vagueness can also prove beneficial as in this way it gives some room for interpretation and the body which is called upon to implement these arrangements has the opportunity to take into serious consideration the social context, the peculiarities and the sensitivity of each individual case.

2. COMPLAINTS INVESTIGATED BY THE GREEK OMBUDSMAN

In 2006, fifty one (51) complaints were filed with the GO by persons who considered themselves wronged by failure to apply the principle of equal treatment to them according to Law 3304/2005. It should be noted that the number of complaints had almost doubled since the previous year. Eleven (11) of these fifty one complaints were related to a discrimination on grounds of sex and were examined under the light of Law 3488/2006. With the exception of nine (9) complaints that were deemed unfounded or are still pending before a court of justice (2), the remaining ones are still under investigation as the public administration has not yet given its final response. It is worth noting at this point that in seven (7) out of nine (9) complaints that were deemed unfounded according to Law 3304/2005, the GO intervened under its general jurisdiction according to Law 3094/2003. In ten (10) out of thirteen (13) cases, the result in the complaints that have been investigated by the GO and then closed, has been favourable for the complainant. The cases investigated are summarized below and are presented according to the grounds of discrimination and the relevant protection area.

2.1 DISCRIMINATION ON GROUNDS OF ETHNIC ORIGIN

2.1.1 EMPLOYMENT

☉ *Foreign born naturalized Greek — Professional qualifications of a lawyer*

A female, foreign born, naturalized Greek citizen under her capacity as an assistant lawyer (trainee), asked the Ministry of Justice to confirm that the provision in the Greek Lawyers' Code according to which "a foreign born person who has acquired the Greek citizenship

through naturalization cannot be appointed as a lawyer until after five years have passed since his/her naturalization” is no longer in force after the publication of Law 3304/2005. The Ministry responded that “the administrative courts of Greece are responsible to verify the constitutionality of legislation... according to our Department, the existing legal framework regarding the appointment of a foreign born person who has acquired the Greek citizenship through naturalization has not been suspended”. In the meantime the local Bar Association received the complainant’s application to participate in the professional license examination in May 2006; the examiners’ board allowed her to participate and, since she passed, her name was included in the successful candidates list which was sent to the Ministry of Justice as required; then, the Ministry appointed all the persons in the list with the exception of the complainant. However, Law 3304/2005 forbids any direct or indirect discrimination on the grounds of racial or ethnic origin in employment and occupation, imposing the equal exercise of a right or the enjoyment of a legitimate good. The only exception allowed for is the discrimination on the grounds of citizenship which is not the case when Greek citizens in their own country are not allowed to enjoy the same goods as their fellow citizens. In the case in question, foreign born Greek citizens, who acquired their citizenship through naturalization are subjected to unfavourable treatment compared to those who acquired their citizenship either by birth or as offspring of a Greek male or female or have been naturalized as expatriates/Greeks living abroad. According to the Lawyers’ Code foreign born naturalized citizens are in an inferior place compared to naturalized expatriates or Greek born on the basis of their origin (foreign born). There seems to be no appropriate and necessary means or objective justification for this discrimination. The provision in question contradicts to the principle of equal treatment and should be considered as *de jure* abolished without any prior judicial decision or legislative act for its abolishment. Instead of providing an answer, the responsible Department of the Ministry asked for an opinion by the *Equal Treatment Committee* which was in agreement with the findings of the GO; the complainant was appointed as a lawyer with a six month delay after her successful participation in the examination (complaint 3833/2006).

☉ *Foreign born naturalized Greek — Employment as teaching staff*

A Greek naturalized citizen applied for employment at the Non Commissioned Officers School of the Hellenic Army (NCOS) as a member of the teaching staff with an hourly remuneration contract. She was disqualified on the basis that she was not a Greek citizen by birth, a necessary precondition according to the post advertisement. However, this precondition is questionable since by rendering the lack of Greek ethnic origin (foreign born) —which is presumed by the acquisition of the Greek citizenship through naturalization— a criterion allowing for a different treatment as regards to the access to employment and occupation, it contradicts both to the equality of Greek citizens proclaimed in the Constitution (Article 4, paragraph 1) on the one hand and to the special provisions of Law 3304/2005 on the other. Such a discriminatory practice, however, can not be considered permissible due to the lack of Greek citizenship (Law 3304/2005, Article 4, paragraph 2) since it is the case of a Greek citizen who is prevented from enjoying the same good her fellow citizens enjoy. Besides, the exemption due to citizenship does not allow for proportionate deductions or differentiations on the basis of foreign or non foreign origin of Greek citizens. Moreover, this case of discrimination does not seem to relate to a racial or ethnic characteristic that is critical to the exercise of the specific teaching activity that can be objectively justified by a legitimate aim

through the use of appropriate and necessary means (Law 3304/2005, Article 5). According to the above, the GO asked this case to be re-examined since by the date the Law comes into force any legislative or regulatory provision contrary to the principle of equal treatment is being abolished. The final response by the State is pending (complaint 7500/2006).

❖ *Alien instructor — Dismissal*

A female alien instructor working at an hourly remuneration at a Musical High School, who had been offered a post as having the necessary qualifications for it, was later dismissed for not holding the Greek citizenship. The investigation produced that the Greek citizenship is not a prerequisite for employment as a specialized associate member of staff (“scientific collaborator”) if there were no other Greek candidates for the post (violin instructor). The necessary qualifications for her employment had been checked at the time of application as well as of employment offer. The Ministry of Education concluded that the employment of associate members of staff is not governed by the provisions for employment of teaching staff. This was the reason why the complainant was dismissed as it was concluded that she did not have the necessary qualification of Greek citizenship. The complainant sought recourse against the aforementioned decision which led to the suspension of her dismissal by the Regional Directorate of Primary and Secondary Education of Peloponnese/Directorate of Arcadia. The final court decision is pending and thus the GO cannot proceed with the mediation procedure (complaint 19747/2005).

❖ *Alien citizen — Employment as seasonal staff*

A male Austrian, registered indicatively in a family register at the Municipal Register of the Municipality of Zografou and permanent resident of Zografou for over twenty years responded to an advertisement by the Municipality and submitted an application for employment as seasonal member of staff on a fixed term contract under private law. He was ranked last in the Table as holding the “3rd degree of locality” since he was not a citizen-member of the municipality. Following the negative answer by the Municipality of Zografou, the Ministry of the Interior was asked to intervene; in its turn, it agreed with the GO and made a remark to the Municipality that “the legally proven for over twenty years permanent residence in the Municipality of Zografou constitutes a real fact that, in combination with the indicative registration in the Register of your Municipality corresponds, in essence, to the requisites prescribed in the provisions related to the employment of staff under private law”. The case is still pending in waiting of the response by the Municipality of Zografou (complaint 11155/2006).

