

2nd SPECIAL REPORT
(article 25 par. 8 of Law 3896/2010)
June 2009 - December 2010

**Equal Treatment of
Men and Women
in Employment and Labour Relations**



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Executive Summary

The second special report of the Greek Ombudsman on the equal treatment of men and women in employment and labour relations is being released during a remarkably harsh period for labour matters in Greece as well as worldwide. The financial crisis and developmental recession aggravate that already thorny position of working women, with high unemployment and underemployment rates, an increase of dismissals due to pregnancy or maternity, and difficulty of reintegration in the labour market.

At the same time however, the position of the Greek Ombudsman as the Equality Body responsible for the promotion of legislation for equal treatment between men and women in employment has been significantly reinforced. Law 3896/2010, enacted in December 2010, broadened the competences of the Ombudsman with regard to tackling discrimination. Hereafter the Ombudsman can take up preventive actions in order to promote equal opportunities and equal treatment of men and women in matters of employment and occupation. To this end, it can cooperate with public administration, social partners, enterprises, NGOs, etc, adopting a more active role in promoting change of gender perceptions in the labour market. Moreover, especially in regard to complaints related to gender-based discrimination, the Ombudsman is not obliged to end its investigation in case the complainant files a lawsuit; instead it will be entitled to continue its mediating efforts until the first actual hearing in court of the lawsuit or the relevant petition for the issue of a temporary injunction is examined.

The aim of this report is to present the Ombudsman's work, resulting from the exercise of this special competence the legislator has entrusted to us since 2006, not just in the form of a mere account of events. Above all, we have tried to delineate the real picture, highlight the problems, register best and worst practices of the administration, offer an update on national and European developments. In general, we have aspired to create a tool suitable for multilayered comprehension and various uses, expanding from simple information to furthering knowledge and deliberation in matters of gender discrimination in the labour market.

This report covers the Ombudsman's accumulated experience from June 2009 till December 2010. After the introduction, it offers an overview of the entire period, followed by statistical data, transcribing facts in the dialect of figures.

The Dossier "Parental leave rights and gender equality in the public sector" holds a prominent position. This is the report's central subject matter and it is exhaustively analyzed. The topic was not chosen in random. Parental leave issues constitute the forefront, the cutting edge of European Union policies, when it comes to reconciliation of private and professional life. During the period covered by this report, the EU enacted Directive 2010/18/EU and the EU Courts (ECJ, ECHR) entered significant judgments on this issue. In Greece also, the matter had noticeable mobility, which was reflected to the number and variety of complaints filed with the Ombudsman. This dossier contains a detailed overview of national and European legislation and case law, as well as all relevant developments at European level. Subsequently, the Ombudsman presents its wide-ranging experience on this issue, with examples of citizens' complaints, the Department's mediation methods and content and the response of the administration or absence thereof. This part is brought to a close with the Ombudsman's conclusions and proposals, as far as specific professional categories are concerned: medical doctors, teachers, police officers and employees of the Ministry of Foreign Affairs posted abroad.



Next, we encounter the update on last year's dossier "Additional maternity protection leave and benefit" with the Ombudsman's actions and the administration's response this year. After that comes an outline of the most important groups of complaints handled by the Ombudsman, which largely cover two themes: women's access to previously male - dominated employment areas, i.e. the Armed Forces and Law Enforcement Agencies, and the problems working women face in the private sector with regard to pregnancy. The final chapter of the report covers the public presence of the Department as Equality Body for

the implementation of the principle of equal treatment of men and women, as this is expressed through its cooperation with the Labour Inspectorate, the Parliamentary Committees, and its active participation in the European Network of Gender Equality Bodies, operating under the auspices of the European Commission.

The Report concludes with general findings and propositions, summarized as follows:

Four years after the enactment of L. 3488/2006, already repealed and replaced by L. 3896/2010, the implementation of the principle of equal treatment of men and women in employment still faces considerable obstacles; the policy of gender mainstreaming in public administration is still at a very early stage; public administration, including civil courts, is not adequately acquainted with the relevant legislation; the absence of reliable statistical data deprives the Department of a significant tool for documentation of discrimination; there is still widespread gender discrimination in announcements for staff hiring and procedures of access to professional education and vocational training our effort to spread out within the entire public sector legislation granting parental leave rights to fathers (i.e. Law Enforcement Agencies), as well as to remove practical difficulties found in the way of exercising such rights, is met with legislative and procedural obstacles, resulting both from social gender stereotypes and lack of political will. In the private sector, pregnancy and maternity remain the prevailing impediments to women's employability; in addition, no measures are taken for reintegration to the labour market, after long absences due to maternity

The Ombudsman anticipates that the procedure for transposition of Directive 2010/18/EU to national legislation will offer the Greek State the opportunity to deal with all problems related to parental leave in both the public and the private sector and provide an efficient codification of the applicable legislation. More specifically, the Ombudsman suggests the establishment of a unified parental leave status for all categories of civil servants, regulated by the following principles: allocation of parental leave time between the parents, motives for use of parental leave by the father in all cases, flexibility in the temporal arrangements of parental leave, i.e. possibility to accumulate the amount of reduced daily working hours into one day off per week.



Introduction

Only a year after the release of the first Special Report on equal treatment of men and women in employment, circumstances have changed dramatically. Multiple legislative interventions to labour law¹, rapid increase of dismissals, prolonged working hours, decrease of pay, adverse working environment, elimination of jobs and suspension of recruitments in the public sector, are some of the rapid changes brought about by the economic recession, marking a completely new employment reality in the public and private sector. Even though the impact of these changes to gender equality has not been yet systematically assessed, it is not difficult to predict. In a deeply fragmented and deregulated labour market, where there is no longer any distinction between the public and the private sector, but between the “insiders” and the “outsiders”, without an adequate social protection net, women, especially younger and older women, have increased chances of finding themselves among the “outsiders”, trapped in fragile routes between unemployment and underemployment. In the traditionally low participation of women in employment – with 4 among 10 Greek women remaining outside the labour market in 2009 – this year adds the dramatic increase of dismissals due to job cutbacks or due to pregnancy and maternity as well as due to concealed dismissals called “voluntary departures”. One reasonably wonders how many women will be able to respond to the extremely competitive environment of individualized and “flexible” labour relations that is being shaped, where gender, in combination with age and family status, becomes a crucial factor of exclusion from rights and for discrimination.

What can the Greek Ombudsman do at this time to deal with these discriminations? Law 3896/2010, which entered into effect in December 2010, institutionally enhanced the Ombudsman as the agency responsible for monitoring and promoting the principle of equal treatment for men and women in the field of professional equality, and extended its competency to equal opportunities for men and women. The Greek Ombudsman's intervention as the agency that supports gender equality, is upgraded from the aspect of quality, since in addition to monitoring the legality of the actions of administration and the actions of individuals, the Ombudsman is now also responsible for promoting actual gender equality in the workplace, with preventive non-legislative measures, in cooperation with social partners, businesses and all the organized agencies of the labour market and the civil society. The new law repeals and replaces Law 3488/2006, significantly broadening the extent and the means of intervention of the Greek Ombudsman. For example, the Ombudsman can now examine complaints on discrimination on grounds of sex, regardless of any pending actions and until the first hearing of the case in court or until there is a decision by the judicial authority on a petition for temporary judicial protection (e.g. petition for provisional measures). This is a deviation that allows the Ombudsman to have a substantial mediating role when examining complaints against private employers, seeking to bring the parties together and resolve the personal labour difference.

The purpose of this report is to evaluate the implementation of Law 3488/2006 that was in effect at the time, through the complaints lodged by citizens with the Greek Ombudsman, covering the period from June 2009 to December 2010. During this period, the Greek Ombudsman handled 370 complaints in total and managed to resolve the problem after its successful mediation in 52% of the cases. In several cases the mediation of the Greek Ombudsman between citizens and public administration had a successful outcome. More specifically, in four cases, the acceptance of the Ombudsman's proposals led to an amendment to laws and regulatory administrative acts to the benefit of a large number of citizens. Therefore, after the intervention of the Greek Ombudsman:

¹ Indicatively mentioning Laws 3845/2010, 3863/2010 and 3899/2010



- ▶ the minimum height limit for the admission of women in military schools was decreased by law

- ▶ a standing order was issued, that extended the right to parental leave also to

military servicemen; there was a corresponding extension with a presidential decree (P.D. 105/2010) for fathers serving in the Hellenic Coast Guard

- ▶ a circular was issued by the Ministry of Education in order for all Universities to grant parental leave regardless of sex, adapting their Internal Regulations of Operation correspondingly.

There were remarkable results from the mediation of the Ombudsman between employees and employers in the private sector as well, after complaints, which in 2010 amounted to 36% of all complaints, and during the reference period of this report, to an average of 26.54%. Labour differences were resolved with settlements before reaching the courts, with the cooperation of the Greek Ombudsman and the Greek Labour Inspectorate (SEPE), dismissals were revoked or the contracts of pregnant employees were renewed and administrative fines were imposed on employers by SEPE, following a recommendation of the Ombudsman.

The collaboration between the Greek Ombudsman and SEPE, for cases relating to private employers, improved substantially, after the issue of a circular on the method of cooperation of the two control mechanisms. The communication of the Greek Ombudsman with public services also correspondingly improved, when exercising its special competency for monitoring and controlling the implementation of the principle of gender equality, since the administration has been accepting the views of the Ombudsman with increasing frequency or requests opinions of the Legal Council of the State following documents of the Independent Authority. Finally, a fertile discussion is under way with the competent services of the European Commission that are monitoring the course of the transposition of EU directives on discrimination and are investigating personal complaints for violations of EU law by member states. The European Commission has asked for the positions of the Greek Ombudsman regarding legal issues, for example whether the provision for a common height limit for both sexes for admission in police schools constitutes a violation of Directive 2006/54/EC, a matter for which the referral of our country to the Court of Justice of the European Union (ECJ) is being considered.

A significant part of the complaints of the above period related to complaints for discrimination on grounds of sex and unfair treatment due to parental leave. Continuing the successful practices of the "dossiers" launched last year (see Special Report November 2009), this year we decided to collect and present in a dossier the most important cases regarding parental leave in the public sector. The thorough examination of these cases, led to the following conclusions:

- ▶ the legal status that governs parental leaves in the public sector is not uniform (Civil Servants Code) but is differentiated based on non-rational criteria, for certain categories of employees, favouring unfair treatment and legal uncertainty.

- ▶ parental leave is a right for both parents only in legal theory, since legislative and regulatory provisions awarding it only to the mother are still implemented, reflecting, apart from the inertness and suspicion of the administration, an outdated stereotypical social perception that the mother bears family burdens, and especially those relating to child care;

- ▶ there is inflexibility in the way parental leave is granted, whether it is granted as reduced



working hours or in the alternative form of the equal length nine-month parental leave, an inflexibility not in line with modern social, economic and employment reality.

The answers to the above, in the Ombudsman's opinion, must follow three directions:

- I. unified parental leave status for all categories of civil servants, and annulment of the general or special regulations that violate the principle of the equal treatment of men and women;
- II. allocation of parental leave time between two working parents, with incentives for its use by the father, and potentially conversion of a part of this leave to a personal and non-transferable right of the father, which, if not used, is permanently forfeited, and
- III. provision for flexible ways for granting parental leave, such as e.g. option for accumulating the reduced working hours into days off, so the employee is motivated to select it instead of a consecutive leave.

During these critical fiscal circumstances, the goal is to ensure the best possible balance between personal-family needs of the employees on the one hand, and the public sector's needs on the other, and to establish the perception that parental leave is a right of both parents which should be exercised in an equivalent manner, without abuse or exaggeration.

Stamatina Yannakourou

Deputy Ombudsman



A. Discrimination on grounds of sex at a glance

The work of the Greek Ombudsman in numbers

As of June 2009 until December 2010, the Greek Ombudsman received three hundred and seventy (370) complaints, of which 57% have already been archived, while 43% remain open.

**Table 1
GROWTH OF COMPLAINTS (2006 -2010)**

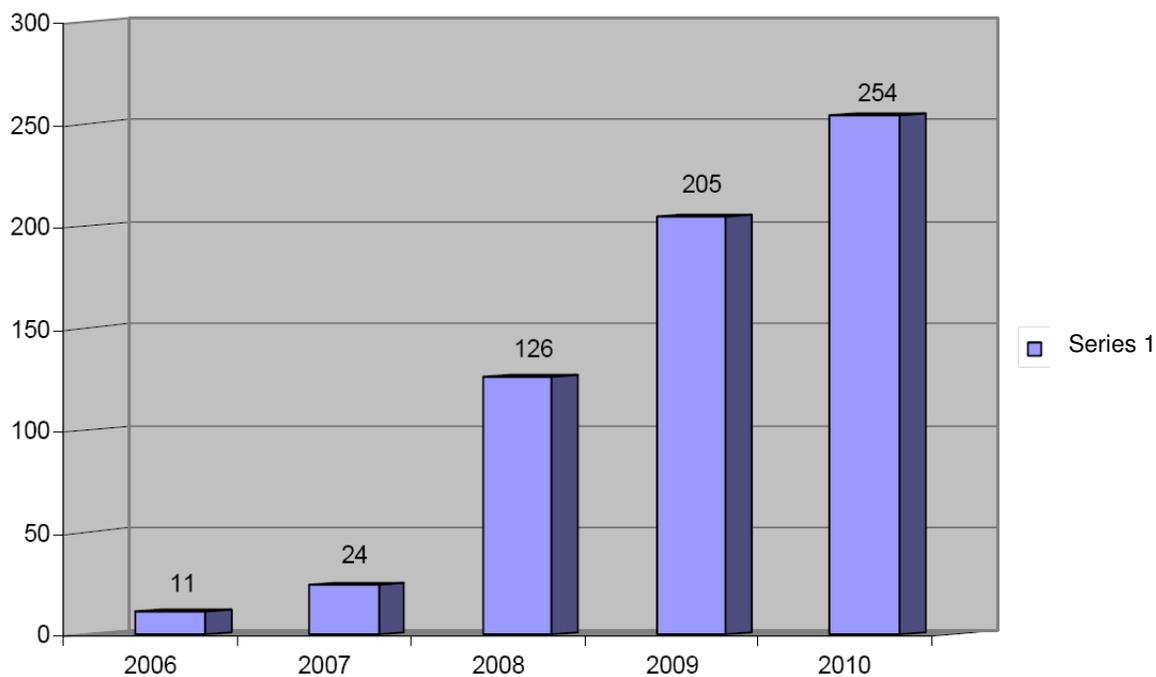




Table 2

OPEN – CLOSED COMPLAINTS

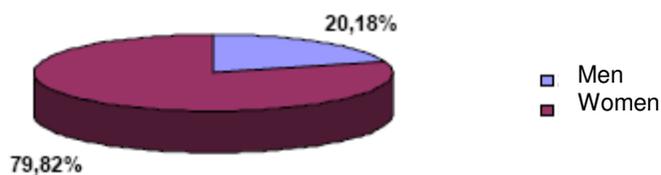


Of the complaints that were archived:

- 19.68% were closed without examination (due to lack of jurisdiction, vagueness of request, simple provision of information)
- the remaining 80.32% were archived following examination.

