



## **IMPLEMENTATION OF THE *ACQUIS COMMUNAUTAIRE*:**

### **CHALLENGES AND OBSTACLES.**

#### **THE ROLE OF THE GREEK OMBUDSMAN**

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#### ***INTRODUCTION***

Europe went a long way ahead, from founding a European Economic Community in 1957 to establishing objectives of a common space of freedom, safety and justice in the present EU Treaty. Starting from the freedom of economic movement, common European principles gradually extended to various policy areas, tipping the balance in favor of EU against domestic legislation, in order to ensure that the rights stemming from the Treaty could be realized. The development of numerous instruments of secondary EU legislation tends to strengthen a common European identity beyond the limited market logic as the driving force of the EU. Thus, legal principles and fundamental rights, including a right to good administration, emerged, marking the gradual establishment of an EU coherent legal framework governed by the Rule of Law.

#### ***I. SCOPE OF THE ACQUIS***

The *acquis* extends very widely from general governance principles, such as the rule of law, good governance and the right of Good administration, to human rights and rights more specifically linked to various policy sectors.

- *The right to good administration*

At the EU level article 41 of the Charter of Fundamental Rights of the European Union (2000) established a new fundamental right: the right to good administration.<sup>1</sup>The principle of good

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<sup>1</sup> 1. "Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

2. This right includes:

a) The right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

b) The right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

c) The obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Constitution and must have an answer in the same language".

administration is based on the existence of a legal system governed by the rule of law and guided by the requirements of good governance.

The concept of good administration was further elaborated in the European Code of Good Administrative Behavior<sup>2</sup>, as drafted by the European Ombudsman; a vital tool in the process of investigating complaints about maladministration in EU institutions. A number of countries have adopted at the national level similar codes.

- *Equal treatment and anti-discrimination legislation*

The *acquis* encompasses various types of legal rules. Among which, there are, first, those reflecting human rights principles. This is the case of a series of EU directives concerning issues of discrimination on various grounds. Gender equality as well as non-discrimination on grounds of age, handicap, ethnicity religion, sexual orientation etc. belong to this group of rules.

- *Rights specific to sectoral policies*

And, of course, there are numerous rules more directly linked to the realization of the common European economic and social space. While regulating various policy sectors, they come to involve economic and social rights contributing to labor and capital mobility and the internal market as cornerstones of EU integration. To refer only to a few examples, access to environmental information, competition rules, labor mobility, mutual recognition of diplomas and professional qualifications, social security issues, etc.).

In reality, there are hardly policy areas that are not directly or indirectly affected by EU legislation or principles. This is why it is difficult for an Ombudsman to give a number concerning the complaints that have to do with the *acquis*. In the process of European integration, domestic and EU legislation have come to be so intertwined that the origin of the rules is neither always visible nor relevant. Only when some divergence or conflict or other problem (e.g. insufficient implementation, late incorporation of a Union rule), the issue is seen in the light of the EU *acquis*.

## **II. THE GREEK OMBUDSMAN'S MANDATE**

The Greek Ombudsman (GO) is a constitutionally established independent authority which started operations on October 1998. In 2001 the statutory independence of the authority was sanctioned by an amendment to the Constitution (art.103 para.9, art.101A).

The Greek Ombudsman's mandate has been defined as "*protecting citizens' rights, combating maladministration and preserving legality*". This constitutes a quite large mandate encompassing all legal rules and principles, including EU and international law and constitutional rules and principles. The Ombudsman's mandate covers the protection of rights and legal interests of all persons, irrespective their nationality, by means of a specific provision of the law.

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<sup>2</sup> This Code was originally intended to explain in more detail what the Charter's right to good administration should mean in practice. On 6 September 2001, the European Parliament adopted the Ombudsman's Code in a resolution. The Code is directed towards the institutions and bodies of the European Union and it is expected that their administrations and officials should adopt their own codes or respect the Ombudsman's Code in their relations with the public. Most of all, it is an important source for understand the meaning of the principle and concept of good administration in European administrative law and a vital tool in the process of investigating complaints about maladministration in EU institutions.