2.1.2 EDUCATION

❖ *Aliens of Greek ethnic origin — Special provisions for admission to higher education institutions*

According to the legislation in force (Law 3404/2005, Article 13, paragraph 3, section a and relative ministerial decision n. F151/1704/B6/17.2.2006) students of Greek origin studying in EU member states are exempt from the special provisions pertaining to the admission of EU citizens in higher education institutions and fall necessarily under the special provisions for expatriates. However, discrimination against EU citizens on the grounds of their Greek origin comes into conflict with the provisions of Law 3304/2005 since the aforementioned exemption

constitutes a direct discrimination on the grounds of ethnic origin. This is why the above exemption should be deemed as abolished (Law 3304/2005, Article 26) as it contradicts to the principle of equal treatment; there should be a single arrangement for all EU students with no differentiation or reference to ethnic origins. The responsible Directorate of the Ministry of Education supported the view that if such a thing is approved, the Cypriot students of Greek origin, when included in the special group of EU candidates for admission in higher education institutions, will be in a more advantageous position compared to other EU candidates since, by token, their performance in the examination of Modern Greek is by far better than that of candidates who do not speak Greek as their language of habitual use. The GO suggested that the EU candidate assessment system should be rationalized by establishing, for instance, a coefficient for the knowledge of the Greek language whether this is the language of habitual use of each candidate or not; nevertheless, the GO emphasized the need to refrain from any reference or taking into account the ethnic origin of EU candidates. The response of the administration to the findings and suggestions of the Authority is still pending (complaints 16371/2005, 4539/2006, 5314/2006, 9444/2006).

2.2 DISCRIMINATION ON GROUNDS OF RACIAL ORIGIN

2.2.1 SERVICES — HOUSING

☉ *Demolition of Roma dwellings — Alleged evictions (Patras and Chania)*

The GO investigates complaints for illegal destruction of sheds and evictions of Roma families in Riganokampos and Makriyanni in the Municipality of Patras and in the area of Kladissos, near the Municipalities of Chania and Therissos. The Municipality of Patras insists that these actions were preceded by charges for violations of sanitary regulations in the settlements and abandoned litter; that it was the case of demolishing deserted dwellings, a fact thoroughly researched by the municipality services and confirmed by Roma neighbours. Respectively, in the case of Roma in the area of Kladissos, the Municipality of Therissos in its response in writing noted that this area does not fall within its administrative territory and consequently, the Municipality is not involved in this evacuation nor is it responsible for relocating the Roma in some other plot of land since no one of these Roma was registered in the Therissos municipal registers. At the same time, the Police Division of Chania emphasized that the evacuation was voluntary and the Roma were under no circumstances forced to evacuate the area. In both cases, the GO sought to collect any useful information given the difficulty of verifying the contradicting allegations by the two parties, in order to draw its final conclusions. The relevant findings paper on the problem of settlement of the Roma in the region of Patras is forthcoming as well as new investigative documents addressed to the State Services involved in Chania (complaints 12285/2006, 2880/2006, 11777/2006).

☉ *Living conditions of Roma (Athens, Votanikos area)*

Concerned by the mention made in the mass media as well as by organizations engaged in protecting Roma to the possible compulsory relocation of the settlement of the Votanikos area (Athens), the GO visited the settlement and proceeded to a series of actions in order to mobilize the competent services. The aim of these actions was to ensure adequate living conditions for this vulnerable population on the one hand and to prevent the possibility of this compulsory evacuation of this plot of land without the guarantees stemming from the Constitution and the legislation in force. Special care was taken so that no sanctions would be imposed for

violation of the sanitary regulations as was suggested by the Prefecture of Athens and Pireaus/ Directory for the Protection of the Environment; the reason for such a move was twofold: these sanctions would have been unsuitable and ineffective on the one hand and, by neglecting to take into consideration the particularities of this population and the special conditions under which they live, they would have constituted negligence to handle dissimilar cases individually, contradicting to the principle of equal treatment. The response of the Municipality of Athens is pending; special care should be taken and a suitable plot of land with appropriate living conditions should be indicated for the possible relocation of the Roma. Then, the competent Region General Secretary should take a relevant decision in collaboration with the competent Directorate of the Ministry of the Interior (complaint 13986/2006).

❁ *Living conditions of the Roma — Neighbours' reactions (isle of Lefkada)*

Roma settled permanently in their shacks on a plot of land owned by a Roma relative and lacking basic facilities such as toilets, drainage, and electricity supply. This caused inappropriate health conditions and infections, affecting the settlers as well as their neighbours. In addition, due to the lack of electricity supply the Roma were obliged to use a generator for long hours causing noise that disturbed their neighbours. The Health Division of the Prefecture of Lefkada visited and examined the settlement and made recommendations to the Roma living in the area without, however, having made any progress ever since. The GO addressed the Municipality and the competent Departments of the Prefecture of Lefkada stressing the compelling need for improvement of the living conditions of the Roma according to the legislation in force “for the settlement of wandering people” (ministerial decision B-973/2003, amending the sanitary regulation A5/696/83). From the response of the competent Departments so far it can be safely concluded that their actions involved focusing their attention on the strict observance of the sanitary regulations and threatening with statutory sanctions without taking into account the issues of living conditions and integration in the socioeconomic milieu which this vulnerable population group faces. To this effect, the GO aims at solving the problem by coordinating the actions of all Departments involved and at carrying out a meeting, at the initiative of the Municipality of Lefkada, that is responsible for supporting the homeless and financially needy citizens as well as for implementing the sanitary regulation A5/696/83 (complaint 2864/2006).

❁ *Relocation of Roma (isle of Lefkada)*

Residents of the Apolpaina hamlet in Lefkada filed a complaint with the GO for the settlement of Roma in makeshift shacks and other structures (tents, toilets built with cement blocks) within the restricted-built area of the Holy Temple of Panaghia Hodegetria, a listed building itself, and for the poor sanitary conditions on this plot. The competent Ephorate of Byzantine Antiquities of the Ministry of Culture, following an on site investigation, recommended to the Mayor of Lefkada to remove the Roma from the site and to relocate them on a plot that is not in the vicinity of sites or buildings of archeological interest. The Mayor of Lefkada refused to evacuate the site referring to the permanent nature of the settlement as well as the fact that the plot is owned by Roma. The GO undertook the role of the mediator with a double aim: to preserve the area of the historical monument and to ensure that the local authorities offer to Roma special support as a group facing social exclusion. To this effect the GO claimed specifically the positive action option that the new Municipal and Communal Code provides for (complaint 13770/2006).

☉ *Real estate acquisitions by Roma*

Another complaint was filed by a female citizen for the long delay of the competent Department of the Municipality of Zephyri to issue a payment receipt for the Real Estate Tax paid in order to use it in drafting a real estate sales contract wherein the buyer would be Roma. A respective complaint was also filed at the GO for a delay to issue a Real Estate Tax receipt from the Municipality of Ano Liossia, which also included the accusation that this constitutes common dilatory tactics on behalf of the Municipality in order to discourage owners to sell their properties to Roma. Finally, the payment receipts were issued following intervention by the GO; however, due to the regular occurrence of similar complaints, the GO is examining the possibility of intervening on this issue in a comprehensive way (complaints 1956/2006, 11255/2006).