68.62% of the complaints had grounds, and the percentage of resolution of the problem following successful mediation of the Ombudsman amounted to 52%.

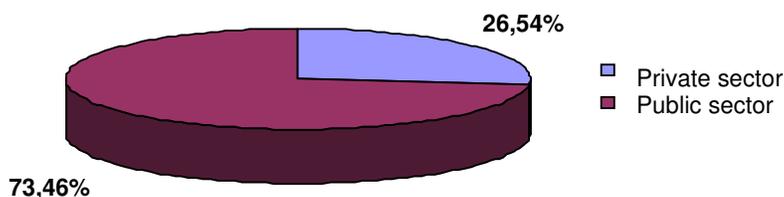
Table 3
COMPLAINTS PER GENDER



79.82% were submitted by women, while 20.18% were submitted by men.

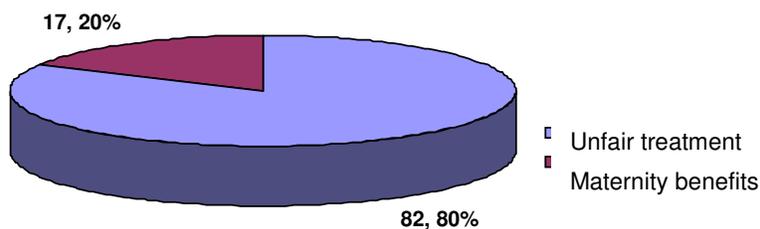


Table 4
DISTRIBUTION OF CASES PER AGENCY



The majority of complaints (73.46%) concerned the public sector (public services, legal entities of Public law and local authorities of the 1st and 2nd degree, broader public sector) and 26.54% concerned the private sector, including banks.

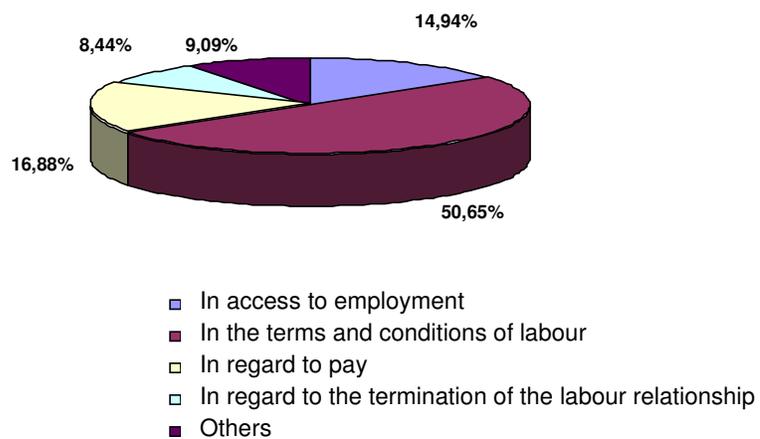
Table 5
CASES PER THEMATIC CATEGORY



From the viewpoint of thematic categories, 82.80% of the cases handled by the Greek Ombudsman concerned cases of unfair treatment, while 17.20% concerned maternity benefits (pregnancy – post-natal benefits, additional benefits, additional maternity protection benefit), which due to their subject concern only working mothers.



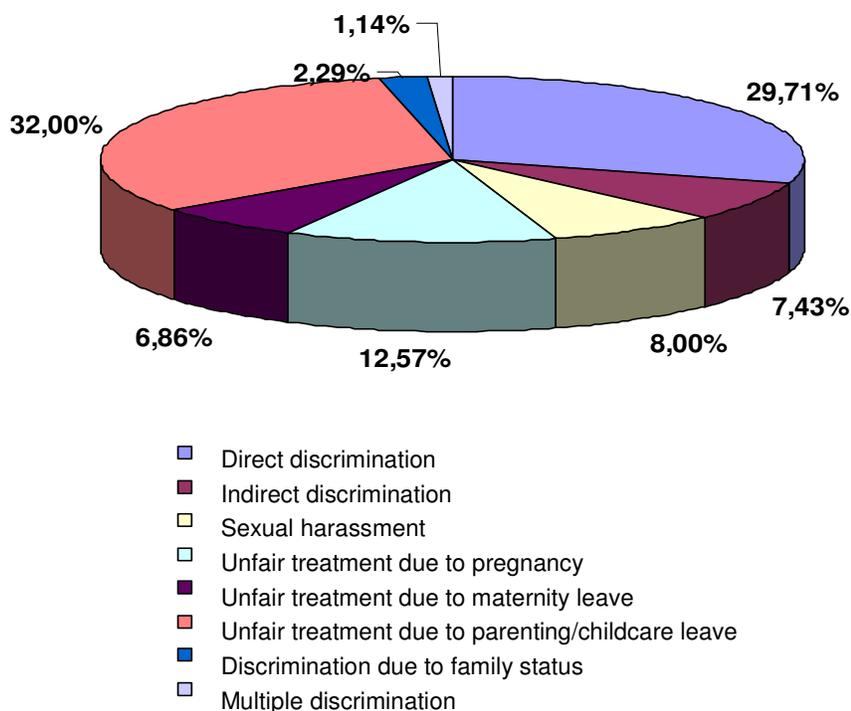
Table 6
CASES PER SECTOR OF UNFAIR TREATMENT



Unfair treatment on grounds of sex was identified mainly in the terms and conditions of employment (50.65 %).



Table 7
CASES PER CATEGORY OF DISCRIMINATION



In regard to the types of discrimination prohibited by law 3488/2006:

- 32% of complaints concerned unfair treatment due to parental leave
- 29.71% direct discrimination (mainly dismissals due to pregnancy)
- 12.57% unfair treatment due to pregnancy
- 8% sexual harassment
- 7.43% indirect discrimination
- 6.86% unfair treatment due to maternity leave
- 2.29% discrimination due to family status
- 1.14% multiple discrimination

The most important cases in which the Greek Ombudsman mediated are presented below, in the form of a dossier on parental leave in the public sector and individual cases.



Parental leave and gender equality in the public sector

The following special section presents in summary Greek legislation on parental leave, its interpretation by administration and the case-law of Greek courts, as well as the European laws and case-law on the same subject. After that, important cases handled by the Greek Ombudsman during the report's reference period are presented.

B.1. Greek legislation and its interpretation by administration

The main legislative act regulating parental leave matters concerning civil servants is the Civil Servants Code (Law 3528/2007²). There is no unified legal regime however covering central administration personnel; on the contrary we see multiple special regimes for specific groups of civil servants, such as servicemen and servicewomen, teachers, doctors, diplomatic officers, etc. An attempt is made below to record the various legal frameworks that apply in the narrow public sector, starting with the regulations of the Civil Servants Code.

B.1.1. Article 53 of the Civil Servants Code (Law 3528/2007)

Benefits for employees with family obligations

- Unpaid parental leave

Unpaid leave with total a length up to two (2) years is compulsory and it is granted, with no need for an opinion to be expressed by a special council, in the case of caring for a child up to six (6) years of age. A three (3) month period of this leave is given with full pay in the case of the birth of a third child and any subsequent child (par. 1).

- Reduced working hours and equal length 9-month parental leave

The working hours of the parent employee are reduced by two (2) hours daily, if s/he has children up to two (2) years of age, and by one (1) hour, if s/he has children from two (2) to four (4) years of age. The parent employee is entitled to nine (9) months parental leave with pay, provided that s/he does not make use of the reduced hours of the previous section (par. 2(1)).

- Single parents or parents of children with disabilities

Regarding parents who are unwed or widowed or divorced or have disability amounting to 67% and above, the one hour decrease of the first section or the leave of the previous section are increased by six (6) months or one (1) month respectively (par. 2(2)).

- Increases for 4th child and above

In the case of the birth of a fourth child, the reduced working hours are extended for two (2) more years (par. 2(3)).

- Determination of parent who makes use of the leave

If both parents are public servants, by a common statement submitted to their services, they determine which one will make use of the reduced working hours or the parental leave, unless

² This law was recently amended with Law 3839/2010, this amendment however is not related to issues examined in this dossier.



with their above common statement they determine the periods when each of them shall make use, but always successively and within the time limits of the previous paragraph (par. 3(1)).

- Spouse working in the private sector

If the spouse of the civil servant works in the private sector, provided that s/he is entitled to entirely or partly similar benefits, the civil servant is entitled to make use of the reduced working hours or the equal-length 9-month parental leave, for that part that the spouse does not use his/her rights or for the part that they fall short of the above benefits (par. 3(2)).

- Non working wife

If the wife of the civil servant is not working or does not exercise any profession, the husband is not entitled to make use of the reduced working hours or the equal-length 9-month parental leave, unless due to a serious condition or disability she is found incapable of dealing with the needs related to the care of the child, according to a certificate by the Secondary Health Committee to which the civil servant is subject (par. 3(2)).

- Parental leave in cases of separation, divorce, widowhood or a child born out of wedlock.

In cases of separation, divorce, widowhood or birth of child out of wedlock of its parents, the parent who has custody of the child is entitled to parental leave (par. 5).

- Leave in order to monitor school performance

The services must facilitate civil servants with children in primary or secondary education, to visit the school of their children, with the purpose of monitoring their performance in school (par. 6).

B.1.2. Explanatory Circulars

Article 53 of the Civil Servants Code has been interpreted with circulars of the Ministry of the Interior, the more recent one being DIDAD/Φ.51/ 590 /οικ. 14346/29.5.2008 "Granting of leave according to the Civil Servants Code and the Code on the Status of Municipal and Community Employees". These circulars provided instructions to public services on the implementation of the law and issues were clarified, such as e.g. the separate right to parental leave for each child, the granting of 2 additional years of reduced working hours for each child after the fourth child, for which there was no explicit legislative provision.

B.1.3. Categories of civil servants with special regulations

Categories of civil services governed by special regulations and provisions have been included in the regulations of the Civil Servants Code as regards parental leave, either after court decisions, or opinions of the Legal Council of the State. These categories include in particular judges, diplomatic officers, doctors of the National Health System and members of the faculty of Universities. For these categories, as well as the problems they have faced when exercising this right, there are detailed references below.

Especially as regards teachers, even before the effect of the new Civil Servants Code, mothers permanent teachers, had been given, according to the provision of par. 2 of article 53 of Law 2721/1999, the option to chose either the 9-month leave with pay for child-care provided for in article 53 of the Civil Servants Code, or the benefits of paragraph 8, article 13 of Law 1566/1985 (exemption from non-teaching duties) and article 30, par. 14, of Law 2083/1992 (reduced working hours). Therefore with regard to parental leave, teachers have the option to chose between the provisions of the Civil Servants Code or the special regulations provided for them, as arises from a series of opinions of the Legal Council of the State (490/2003, 193/2004, 546/2005, 64/2008). The Ministry of Education however, invoking the application of special provisions that prevail over the regulations of the Civil Servants Code, has chosen to differ as



regards other issues, such as the separate parental leave for each child and the provision of 3 months leave without pay for any child after the third child. These issues are also examined in detail below.

B.1.4. Opinions of the Legal Council of the State: summary presentation

- 211/2010 (issued about a document of the Ombudsman)

Teacher with large family, who used the nine-month leave, is not entitled to the additional reduced working hours of article 53(2)(4) of Law 3528/2007, in the event of birth of a fourth child.

- 406/2009 (issued about a document of the Ombudsman)

The transfer of an employee of the Ministry of Foreign Affairs, from a position abroad to the central service, during the granting of parental leave, does not constitute unfair treatment on the grounds of sex or family status and does not conflict with EU and Greek legislation, under the prerequisite that the Administration effectively ascertains that:

- on the one hand, the legal conditions for the transfer apply and
- on the other, the position, according to the employment relationship or contract, where the employee is posted, is equivalent with the previous one

- 388/2009 (issued about a document of the Ombudsman)

Permanent medical doctors and dentists of the Social Security Institute – Unified Insurance Fund for Employees (IKA-ETAM), are not subject to the Civil Servants Code and are not entitled to childcare benefits of article 53(2).

- 361/2009

Maternity leave and parental leave (articles 52 and 53 of Law 3528/2007) can be given both to the surrogate and the legal mother.

- 194/2009 (issued about a document of the Ombudsman)

It is possible to terminate the employment relationship of a teacher in the private sector, with six full years of service, during the period when she is off on parental leave. The period when the nine-month parental leave is used is not considered a period when maternity is protected and dismissal is prohibited, since it does not fall within the period of protection of article 15 par. 1 of Law 1483/1984 (i.e. the period that covers the entire term of the pregnancy and one year after birth).

- 90/2009

The provision of article 53(2) of Law 3528/2007 must be implemented in the case of a mother with a large family, who is an employee of Nursing Technical Education and belongs to education sector UE 18, with regard to the use of reduced working hours for child care.



B.2. Case law of Greek administrative courts: summary presentation

Decisions:

- Hellenic Council of State 899/2010

The provisions of Article 44(21) of Law 1756/1988³ apply not only for mothers who are judicial officers but also for fathers who are judicial officers who are entitled to a 9-month parental leave with pay. Hellenic Council of State 711/2009 is similar.