The Ombudsman institutions have been historically connected with a concept –or a phase- of the State that aspires to offer its citizens more than the strict application of legal rules, a State in which the actual enjoyment of rights is of intrinsic importance to the legitimacy of power. And it is not a mere coincidence that in the context of the European Union as well, the role of the European Ombudsman is embedded in the EU Charter of Fundamental Rights, in the chapter establishing citizens ‘rights’<sup>3</sup> (art.43), which includes the right to refer to the Ombudsman cases of maladministration in the activities of the Community institutions or bodies.

The Ombudsman institutions are thus widely spread, their independence often sanctioned by the Constitution, as in the case of Greece, and generally conceived at least in Europe as having a role to play in consolidating the Rule of Law, in complementing the role of the Courts in a well-balanced system of separation of powers. If the Ombudsman institutions are not an isolated phenomenon but a standard feature of modern European states, connected with the underlying values of United Nations (Paris principles)<sup>4</sup>, the Council of Europe and the European Union, the unavoidable question is whether their contribution to the actual application of legal rules and principles in each country goes beyond domestically driven legal standards. My hypothesis is that it goes far beyond.

The role of the Ombudsman is important because it contributes to awareness-raising and actual implementation in the daily administrative practice of European law standards on people’s rights and good governance. Despite the fact that its recommendations are deprived of binding force, it contributes to a change of attitude and even a change of culture of the civil service, promoting solutions that encompass common EU principles in the ordinary administrative procedures and considerations.

In this way, the implementation of EU law and the transposition of Directives into domestic law has always been a matter for the Greek Ombudsman’s interventions and recommendations since the beginning of its operation in 1998. The implementation of the *acquis communautaire* benefits from the interventions of the GO that contribute to the harmonization of various domestic legal instruments with the EU standards in place. But there is more. The Ombudsman is entrusted with the specific mission of monitoring the implementation of a body of EU law, namely combating all forms of discrimination and promoting gender equality.<sup>5</sup> Thus, the Greek Ombudsman has a more overt and direct contribution towards achieving European integration.

### ***III. THE OMBUDSMAN AS A DESIGNATED BODY TO ENSURE IMPLEMENTATION OF EU LEGISLATION ON DISCRIMINATION***

#### ***a. Discrimination***

In 2005 (Law 3304/2005) the GO was designated as national equality body handling complaints with regard to *discrimination* on the grounds of racial or ethnic origin, religion or belief, disability, age and

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<sup>3</sup> Chapter 5 art.43

<sup>4</sup> Annexed to General Assembly resolution 48/134, [http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI\\_en.pdf](http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf)

<sup>5</sup> Also, the GO was by Law 3907/2011 assigned the role of external monitor of returns of foreign nationals to their country of origin, under art. 8(6) of EU Directive 2008/115/EC. A pending ministerial decision is to set the details of CO’s monitoring the final stage of actual removal operations by the Greek Police.

sexual orientation in the public sector (Directives 2000/43/EC<sup>6</sup>, 2000/78/EC<sup>7</sup>), as well as discrimination on the grounds of gender and gender identity in both the public and the private sector in the field of employment since 2006 (Directives 2002/73/EC, 2006/54/EC)<sup>8</sup>. The GO is a regular member of the *Equinet* Network of Equality Bodies in EU.

Furthermore, the non-discrimination liberal principle of the Greek post-dictatorship Constitution (1975) facilitated the Ombudsman's mediation from the start, against arbitrary treatment of any person on the basis of race, nationality, language, religious or political belief (art.5 para.2 Constitution).