2.3 EXEMPTION DUE TO NATIONALITY

2.3.1 EMPLOYMENT

☉ *Aliens — Labour agreement for indefinite period*

Third country nationals, employed in musical groups on employment contracts or fixed term contracts, filed a complaint with the GO as a protest for the negative answer they had received from their employers (legal entities of public law, local government and the *Hellenic Broadcasting Company* - ERT S.A.) to rank them in posts under employment contracts for indefinite period with the pretext that, in order to be employed in such posts, as a formal qualification one needs to be a holder of the Greek citizenship or of a EU member state citizenship. The complainants claimed violation of the principle of equal treatment, as this is specified in the relative Directive and Law 3304/2005. Indeed, the scope of the principle of equal treatment regardless of racial or ethnic origin includes the conditions of access to employment and occupation in general, including the promotion and selection criteria. The law, however, explicitly mentions the cases in which a different treatment is stipulated on the grounds of citizenship (Article 4, paragraph 2). This is the reason why the GO finally concluded that in this case there had been no violation of Law 3304/2005 (complaints 6892/2006, 8516/2006).

☉ *Aliens — Vendor permit in weekly markets*

Third country nationals holders of non itinerant weekly market trader permit filed a complaint because their requests to upgrade these to professional weekly market vendor permits had been rejected. This was based on the basis of a decision by the Deputy Minister of Development according to which such permits are not to be issued to individuals who are not Greek citizens or of Greek origin. Because of this newly established prerequisite, the complainants were not able to earn their living and provide for their families; in addition, they run the risk of being considered illegal immigrants in this country. As for the alleged violation of the principle of equal treatment, it was found that the legislation in force regarding discrimination on the grounds of ethnic origin (Law 3304/2005) does not prohibit differentiated treatment on the basis of citizenship as regards access or exercise of professional activities. The GO turned its attention to Law 3304/2005, Article 29 and the relevant ministerial decision underlining that, in this case, the principle of good administration dictates that care should be taken for aliens who are holders of non itinerant weekly market trader permits, and who, because of their citizenship, cannot acquire professional weekly market vendor permits under the new regulatory framework. At the same time, the GO addressed specific suggestions to the Ministry of

Development on this issue. These suggestions, which are in agreement with the suggestions by the competent Department of the Ministry, include examining the possibility of removing citizenship from the prerequisites list for such permits. The response of the State to the suggestions by the GO is pending (complaints 4409/2006 and 6343/2006).

2.3.2 EDUCATION

⊗ *Alien students — Housing benefit for students*

A female student from a third country filed a complaint because the competent Tax Office (DOY) had claimed return of the housing benefit for students which she had been granted because, as officially confirmed, she is not holder of the Greek citizenship. The GO ascertained that, indeed, according to the legislation in force, the housing benefit is destined exclusively to students who are Greek citizens or EU member states nationals. Such discriminatory practice, however, can not be considered illegal according to Law 3304/2005. Hence, the GO noted that the competent DOY rightfully refused to grant the housing benefit this year and also rightfully claimed the return of the benefit that had been granted the previous year. However, the GO noted that the complainant had acted *bona fide* in the first case, and the mistake seems to be of the competent Department that is responsible for going through the certificates and other supporting documents submitted: consequently, the complainant should not return the amount originally granted in threefold as dictated in Law 3220/2004, Article 10, paragraph 6. In the end, the complainant returned the amount of 1,000 euros that had been originally granted (complaint 2642/2006).

Another similar case is that of a third country foreign student who filed a complaint concerning the rejection of student housing benefit applications by foreign students despite their long legal residence in the country. The GO noted that, although this constitutes an acceptable form of discrimination according to Law 3304/2005, Article 4, paragraph 2, is prepared to submit suggestions to the Minister in charge as regards the possibility to extent the eligibility criteria for housing benefit so as to include third country nationals who reside for a long period of time in this country (complaint 9606/2006).

2.3.3 SERVICES / ISSUANCE OF CERTIFICATES

⊗ *Minor children of immigrants — Issuance of birth certificates*

The Pan-Hellenic Migrants Network and the United African Women's Organisation filed a complaint with the GO for racial discrimination to immigrant children born in Greece. More specifically, immigrant women's associations claimed that the competent Departments do not issue birth certificates but only birth registrations for children who were born in Greece and whose parents are foreign citizens. This results to problems in enrolling children to pre-school and elementary school, and to a series of bureaucratic procedures until they attain the age of 18. The GO investigated the complaint under the light of the legislation in force and found that not issuing birth certificates to children of foreign origin who were born in Greece does not constitute an act of discrimination according to Law 3304/2005 as this differentiation belongs to those stipulated due to citizenship (Article 4, paragraph 2). More specifically, this practice is legal since, according to the legislation in force, Greek citizens are the only residents who are registered in the municipal and communal registries. However, this legal differentiation which prevents the registration of foreign citizens in such registries results in distorting our harmonious coexistence with foreign people who

reside in this country, both minors and adults. This is the reason why the GO seeks ways to proceed with the mediation procedure, collects pertinent information from other institutions related to the registration of foreign residents in registries (dedicated immigrant registries) and the issuance of birth certificates to children born in this country (complaint 2298/2006).

2.4 DISCRIMINATION ON GROUNDS OF DISABILITY — REASONABLE ADJUSTMENTS AND SPECIAL MEASURES

☉ *People with disability — Change of work place*

A female bank employee filed a complaint asking the GO to investigate whether the Labour Inspectorate investigated thoroughly her charge against her employer for violation of the labour law and, more specifically, for discriminatory treatment on the grounds of disability. The complainant had been employed by the bank since 1995 as a person with disability according to Law 1648/1986 and she had been placed ever since to work at a bank's branch located near her house. In 2006 she was notified that she was being transferred to another branch, a change she was not able to cope with. At the reconciliation procedure between the two parties involved that was carried out by the Labour Inspectorate, the complainant claimed that this transfer was a change of the working conditions that caused damage to the one party, herself, and that it was decided upon in an unfair manner, violating the obligation of the employer to take measures for reasonable adjustments (Law 3304/2005, Article 10). The employer claimed that before deciding upon this transfer, he had already looked for an opening suitable for the complainant in the branches in the vicinity of her house but there was none. The dispute was not resolved and the Inspector in charge suggested that the complainant should seek recourse to the court.

The investigation of the GO concluded that according to Law 2639/1998 "Regulation of labour relations, establishment and constitution of the Labour Inspectorate and other provisions", the Labour Inspectorate is *par excellence* a body of inspection, that is it carries out inspections and decides upon the soundness of a complaint on violation of labour (or social security) law and it imposes sanctions in case such a violation is identified. Consequently, the responsibility of the Labour Inspectorate extends beyond facilitating the mediation procedure or, in case this fails, the advice to seek legal recourse. As to the essence of the matter, it was noted that, in exercising the right of transferring an employee, an employer is governed by the general provisions of the Civil Code that forbid abuse of right (CC 281). In the scope of the principle of equal treatment, the exercise of the employer's right in question may constitute indirect discrimination (Law 3304/2005, Article 7, paragraph 1, subparagraph b) to the extent that it places an employee with a disability to a disadvantageous position compared to other employees, unless it is supported by a legitimate aim and constitutes an appropriate and necessary means of achieving that aim or if all appropriate and necessary measures of reasonable adjustments had been taken (Law 3304/2005, Article 10, and Article 231, paragraph 6 of the Constitution). In addition, the GO suggested collecting evidence and using the shift of burden of proof mechanism (Law 3304/2005, Article 14, paragraph 1). In the final findings, the GO concluded that the Labour Inspectorate did not strain its competences and suggested the re-examination of the complaint. The Labour Inspectorate informed the GO that the issue was resolved with an injunction imposing that the complainant returned to the branch she had been working before being transferred. This complaint was the base for investigating the ways

in which the cooperation of the GO with the Labour Inspectorate could be improved and the new competences clarified (complaint 10310/2006).