- Hellenic Council of State 569/2010

The provisions on parental leave of the Civil Servants Code apply also for the case of granting parental leave to a father who is a judicial officer with a wife who is a self-employed person, and the start of the leave must be determined as soon as possible after childbirth.

- Hellenic Council of State 2112/2009

The application of a father who is a judicial officer for parental leave must be submitted as soon as possible after the end of the mother's post-natal maternity leave. If the wife does not get post-natal maternity leave, the application must be submitted as soon as possible after the date on which the post-natal maternity leave, which the mother judicial officer would get, would have ended. This position differs from that of the most recent decision of the Hellenic Council of State 569/2010, according to which the start date of the leave must be determined as soon as possible after childbirth. Hellenic Council of the State 2118/2009 is similar.

- Hellenic Council of State 4329/2009

The pregnancy of a judicial officer or multiple pregnancies that end with the birth of more than one child do not mean that she will acquire the right to get as many 9-month leaves as the children that are born. The applicant's wife and mother of triplets got parental leave with pay; therefore the applicant is not entitled to get such parental leave for the two of his triplets.

- Administrative Court of Appeals of Athens 1487/2009

Each leave that aims at protecting maternity and childhood is also granted to male fire department employees. The male fire department employee is entitled to request a 9-month parental leave with pay until the completion of his child reaches the 4th year of age.

- Administrative Court of Appeals of Piraeus 306/2009

The right to parental leave is separate for each child, provided that the children have not reached their 4th year of age when the application is submitted. Annulment of an act of the Head of the Secondary Education Office that rejected the application of a teacher for parental leave for the second child, after getting leave for the first child.

³ A mother judicial officer is granted by a decision of the Minister of Justice and after her application nine months of paid parental leave.



B.3. European case-law in development: from Directive 96/34/EC to Directive 2010/18/EU

Directive 96/34/EC ratified, giving legal force, the framework agreement on parental leave, which was concluded on 14/12/1995 between European social partners, BUSINESSEUROPE, UEAPME, ETUC and CEEP, in order to determine the minimum requirements for the establishment of parental leave in member states of the European Union:

- as means to reconcile professional and family responsibilities;
- as means to promote the equality of opportunities and the equal treatment of men and women.

Throughout the years, there were developments in the political viewing of the issue of the reconciliation of professional, private and family life, which made necessary the revision of the agreement of 1995 through negotiations of the European social partners. The new Directive 2010/18/EU gave legal force to the revised framework agreement signed on 18/6/2009. The new Directive specifies the minimum requirements for the reconciliation of family and professional responsibilities of working parents, taking into account the increased variety of family structures. The agreement applies to all employees, men and women who have an employment contract or relationship specified by law, the collective agreements and/or the practices that apply in every member state. Employees with part-time employment, employees with a fixed-term contract or employment relationship or employees with a contract or employment relationship with temporary employment companies, are not exempted from the scope of the revised agreement. The right to parental leave is a personal right of each parent, non-transferable in principle, which can however become transferable by member states. It is noted that the flexible working arrangements facilitate the reintegration of parents into employment, while the parental leave is intended to provide support to working parents, aiming to preserve and promote their continuous participation in the labour market. It is up to the member states and/or social partners to harmonize their national law with the content of the directive and correspondingly to evaluate the need to take supplementary measures, as for example in the case of adoptive parents or parents with children with disability or long-term illness. The labour rights of workers and their non-discrimination when they return to work after the end of parental leave should be ensured – the return to work should be subject to some form of flexibility, so that workers are smoothly reintegrated into it. There should also be measures that allow workers to be absent for reasons of force majeure.

To recapitulate, Directive 2010/18/EU aims at:

- the equality of men and women, as regards opportunities in the labour market across the European Union
- &
- the improvement of the reconciliation of professional, private and family life for working parents



Main regulations of Directive 2010/18/EU and Directive 96/34/EC Comparison table

Directive 96/34/EC	Directive 2010/18/EU
<p>3 months leave per parent A non-transferable right in principle, which can become transferable by member states</p>	<p>4 months leave per parent A non-transferable right in principle, except for the fourth month that is strictly non-transferable between parents, to encourage the father to assume more family responsibilities.</p>
<p>Special regulations that meet the needs of operation and organization of small enterprises, in regard to workers requesting parental leave.</p>	<p>Parental right, after returning from parental leave, to request changes in their working hours, which their employers must consider and reply.</p>
<p>The parental leave right depends on the employment period and/or the employee's seniority time, that cannot however exceed one year.</p>	<p>The parental leave right clearly includes part time employees or in fixed-term employment</p>
<p>Protection of workers from dismissals due to application or receipt of parental leave.</p>	<p>Protection of worker not only from dismissal, but also from discrimination related to parental leave and against any form of discrimination that may affect the professional development or salary prospects of the worker</p>



B.4. The case-law of the Court of Justice of the European Union in development

Decisions:

Parental leave granted in case of birth of twins

Case C-149/10 Zoe Chatzi v Ipourgos Ikonomikon

In this case with Greek interest, the Administrative Court of Appeals of Thessaloniki addressed to ECJ the question: Can Directive 96/34/EC, interpreted in conjunction with article 24 of the Charter of Fundamental Rights of the European Union, be regarded as also creating in parallel a right to parental leave for the child, so that, if twins have been born, the grant of one period of parental leave constitutes unfair discrimination on the basis of birth and a restriction on the right of twins that is not permitted by the principle of proportionality?

If the answer to the preceding question is negative, does the term "birth" in clause 2.1 of the framework Agreement, attached to Directive 96/34/EC, mean that a double right to the grant of parental leave is created for working parents, based on the fact that pregnancy with twins results in two successive births of children (twins) or does it mean that parental leave is granted for one birth, irrespective of how many children are thereby born.

The European Court replied that Directive 96/34/EC does not award to the child a personal right of parental leave. Moreover, the provisions of this Directive do not mean that the birth of twins establishes a right to a number of parental leaves equal to the number of children born. In any case, under the light of the principle of equal treatment, the Directive imposes on the national legislators the establishment of a parental leave system, where, depending on the situation in the relevant member state, it ensures to the parents of twins a treatment that takes into account their special needs as appropriate. It falls upon the judge of each country to ascertain whether national legislation meets this requirement and to interpret – to the extent possible – this national legislation in line with EU law.

Parental leave of employed fathers regardless of the professional status of the child's mother

Case C-104/09, Pedro Manuel Roca Álvarez v Sesa Start España ETT SA

The preliminary question in this case is related to the right of the employed father to receive breastfeeding leave with pay, in the form of reduced working hours, which national legislation grants only to mothers. The national court asks whether it opposes Directive 76/27/EEC, on the implementation of the equal treatment of men and women in employment, a national law (in this case the Spanish labour code), which grants exclusively to employed mothers the right to receive breastfeeding leave with pay, in the form of reduced working hours by half an hour each day, or absence from work for one hour divided into two parts. It is noted that the leave is optional and is borne by the employer, until the child becomes nine months.

The ECJ, interpreting Directive 76/207/EEC resolves that its provisions (article 2, paragraphs 1, 3 and 4 and article 5) prohibit national measures that, as the one in question, provide that working mothers in dependent employment can be granted leave, in various forms, during the first nine months after the birth of their child, while working fathers also in dependent employment, do not have the right of such leave, except in the event that the mother of their child is also working as an employee.

Parental leave and annual leave without pay

Case C-486/08: Zentralbetriebsrat der Landeskrankenhäuser Tirols v Land Tirol

The case concerned the question whether the right for leave without pay could be exercised after the end of the parental leave, that have been acquired before its start. The Court, interpreting the framework-agreement for parental leave included in the annex of Directive 96/34/EC, initially repeated that the rights acquired or in the process of being acquired by the worker on the date on which parental leave starts shall be maintained as they stand until the end of parental leave and shall apply after the end of this leave. The term "rights acquired or in the process of being acquired" according to clause 2.6 of this framework agreement covers all rights and benefits, whether in cash or in kind, derived directly or indirectly from the employment relationship which the worker is entitled to claim from the employer on the date on which parental leave starts. The right to annual paid leave is undoubtedly one of the rights derived directly from the employment relationship of every worker, and this is true both in the case of male and female workers. Therefore, the ECJ concludes, the framework agreement must be interpreted as precluding a national provision under which workers exercising their right to parental leave of two years lose, following that leave, their right to paid annual leave accumulated during the year preceding the birth of their child.

Termination of employment agreement during parental leave – calculation of compensation

Case C-116/08: C. Meerts v Proost NV

Clause 2.6 and 2.7 of the framework agreement on parental leave (Directive 96/34/EC), must be interpreted as meaning that, if the employer, unilaterally and without urgent cause or without observing the statutory period of notice, terminates the indefinite duration full-time employment contract, during a part-time parental leave of the worker, the compensation to be paid to the worker should not be calculated based on the reduced salary at the time of the dismissal.

Parental leave and calculation of disability pension

Case C-537/07: Evangelina Gómez-Limón Sánchez-Camacho v Instituto Nacional de la Seguridad Social (INSS)

Clause 2.6 and 2.8 of the framework agreement on parental leave (Directive 96/34/EC) does not preclude taking into account, in the calculation of an employee's permanent invalidity pension, of the fact that he has taken a period of parental leave in the form of reduced working hours during which he made contributions and acquired pension entitlements in proportion to the reduced salary received. Clause 2.8 of the framework agreement on parental leave does not require member states to ensure that during parental leave employees continue to receive social security benefits. The principle of



equal treatment for men and women in matters of social security, within the meaning of Council Directive 79/7/EEC, does not preclude an employee, during part-time parental leave, from acquiring entitlements to a permanent invalidity pension according to the time worked and the salary received and not as if he had worked on a full-time basis.

B.5. The case-law of the European Court of Human Rights in development

Konstantin Markin v Russia (ECHR, 1st section, 7/10/2010, application number 30078/06)

The reason for the issue of this interesting judgment was the request of a Russian military serviceman to get three years of parental leave, which was provided only for female military staff. After many years of adventures, the officer applied to the Constitutional Court of Russia, claiming that the provisions of the Military Service act concerning the three-year parental leave were incompatible with the equality clause in the Constitution. The Constitutional court rejected his application, holding in particular that by entering the military profession of an officer of the Russian army, the applicant accepted certain limitations on his civil rights, in order to create appropriate conditions for efficient professional activity in defence of the country. The Constitutional Court also pointed out that the restriction of the possibility to grant parental leave only to servicewomen is justified by the limited participation of women in the military and the special social role of women associated with motherhood. Moreover, the judgment mentioned that if a serviceman decided to take care of his underage child himself, he was entitled to early resignation from the armed forces.

The European Court of Human Rights, to which the serviceman applied, considered that there was discrimination with regard to the enjoyment of the right to the respect of private and family life, in violation of Article 14⁴, in conjunction with Article 8 of the European Convention of Human Rights, because there was no objective or reasonable justification for the different treatment of servicemen and servicewomen. To the extent that the different treatment is established on the stereotypical traditional gender roles, that is, on the perception of women as primary child-carers and men as primary breadwinners of the family, these gender prejudices cannot, by themselves, be considered by the ECHR to amount to sufficient justification for the difference in treatment, any more than similar prejudices based on race, origin, colour or sexual orientation. Nor can the fact that in the armed forces women are less numerous than men justify the disadvantaged treatment of the latter as regards entitlement to parental leave.

The ECHR concluded that the Russian Government failed to offer convincing and weighty reasons to justify the difference in treatment between male and female military personnel as regards entitlement to parental leave.

B.6. The experience of the Greek Ombudsman

B.6.1. Problems in the implementation of the Civil Servants Code (article 53)

The Greek Ombudsman examined more than seventy (70) complaints by civil servants regarding requirements and issuance procedure of parental leave (Article 53 of Law 3528/2007). These complaints mainly related to the non-granting of the nine-month paid parental leave to fathers civil servants whose wife is either a self-employed person or does not work. Other issues raised with the Greek Ombudsman were, indicatively, the refusal of public services to grant parental leave to fathers, invoking service needs, the starting time of the leave, the case of an employee whose wife is a self-employed person and is not

⁴ The enjoyment of the rights and freedoms established with this Agreement is secured without discrimination for reasons such as sex, race, colour, language, religion, the political or other conviction, the national or social origin, the relationship with a minority, ownership, birth or other condition



entitled to maternity leave, the lack of the possibility to grant the nine-month leave in parts, the decrease of its duration when the employee appointed for the first time already has a child younger than 4 years of age.

The Greek Ombudsman concludes with specific findings and proposals, which it addresses with a report to the Ministry of Interior as follows:

- The exclusion of the father civil servant from parental leave “when his wife is not working” constitutes direct discrimination on the grounds of sex. In order to restore equal treatment the rephrasing of this provision is proposed (53(3) (3) of the Civil Servants Code) to make it compatible with the regulations of Law 3488/2006.
- For the same reasons, the limitation of the right to parental leave for a father civil servant, for as long as “his wife's contract” is in effect, also constitutes direct discrimination on the grounds of sex. This limitation that is not provided for in the Civil Servants Code, but was introduced with a circular of the Ministry of Interior (DIDAD/Φ.51/590/ οικ.14346/29.5.2008), must be removed and the relevant section of the circular must be rephrased. -{-
- The limitation of the duration of the parental leave in the case that the spouse of the civil servant is working in part-time employment, which was introduced with an interpretative circular of the Ministry of the Interior (DIDAD /Φ.51/538/12254/14.05.2007), constitutes restriction on the exercise of the right. This restriction constitutes indirect discrimination on the grounds of sex in combination with the family status. This circular must be rephrased.
- The Ministry of Interior has decided through a circular (DIDAD/F.51/590/oik.14346/29.5.2008) that newly-recruited employees, who during their appointment already had a child under 4 years of age, are entitled to part of the nine-month parental leave, equal to the sum of the hours remaining from the date of their appointment until the child turns 4 years old. The Greek Ombudsman proposes an interpretation of article 53(2) of the Civil Servants Code in line with the Constitution and EU law, based on which if the parent has not made use of the reduced working hours, s/he reserves intact the right to the entire nine-month parental leave until the child turns 4 years old, even if the child was born before his/her appointment as a civil servant. The Ombudsman makes a similar proposal for the case of employees who worked in the public sector of local government organizations (OTE) with fixed-term or project contracts, which were then changed into open-ended contracts.
- The Ministry of Interior has adopted through circulars the position that it is not possible to grant the nine-month leave in parts, which must be exhausted in its entirety, because it is given for a continuous period of time until the child turns four years old. In certain cases, the inflexibility in granting the parental leave, may result in the loss of the right to use the remaining leave period, as in the case of a father receiving parental leave, which he stops after the end of his wife's project or fixed-term contract. The simultaneous financial, social and labour reality demands flexibility in the method of exercising the reduced working hours right (e.g. possibility of accumulating the daily reduced working hours into one day off a week) and the nine-month parental leave (e.g. possibility of partial granting), in order to combine with better efficiency the developing personal and family needs of employees with the also changing service needs.
- There is a gap in the Civil Servants Code with regard to the starting time of the parental leave when it is exercised by a father civil servant, whose wife is a self-employed person and is not entitled to maternity leave (pregnancy - post-natal leave). To cover this gap, the Ombudsman proposes that a circular of the Ministry of Interior stipulates that in this case the nine-month leave may start immediately after childbirth and not after the three-month post-natal leave ends, which only women employees get.