But the EU secondary legislation proved important, among other reasons because:

- a) it gave the EU member-states Equality Bodies the opportunity for networking in order to reach optimum solutions to discrimination cases (*Equinet*) and
- b) it offered not only concrete provisions but also new legal tools, such as the reversal or sharing of the burden of proof, indirect discrimination and positive measures, tools that have an added value enlightening the interpretation of all discrimination cases.

New legal tools and methods are useful especially in times of crisis where the rights of the most vulnerable persons are at stake. The progress in human rights in recent years in Europe is at risk of being overturned by xenophobic and defensive attitudes and behaviors while the crisis leaves the weaker – poorer, unemployed, disabled and immigrants - behind. But we should not consider people as collateral damage.

The Greek Ombudsman issued in September 2013 a special report on “The phenomenon of racist violence in Greece and how it is combated”<sup>9</sup>. In that, it criticized the administration (mainly police authorities and school administration) but also formulated recommendations on combating phenomena which, regrettably, have been escalating both in number as well as in the intensity of the violence exercised, thus threatening social cohesion and peace and undermining the principle of equal human value and the foundations of the rule of law itself. Among these recommendations, specific amendments to the existing legislation were proposed, including the transposition in domestic law of the Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law. A year later, a positive development must be mentioned. Specifically, the Penal Code was recently amended in order to recognize as aggravating factors in sentencing the existence of racial or ethnic origin, religion or belief, disability, age, sexual orientation and gender identity motivation in crimes committed. In addition, a Bill was voted on September the 9<sup>th</sup> 2014, which included sexual orientation and gender identity as grounds of specific protection against hate speech and violence in accordance with the aforementioned EU framework decision.

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<sup>6</sup> Discrimination on the basis of racial or ethnic origin in employment, labor, healthcare and social welfare, education, goods and services

<sup>7</sup> Discrimination the basis of religion or belief, disability, age and sexual orientation in employment and labour.

<sup>8</sup> The Ombudsman monitors also gender equality in accessing goods and services in the public sector only (Dir 2004/113/EC).

<sup>9</sup> <http://www.synigoros.gr/?i=human-rights.en.recentinterventions.131435>

In any case and, despite the difficulties related to the existing anti-discrimination legislation, the joint implementation of the GO's special competency as the body promoting the principle of equal treatment and its general competence as a body protecting civil rights, allows for widening the protection provided to persons being discriminated against. Characteristic problems and recommendations issued by the GO as designated body to combat discrimination may be found in its special reports on Discrimination, issued annually<sup>10</sup>.

### ***b. Gender equality***

The Ombudsman is also an equality body for the implementation of the principle of equal treatment and equal opportunities between women and men. This involves a monitoring role concerning the implementation of the corresponding EU legislation as a unique and valuable tool to establish the equality principle in the operation of the labour market.

In September 2006, through Law 3488/2006, the Greek Ombudsman was assigned the task of monitoring the application and, generally, supporting the principle of equal treatment for men and women in employment and labour issues, in response to EU law (Directive 2002/73/EC). Since then and after the implementation of the Directive 2006/54/EC (through the law 3896/10), major developments took place in gender equality issues at the European and national level both in the public and in the private sector. The Ombudsman monitors also gender equality in accessing goods and services in the public sector only<sup>11</sup> (Directive 2004/113/EC).

In discrimination issues the GO regularly invokes EU directives in order to mobilise national authorities to regulate the issue accordingly (see 2010 Report, p. 22 ff). Such issues are parental leave for various groups of personnel (civil servants, doctors, teachers, the security forces etc.). On the basis of its findings, the Greek Ombudsman has developed a series of proposals concerning the pillars of harmonization with community law: information, prevention, remedy (2009 Report, 10-11).

In several cases the mediation of the Greek Ombudsman between citizens and public administration had a successful outcome. The acceptance of the Ombudsman's proposals led to the amendment of laws and administrative regulations to the benefit of a large number of citizens. Therefore, after the intervention of the Greek Ombudsman: (2010 Report, 6-7):

- > 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.