⊗ *People with disability — Access to the work place*

A male citizen with disability complained that since there is no ramp or lift, there is lack of the appropriate infrastructure and he is thus deprived of access to his workplace. In this case the crucial question is whether Article 28 of Law 2831/2000 can be interpreted in such a way to include industrial buildings in the premises list that should undergo alterations so as to be accessible to people with disability. The complaint is under investigation (complaint 1955/2006).

⊗ *People with disability — Employee transfer in the public sector*

A female employee with disability, working as a member of the nursing staff in a regional hospital asked to be transferred to an administrative post in another regional hospital. During the investigation of this complaint it was found that, due to her disability, she had been assigned duties different to those prescribed for the post she held. Thus, the GO concluded that the obligation arising from Law 3304/2005 for reasonable adjustments had been observed and the request for transfer exceeded this obligation. The complaint was filed since there was no sign of violation of the legislation in force (complaint 3429/2006).

⊗ *People with disability — Employment*

A female candidate for employment as member of the nursing staff in a public hospital complained about the rejection of her application arguing that it was due to her disability. She filed a plea against this rejecting decision to the Independent Authority for Public Sector Personnel Selection (ASEP). When this plea was examined it was found that there had been a wrong calculation of the qualification credits. Following this examination the complainant was ranked second in the runner up list but she was not employed after all due to insufficient credits. The GO, after investigating the complaint, found that this rejection was legitimate and was not violating Law 3304/2005 (complaint 9581/2005).

In another case, a female candidate for employment as administrative staff of the Social Security Organisation (IKA) filed a complaint for the rejection of her claim, arguing that this rejection was due to her disability. The GO recommended that she filed a plea against this rejection, and the competent department informed her reassuringly that the issue would be resolved immediately. The complainant was finally employed at this post (complaint 2410/2006).

2.4.1 EDUCATION

2.4.2 VOCATIONAL TRAINING

⊗ *Student with disability — Participation in oral examination*

A male student at the Mercantile Marine Academy (AEN-MMA) filed a complaint because the Academy refused to carry out an oral examination although the complainant is dyslexic and hence it is not possible for his performance and abilities to be assessed through written examination. More specifically, this student was admitted in the Academy through oral examination according to the legislation in force on “Examination of students with special learning needs”. The GO asked a justification of this refusal, making it clear that a possible refusal by the Academy to carry out examinations as fits to the special demands of the School as well as to the

possible special needs of its students, can be considered an indirect discrimination on the grounds of disability; however, this is stipulated only if it constitutes a substantial and determining precondition for executing a specific activity and it is justified by the nature of such activity or the environment in which such activities are carried out, and abiding to the principle of proportionality (Law 3304/2005, Article 9). The Mercantile Marine Academy responded that the provisions for the obligation to implement special education and assessment methods are referring to the elementary and secondary education but no such obligation can be deduced as regards higher education. In addition, it was made clear that the exercise of seafaring, according to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) signed in 1978, demands specific ability in written speech (to keep the ship's logs, to conclude contracts, etc.) and in using electronic equipment; dyslexia, if severe, may interfere with the exercise of these activities. Hence, MMA noted that the profession of seafarer falls under the exemption of Law 3304/2005, Article 9. This answer was considered only partially satisfactory (complaint 3377/2006).

2.5 DISCRIMINATION ON GROUNDS OF AGE

2.5.1 EMPLOYMENT

☉ *Exceeding the age limit — Registration at the lawyers' bar*

Assistant lawyers ("trainees") filed a complain because their claims to register at the Patras, Agrinio and Alexandroupoli Lawyers' Bars had been rejected due to age limit as laid down in Article 4 of Presidential Decree 3026/1954 (on the Greek Lawyers' Code, Government Gazette A 235). The GO addressed the Ministry of Justice and noted that since Law 3304/2005 took effect (incorporating Directives 2004/43/EC and 2004/78/EC), the aforementioned clause is considered to be abolished in its own right (Article 26) when the set age limit is not adequately justified according to the preconditions of Article 7 *et seq.* of the above Law. In addition, the GO recommended to the Ministry to take measures as to amend the Lawyers' Code and, if the age limit is deemed purposeful, this should be expressly justified, according to the preconditions set in Law 3304/2005, or, in any other case, any mention of age limit for registration should not be mentioned. The Board of Directors of the Patras Lawyers' Bar insists in preserving the situation as this has resulted from the original rejection. The Commission for Equal Treatment of the Ministry of Justice (Law 3304/2005, Article 21 *et seq.*) has also examined the issue, without having publicized any of its decisions yet. It is noted that the complainants have had recourse to the Council of State (Symvoulío tis Epikrateias) against the aforementioned decisions of rejection; the Council of State has previously invalidated similar decisions considering that the clauses of the Lawyers' Code contravene to higher-level constitutional rules (Council of State decision no 413/1993) (complaints 18213/2005, 11184/2006, 11764/2006).

☉ *Exceeding the age limit — Occupation of a public sector post*

A female citizen filed a complained with the GO because her candidature had been rejected due to her exceeding the age limit of 35 that was set in an announcement for vacancies in administrative posts at the Hellenic Migration Policy Institute (IMEPO), a private law research agency supervised and funded by the Ministry of the Interior, Public Administration and Decentralisation (MIPAD). The GO found that there was in fact an issue of harmonising this announcement for vacancies with the provisions of Law 3304/2005, given that the nature and

the duties of these vacant posts do not justify excluding interested to apply parties who are older than 35. The Minister in charge was informed on these findings in order to take measures so that IMEPO complies with the law (complaint 18429/2005).

⊗ *Setting an age limit in advertisements for scientific staff vacant posts*

Following a relevant complaint on the compatibility of terms of employment in announcements for scientific staff vacant posts in the Hellenic Migration Policy Institute (IMEPO) with the provisions of Directives 2004/43/EC and 2004/78/EC, the European Commission addressed a letter to Greece which was delivered to the Ministry of Employment by the EU Permanent Representation of Greece (MEA). Responding to the claim by this Ministry, the GO formulated its considerations on the complaint under investigation, which included charges for violation of the principle of equal treatment on the grounds of ethnic origin, disability and age, partially verifying the alleged violation as to the unnecessary setting of an age limit (the age of 40) for employment in the advertised posts, and gave recommendations to the supervising Ministry. Until today, MIPAD has not responded on this issue (complaint 7510/2006).

⊗ *Age limit — Retirement age for diplomats*

According to the legislation in force (Law 2594/1998, Article 83, paragraph 1, subparagraph b, Foreign Affairs Ministry Organization) the retirement age for diplomats is the age of 60, while for those at the rank of the Ambassador it raises it to 65. It is questionable, however, if this clause constitutes a discrimination on the grounds of age. According to the clauses of Directives which Greece has incorporated by amending the national legislation on discrimination, every state claim reasons of general social or pensions policy to establish exceptions. Ministry of Foreign Affairs (MFA) has not claimed any reason for not updating the aforementioned retirement ages. The GO has asked the Ministry to present its views on the issue but there has not received any response yet (complaints 15556/2006, 13143/2006).