- Finally, several problems have been observed in the procedure of granting the parental leave, such as: delays in the information of the interested parties by the directorates of the Ministry of Interior and in the processing of relevant civil servant applications by their services, refusal to grant leave due to service needs, as well as difficulties in the calculation of the leave when the mother has already made use of relevant benefits in the private sector. In order to address these problems it is necessary to provide better information to the interested parties regarding the method for exercising their rights, faster service of the applicants, as well as regular updates of all public services from the competent directorate of the Ministry of Interior, Decentralization and e-Government which must have a coordinating and supervisory role.

Response of the Administration. In reply to its report, the Greek Ombudsman received the document dated 7.7.2010 from the General Secretariat of Public Administration & e-Governance. This document records with detail the ministry's positions regarding issues of parental leave that have not been handled by the Greek Ombudsman to date. On the contrary, the problems highlighted by the Ombudsman in its report were not addressed in an overall way, many of them arising from the interpretations of the relevant provision of the Civil Servants Code adopted by administration and from the explanatory circulars it issues. The Greek Ombudsman repeats that further study of its proposals is necessary regarding all issues still pending and it shall be at the disposal of the Ministry of Interior for cooperation.

B.6.2. Problems from the implementation of special legal regimes for categories of public servants: important cases

B.6.2.1. Parental leave under the competence of the Ministry of Health

i. Parental leave of resident doctors

Mothers specialist registrars complained to the Greek Ombudsman, on issues relating to parental leave and on-call service duties. The examination of the complaints resulted in the following:

► Based on relevant circulars, residents are legally addressed as personnel with fixed-term personnel under private law of the public sector, and in regard to parental leave issues, fall under the provisions of the National General Collective Labour Agreements and the relevant labour legislation.

► Moreover, with a circular of 1989 which was never amended or supplemented to date, it is considered advisable to exclude mothers residents from the on-call service program for the first year of the infant's life, unless they explicitly state that they do not want it. For the next 3 years it lies upon the Director of the Medical Service of each hospital to determine the number of on-call services that medical doctors of this category must do, given the reduced hours.

► With a more recent circular of 2008 hospitals are invited, when preparing the on-call service program for the medical personnel, to provide to mothers doctors of the National Health System, the maximum possible facilitation.

Actions of the Ombudsman: The Greek Ombudsman, with a document to the Department of Training Resident Doctors, stressed that the above regulations introduce direct discrimination on the grounds of sex against fathers residents, who are only entitled unpaid parental leave, under the legal requirements, whereas mothers residents are also entitled to paid breastfeeding and childcare leave, which is parental leave, without any further requirement. Moreover, there is no regulation on the issue of on-call services of fathers residents. Furthermore, the Ministry underlined that in cases where the issue of on-call services is put under the discretion of the Heads of departments, issues of unfair treatment of certain mothers residents against others may arise.



Response of the Administration: In its reply dated 2.9.2010, the Ministry of Health states the following:

- ▶ The labour relationship of residents is a fixed-term contract under private law relationship, governed by the relevant provisions of the Civil Code and labour legislation. The Provisions of the Civil Servants Code do not apply for residents.
- ▶ All leave provided by this legislation is granted to resident doctors (Law 1849/89, EGSSE 1993, Law 2639/98).
- ▶ Especially mothers resident doctors are exempted from the on-call service program, as well as their employment during the night, as breastfeeding employees, for one year after childbirth.

ii. Parental leave of auxiliary doctors

An auxiliary doctor complained to the Greek Ombudsman, who during the period of signing the relevant contract was already on pregnancy leave and had not received a reply from the hospital regarding her rights in parental leave and her participation in the on-call service program. After the mediation of the Ombudsman the Ministry replied the following:

- ▶ According to the relevant opinion of the Legal Consultant of the Ministry of Health and Social Insurance, auxiliary doctors conclude with hospitals a dependant employment contract under private law, which cannot be longer than one year.
- ▶ The hospital cannot refuse to hire an auxiliary doctor for reasons of pregnancy or maternity, even if she is unable to offer her services.
- ▶ If, however, the contracting doctor does not provide work for at least ten days (657 CC) she is not entitled to a salary and the period during which she did not offer her services cannot be considered as time of service in the National Health System (Opinion SLC 305/2008).
- ▶ Due to the legal nature of the employment contract, in addition to the pregnancy and post-natal leave, auxiliary doctors are not entitled to any form of parental leave.
- ▶ No information was provided regarding the on-call service duty.

iii. Parental leave of rural service doctors

Father rural doctors complained to the Greek Ombudsman requesting parental leave. The examination of the complaints resulted in the following:

- ▶ According to a relevant document of the General Directorate of Health of the Ministry of Health and Social Insurance, for rural service doctors, the regulations of the Civil Servants Code apply for the calendar period during which their contract applies. Therefore, they are entitled to parental leave, either in the form of reduced working hours, or in the form of equal-time leave, with calculation of the time proportionally to the period of effect of the contract.
- ▶ Rural doctors making use of the equal-time leave must serve these days at the end of their term, to complete 12 months of mandatory rural service.
- ▶ The Ministry however stresses that competent to issue the relevant decisions are the Boards of the hospitals responsible for the regional clinics or Health Centres. This resulted in the acceptance of one doctor's applications and the leave was granted, whereas in another case, despite the mediation of the Ombudsman, the leave was denied, with the justification "that the use of reduced working hours concerns permanent public servants



whose employment relationship continues, something that is not the case with rural doctors".

Special findings on parental leave of doctors

Overall, the Greek Ombudsman came to the conclusion that:

- No reply of the Department of Resident Doctors to the document of the Greek Ombudsman, despite the continuous reminders, invoking a heavy work load.
- Failure of the Personnel Directorates of Hospitals to provide to doctors information regarding these issues or the provision of wrong information (e.g. there was a public hospital that informed a doctor in writing, that she was entitled to the additional maternity protection benefit of article 142 of Law 3655/2008). This failure drives the competent directorates to submit ongoing questions to the Central Service, resulting in the long delay in the procedure, a fact that has a significant impact on the exercise of the rights, especially when it pertains to doctors with annual contracts (auxiliary, rural).
- Bad use of the discretionary power of hospitals to decide on these issues, frequently despite the guidance and opinions of the Ministry, which leads to unfair treatment of the beneficiaries of the leave, on the one hand, and those who have a duty to on-call service, on the other.
- A need to have a codification of the various types of employment relationships and contractors of doctors employed in public health, at least with regard to maternity leave, as well as the rights to child-care, in order to ensure the legality and the equal treatment of working doctors, within the category they belong to, as well as the elimination of discrimination on grounds of sex.

B.6.2.2. Parental leave under the competence of the Ministry of Citizen Protection: the case of fathers police officers

The Greek Ombudsman has received a sufficient number of complaints by fathers police officers, where the complainants notify the refusal of the Hellenic Police, to grant the parental leave provided for female police staff, either in the form of reduced working hours, or in the form of the equal-length 9-month leave.

Actions of the Ombudsman: After examining the issue, the Greek Ombudsman sent to the Hellenic Police a document on 1.12.2009, which presents the legislation and case-law in force in Greece and the European Union (EU) regarding the issue under examination, and confirms the existence of discrimination on the grounds of sex and makes specific proposals for the compliance of the Hellenic Police with the current national and EU law.

Response of the Administration: The Greek Ombudsman received a reply from the Hellenic Police on 27.01.2010. In this document the Hellenic Police:

- shares the rationale and the spirit of the Greek Ombudsman regarding the strict observance of the principle of equal treatment of men and women and the obligation to implement EU Directives.
- expresses its concern that the use of parental leave by male police officers will significantly increase the deficiencies of the services of effective policing.
- notes that there is no legal provision granting this leave to the Armed Forces, the Coast Guard and the Fire Department.
- informs that it intends to gather information on the implementation of the relevant EU directive in other EU countries and present its findings together with the Ombudsman's proposals to the political leadership, and potentially propose the amendment of the relevant provisions, if this is deemed necessary, without however being able to set a time schedule for these actions.

Additional Actions of the Ombudsman: The Greek Ombudsman waited for further information from the Hellenic Police for three months, without result. It then prepared and sent on 3/5/2010 a new document to the Chief of the Hellenic Police, with communication



to the Office of the Minister of Citizen Protection and to the General Secretariat for Gender Equality. In this document the Ombudsman states in summary the following:

- The granting of this right (parental leave) has not been placed under the discretionary power of the public service by the law, allowing "service needs" to be invoked as adequate justification of the refusal to grant.
- The provisions based on which the Hellenic Police refuses to grant parental leave to fathers, include regulations that constitute direct discrimination on grounds of sex and conflict with European and national legislation on the implementation of the principle of equal treatment and the prohibition of discriminations on the grounds of sex.
- Taking into account relevant decisions of the Council of State pertaining to fathers judicial officers (indicatively we mention 1/2006, 2/2006, 120/2007, 3576/2008), the nine-month paid child-care leave, recognized for mothers police officers, constitutes parental leave according to community law. The relevant provision must be interpreted under the light both of the constitutionally established principle of gender equality and the principles of EU law on the equal treatment of men and women, as well as the reconciliation of professional and family life.
- With regard to armed forces, the Hellenic National Defence General Staff already proceeded to remove all obstacles and fully equate men and women regarding issues of parental leave. The Fire Department and Coast Guard have also accepted the proposals of the Greek Ombudsman and promote legal regulations to equate men and women on the issue of parental leave. Therefore, only the Hellenic Police is delaying in complying with the Greek legislation and the law of the European Union on this issue.

Based on the above, the Greek Ombudsman asked the Hellenic Police to remove all inequalities against fathers-police officers, by amending the relevant provisions on parental leave, with proportional implementation for border guards and special guards. There has been no response to this intervention of the Greek Ombudsman.

B.6.2.3. Parental leave under the competence of the Ministry of National Defence: the case of fathers military officers

Further to the initial examination of relevant complaints and the exchange of documents on the issue between the Hellenic National Defence General Staff (GEETHA) and the Ombudsman, where the Ombudsman expressed the opinion that the refusal to grant parental leave to the male military staff constitutes direct discrimination on the grounds of sex, the GEETHA informed the Ombudsman of a temporary order (number Φ.454/137800/Σ.909/28.1.2010), based on which a 5-month leave of pregnancy-childbirth is granted to female military staff after the 4th month of pregnancy, and a 9-month parental leave to male and female permanent and voluntary military staff, according to the provisions of the Civil Servants Code (article 53(2) of Law 3528/2007). With regard to the method of exercising the right, the order adopts the proposals of the Greek Ombudsman. This order is effective immediately and applies until its amendment.

The actions of the GEETHA significantly affected developments in the Fire Department and the Coast Guard, which also took legislative action to resolve the issue and reformulate the framework for granting parental leave, based on the principle of equal treatment of men and women and the European policy of reconciliation of family and professional life. The Greek Ombudsman proposes the extension of parental leave to the male staff of the Coast Guard. The proposal was accepted and an Order was issued (with decision number 1146.1/40/10/06.08.2010) for granting this leave either in the form of reduced working hours



with a 4 year duration, or in the form of 9-month parental leave (according to the example of Law 3528/2007). PD 106/22.10.2010 was then issued with the same content. Also, with

regard to a related application with regard to the Fire Department, the proposals of the Greek Ombudsman have been accepted and have been included in the report of the competent Committee for Amendment of the Internal Regulation of the Department, promoted to the actual and political leadership.

B.6.2.4. Parental leave under the competence of the Ministry of Education

i. Parental leave of University Faculty Members

The Ombudsman received complaints from fathers members of Faculty, who complained that the administration of the Universities they worked in refused to grant parental leave. After the mediation of the Ombudsman, the Legal Services of the Universities issued opinions, which were positive for the applicants, and as a result the Universities granted the leave. After the successful conclusion of its mediation on the specific complaints, the Greek Ombudsman informed the Higher University Education Personnel Directorate of the Ministry of Education in writing, that the issue of parental leave of Faculty members, must be addressed in a general, uniform way, in accordance with EU law and domestic law on the equal treatment of men and women, in all higher education institutes under the supervision of the Ministry. For this reason it asked the competent Directorate to issue a relevant circular instruction to the countries Universities and Technical Institutes.

In response, the Ministry of Education, sent a relevant circular to the Deans and Presidents of Administration Committees of all universities and Higher Ecclesiastical Academies of Athens, in which it makes references to the position of the Ombudsman and it invites the administrations of the aforementioned institutions:

- to grant parental leave without discrimination on grounds of sex;
- to amend as soon as possible the Internal Regulations of Operation so that they are compliant to the specifications of Law 3488/2006.

ii. Parental leave of permanent teachers

The Greek Ombudsman has received a large number of complaints from parents permanent teachers, who have faced problems in the granting of parental leave, and specifically in cases of application for granting a cumulative parental leave for more than one children, as well as the granting of three-month paid leave for the third child and subsequent children. With regard to the loss of the previous parental benefits in the case of a new child, the Ombudsman underlined in writing to the administration that the Ministry of Education deviates unjustifiably from the specifications of the circulars of the Ministry of Interior for the entire Public Sector, and that there are decisions of the Greek administrative courts and opinions of the State Legal Council⁵, that have decided that the parent civil servant who is already receiving the benefit of reduced working hours or the nine-month parental leave, and acquires another child before they are exhausted, is entitled to receive the remaining benefits for the first child at a later time, cumulatively with the benefits corresponding to the new child.