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<sup>10</sup> <http://www.synigoros.gr/?i=human-rights.en.recentinterventions.129381>

<sup>11</sup> By Law 3769/2009

- *National policies and legislation to be harmonized with the *acquis communautaire*.*

The public administration is not fully aware of the specific legislation on equal treatment of men and women. This leads to measures (individual and general) that are not in accordance with EU (European) or national law concerning equal treatment of men and women, thus becomes necessary the intervention of the GO.

The administration equates positive measures in favor of women with measures for the protection of maternity and the support of families.

Being also entrusted with the mission to promote equal treatment, the GO stressed in its reports that full and timely harmonization of Greek legislation with the *acquis communautaire* on equal treatment for men and women is required, as well as the compliance with the decisions of the European Court of Justice. It has recommended the familiarization of the administration with the specific issue of equal treatment for men and women. This can be achieved through the provision of continuous training to civil servants. The GO has already participated in training seminars specifically designed for Labor Inspectors. Close cooperation between the administration and the Greek Ombudsman as an agency for monitoring and promoting the implementation of the principle of equal treatment for men and women is equally important to this end.

#### ***IV. THE OMBUDSMAN'S INDIRECT ROLE IN PROMOTING EUROPEAN INTEGRATION***

##### ***a. Environment***

- *The right to environmental information and public participation*

On environmental matters, which are a crucial factor for the quality of everyday life, citizens often meet the reluctance of authorities to disclose data on industry licensing, carbon emissions etc. the GO found out a few years ago that full access to information on the environment has not yet been uniformly applied by the Greek public administration<sup>12</sup>. It had to explain to the authorities that disclosure of all environmental information, as prescribed in EU law<sup>13</sup> (as well as the Aarhus UN Convention, ratified by the European Union as a whole), enables people to pursue their right to be heard by the authorities and to ask for judicial protection. Furthermore, the right of all to access environmental information, is intrinsic to the formation of what we call an informed opinion of the people and therefore it contributes to the actual participation of the people in decisions affecting them. It must be noted that democratic participation is fundamental to good governance and environmental sustainability. The Greek Ombudsman has also in many instances recommended to different levels of administration the need to run effective public consultations upon decision-making and environmental impact assessment issues, that would avoid the ex post facto annulment of controversial works and development projects with an environmental impact.

- *Environmental liability and economic growth*

Environmental legislation is equally wide-scoped and complex, as is the object it deals with. Consequently, this causes many interpretation and technical implementation problems, while it

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<sup>12</sup> <http://www.synigoros.gr/resources/docs/en2006.pdf> p.36

<sup>13</sup> Directive 2003/4/EC on access to information, and 2003/35/EC on public's participation, replacing pre-existing secondary EU legislation.

entails difficulties in ensuring a better coordination of the various national authorities that take part in the transposition process to the national legislation and the practical implementation. Often, the result of enforcing environmental law entails a confrontation between public authorities and private interests. What is needed is a co-operation instead of confrontation, direct responsibility of entrepreneurial activities instead of command and control.

The Environment, as a collective good available to all and secured for future generations, requires alertness on behalf of the state and private sector, to ensure that economic development does not end up being a threat to human life. Thus, the European legislation on Natura 2000 and the environmental protected areas regime is a constant problem area that the Ombudsman focuses on and often invokes<sup>14</sup>. Given the fact that in many cases business interests either ignore the value of environmental conservation and protection, or function solely on the principle of cost minimisation, the Greek Ombudsman is often obliged to act in a proactive manner, using all available means in order to secure the harmonious co-existence of entrepreneurial activity with the environment. In addition to the state's obligation to protect the environment, private sector firms are required to develop a set of actions dealing with environmental issues. In such cases, the Greek Ombudsman mediated for the implementation of the Greek legal framework based on the EU environmental liability legislation<sup>15</sup>.