⊗ *Retirement age — Pensionable employment*

The daughter of a member of the National Resistance was employed perforce in the Greek Railway Organization (OSE) (Law 1648/1986) and was placed at the Department of Hygiene and Security at the Work Place. On 31 December 2002, the complainant reached the age of retirement set for the rank of employees to which she belongs, and as a consequence since 1 January 2003 her employment contract is considered terminated in its own right, creating thus to the main social security organization (Greek Telecommunications Organization Employees Social Security Fund — TAP/OTE) the obligation to provide her with pension payments. However, according to the provisions in the Statutory instrument of the aforementioned social security benefits provider, a precondition for pension, besides reaching the pensionable age, 60 in this case, is being employed for at least 15 years in total, a precondition not met by the complainant. This is the reason why the administration of the Organization decided to employ her at the Greek Railway Organization as extra personnel until she completes the required period of pensionable employment; however, as a result the complainant was not any more eligible for the benefits of the regular personnel (wages, promotion). The complainant claims, among others, a violation of the principle of equal treatment under Law 3304/2005. This complaint is pending before the Administrative Court of Appeal (complaint 16178/2006).

⊗ *Age limit for employment in the public sector — Employment status*

School security guards at the Municipality of Athens on a fixed term contract filed a complaint with the GO because, although the Independent Authority for Public Sector Personnel Selection (ASEP) had taken a decision to include them in the provisions of Presidential Decree 164/2002 and to transform their contract into an open end employment contract, they had not been ranked because of the age limit into respective permanent posts on open end employment contract. The Municipality of Athens, following the opinion of the Region of Athens and the informal mediation by the GO, ranked the complainants to permanent posts on open end employment contract private law, given the abolishment of the age limit for employment or appointment in the public sector (complaints 15185/2006, 15297/2006).

⊗ *Age limit — Employment in permanent posts*

In two advertisements for permanent posts of scientific personnel at the Special Legal Department and for permanent positions of Information Technology and Telecommunications experts field in the Ministry of Foreign Affairs (MFA), a limit age of 35 has been set for participation in the selection process, as it is also provided for in the Foreign Affairs Ministry Organization. The GO addressed in writing the competent Departments and noted that the possible provision of an age limit in such processes should be expressly justified so that it is made clear that age is an essentially important factor determining the ability to execute specific professional duties (Law 3304/2005, Article 9). The lack of such a justification constitutes violation of the principle of equal treatment on the grounds of age and would undermine the validity and the legality of these advertisements as well as of the selection process. Also, the GO claimed the harmonization of the provisions of the Ministry of Foreign Affairs Organization with the provisions of the relevant EC Directives and Law 3304/2005. MFA claimed a previous decision of the Athens Administrative Court of Appeal according to which, due to the special status of all its employees (as set in the Organisation) “the clauses of the Organisation prevail against any other, even later general provision”. Moreover, MFA claimed that Law 3304/2005 does not include any special arrangements on how a justified discriminatory treatment is established by setting an age limit and at the same time that the specific justification for the expertise fields in question was included in two documents addressed to MIPAD, by virtue of which the aforementioned ministerial decision DIPP/FIL./6436/2003 was issued. According to MFA, since in the decision examined there is no mention to the two fields of expertise, it can be deduced that MIPAD accepted in these two cases the age limit of 35 which is already set in the Organisation (complaint 16814/2006).

2.6 DISCRIMINATION ON GROUNDS OF SEX

2.6.1 ACCESS TO EMPLOYMENT ON EQUAL TERMS

⊗ *Gender quotas affecting female candidates — Admission to Mercantile Marine Academies*

Female candidates to the Mercantile Marine Academies (MMA) filed a complaint with the GO claiming discriminatory treatment on grounds of gender at the entry examination. Following investigation of the complaint it was discovered that the Ministry of Mercantile Marine is applying a direct discrimination policy since there is a limit on the number of women to be admitted in its schools, without any legal justification. Applying these gender quotas leads in essence in excluding a large number of women who would be interested in entering the

profession as captains or marine engineers. The Ministry purports that due to the hard working conditions in this field, even during training, it is of critical importance to determine the number of women to be admitted each year. However, this justification can not be considered as complying with the law. The relevant legislation dictates that any deviation from the principle of equal treatment of men and women as regards professional activity and access to the training required should be expressly justified and special reference should be made to the factor of gender. If not, this discrimination in admitting female candidates at the MMA as well as the difficulties female students face during their training are suspect to derive from outdated social prejudice and, in any case, as contradicting to the fundamental principle of equal treatment to which our country adheres. To deal with the issue, the GO suggested to the Ministry to take measures so as a) to establish firmly in the relevant legislation and to include in the call to candidates the particular reasons imposing such a deviation from the statutory principle of equality of men and women, b) to create the necessary infrastructure so that the MMA can accommodate for female students so that gradually a real equality between men and women would be achieved in training and at work. However, although two years have passed since the Minister was duly informed, there has been no response by the Ministry and the entry regulations at MMA remain as they were. Consequently, the GO publicizes the issue by posting a findings paper at its website (complaint 18592/2004, 21738/2004).

⊗ *Gender quotas affecting women — Guards at correctional facilities*

A female candidate for a permanent post as prison guard filed a complaint with the GO questioning the legality of a ministerial decision which opens 225 posts, 200 to men and 25 to women. Setting this quotas and allocating posts for women in specific facilities nationwide caused the exclusion of the complainant from the posts advertised for the Correctional Facility in Chios, as these positions were destined for men candidates on the basis of a justification in the preamble of the relative announcement "...it is necessary for the prison guards to be of the same sex with the detainees so that the smooth operation of the facilities is ensured". The GO addressed the competent department of the Ministry of Justice emphasizing that, even if assigning such duties to members of the same sex with the detainees is sometimes necessary, this precondition in this specific announcement should not be set in a general and abstract way but it should be specified and should make mention to the particular reasons that make it imposing in relation to the specific duties that the people employed for this posts will be called upon to execute (complaint 18978/2005).

2.6.2 EQUAL PAY

Discrimination on the grounds of sex — Dedicated financial benefit

A female employee filed a complaint with the GO claiming that her employer has wronged her by failure to apply the principle of equality. According to the evidence she submitted, the employer pays on his own initiative to all men employees—who appear to carry out exactly the same duties as herself—but not to her a benefit for computer use. The complainant had first addressed the Pireaus Social Inspectorate that took measures to resolve amicably this labour dispute which included a series of offenses (no overtime remuneration, no payment receipts, etc.) apart from the computer benefit. According to the complainant and the Inspector who mediated, all issues were resolved except that of the computer benefit. The employer claimed that this benefit is not granted to the complainant since she performs completely different duties than her colleagues who receive it. The GO had a telephone conversation with

the head of the Social Inspectorate and addressed in writing a request for the re-examination of the case. Indeed, it was agreed that an on site investigation should take place. The results of this re-examination are pending (complaint 16460/2006).

2.6.3 EQUAL TERMS AND CONDITIONS OF EMPLOYMENT

☉ *Female teacher — Parental leave of absence*

The Western Thessaloniki Directorate for Elementary Education declined the reappointment at a director's post of a female teacher employed in the private sector and decreased her remuneration on the basis that she had been absent from work with a nine (9) month parental leave of absence while normally she would have returned to work. The complaint was filed while the answer to the plea of the complainant was pending. The GO has already made informal contact with the parties involved reserving the right to address the Ministry of Education in writing in case the plea is rejected (complaint 1785/2006).