As regards the time limit of the right to grant the three-month paid leave for caring for the third child and subsequent children, the relevant circular of the Ministry of Education (Φ.351.5/65/84800/Δ1/30.06.2008) restricts the granting of the right, by stating that it is mandatory to grant this leave "either directly after the end of the post-natal leave, or at the start of the school year" and conflicts with the provisions for all other agencies of the public sector. As a result, the Ministry of Education refuses the granting of this leave to

⁵ Indicative we mentioned the Administrative Courts of Appeals of Piraeus 306/2009, Administrative Court of Appeals of Athens 1192/2008, Administrative Courts of Appeals of Thessaloniki 1110/2007, Council of State 2357/2006, Administrative Courts of Appeals of Thessaloniki 2847/2006, Council of State 1/2006 and 2/2006, Council of State 420/2005 and opinion number 64/2008 of the State Legal Council.



teachers, who request its granting at a different period of time, thus cancelling the right itself. In the same document the Ombudsman noted that the general problem of the

issuance by the Ministry of Education of interpretive circulars, that introduce new regulations that are not based on a law, and in addition they often infringe on it and violate it. The document of the Ombudsman is pending at the Ministry of Education as of December 2009.

Special findings about parental leaves of permanent teachers and the position of the Ministry of Education:

1. The communication of the Ombudsman with the Ministry of Education is especially difficult and cooperation is problematic. There is also difficulty in phone contact. A large number of documents, important documents in fact pertaining to entire categories of teachers, remain unanswered or there are significant delays in the replies, especially if opinions of legal consultants are involved in them.

2. In regard to the parental leave issue, the Ministry of Education tends to systematically differ from other services of central administration, as we mentioned above, in various ways. In summary, the Ombudsman has concluded the following:

- Refusal to grant cumulative parental leave for more than one children, which means loss of the remaining parental leave for the first child, in the event of a second pregnancy. Regarding this issue, teachers who have taken the case to court have won it, but nevertheless the Ministry has not altered its policy.
- Determination of specific time for granting the three-month paid parental leave from the third child and any subsequent children, only directly after the post-natal leave or at the start of the school year. The determination of these narrow margins substantially alters the nature and purpose of the leave, which is basically a direct and remedial action in cases of an emergency related to underage children.
- Restriction of the granting of the two (2) extra years of reduced working hours in the case of birth of a fourth child, only to teachers who used the reduced working hours, which de facto cancels the possibility of receiving the benefit, because it is more probable that teachers will use the 9-month leave.
- This differentiation mainly takes place with circulars, which are given regulatory effect, exceeding the purely interpretative dimension of the circular. Moreover, no justification or documentation is offered for this differentiation, which places teachers in an unfavourable position compared to other civil servants without justification.
- In the contacts of the Ombudsman with the Ministry of Education, competent officers frequently mention as justification the restricted working hours of teachers, compared to those of other civil servants. The Ministry however appears not to take into account that in addition to their purely teaching working hours, teachers also have non-teaching working hours inside the school, as well as long hours of preparation and corrections, which they often do at home.

iii. Parental leave of substitute teachers and hourly-paid teachers

The Greek Ombudsman has received a sufficient number of complaints from teachers, as well as the Federation of Secondary School Teachers of Greece (FSSTG – OLME), with subject the exclusion from the six-month additional maternity protection benefit and from parental leave (facilitation leave of employees with family obligations) of non permanent teachers (substitutes and hourly-paid teachers). More specifically, the special six-month leave/maternity protection benefit of Law 3655/2008, it is not granted to substitute and hourly-paid teachers of the public sector, because they do not provide employment to businesses or undertakings of the private sector. At the same time, OLME raises the issue of the exclusion of substitute teachers from the granting both of the nine-month parental leave (article 53 of Law 3528/2007 of the Civil Servants Code), and the special six-month maternity protection leave.



The Greek Ombudsman came to the following findings:

- ▶ Women substitute and hourly-paid teachers of the public sector, as employees of the state under private law with fixed-term employment, fall under national general collective labour agreements and are entitled and receive maternity leave (pregnancy and post-natal) granted to all employees without exception.
- ▶ Temporary substitutes are entitled to reduced working hours by 2 hours for 2 years as parental leave and exemption from non-teaching work. There is no provision however for the possibility to grant these reduced working hours as an equal-length leave.
- ▶ On the contrary, hourly-paid teachers are excluded from all existing alternative regulations for maternity protection and granting of parental leave to employees with family obligations, established with the purpose of protecting maternity and the family and reconciliation of personal and professional life both in the private and the public sector. The unfavourable discrimination to the expense of hourly-paid teachers is examined as an indirect discrimination on grounds of sex against women.

The Greek Ombudsman recommended to the Ministry of Education to proceed with regulations compatible with EU and Greek law on the equal treatment of men and women and the reconciliation of professional and family life. The document of the Ombudsman is pending at the Ministry of Education as of February 2010.

B.6.2.5. Parental leave under the competence of the Ministry of Foreign Affairs: the case of civil servants serving abroad

The Greek Ombudsman examined a complaint pertaining to the mandatory return of a female civil servant to the central service of the Ministry of Foreign Affairs, from the Consulate of Istanbul where she was serving, immediately after the mandatory two years ended and after parental leave was given, invoking "service needs". The complainant viewed her mandatory transfer as unfair treatment due to taking parental leave (infringement 3488/2006) and for this reason filed a complaint with the Greek Ombudsman as the agency competent for monitoring the implementation of Law 3488/2006. These employees, with regard to their service issues, fall under the Regulations of the Ministry of Foreign Affairs (Law 3566/2007, as in effect after the amendment of Law 3712/2008).

Actions of the Ombudsman: The Ombudsman sent a document to the Personnel Directorate of the Ministry of Foreign Affairs (30.09.2009), requesting a copy of the minutes of the decision of the Service Council as well as information on the reasons of the mandatory transfer and their relation to the fact of granting parental leave, in order to ascertain whether there was unfair treatment due to the use of parental leave.

Response of the Administration. The Ministry of Foreign Affairs supported that the transfer met all legal requirements (see above issue of ad hoc opinion number 406/2009 of the 7th Section of the State Legal Council), that it took place due to service needs and that it does not constitute discriminatory treatment, without specifically justifying this claim.

Additional Actions of the Ombudsman. The Ombudsman replied to the Ministry of Foreign Affairs, recommending the amendment of the Ministry's Regulations (Law 3566/2007) with the purpose of regulating parental leave issues, as well as substituting civil servants serving abroad when such leave is taken, in a manner where the regulations will coincide with the mandates of Greek law, EU law as well as the European policy on the reconciliation of the professional and family life, and that taking this leave does not constitute unilateral adverse change of their position in the service and their financial position. Until the Regulations are amended, the Ombudsman recommended to the Personnel Directorate to immediately issue instructions to employees and services regarding the applicable provisions for granting parental leave (e.g. proportional implementation of the relevant articles of the Civil Servants Code, etc.), so that the Ministry's employees know what practices are followed and are not unpleasantly surprised.



Response of the Administration. These issues were discussed, among others, in a meeting of the Greek Ombudsman with representatives of the Ministry of Foreign Affairs. After the meeting the Ombudsman sent a new document to the Ministry of Foreign Affairs, where it repeated its positions that the involuntary transfer of employees to the Central Service, when they make use of the right to nine-month parental leave, is examined as an infringement of European legislation on parental leave, as interpreted under the light of the EU principle on the reconciliation of family and professional life, as well as indirect discrimination on grounds of sex against women civil servants, that is prohibited by EU law. Invoking good economic management and the smooth operation of the Service does not under any circumstances eliminate the infringing and illegal nature of this regulation nor does it cover the criteria of the principle of proportionality, in order to legalize the unfair regulation. The Ministry of Foreign Affairs must find a solution that is legal, compatible with EU law and at the same time economically advantageous for the service. There has been no reply from the Ministry of Foreign Affairs to the documents of the Ombudsman.



C. Additional Maternity Protection Benefit

Developments over the past year

As of May 2008 and to date, the Greek Ombudsman has received a large number of complaints, that are related to the granting of the additional maternity protection benefit, an issue which the special report for the equal treatment of men and women in employment and labour relations of November 2009 had elaborated on in detail; (see relevant file). Within one year the number of the relevant complaints grew from 77 to 130.

Over the past year the Greek Ombudsman continued to examine complaints regarding the exemption of various categories of working mothers from the beneficiaries of the provision, based on interpretations of the provision by administration, as well as the control of the administrative granting procedures of this provision by OAED. At the same time, citizen complaints highlighted new problems created by the voids which the legislator omitted to regulate on. Both already known and new problems were discussed in a working meeting of the Greek Ombudsman with members of OAED, the General Secretariat of Social Insurance and the Ministry of Labour and Social Insurance, which took place on 17.06.2010 in the office of the Ombudsman. The opinion of all sides were recorded in the meeting, as well as the points of approach and deviation. It was also agreed that the Greek Ombudsman in cooperation with administration, will make legislative proposals to the political leadership.

In October of 2010, when the Ombudsman concluded its intervention, it sent a special report to the Prime Minister, the Chairman of the Parliament and the competent Ministers, according to article 5(5)(3) of its statutory law 3094/2003. The most important findings of the Ombudsman referring to the reference period of this report are the following:

C.1. Exemptions of working mothers from the additional maternity protection benefit

C1.1. Exemption of workers not falling under Article 9 of the National General Collective Labour Agreement (NGCLA -EGSSE) 2004-2005

The Greek Ombudsman continued to receive – to a lesser extent – complaints by employees in banks, shipping offices and agencies, and similar cases, which were excluded from the additional maternity protection benefit because they fell under trade or business collective labour agreement, with provisions for more favourable regulations regarding parental leave, as well as longer duration of reduced working hours or equal-length parental leave, from the ones in the National General Collective Labour Agreement (EGSSE 2004-2005, Article 9). The positions and actions of the Ombudsman on this issue have already been elaborated on in the Special Report of November 2009 (see Dossier). These positions were brought to the attention of the new political leadership of the Ministry of Labour, after the elections of October 2009, without response. Finally, they were included in the special report on the additional benefit issued in October 2010.

C.1.2. Exception of workers in small businesses and with next of kin employers

The Greek Ombudsman continued to accept complaints from mothers who work for small businesses and who are 1st or 2nd degree relatives with the employer. The applications from such women were rejected on the grounds that they are not in dependent employment and they do not pay contributions to OAED. The positions and actions of the Greek Ombudsman on this issue have already been elaborated on in the Special Report of



November 2009 (see Dossier). These positions were also brought to the attention of the new political leadership of the Ministry of labour, after the elections of October 2009. In the working meeting of 17/6/2010 it was discovered that the regulation of the issue conflicts with Law 1759/89 and a ministerial decision based on it, according to which persons employed with employers who are their spouse or 1st or 2nd degree relatives, are exempted from insurance in DLOEM, which finances the additional benefit.

C.1.3. Exemption of hotel employees

The positions and actions of the Greek Ombudsman on this issue have already been elaborated on in the Special Report of November 2009 (see Dossier). After the intervention of the Greek Ombudsman, Ministerial decision number 2637/1050/04.09.2009, that extended the granting of the additional maternity protection benefit also to hotel employees, insured in the former TAXY. The issue however of those who had already received rejecting decisions and had returned to their work, remained pending, since the relevant ministerial decision did not have retroactive force. The position of the Ombudsman was from the beginning that the issue required a circular that would correctly interpret the regulation and give the possibility to OAED to revoke the rejecting decisions of persons already returned to their work, meeting their request with summary proceedings. The Ombudsman considers that the handling of this issue by the Ministry was unfortunate, and for this reason it sent a new document to OAED and the Ministry of Labour, aiming to resolve the issue, also addressing the issue of granting additional maternity benefit to this category of working mothers. The positions of the Greek Ombudsman were recorded, for reasons of complete content, in the special report for the additional benefit concluded in October 2010. It is however accepted that since the legal solution of extending the benefit with a ministerial decision and not the interpretation of the legislation with a circular was selected, the extension regulation introduced by M.D. 2637/1050/04.09.2009 cannot have retroactive effect, due to the problems it would cause in the execution of the budget of OAED. The issue however of this category of workers not having access to additional maternity benefit is pending.

C.1.4. Exemption of workers in legal entities under private law of the broader public sector

This issue was raised by the new complaints received by the Greek Ombudsman during this report's reference period. By a document, the Insurance Directorate of OAED requested that rejecting decisions are revoked in corresponding cases, noting that "businesses-undertakings" include all businesses of the private sector regardless of the nature of the employer activity, that is, institutions, associations, Legal Entities under Private Law of profit or non-profit nature. Therefore mothers insured with the above employers are in principle beneficiaries of the additional maternity protection benefit.

Still, at a later state, similar requests of employees in Legal Entities under Private Law were rejected with a case by case interpretation of the nature of each agency, following relevant opinions by the legal service of OAED. For example it was decided that the Centre for Renewable Sources of Energy belongs to the broader public sector, and research centres are Legal Entities under Private Law with a public nature seeking public interest purposes. On the contrary the Hellenic Migration Policy Institute (IMEPO) was found not to belong to the broader public sector, in particular due to the lack of specific reference to the covered percentage of its budget in the provision for assignment of state funds, and therefore women workers can receive the benefit.