#### ***b. A common EU asylum system***

The dual aspect of international legal instruments on the one hand and EU secondary legislation on the other, is a characteristic feature of the procedures and conditions for the recognition, the reception and all treatment of political refugees and applicants for international protection under the UN 1951 Geneva Convention. The growing demand for refuge in Europe lead to multiple Directive provisions aiming at a common EU asylum system.

The mixed flows of immigrants and applicants for international protection in the borderline of European Union in addition to the deficiencies of an administrative system unready to process timely and effectively the merits of each case as well as the numbers of the applicants, called for the intervention of the Greek Ombudsman since the beginning of its operation, 15 years ago. Procedural safeguards of access to the asylum procedure were and still are at the core of the independent authority's recommendations on the matter, invoking EU law and UNHCR guidelines to a number of cases throughout the years. Reversing the practice of detention of asylum applicants, which should be the exception rather than the rule under Dir.2005/85/EC, raising the standards of treatment according to Dir. 2013/33/EU (recast reception directive), are some of the current issues arising from the Ombudsman's recommendations, in line with UNHCR. The tragedy of people drowned in the South-eastern sea borders (Farmakonisi, January 2014), provoked an investigation on the Ombudsman's own initiative, asking for transparency in the practices of rescue at sea, in line with the Council of Europe's<sup>16</sup> and the EU Fundamental Rights Agency's recommendations<sup>17</sup>. (It is a pending Ombudsman's investigation.)

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<sup>14</sup> <http://www.synigoros.gr/resources/docs/en2006.pdf> p.35.

<sup>15</sup> <http://www.synigoros.gr/resources/annualreport2012--3.pdf> p. 18

<sup>16</sup> *Resolution 1821 (2011), The interception and rescue at sea of asylum seekers, refugees and irregular migrants, Lives lost in the Mediterranean Sea: who is responsible?* doc.12895, 5. 04. 2012).

<sup>17</sup> *FRA. [2013] Fundamental rights at Europe's Southern Sea Borders*).

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The aforementioned examples reveal the degree of interaction between EU law and the Ombudsman's work and the important role the Ombudsman institutions may have in focusing on actual implementation of the law according to EU standards of protection. This role is even more crucial in the protection of freedom of movement of EU workers, one of the basic rights of the European Community since 1957.

## ***VI. THE OMBUDSMAN AND THE IMPLEMENTATION OF THE ACQUIS ON SOCIO-ECONOMIC RIGHTS.***

I would like to approach now some examples of the GO's intervention in view of the actual implementation of basic EU socio-economic rights. Important components and conditions of labor mobility within the EU include the recognition of diplomas and professional qualifications as well as social security rights. Professional qualifications and access to regulated professions constitute the field that most cases on nationality-based discrimination against EU nationals occur. It should also be reminded that Dir.2005/36/EC on free movement and recognition of professional qualifications applies also to third country members of the family of EU nationals and political refugees.

All Member States are responsible for regulating access to specific professions by requiring possession of certain professional qualifications, which can be obtained within the national territory. This process however may constitute a hindrance to the free circulation of professionals within the European Union. Obviously, the recognition of professional qualifications to a holder of a foreign title is a complex procedure which requires examination case by case. The competent authority in Greece for the recognition of professional qualifications is the Council for the Recognition of Professional Qualifications (SAEP), a multi-faceted administrative body seated at the Ministry of Education. The Ombudsman's investigation revealed delays in designating the members of the aforementioned Council as well as substantial disagreements between the members of the Council, due to uncertainty as to the adequacy of education that had been delivered in other member-states and the pressure put on the Administration by the representatives of corresponding professional organizations participating as members in the Council.<sup>18</sup>

Some indicative cases of access to regulated professions where the Ombudsman had to intervene include the following:

- *Recognizing prior professional experience of language teachers*

EU citizens wishing to work as language teachers in public high schools may apply to be included in the priority list for recruitment on a yearly contract. The ministry of education refused to take into account the years of prior service (teaching) in the education system of other EU countries, arguing that this service extended before the year of recognition of professional qualifications. This position stemmed from confusion between the years of prior service and the recognition of diplomas from

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<sup>18</sup> The paradox is that the cases brought to the Ombudsman mainly concern Greeks who are holders of foreign titles and return to the country. It seems that the system of administrative recognition of professional qualifications tends to protect the rights of nationals not only at the expense of EU citizens but also at the expense of Greek nationals having studied and/or worked abroad.

other countries, which in the Greek system is assimilated to the granting of the diploma and produces legal effects only *ex nunc*. Thus EU citizens would lose all benefit from their prior professional activity.

What is particularly interesting in this case is that a rule which applies to Greek nationals (most of whom have never exercised their right to professional mobility) produces indirect discriminating effects with regard to EU law (article 48 -new art. 39- of the EC Treaty).

The Ombudsman argued and succeeded to convince that prior professional experience cannot be nullified by a formal element i.e. the date of the official recognition of professional qualifications. This position was shared by the Legal Council of the State while there has been similar jurisprudence of administrative courts and the Supreme Administrative Court.<sup>19</sup>

This example shows that the Ombudsman has a role in pushing for the implementation of free movement EU legislation, but also for the clarification of a series of specific questions arising in concrete cases. The Ombudsman represents an institutional means to defend one's rights in this area, avoiding the time- and money-consuming judiciary procedures, unless as a means of last resort.

- *Conditions to operate a language school excluding indirectly EU nationals*

In a different case, a UK citizen was required to have a diploma of English as a foreign language in order to operate a language school. However, this diploma, by definition is not awarded to British citizens. The requirement was clearly geared towards Greek citizens and indirectly excluded him as an EU national from this professional activity. The administration did not appear willing to adjust when the Ombudsman pointed out that the criteria used did not conform to the jurisprudence of the ECJ.

- *Offset professional training of tourist guides in Greece*

The aforementioned Council SAEP ordered an offset training to the School of Guides of Tourist Training Organization for those possessing a tourist guide's professional qualification in EU member states. However, these Schools did not operate for two years. The Ombudsman recommended that access to the tourist guide profession should not be hindered by prerequisites that the administration was unable to meet and the Ministry of Education agreed to change the relevant measures.

- *Conditions to offer voluntary veterinary work*

A Dutch veterinary was refused to offer voluntary work in Greece because he was asked to submit a certificate of good knowledge of Greek language. The Greek Ombudsman and subsequently the Legal Council of State stated that this precondition lay outside the provisions of the relevant legislation and of Dir. 2005/36/EC and the administration withdrew the language certificate requirement.

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<sup>19</sup> <http://www.synigoros.gr/resources/docs/180862.pdf> and <http://www.synigoros.gr/resources/epistolh-stp-prouphresia-ekpaideytikwn--3.pdf> (in Greek)

- *Unemployment Registration of EU nationals*

It seems that not only access to employment but also to unemployment raises obstacles to EU nationals from domestic bureaucracy.

A circular by the Manpower Employment Organization demanded for the Registration of EU nationals as unemployed to submit a certificate of stay as EU nationals or a permanent residence permit. The Ombudsman stated that this precondition was contrary not only to Dir2004/38/EC stating that certificates of stay of EU nationals cannot be raised as preconditions for enforcing a right and as obstacles for concluding administrative procedures. It was also violating the freedom of movement principle according to the EC Treaty that is not subjected to any administrative permit. The Administration followed the Ombudsman's recommendation.

- *Permanent residence as a condition for pension supplement*

Coordination of social security systems aims at facilitating the free movement of citizens in the EU. Most social allowances do not depend on the residence, but on employment.