☉ *Working male parents — Parental leave of absence or flexible working hours*

Male public sector employees filed a complaint with the GO asking for assistance to their claim for a nine (9) month parental leave of absence or flexible working hours in order to take care of their children. The GO informed the complainants on the legislation in force and the forthcoming new Public Service Code, according to Article 53 of which male parents have the right to receive parental leave of absence. They were also advised to submit an application to their service the soonest possible. It is expected that during 2007 an increased number of similar complaints will be filed (complaints 17858/2006 and 14395/2006).

☉ *Working male parents — Time off to attend parent/teacher meetings*

A male employee of the Athens Electric Trolley Buses SA (ILPAP) claimed in his complaint that the rejection of his request to be granted time off in order to attend parent/teacher meetings constitutes discrimination on the grounds of gender. The GO investigated the complaint and contacted all interested parties but did not at first confirm such discrimination. However, it is still under investigation whether, given the fact that the majority of employees in this company is of the male sex, rejecting this request, despite the fact that this time off can be granted to fathers too (Law 1483/1984, Article 9, paragraph 2) constitutes an indirect discrimination on the grounds of gender (complaint 18643/2006).

2.6.4 SEXUAL HARASSMENT

☉ *Charge for sexual harassment against employee*

The Kallithea Social Inspectorate reported to the GO the conclusions of its mediation in the settlement of a labour dispute. The object of this dispute was, among others, the charge for sexual harassment of a female employee by her employer. All charges filed by this employee had been investigated with the exception of the charge for sexual harassment. The GO is in contact with the aforementioned Inspectorate so that this charge is investigated anew on the basis of the new rules for "shifting" the burden of proof (complaint 17357/2006).

☉ *Charge for sexual harassment against municipal employee*

A fixed term female employee of the Municipality of Athens filed a complaint for being subjected to sexually harassing conduct which produces an intimidating, hostile, offensive or

disturbing working environment. More specifically, the complainant claimed that her supervisor is harassing her sexually with a view to a sexual relationship and her refusal to yield leads to continuous pressure, assignment of harsh duties and constant threats with non renewing her contract in case she does not succumb to his advances. The GO called the complainant to the premises of the Authority in order to examine all evidence that she had purported of having at her disposal and to receive detailed information on the situation. The complainant reported that following the charges she filed with her Department and its particularly unfavourable impact on her in and outside her working environment, she does not wish the case to be further investigated by the GO fearing retaliation against her. The GO informed the complainant on what the Authority could do in order to investigate the case. The complainant finally asked for her complaint to be left pending without any other action taken until she decides whether she wishes the case to be further investigated or not (complaint 13225/2006).

☛ *Charge for sexual harassment by a public servant*

A woman carrying out a transaction in a Department at the Customs House claimed to have been sexually harassed by means of an unprovoked verbal attack and profane gestures by the head of that Department. This charge does not fall under Law 3488/2006 as it has not taken place in the complainant's work environment. However, the GO remains the competent authority for this case too; hence the GO addressed the Customs Personnel Directorate of the Ministry of Finance and Economy in writing, asking to be notified on the views the Department holds in regard with the incident as well as on any possible investigation measures taken. The GO suggested also that all correspondence should be characterised as confidential so that the personalities of the individuals involved are protected. The response is pending (complaint 12946/2006).

3. MAKING THE BEST POSSIBLE USE OF THE GO LEGAL APPARATUS

3.1 STRATEGIC ENFORCEMENT FOR ROMA CITIZENS

3.1.1. OBJECTIVES

The "2005 report of the GO as a specialized body for the promotion of the principle of equal treatment" presented the strategic enforcement for the protection of Roma in our country articulated around the issues of their living and housing conditions. The GO continued to receive and investigate similar complaints (see above 2.2.1) aiming first at the on site investigation of all cases. However, the GO's action for the housing problem of Roma is mostly dealt with *ex officio* monitoring of facilities in the country. To this effect, GO units visited the Municipality of Ano Liossia, the area of Votanikos in Athens, the remaining settlements in the Municipality of Patras, two major settlements (in Aghia Triada and the Industrial Zone) in the Municipality of Kalamata, in the area of Nea Smyrni in Larissa, the area of Dendropotamos in the region of Thessaloniki, the area of Aghia Sophia in the Municipality of Ehedoros and the scattered settlements in the region of the Municipality of Evosmos.

The aim of these field visits was firstly, to find and discover the characteristics of each settlement and the particular problems the population in each one faces through the personal contact with the Roma themselves and the local civil society structures as well as the competent authorities in each locality, especially municipal authorities, the police, health directorates,

urban planning departments, etc; then, to begin the mediation in order to jointly achieve a commonly acceptable frame for solutions of the problems detected. However, through the ad hoc mapping of the special characteristics and problems of the Roma settlements we aim at processing the material collected and identifying each case into categories of housing and related social practices and problems. Having the issue of housing as a starting point we will be able a) to bring to light the complicated picture and the institutional context of the social exclusion of the Roma and b) to clearly determine which should be the focal point of a regulatory objective—still lacking in our country—that will facilitate the shaping of an integrated approach according to the standards that derive from the care and respect a democratic polity should reserve for its members.

3.2.1. FIRST CONCLUSIONS

In brief, the GO's strategic enforcement for Roma housing allows for the following preliminary conclusions bearing on facts as well as on normative orientation:

☉ *Preliminary findings*

The populations in question are more or less permanently settled in specific areas due mostly to the job availability there (e.g. farming, recycling-use of waste material) or/and the apparent relative security of particular settlements. Such settlements constitute a pole of attraction for other Roma groups which either stay there periodically depending seasonal job patterns while are permanently settled somewhere else or intend to settle there for good. This mobility seems to be determined to a large extent by the kinship ties in a wide family setting (of the clan type). A large part of the newly settled populations seems to be foreign Roma, originating from Albania or former Yugoslavia, Kosovo and FYROM especially, who were forced to abandon their initial settlements because of last decade's pressing political events and of poverty. These groups, although they seem to live side by side with the local Roma, take advantage of the relative security they encounter due to the lack of attention that the official authorities reserve for Roma. These critical differentiations within the Roma population are not easily perceptible as a large part of the total population is not in any case registered in the municipal registers, while their high demographic rate and relative mobility render some sporadic and informal attempts to compile a census quite useless.

These settlements are usually on free land, owned by the State, either the municipality or some public entity, sometimes even on privately owned land that the settled Roma group has taken the initiative to occupy and hold, due to the indifference or the tolerance the owners demonstrate. In some cases of private property trespassing, the settlement remains because the owners who leaped to execute a judicial decision of eviction were not successful in their endeavour due to the inertia of the competent authorities.