The Ombudsman confirmed a selective protection of working mothers based on the agency they work in and not based on the type of the employment contract. The result is that mothers working with a dependent employment contract in the private sector are entitled to parental leave of an equal length of 3.5 months with the reduced working hours, with the additional six-month maternity leave (Article 142 of Law 3655/2008), while working mothers with a dependent labour contract in legal entities under private law of the broader public sector are only entitled to the equal-length parental leave, and this restriction cannot be compensated by taking another form of paid leave. Based on the



above, the Ombudsman stated that the exclusion of mothers working in legal entities under private law of the broader public sector from the regulations of article 142 of Law 3655/2008 is examined as possibly opposing the constitutional mandate of equality, as protected by Article 4(1) of the Constitution (unjustified treatment of materially similar relationships or situations) and recommended the examination of the possibility of the proportionate implementation of the provision of article 142 of Law 3655/2008, in order to cover the law's gap at this point.

C.2. Administrative procedure problems when exercising this right

With regard to the spot checks procedure, in order to confirm whether working mothers who received the benefit are in fact staying away from work, the administration of OAED responded to the written recommendations of the Ombudsman (see special report of November 2009) with the issuance of the "Inspectors" handbook for Training, Employment, Insurance and Special Employment Promotion Centre Service, which was sent electronically to all departments of the Organization, on 26/06/2009.

Citizen complaints for deficient or wrong information regarding their rights by Local OAED agencies continue, with consequence their late exercise and loss (in particular to the supplementary and additional six-month maternity benefit). These problems do not concern only OAED Services, but also IKA, where they get the pregnancy and post-natal benefits from, as well as the SEPE that is competent for informing workers and providing replies to questions regarding leave. It was decided that the involved services would investigate the possibility of finding financing for printing popularized practical brochures, which will be distributed primarily to IKA branches, and will also be available at the local agencies of OAED, Labour Inspectorates and the offices of the Ombudsman. The purpose of the brochure will be to inform pregnant insured women and other interested parties on all the relevant rights and obligations regarding benefits in kind and in cash. The Ombudsman committed to contribute in the effort by participating in the preparation of the content of the brochure.

The issue of the negative consequences of the legal revocation of approving decisions for issuing the benefit for mothers that were already in the 6-month leave period, was resolved on a case by case basis only for certain complainants (with decision number 287/2/26.01.2010 of the BoD of OAED), following the mediation of the Ombudsman. This decision however has limited effect only for mothers that had complained to the Authority and had exercised the right of the second degree appeal. Moreover, the issue of the insurance coverage had not been resolved for the period of the actual employment provision before the revocation. With regard to the last issue the opinions of IKA are pending.

With starting point a relevant complaint of a female worker, the Ombudsman expressed the opinion that the non-exhaustion of the parental leave with an equal-length to the reduced working hours can in no case be considered as legal justification for not granting the special benefit, and primarily for the revocation of the initial approving decision and the issue of a new rejecting decision. Any taking of equal-length leave is simply specified to the point of time after which the six-month maternity protection leave starts. The Ombudsman underlined that it considers the interpretation of the relevant circular of OAED inflexible and incorrect, according to which the employee shall be entitled to request the six-month maternity protection leave if she has exhausted the total equal-length leave (3.5 months). It then proposed the amendment of the relevant Ministerial decision, with the addition of the phrase "after the end of the equal-length leave or part thereof", it estimates however that the issue could be resolved as effectively also with the issuance of a clarifying circular to the local OAED agencies.

The issue of addressing the cases where the initial rejecting decision is revoked and then the additional maternity protection benefit is granted, while the interested party has already returned to work or has made use of other leave/benefits, remains open. This issue has been resolved on a case by case basis only for a specific category of mothers employed in non-profit agencies of the private sector, with document number 147587/02.12.08 of the OAED Administration, which was issued in reply to a document by



the Ombudsman. The written proposal has also been made, for instructions provided in document number 147587/02.12.08 of the OAED Administration having proportional application in each case where the initial rejecting decision is revoked and a new one is issued, approving the benefit, while the interested party has already returned to her work or is making use of other leave/benefits.

C.3. Legislative gaps and relevant proposals of the Greek Ombudsman

C.3.1. Discrepancy between the starting dates of the six-month and additional maternity protection leave

The positions and actions of the Greek Ombudsman on this issue have already been elaborated on in detail in the Special Report of November 2009 (see Dossier). There was no written response by administration, in the working meeting however that took place on 17.6.2010 in the Ombudsman offices, there was agreement that the deviation between the starting date of the six-month leave and the time for submitting the application for the benefit to be granted by OAED creates problems for insured women, in particular in the case they will receive a delayed rejecting decision by OAED. In general it was decided that the Ombudsman's proposal will contribute in reducing bureaucracy, rationalizing the procedure and correcting unfair practices against insured mothers, with no financial cost involved. In this spirit, the proposal was included in the Special Report on the additional maternity protection benefit, which was completed in October 2010.

C.3.2. Exclusion of mothers from insurance for the health and unemployment sectors during the six-month leave

This important issue was raised during the reference period of this report. The Greek Ombudsman received a significant number of complaints regarding the refusal to renew health books, the granting of maternity and health insurance benefits from IKA, as well as unemployment benefits to working mothers, due to not calculating the time of the additional maternity protection leave as insurance time for the unemployment and health insurance sectors. For this reason it sent a document to the General Secretariat of Social Insurance, with notification of the competent deputy minister. In its document the Greek Ombudsman made legal arguments regarding this issue, and asked for the examination of the possibility to extend the insurance coverage for the pension sector to the health insurance and unemployment sector, during the additional six-month leave/maternity protection benefit. The administration (OAED) has given a positive response with regard to the issue of unemployment benefits with Circular number B137769/09.09.2009 of the General Secretariat for Labour, while the study for finding the best solution regarding health insurance during the six-month additional maternity protection benefit is under way by the General Secretariat of Social Insurance in cooperation with IKA.

C.3.3. Loss of part of the entitlement to reduced working hours for mothers making use of the six-month leave

One more new issue that the Ombudsman examined, related to cases where mothers do not make cumulative use of the reduced working hours, as an equal-length leave, and as a result the six-month leave of article 142 is offset against part of the duration of the reduced working hours and consequently it is deducted from the total time of the stipulated reduced working hours for child care. With regard to this issue, the Ombudsman has sent a document to the Directorate of Employment Terms – Gender Equality Department of the Ministry of Labour and Social Insurance. The administration ruled that this case is legitimate. The interpretation adopted by administration introduces unfair discrimination against women whose employer did not consent in granting the reduced working hours as an equal-length leave. The Greek Ombudsman considers that the duration of the reduced working hours should not be affected, as it has been established by the relevant National General and other Collective Labour Agreements, and calls upon administration to regulate the legal gap created.



D. Specific cases of discrimination on the grounds of sex

D.1. Discrimination against female candidates in the examinations for admission to military schools

Citizens have reported incidents of discrimination against female candidates in the examinations for admission to military schools: the minimum height requirement was increased unevenly for men and women (10 centimetres for women and 5 centimetres for men); common lower performance standards were established for athletic tests for both genders and, particularly, for shot-putting, women candidates were obliged to participate using the heaviest shot used by men shot-putters. The positions and actions of the Greek Ombudsman on this issue have already been elaborated on in the Special Report of November 2009 (see Dossier, pg. 57).

In 2010 there was a remarkable development in regard to the administration's response. Whereas during the initial examination of the issue by the Ombudsman, the Hellenic National Defence General Staff (GEETHA) had given a negative response, invoking as an imperative operational demand the existence of a common, to the extent possible, body type, for members of the Armed Forces, the Ombudsman's proposal for height limits was accepted in the end.

Initially P.D. 54/2010 was enacted, which reduced the minimum allowed height for women from 1.65m to 1.60m, and increased the Body Mass Index (BMI), for men between 19-27 and for women between 18-25. These amendments have already applied for the admission examinations for academic year 2010-2011. After that the minimum height of 1.60m was established (article 63 of Law 3883/2010) for women enlisting in all positions in the Armed Forces. Finally, in regard to athletic tests and performance limits, the Ombudsman was informed that their amendment is imminent, in the direction of removing discrimination against women, which shall be included in the notice for the admission of candidate students during the upcoming academic year.

D.2. Discrimination against female candidates in the examinations for admission to police schools

On 17.05.2010, the Ombudsman sent a Report to the Minister of Citizen Protection in regard to discrimination against women in the examinations for admission to schools of the Hellenic Police. According to this Report, the minimum height requirements common for both sexes (1.70cm) and athletic test performance limits established by PD 90/2003, introduce discrimination against women for admission to police schools. These limits, even though at first glance appear neutral, exclude in fact approximately 80% of women from accessing schools that prepare students for the police officer profession, as proven by the studies, and the analysis of the statistical data submitted to the Greek Ombudsman by the police authorities themselves. This indirect discrimination is not adequately justified based on the principle of proportionality by the police, and therefore the relevant regulations constitute violation of Greek and EU law on the equal treatment of men and women (Article 14 of Directive 2006/54/EC).

The Ombudsman proposes: a) legislative amendment of the common for both sexes minimum height limit as a condition for admission to the Hellenic Police schools, so that both sexes are proportionally admitted; b) legislative amendment of the limits of athletic tests and c) use of the female shot in women's shot-putting. To date there has been no response to the relevant report, neither by the Hellenic Police or the Ministry of Citizen Protection.



D.3. Pregnancy and recruitment procedures in Law Enforcement Agencies

D.3.1. Health examinations during the procedure of selecting police personnel with special duties

The Ombudsman received a complaint from a pregnant woman, who, in the framework of her participation in procedures for the recruitment of police personnel with special duties (psychologist), she refused to be submitted to a chest x-ray during the examinations before the Supreme Health Committee. After this she was not allowed to continue with the other health examinations and her supporting documentation was returned by the Three-member Evaluation Committee. After the mediation of the Ombudsman she was assured that in the event that she was found successful based on the other qualifications, she could complete the health examinations after childbirth.

D.3.2. Health examinations during the recruitment of successful coast guard cadets

The Greek Ombudsman received a complaint from pregnant women, who complained that, while they had succeeded in all stages of the competition for the recruitment of coast guard cadets (written and athletic tests), they had a problem with their enlistment due to their pregnancy, when they were invited for medical examinations. After the mediation of the Ombudsman, the Supreme Health Committee did not consider the pregnancy as an impediment for their suitability, it listed them regularly on the successful candidate lists and invited them to enter the School and participate in the relevant training. Finally, as we were informed, all coast guard cadets that were pregnant while entering the School, attended and graduated regularly.

D.4. Pregnancy and employment in the private sector

D.4.1. Positive response of employer to the mediation of the Greek Ombudsman

- ▶ An employee working as a special associate in a Municipality applied for parental leave, which, according to her, was illegally not filed by the Municipality's service. The Municipality without reasons, according to the allegations of the complainant, and by a decision it took and published in the Government Gazette, dismissed the employee. The Greek Ombudsman, with a letter to the Municipality, presented the relevant legislation on the protection of the working woman both during pregnancy and for a one year period after childbirth and noted the illegality of her dismissal. Following the Ombudsman's intervention, the Municipality revoked the dismissal of the employee by a decision of the Region published in the Government Gazette issue.
- ▶ An employee assistant child carer, in a child care facility of a societe anonyme of the broader public sector, complained to the Ombudsman that she was not rehired for the current school year because she was pregnant. Up to that time, the employee concluded repeated fixed-term employment contracts with a private company that is responsible to operate and staff the child care facilities that are owned by a societe anonyme of the broader public sector. The employee reported that her employer connected his refusal to rehire her with the new influenza and that the company, a public sector agency, considered pregnant women as a high risk group. The Ombudsman underlined both to the private company appearing as employer, and to the societe anonyme of the broader public sector that owns the child care facility, that according to the complaint, the non-renewal of the contract appears initially to be related to the employee's pregnancy. Therefore the employer, according to the law, must prove that the employee was not rehired for a reason that was not relevant to her pregnancy. The Ombudsman also asked the private company to especially justify the non-renewal of the employment contract of the pregnant woman because, as the law stipulates, the burden of proof is reversed and



passes to the employer in cases where there are indications of discrimination on the grounds of sex (with which discrimination on the grounds of pregnancy is equivalent), as in this case. After the intervention of the Ombudsman, the private company rehired the employee.

D.4.2. No response of employer to the mediation of the Greek Ombudsman – Imposition of administrative fine

- ▶ A pregnant woman, who was employed without insurance in two canteens of the same employer, complained that she was dismissed. The reason of the dismissal was that during the inspection of the Labour Inspectorate the worker stated an earlier employment starting time from the one the employer stated. The employer supported that he had hired the worker on a trial basis, and that the worker left her work voluntarily, but along the way he claimed that he dismissed her because his trust in her was shaken when she lied to the Labour Inspectorate about her employment starting time. The Ombudsman proceeded, in communication with the Labour Inspectorate, to examine witnesses from both side, as explicitly provided for in Article 4(5) of Law 3094/2003. From witness testimonies, and the other information that came to its attention, it confirmed that the dismissal was considered invalid due to lack of material cause and due to the violation of the provisions of the relevant legislation. The Ombudsman forwarded its report to the Labour Inspectorate and recommended that an administrative fine is imposed to the employer. The Labour Inspectorate imposed a €10,000 administrative fine on the employer.
- ▶ A pregnant woman, who was employed without insurance in two canteens of the same employer, complained that she was dismissed. The reason of the dismissal was that during the inspection of the Labour Inspectorate the worker stated an earlier employment starting time from the one the employer stated. The employer supported that he had hired the worker on a trial basis, and that the worker left her work voluntarily, but along the way he claimed that he dismissed her because his trust in her was shaken when she lied to the Labour Inspectorate about her employment starting time. The Ombudsman proceeded, in communication with the Labour Inspectorate, to examine witnesses from both side, as explicitly provided for in Article 4(5) of Law 3094/2003. From witness testimonies, and the other information that came to its attention, it confirmed that the dismissal was considered invalid due to lack of material cause and due to the violation of the provisions of the relevant legislation. The Ombudsman forwarded its report to the Labour Inspectorate and recommended that an administrative fine is imposed to the employer. The Labour Inspectorate imposed a €10,000 administrative fine on the employer.
- ▶ In another case of dismissal, which was forwarded to the Ombudsman by the Labour Inspectorate, the dismissed woman was working as a salesperson in a shop and she was dismissed. According to the file's information, the complainant's employment contract was continued smoothly and without interruption up to the time that the employer terminated it without reason, whilst the worker was pregnant. The Ombudsman, with a letter to the employer, noted the illegal nature of the dismissal. The employer did not react to the Ombudsman's letter. Following this, the Authority forwarded its report (according to Article 13(9) of Law 3488/2006) to the Labour Inspectorate and recommended that an administrative fine is imposed to the employer company on the violation of Articles 15(1) of Law 1483/1984 and 9(c) of Law 3488/2006. The Labour Inspectorate informed the Ombudsman that a €7,000 fine was imposed on the company.
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D.4.3. Out-of-court resolution of difference with the cooperation of the Ombudsman and SEPE

In a case forwarded to the Greek Ombudsman from the Labour Inspectorate, an employee of an enterprise complained about sexual harassment during working hours by her superior. The case was heard before the competent Labour Inspectorate in the presence of a representative of the Ombudsman. During the meeting the enterprise's representative was reminded of the relevant legislation on the protection of workers in case of sexual harassment. The company issued an apology to the worker before all parties, while it informed that the person who had been accused of the sexual harassment resigned and his resignation was accepted by the employer.