In most cases, although the initial settlement exists for several decades, it is still illegal and unsafe. The prospect of remodeling or use the occupied lands either for a specific public purpose or—and in some cases under the pressure by the local population often fretting on their social contact with the Roma—to “beautify” the area (especially in view of a forthcoming or international promotion of the city) results usually to the mobilization of a compulsory evacuation mechanism either by forcible eviction or by destroying the temporarily deserted shacks (“cleansing” operations). Because of this pragmatic and legal insecurity in combination with the financial situation and the particular social practices of this population, the main type of dwelling is a makeshift shack, built with cheap material or by recycling construction or

other waste, having neither facilities such as water supply, drainage or electrical supply nor abiding to any other urban planning regulation. Despite the occasional assistance offered by the municipality or other local authority (e.g. water supply, periodic garbage collection) the conditions in the settlements along with the poverty these populations suffer from, their social marginalization, the general indifference of the state towards them and their sticking to traditional social practices among others, weave a life in abject squalor with inherent dangers to public health and the environment (e.g. uncontrolled waste disposal); combined with the possibly annoying traits of certain professional or social activities they undertake, their social isolation is being constantly refueled along with the social tension with the rest of the population.

It seems that the structural exclusion of members of Roma groups is being built on this basis: exclusion from fundamental aspects of social life in the geographical area they have settled but country-wide also and to a large extent the failure of any prospect or chance for personal and collective development and wellbeing (employment in the public or the private domain, education, preventive medicine etc.), and finally, the impossibility of a serious involvement in political life at local or national level. Increased delinquency rates, childhood exploitation, widespread substance abuse in young age groups and the involvement in illegal substances trafficking as well as the numerous manifestations of racially discriminatory spirit against Roma constitute typical by-products of the processes that regenerate in their turn the vicious circle of exclusion.

In an increasing number of cases, however, due mostly to the widespread (and apparently uncontrollable) granting of housing loans on State securities, the settlements are built on privately owned properties. It often happens, thought, that when Roma acquire land they usually face insurmountable problems —lack of planning permission, non-buildable plot, zoned as close to archaeological sites or sensitive ecosystems, intensive farming etc.— as to the construction of houses for a number of reasons, namely ignorance of urban planning laws, of the real estate and the construction market, the intervention of deft middle men, the difficulty to contact for help the competent urban planning or other Departments and the discouragement they come across when they finally manage to contact them. So, obstructed by the urban planning Departments that eagerly impose fines for constructions without construction permits (probably under the pressure of local agents), the majority of Roma who have settled on their own land maintain the makeshift type of dwelling becoming thus again entangled in this circle of immobility and social exclusion. Moreover, these settlements, compared to some other on plots that have been evacuated, seem more secure to the eyes of other Roma passing by, and they are attracted to stay there too regardless of any family ties. So, illegal settlements expand in neighbouring plots and annoying activities thrive. When this settlement lies within a built-up area, the horizontal social tension with the neighbours reaches its peak; on the other hand, urban planning, sanitary or other authorities impose in vain the strictest fines possible and file suits against Roma settled there; in practice not only is such severity unable make them comply to an unconceivable to them system or adhere to a social peace scheme but it is also possible that the problem is in this way even more aggravated.

These findings make it quite clear that as far as the settlements that the GO had the opportunity to monitor under the composite action undertaken, the situation today tends to undermine positive actions on behalf of the Greek state aiming at improving the status of Roma in our country and, more specifically, the effectiveness of the most essential of all, the loan scheme. However necessary and useful are public initiatives such as a loan scheme on favourable terms and the so called Integrated Programme, their effectiveness heavily depends

on the prior existence of a basic framework of regulations, institutions and infrastructures able to neutralize the factors that undermine the positive actions expected outcome. As the GO investigation demonstrated, in essence, there is no such basic set of rules and institutions in our country with the sole exception of isolated and outdated arrangements such as the sanitary clause on dealing with the uncontrollable settlement of wandering peoples (Ministerial Decision GP/23641, Government Gazette B 973/15.07.2003). In practice this means that not only the Roma themselves as citizens and as individuals are deprived from their special rights that would allow them to assert successfully their right to participate in social life, but also that the public administration in its turn lacks any specialized legal tools to develop positive actions to minimize the social exclusion of this remarkable and sensitive population. Until comprehensive rules are drafted to this effect, the judicial authorities can only resort to the Constitution and the European Convention on Human Rights and Fundamental Freedoms (ECHR) and interpret it in each case accordingly in combination with the principle of equal treatment (Law 3304/2005) so that the necessary regulatory orientation is made clearer and explicit.

❁ *Normative orientation*

The initiatives and the projects by the Greek public administration for the housing rehabilitation for the Roma in our country are founded on Article 21, paragraph 4 of the Constitution, according to which “the acquisition of a home by the homeless or those inadequately sheltered shall constitute an object of special State care”. This does not mean, however, neither that everyone can demand from the State to ensure a home for him or her nor that, when someone does not have a home, he or she has the right to occupy on his or her own initiative a public or private property. Such rights are attributed or granted to no one even if he or she has a certain ethnic origin or other unique trait. Having the right to home or housing loan or to trespass private property on the grounds of being a Roma would be a direct violation of the principle of equal treatment against the other members of the population. However, on the other hand, the State should take into consideration when applying the law or take special measures, the critical uniqueness of the characteristics and the position of all individuals under its jurisdiction. Failing to do so constitutes in its turn a violation of the principle of equal treatment because it reserves the same treatment for dissimilar situations and individuals with significant differences among them.

The home, recognized by the Constitution and the ECHR as the field for private life and personality development, constitutes a prerequisite for the exercise of the majority of freedoms each individual enjoys. The housing situation of Roma in this country, due less to its cultural particularities and more to its poor quality, is a special social size that the State should take into serious consideration. As the European Court of Human Rights has reaffirmed, the obligation to ensure human dignity does not refer only to averting any instance of violation but also to the obligation of the State to take positive measures to eliminate situations which, if tolerated and maintained, constitute degrading treatment for those subjected to it. One could safely consider an instance of such a treatment assenting to such poor living conditions for the Roma for so long and in many parts of the country. Eliminating similar degrading conditions can not be left to the public administration’s discretion as the strict interpretation of the sanitary provisions purports. On the contrary, it should be interpreted according to the specific (and most usual) conditions under which the settlement of the Roma exists in each case, as a mandatory exercise. Hence when it comes to the attention of the competent administrative

authorities, either by first hand knowledge or following relevant notification or a claim by the Roma themselves or by other citizens, that within their administrative jurisdiction there is a poor quality settlement, their positive actions should be launched as far as their field of competence is concerned, would that be social affairs services municipal or health and education services or the Region General Secretary who has the responsibility to determine a place of safe, legal and adequate housing for all Roma who do not have such a house and until they do so. Should the regionally competent General Secretary neglects to do so within a reasonable period of time, it is reasonable to infer that it has been tacitly indicated to the Roma to retain their settlement where it was. Should such plot be privately owned, the owner can claim recompensation by the State for their inability to actually enjoy their possession or property due to State inaction. In any case, the particular, qualitative and cultural, parameters of the Roma housing should function as critical considerations for assessing and therefore restricting all negative measures that may be taken according to law against the inhabitants of any Roma settlement. So, from this point of view there should be a legal assessment not only of all possible sanctions imposed by urban planning, sanitary or police authorities but, *par excellence*, the measures of forced eviction and compulsory evacuation of Roma from their settlements.

The action undertaken by the State should not throw into a deeper wretchedness or limit any ability to enjoy one's rights individuals who, due to their special social status and their characteristics, should first and foremost find themselves at the receiving end of the public authorities concerned. It can be thus understood that the Greek legislation forbids, on the penalty for breach of positive duty, the compulsory evacuation of a Roma settlement without prior indication of a suitable place for safe and legal settlement, of equal quality to that which is to be evacuated. This prerequisite renders the aforementioned need for positive actions even more imposing in order to locate any appropriate plots, equipped with all necessary infrastructure and with access to all public goods (e.g. medical care and welfare, education) so that a significant number of Roma who are currently in encampments on privately owned or free properties. It is only through the promotion of the effective application of such principles that it would be possible to ensure a frame of relative stability within which local or national projects and positive actions for the rehabilitation of this sensitive population would have any chance to succeed. However, this objective does not seem achievable without incentives that would mobilize the local civil society and the local authorities themselves.

3.2 ACTIONS FOR RAISING PUBLIC AWARENESS, TRAINING AND DISSEMINATION OF KNOW-HOW

3.2.1 TRAINING OF THE GO STAFF AND TRAINING SERVICES

In 2006, the GO continued the intensive cooperation and exchange of know-how with other institutions in Greece and abroad that are engaged in implementing and promoting the principle of equal treatment. Also, making use of the knowledge and experience so far acquired, the GO participated in a series of training seminars aiming at informing and raising awareness on how to combat discrimination in workplaces.

More specifically, the GO participated in:

- An international training seminar on “Combating Discrimination on grounds of Race, Ethnic Origin, Religion and Belief — Effective Test Case Strategies” organized by the European Institute of Public Administration in Warsaw.

- An international conference on “Actions to raise awareness against discrimination in the workplace” organized by the Labor Institute of the General Confederation of Greek Workers (GCGW-GSEE).
- A plenary meeting of the Economic and Social Committee of Greece on “Implementing the principle of equal treatment regardless national or ethnic origin, religion or other beliefs, disability, age or sexual orientation”.
- In three training one-day conferences on gender equality issues organized by the Training Institute of the National Centre of Public Administration and Local Government in Athens and in other Greek cities.
- In a one-day conference on “Protection and promotion of the Roma basic rights and freedoms” organized by the Ministry of Health and Social Solidarity, the Centre for Social Solidarity and the Pan-hellenic Inter-municipal Network ROM.
- In a training seminar on “Ensuring access to mainstream services for the Roma” organized by the inter-municipal society “Efxini Poli”.
- In the 3rd interstate seminar on “Raising awareness on equality and against discrimination” organized by the National Centre for Social Solidarity within the framework of the European project “Join in Mainstreaming of Equality and Non-Discrimination”.

3.2.2 PARTICIPATION IN NATIONAL AND INTERNATIONAL NETWORKS FOR THE FIGHT AGAINST DISCRIMINATION

This has been the second year that the GO has participated actively in the European network Equinet, a network which brings together and coordinates designated Equality Bodies in enforcing Community Directives against discrimination in the EU member states and the accession countries. More specifically, the GO participates in the second working group of the network that deals with information exchange on the means and strategies for action applied by Equality Bodies for the effective and comprehensive exercise of their competences. In addition, in 2006 the GO undertook a similar role in the third working group of the network, dealing with interpretation questions arising during the application of legislation in force, aiming at formulating even more dynamic ways to intervene in individual cases of violation of the principle of equal treatment in order to cover occasional legal lacunae in the most successful manner. Continuous exchange of information on cases and best practices is sought for through electronically exchanged questionnaires and regular meetings.

Moreover, the GO participates in the National Working Group of the project “For Diversity. Against Discrimination” set up in 2005 as an initiative by the General Directorate for Employment, Social Affairs and Equal Opportunities of the European Commission. This program coordinates the actions by national agents which have been entrusted with the mandate to monitor and promote the principle of equal treatment, as well as to encourage organizations representing groups vulnerable to discrimination to become involved in sharing information on the developments that have taken place at legislative level and to highlight the best practices.

In 2006 the GO participated also in:

- Training seminars on “Training on the practical implementation of anti-discrimination and equal treatment legislation” and “Training on Policy-making issues using codes of conduct as an example” that took place in Budapest and Vienna respectively.
- In interstate seminars in Athens on “Raising awareness on equality and against discrimination” organized by the National Centre for Social Solidarity under the EU programme “Join in Mainstreaming of Equality and non-Discrimination”.

4. ISSUES ARISING FROM THE APPLICATION OF THE NEW FRAME-LAW — SUGGESTIONS

Applying for two years the regulatory framework against discrimination and promoting the principle of equal treatment has illustrated the need for additional institutional interventions aiming either to increase the effectiveness of this law or to rectify unsuccessful or inadequate solutions.

- It is even more compelling to take drastic institutional initiatives in order to invigorate the active participation of civil society, especially in the regional areas, so that the principle of equal treatment is promoted beyond the provision of information and raising awareness which is usually absorbing all available funds. There are no complaints yet for discrimination, especially on the grounds of sexual orientation and religion, or for gender discrimination by female private sector employees, or by individuals belonging to the groups that are allegedly victims of discrimination. One would be naïve to associate this lack of complaints to the actual occurrence of discrimination. What actually happens is quite the contrary: this absence of complaints filed signifies the limited trust the protection mechanism is invested with and, on the other hand, a series of significant factors (personal or social) discouraging the claim to legal protection. The failure of contact between institutional mechanisms and individuals victims of discrimination can be remedied only by those social formations that are active near the problem site, in social and geographical context. To this effect and given the extent of activation and the interests of the local civil society, it is now more than ever necessary to be activated with funding activities towards oriented approach and/or host activities as well as social and legal support of the alleged victims of discrimination. The GO, wishing to contribute in this activation, is about to launch a pilot network for communication and coordination of regional civil society organizations that are already active in protecting and supporting Roma.
- On the other hand, the various organizational options in Law 3488/2006 and the disfunctions and ineffectiveness that were brought about by the organizational options in Law 3304/2005 seem to impose the unification to a single protection system by assigning all fields of discriminatory treatment jointly to the GO and the Labour Inspectorate. It also seems that to achieve rapid and effective activation of this framework, it is advisable to specify in detail the ways in which these two bodies should cooperate and to clarify the new competences undertaken by the Labour Inspectorate, especially in comparison to the prior ones. However, it would be naïve or even insincere to expect dramatic improvement in the field of protection against discrimination, especially in the private sector, if the civil society does not get substantially involved in activities as mentioned above.

All departments of the Greek Ombudsman have contributed to the preparation of the Ombudsman's annual report as a specialized body for the promotion of the principle of equal treatment.

**RESPONSIBLE DEPUTY
OMBUDSMAN**

Andreas Takis

EDITING OF TEXTS

Kalliopi Lykovardi
Dimitris Veremis

**COORDINATION OF
PUBLICATION**

Zina Assimakopoulou

TRANSLATION-EDITING

Athena Balopoulou

ART DIRECTION

Anna Katsoulaki

COVER

Anna Katsoulaki

Cover page: painting by Kenneth Noland.

PRODUCTION

METROPOLIS S.A.

PRINTED

BY THE NATIONAL PRINTING
HOUSE
in 600 COPIES

NOVEMBER 2007

ISBN: 978-960-6762-01-7