D.4.4. Out of court settlement for the parties

The Greek Ombudsman received a complaint by a worker with repeated contracts of few months each in a telesales – telemarketing company about her dismissal by her employer a few days after she informed the employer that she was pregnant. The Ombudsman sent a document to the employer presenting the current legislative and case-law framework on the protection of pregnancy, requesting at the same time that the pregnant woman be rehired in order to complete the remaining time of her contract.



The Ombudsman also informed the employer that the non-announcement of the employment's termination to the Labour Inspectorate renders the complaint formally invalid. The employer company answered that it was not aware of the complainant's pregnancy and that with the payment of a monetary amount it had been released of its obligations to the dismissed woman. It also reported to the Ombudsman that the reason of the worker's dismissal was her non-contractual behaviour. The Ombudsman sent a new

document to the employer underlining anew the formal invalidity of the termination and, given that the dismissed woman was now at an advanced stage of her pregnancy and could not work, stressed that due to the invalidity of this termination the employer owed to the worker the delayed salaries of the other months of her contract, the insurance stamps of these months, as well as the Easter bonus that had not been paid to her and part of the leave benefit. At the same time, the Ombudsman informed again the employer that based on current case law, the termination of a pregnant woman's employment contract is invalid, regardless whether the employer knew of the pregnancy or not. Following the above, the employer asked the Ombudsman for time. After phone calls and negotiations of the two parties, the employer paid to the dismissed woman the amounts it owed her, and they signed a relevant agreement.

The Ombudsman cooperated with SEPE in a case of a worker's complaint about a change in the behaviour of the employer after her return from the pregnancy leave and the six-month special leave/maternity protection benefit. The Ombudsman sent a document to the employer, asking him to clarify the issues arising from the worker's complaints. The employer company replied to the Ombudsman, without answering the whole list of questions. Before sending a new document to the employer, the Ombudsman, through an extrajudicial statement of the employer company was informed of the worker's dismissal, in fact without compensation. Due to the fact that during the intermediation the employer submitted deficient information based on which it was impossible to ascertain whether there was a unilateral unfavourable change of a term of the personal employment relationship of the worker as well as after the worker's statement that she will seek legal recourse, the Ombudsman stopped the investigation of the case. The case was brought to court, but along the way the dispute was settled out-of-court, with the payment by the employer of dismissal compensation to the worker.



E. Cooperation with the Hellenic Labour Inspectorate

Law 3488/2006 (Article 13, paragraph 8), established for the first time an institutional cooperation framework between the Greek Ombudsman and the Hellenic Labour Inspectorate (SEPE), with the purpose of addressing discrimination on the grounds of sex in the private sector. The local labour inspectors must inform the Ombudsman about the complaints they receive regarding discrimination on the grounds of sex in employment and to submit to it the results of the actions under their competence. Furthermore, the competence is provided to the Greek Ombudsman to conduct its own research and formulate the final report on the complaint. SEPE remains as always competent for imposing the stipulated administrative sanctions or to take recourse to justice for the imposition of the criminal penalties.

In the framework of this provision a circular was issued (number 30257/26/02/2010) by the Ministry of Labour and Social Insurance on the subject of the cooperation with the Ombudsman in the framework of Law 3488/2006 on the implementation of the principle of equal treatment of men and women with regard to access to employment, professional training and development, in the working terms and conditions and other relevant provisions (Government Gazette A/11-9-2006). This circular provided clear instructions to all the country's Social Inspection agencies, in order to promptly inform the Greek Ombudsman as regards complaints or information they receive pertaining to the above law, and to submit to the Ombudsman the results of their inspection, under the reservation in any case of the Ombudsman's power to conduct its own investigation and to formulate the final conclusion on the complaint. At the same time the Social Inspectorate Departments were informed of the usefulness of having a representative of the Ombudsman present during the discussion of the trilateral labour difference, if it wishes.

After the issue of this circular, the cooperation of the Ombudsman with the Social Inspection Departments was improved to a great extent. Specifically, during the second half of 2009 and during the first half of 2010, the Social Labour Inspection Departments forwarded to the Ombudsman 33 cases, 24 of which were related to dismissals of pregnant women, 4 to issues of sexual harassment, 2 to unilateral unfavourable change of working conditions after the return of the worker to the workplace after using the six-month leave of OAED, 1 to a non-renewal of a pregnant woman's contract, 1 to the exclusion of a worker from a recruitment competition due to pregnancy and 1 to the employer's refusal to consent to a proposal of the worker for stopping the six-month leave of OAED.

The complaints forwarded to the Ombudsman represented 50% of the total complaints on issues of discrimination on the grounds of sex (66) received by SEPE.



Table 7
Complaints lodged with SEPE (2nd half 2009 – 1st half 2010)

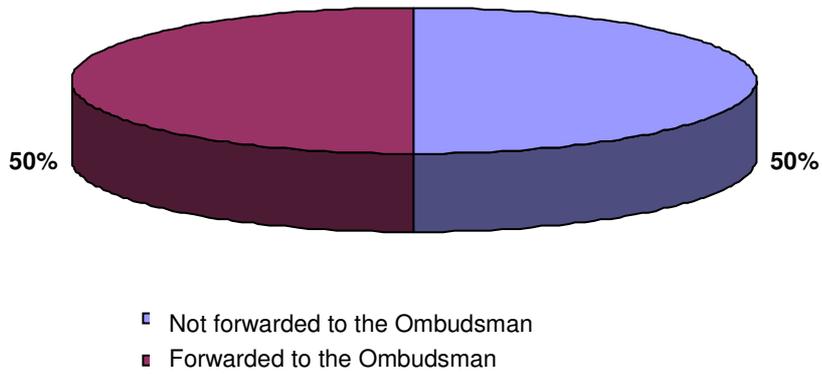
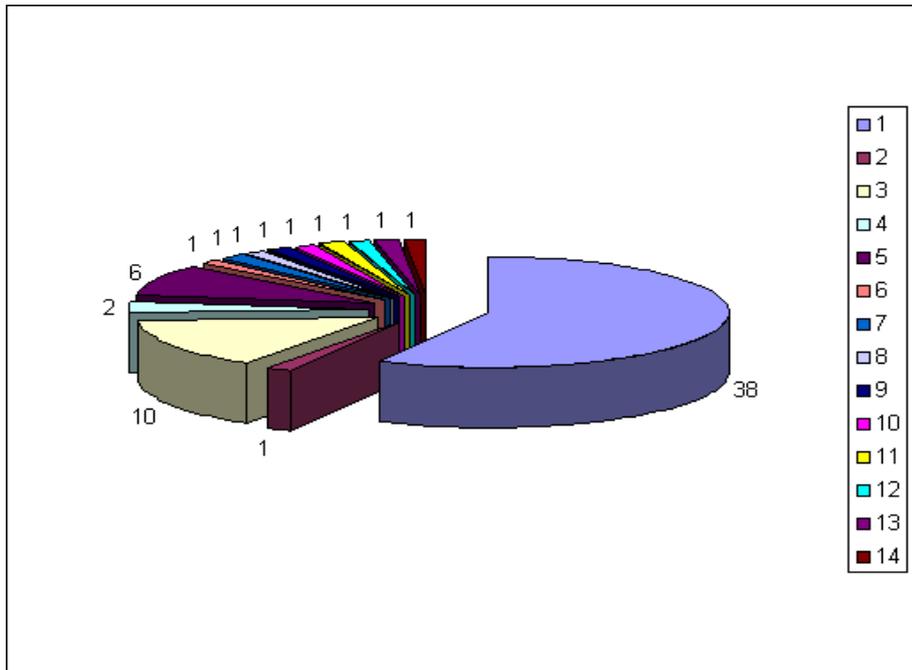


Table 8

Subjects of complaints of discrimination on the grounds of sex lodged with SEPE (2nd half 2009 – 1st half 2010)





Number of complaints	Subject
38	Dismissals of pregnant women
1	Dismissal of worker on grounds of maternity
10	Unfavourable change of working conditions
2	Insulting behaviour of employer
6	Sexual harassment
1	Offending worker's personality
1	Not granting maternity protection
1	Not granting parental leave
1	The employer not signing IKA
	documentation
1	Non payment of post-natal leave remuneration
1	Exclusion of workers from participating in recruitment
	competition due to pregnancy
1	Unfair treatment on grounds of maternity
1	Not granting remaining single-parent leave
1	Not providing work to pregnant worker
TOTAL: 66	

Moreover, the Ombudsman's representatives attended nine (9) trilateral meetings before the Labour Inspectorate, six (6) of which had a successful outcome, meaning that the labour difference was resolved. In one case, following communication with the Labour Inspectorate, there was an on-site inspection of the workplace, whereas in two cases, after the recommendation of the Ombudsman, a fine was imposed on the employer. Positive note is made of the smooth cooperation with several Social Inspection agencies, as for example (indicatively) the Social Inspection Agency of Kallithea, Pallini, Ilion, Anoixi, Easter Sector of Thessaloniki, Samos, Syros, etc.



F. Cooperation with parliamentary committees of the Hellenic Parliament

The Deputy Ombudsman, responsible for Gender Equality, participated with a fifteen minute speech in a special seminar organized by the Special Permanent Parliamentary Committee of Equality, Youth and Human Rights, with subject "100 years Feminist movement: conquests and visions: (8 March 2010, Senate Hall of the Parliament).

G. Participation in the European network of gender equality bodies

As of May 2008, the department for gender equality of the Ombudsman has been participating in the network of independent gender equality bodies. The network has been in operation since December 2006, under the auspices of the European Commission, and, specifically, the Directorate-General for Employment, Social Affairs and Equal Opportunities. During the report's reference period there were three meetings of the Network in Brussels: the first one in October 2009, on the subject of the equal treatment between men and women in the access to and supply of goods and services (Directive 2004/113/EC) and the second one in March 2010, on the subject of the coexistence and conflict of religious rights and gender equality. The next meeting of the Network took place in November 2010, on the subject of the equal treatment of self-employed men and women. Important cases related to the subject were presented in this meeting, which the Greek Ombudsman handled, as well as the way in which the latter utilized EU Law and ECJ case-law on removing the discrimination it encountered during their examination.



Findings-Proposals

I. With regard to the implementation of Law 3488/2006 (now Law 3896/2010)⁶ by public administration

The public administration continues to have no knowledge of the special legislation on equal treatment of men and women

This leads to the introduction of legislative measures and the issue of individual and general administrative acts that are not in accordance with EU or national law concerning the implementation of the principle of the equal treatment of men and women. Such examples are: the height limits and athletic tests in notices for examinations for admission in law enforcement agencies, the refusal to grant parental leave to fathers police officers, as well as phrasings or separate interpretations of article 53 of the Civil Servants Code that introduce direct or indirect discrimination on the grounds of sex.

Public administration continues to equate positive measures in favour of women with measures for the protection of maternity and the support of families

The Ombudsman, while handling complaints of male citizens, found that the administration tends to systematically characterise a measure that favours women as positive, without providing specific and comprehensive justification. After the ex-post accumulation of the views of the administration, it was found that the administration rejects the extension of such measures to fathers, with the justification that they are positive actions that favour women and serve maternity, the support of families with numerous children and the reconciliation of private and professional life. A typical example of such treatment is the non recognition of the right to parental leave to fathers employees of various categories. Therefore, there is confusion in the administration with regard to the definition of a measure for the protection of maternity, a measure for the reconciliation of private and professional life and a positive measure for supporting the employment of women.

The Ombudsman considers necessary the cooperation with the entire spectrum of public administration, in order to jointly assess whether the provisions that include special measures in favour of women are truly positive measures that constitute a lawful deviation from the principle of equal treatment for men and women, on the basis of the definition provided by the ECJ in case C-559/07 (Commission v Hellenic Republic) It is therefore a particularly useful process, because it will urge public administration to document with statistical data that the specific categories of women, which a measure favours, are truly under-represented in employment and the productive procedure, and therefore it is necessary to take a positive measure. This will gradually lead the involved parties to introduce legislative measures to realize where actual discrimination exists in order to take targeted and appropriate measures. At the same time it will identify certain "privileges" of women that no longer have any legal or social grounds, since they perpetuate erroneous stereotypical perceptions on the role of the two sexes in the family and work, and for this reason they must no longer be implemented, if they conflict with the Constitution (see Ombudsman Plenary 1580/2010), or they must be extended to men.

➤ **The deficiency of reliable statistical data continuous to make difficult the implementation**

⁶ Law 3488/2006 was repealed and replaced with Law 3896/2010 (effective date 8/12/2010), that adapted Greek law to the provisions of Directive 2006/54/EC



of the principle of equal treatment of men and women by public administration

To date, the Public Administration has not taken systematic action for the collection, processing and systemizing of reliable and comparable quantitative information and statistical data based on sex, per sector of responsibility of each ministry.

Cases of discrimination on grounds of sex continue to be identified in the terms of recruitment notices in the public and broader public sector, as well as in the examinations for admission to law enforcement agencies

With regard to the asymmetrical increase of height limits for admission to military schools, after a relevant recommendation of the Ombudsman and the good cooperation with the Ministry of National Defence, the relevant provisions that contained discrimination on the grounds of sex were removed. The actions of the Ministry of Citizen Protection are pending for the removal of the discrimination on the grounds of sex in the examinations for admission to law enforcement agencies.

II. In regard to the implementation of Law 3488/2006 (now Law 3896/2010)⁷ in the private sector

Pregnancy and maternity continue to be the main factor of discrimination against women

The complaints for discrimination on the grounds of sex in the private sector amounted to 40% of the total complaints received by the Ombudsman during the Report's reference period (in the total of year 2010 they reached 36%). These complaints confirm in a dramatic way the tendency of enterprises to consider pregnancy and maternity as incompatible with employment. In fact in the last year, in the context of the financial crisis, there was particular increase of incoming complaints regarding the dismissal of pregnant women or the unilateral unfair change of the employment relationship for women that are either pregnant or in the one-year protection period after childbirth. The Greek Ombudsman expresses its concern on the fact that a significant number of working women are placed outside employment due to pregnancy, maternity and inability to combine family and work, running the risk of staying outside the labour market for a long time and/or permanently. The experience from previous international financial crises shows that male employment recovers faster than female employment. In fact, in its Annual Report on the Equality of Men and Women for 2010, the European Commission stresses that unemployed women have a significantly higher chance of not being re-employed.

The measures taken are fragmentary and do not address the problem of reintegration after long absence and the combination of the working woman and mother

The Ombudsman persists to its finding expressed in the Special Report of November 2009, which the provision of Law 3488/2006 (now Law 3896/2010) that established the right of the working woman to return to the same or a similar job under the same or equivalent terms is violated in practice by the deterioration of the working conditions. The hostile and competitive working environment forces the working woman to resignation or agreed dismissal with or without compensation, upon the expiration of maternity protection period, which was recently increased from 12 to 15 months, when the woman uses the six-month additional maternity protection leave (Law 3896/2010).

⁷ Law 3488/2006 was repealed and replaced with Law 3896/2010 (effective date 8/12/2010), that adapted Greek law to the provisions of Directive 2006/54/EC



Even though the regulation on the additional maternity leave benefit (article 142 of Law 3655/2006), which following pregnancy – post-natal leave, seemed to temporarily help low-salary female workers in the private sector, in practice it was proven that it accelerates their exit from the labour market. This happens because the regulation was adopted without supplementary measures of reintegration and stay in work of women absent with many months of maternity leave who return burdened with family obligations, without adequate services and structures for childcare and with now inexistent professional mobility.

The cooperation between the Greek Ombudsman and the Greek Labour Inspectorate improved substantially

After the issue of the circular of the Central service of SEPE in February 2010, regarding the cooperation of the local Labour Inspectorates with the Ombudsman, this cooperation improved to a great extent. Even though in the second half of 2009 and during the first half of 2010, the complaints forwarded to the Ombudsman represented only 50% of the total complaints on discrimination on the grounds of sex received by SEPE, it is estimated that the situation improved significantly in the second half of 2010 (for which no official data is collected).

The attendance of a representative of the Ombudsman in various trilateral meetings of employers and employees before the local Labour Inspectorate was a model of the new cooperation, as well as the common on-site inspections of a workplace by the Ombudsman representative and SEPE inspector. Also, an example of a constructive cooperation of the two institutions are the cases of administrative fines to employers who dismissed a pregnant woman, in continuation of unfair treatment behaviour during the pregnancy, after a proposal of the Ombudsman.

For the further improvement of the cooperation, the following recommendations are made:

- I. the computerization of SEPE for the facilitation of the on line communication and the more direct and faster response to complaints
- II. the staffing of the local Labour Inspectorates with young and specialized staff, which shall be an important tank of employees trained on the law for combating discrimination and will upgrade the inspection mechanism of SEPE
- III. the training of Labour Inspectors aiming at the uniform handling of complaints, where there is co-competence with the Ombudsman
- IV. the appointment of contact people in every department of the Social Labour Inspectorate, in order to facilitate the communication of the Ombudsman with Labour Inspectorates, given the fact that the Ombudsman has no regional structures and its employees cannot travel all the time.

The familiarization of civil judges with the special legislation on equal treatment of men and women remains low

The noteworthy initiative of the National School Judges to organize a training seminar (Thessaloniki 13-15.10.2010) to familiarize administrative judges with European and Greek law on combating discrimination, must be repeated for civil judges.

The creation of a legal database systematically recording the decisions and pending cases of the Greek civil and administrative courts, the European Court of Justice (ECJ) and



the European Court of human rights (ECHR) in regard to gender equality issues as well as the equal treatment and combating discrimination in general, as the Ombudsman had proposed (see Special November report 2009), would help disseminate this special subject and highlight its currency and its difficulties.

III. In regard to the additional maternity protection benefit (Article 142 of Law 3655/2008)

During the reference period of this Report the number of complaints lodged with the Ombudsman on the above issue increased from 77 to 130 and at the same time the themes of the problems diagnosed were expanded. Several of the problems of the administrative procedure followed by OAED for granting the additional benefit, after the working meeting with the competent services (June 2010), were dealt with successfully and the mediation of the Ombudsman on individual cases had a successful outcome. Also, the General Secretariat of Social Insurance committed that it will make a legislative regulation providing the method of insurance in the health insurance sector of mothers insured with IKA, making use of the additional maternity protection benefit, and today they are excluded from the benefits of this sector. The Ombudsman positively states that this issue was regulated in 2010 by OAED with regard to the unemployment sector. On the contrary, the Ombudsman considers that the financial crisis had a negative effect on the outcome of its mediation effort on the subject of increasing the beneficiaries of the additional maternity protection benefit, in regard to categories of working mothers who have been excluded through incorrect interpretations of the administration, as well as vulnerable categories of workers, such as mothers with fixed-term contracts in the public sector, who have reduced maternity protection.

IV. In regard to parental leave and gender equality in the public sector

1. Parental leave: important developments in Europe

The legislative policy of the European Union on the subject of parental leave, as formulated after the adoption of a new framework Directive (2010/18/EU), consists of:

- establishment of right of working parents to parental leave of a minimum term of 4 months, mandatory for member states of the EU.
- the removal of any form of direct or indirect discrimination on the grounds of sex in regard to taking parental leave
- encouragement towards both parents to exercise the right to take parental leave, with the provision for the option of a flexible allocation of the parental leave time between the parents and also simultaneously the impossibility of transferring a minimum period (one month).
- protection of parents from any discrimination against them due to the request or taking of parental leave;
- facilitation of reintegration of parents into work after parental leave.

The view that the parental leave is a right of both parents tends today to prevail in Europe, even outside the EU and beyond the field of implementation of EU directives. The change of the case law of the ECHR with its ruling for *Markin v Russia* (see above under 2.5). The Court, taking into account the progress in the equality of the sexes, as a fundamental goal of most states of the Council of Europe, accepts henceforth that parental leave can be



recognized as a right of both fathers and mothers. It thus abandons its older position that the non uniform handling of the issue by member states of the Council of Europe, makes imperative the discretionary power of the member states to estimate and decide themselves whether they will limit the right to parental leave only to mothers. At the same time the ECJ in the last year has produced rich case-law for the interpretation of Directive 96/34/EC (repealed and replaced with Directive 2010/18/EU). Representative of this case-law is a decision with Greek interest, *Zoe Chatzi v Ipourgios Ikononikon*, where the European Court judged that on the one hand Directive 96/34/EC does not award to the child a personal right of parental leave, and on the other that the birth of twins does not establish a right to a number of parental leaves equal to the children born and finally that the national legislator must establish a system of parental leave which shall ensure to the parents of twins a treatment that takes into account their special needs. Significant in fact, and with extensions for the compatibility of provisions of Greek collective regulations (Collective Labour Agreements) with the European principle of the equal treatment of men and women in employment is the *Roca Alvarez* decision. Here the Court decides that the regulation that fathers working in dependant employment do not have a right to parental leave, unless the mother of their child is also working as an employee, introduces discrimination on the grounds of sex, provided that a corresponding requirement does not apply for women.

2. Parental leave: role and findings of the Ombudsman

► The Ombudsman, as an independent agency supporting the implementation of the principle of equal opportunities and equal treatment of men and women in employment⁸, has, among other things, as its mission to monitor if and how the principle of equal treatment of men and women is implemented in the field of parental leave. It monitors more specifically if the legislation that covers parental leave in the public sector is compatible with EU law, as interpreted in the decisions of the ECJ. From the total number of cases related to the parental leave situation in the public sector that it examined, the Ombudsman concluded with these final general findings:

► The absence of a uniform legislative regime for the personnel of central administration and the development of multiple special regimes for various groups of civil servants (military, teachers, doctors, etc) as well as the absence of clear regulations for other categories (e.g. employees of the Ministry of Foreign Affairs), cultivates legal uncertainty and impedes the implementation of the principle of equal treatment of men and women, since the fragmentation of the legislation creates fertile ground for direct or indirect discrimination against women. In any case it cultivates the unfair treatment of workers in the public sector, without objective justification of the different treatment.

► The long duration (nine months) and the remunerated nature (full pay) of the continuous parental leave, as an alternative form of the decreased working hours in the public sector, list Greece among the countries with the most generous policies for parental leave in international surveys⁹, ignoring on the one hand the great institutional unfairness in labour relations of the public and private sector, and on the other the difficulties of correct interpretation and implementation in practice of the relevant legislation.

► The public policy on the issue of the reconciliation of professional and family life is proved to be fragmentary and focuses on granting leave, mainly addressed to women (maternity leave, additional six-month maternity leave) and completely alternatively to the father (see refusal to grant leave to fathers civil servants for service reasons or if the mother is not working or if she is not working as an employee, imposition of legislative restrictions cancelling the father's right to parental leave in the private sector, etc).

⁸ Article 25, Law . 3896/2010, former Article 13 Law 3488/2006

⁹ Ray, Gornick and Schmitt, "Who cares? Assessing generosity and gender equality in parental leave policy designs in 21 countries", *Journal of European Social Policy* 2010:20, 196.



► At the level of the applicable provisions, the Ombudsman had already highlighted with a Report to the Ministry of Interior that the relevant provision of the Civil Servants Code includes phrasings that introduce direct discrimination on grounds of sex that must be eliminated, and its interpretative circulars must be rephrased because they introduce indirect discrimination against male employees. At the same time the Ombudsman achieved the legislative extension to male military personnel serving in the armed forces and the coast guard – where special provisions are implemented – of the parental leave that had been exclusively provided for women as mothers. In regard to the same issue it is cooperating with the Fire Department and expects the actions of its Leadership. On the contrary, in regard to the extension of parental leave to fathers police officers, the Ombudsman continues to find resistance from the Hellenic Police and the Ministry of Citizen Protection. The resistance of the administration to grant parental leave to men employed in professions (military, police and other Law enforcement agencies) where until recently women were underrepresented, proves that while society changes, i.e. increasingly more men working in these professions wish to be involved in raising their children, public administration is proven inflexible in its adaptation and impervious to the apparent infringement of policies and rules of law of the EU.

► The text of the Report contains special findings of the Greek Ombudsman on parental leave for doctors (2.6.2.1.C), permanent teachers (2.6.2.4.B) and substitute and hourly-paid teachers (2.6.2.4.C), as well as the interventions of the Ombudsman on parental leave of faculty members (2.6.2.4.A) and employees of the Ministry of Foreign Affairs (2.6.2.5).

3. Parental leave and combination of work and family in the public sector: proposals of the Greek Ombudsman

The Ombudsman proposes :

A. Legislative action

- The legislative drafting committee to be established at the Ministry of Labour, with subject the incorporation of the new Directive (2010/18/EU) on parental leave, is called upon to examine: a) the **codification** in a single text of all provisions related to parental leave in the public and private sector; b) the **adaptation of these provisions to EU law** on the equal treatment of men and women, as it stands with the EU Directives and the case-law of the ECJ; c) in the event that both parents are civil servants, the proposal that the three (3) months from the total nine (9) months paid leave, which is the duration of parental leave in the public sector (article 53 of Civil Servants Code), to be established **as an non-transferable right of the father civil servant**¹⁰; at the same time, the establishment of **incentives** should be examined for the use of this three-month leave by fathers (in Scandinavian countries for example, the taking of parental leave is awarded points for promotion to positions of responsibility) and d) the **establishment of specific sanctions** in cases of violation of the legislation on parental leave, where it is mandatory.
- **Eradication of the special parental leave regimes for public employees** and uniform the Civil Servants Code for all civil servants regardless of Ministry, position or specialization. The provisions of the Civil Servants Code must be the common legal basis for all categories of civil servants and unjustified deviations, based on union criteria and arbitrary interpretation of administration, e.g. for teachers or medical doctors.
- **Eradication of all direct or indirect discrimination on the grounds of sex** in the provisions both of article 53 of the Civil Servants Code and special legislative acts, e.g. law

¹⁰ According to new Directive 2010/18/EU, at least one month must henceforth be recognized as the mandatory non-transferable right of each parent



enforcement agencies that establish long-term maternity-parental leave only for mothers.

- **Flexibility in the method of exercising** the reduced working hours right (e.g. possibility of accumulating the daily reduced working hours into one day off a week) and the nine-month parental leave (e.g. possibility of partial granting) in the public sector, in order to combine with better efficiency the developing personal and family needs of employees with the also changing service needs.
- Expressed and clear **inclusion of the entire fixed-term personnel of the public sector**, regardless of Ministry or agency it is serving in, **under the provisions of the labour law**, including the provisions of the National General Collective Labour Agreement, as in force each time.

B. Administrative actions

- **Training of the Human Resource Administration Services** of the public sector on issues of granting parental leave, as these arise through the legislation of the EU and the case-law of the ECJ.
- Establishment of obligation of every service **to provide information on the applications for receiving and granting parental leave per sex** to the Ombudsman and the General Secretariat of Equality of the Ministry of Interior, in order to have reliable data, based on which any improvement of the situation may be improved and/or the need to promote further policies and measures.
- **Cooperation between the Greek Ombudsman and the Equality Offices per region**, for the exchange of information, collection of data and coordination of actions.



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