The 'pension supplement' is a non-contributory benefit to complement the pension under certain conditions. In order to prevent eventual abusive take-up, the Greek social security services required from potential beneficiaries from neighboring countries (especially Bulgaria), not just to prove residence, but to hold a *permanent residence* card; the latter is subject to a minimum condition of 5 years of residence (or less in some categories of beneficiaries). However, permanent residence is not a condition for access to social security benefits according to the relevant European Regulation 883/2004<sup>20</sup>. In the view of the administration, the legal basis for this practice was the rule that (according to EC Directive 38/2004 as opposed to Regulation) the right of permanent residence should not impose a burden on the welfare system of the country of residence.

The Ombudsman requested that the administration follows the rules set by the Regulation. It proposed that in order to prevent the possibility of abusive take-up of the pension supplement, the administration should use the tools provided for by the Regulation and raise the issue before the Administrative Committee for the Coordination of social security systems, instead of breaching the letter as well the spirit of European legislation. It is understandable that the issue has gained in importance now that the country goes through difficult times, since it potentially leads to a waste of resources, increases deficits and leads to further cuts for those who are in real need.

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<sup>20</sup> According to Regulation 883/2004 on Old-age pensions (art 58), 1. A recipient of benefits to whom this Chapter applies may not, in the Member State of residence and under whose legislation a benefit is payable to him, be provided with a benefit which is less than the minimum benefit fixed by that legislation for a period of insurance or residence equal to all the periods taken into account for the payment in accordance with this Chapter. 2. The competent institution of that Member State shall pay him throughout the period of his residence in its territory a supplement equal to the difference between the total of the benefits due under this Chapter and the amount of the minimum benefit

## ***V. CONCLUSION: FACTORS AFFECTING THE IMPLEMENTATION OF EU LAW***

The above examples have extensively, I believe, shown the role of the Ombudsman in the implementation of the *acquis communautaire*.

It is useful to keep in mind that in many cases regulations are or have been shaped for nationals and indirectly or even accidentally may exclude other EU citizens; furthermore, bureaucratic procedures and barriers, standardized responses to problems as well as perceptions constitute factors affecting the implementation of EU legislation in various policy fields. In reality, the issue at hand is not simply the implementation of European regulations strictly-speaking. It is rather the *adjustment capacity, the responsiveness and flexibility* of a national administrative system; its readiness to identify solutions compatible with the *acquis*.

Factors affecting administrative responsiveness can be grouped in the following categories:

### *1. Political hesitation*

This is often linked to political and/or financial concerns and leads to delayed transposition and /or implementation of incorporated EU legislation. The Greek Ombudsman has had to keep up the pressure for both.

### *2. Administrative capacity*

Lack of awareness or knowledge and experience with legislation of EU origin within public administration may explain the lack of adjustment. But further, there might be reluctance of public employees to take the initiative and responsibility to solve the issue in conformity with European legislation. There might appear a lack of flexibility in solving the problem of divergence between domestic and European norms, given that reflexes favour the implementation of domestic law.

### *3. Vested interests. Preservation of prerogatives or more generally of the status quo.*

Vested interests are often involved either in shaping the general criteria or in the individual decisions concerning, for example, the recognition of professional qualifications. These interests may be protected by the existing legislative framework while inertia works in their favor. Delay or administrative incapacity may just hide what is really at stake. The obstruction power of vested interests might be the deeper reason.

### *4. Attempt to avoid secondary negative effects of EU legislation.*

Sometimes, there is an intentional but inappropriate reaction to a real problem, a reaction with a short term view, expressed by raising further obstacles to the enjoyment of rights. This may be the case especially when financial resources are primarily the issue.

The above examples of the issues the Greek Ombudsman faces confirm that legal harmonization is an important and necessary condition but not sufficient per se for the implementation of EU law. Even after the transposition of European directives, various obstacles remain, either as remnants of a domestically-centered past, or as a result of resistance of domestic structures.

The role of Ombudsmen is therefore be very important though not always visible, since it most often deals with the everyday complications. Its importance needs to be seen in relation to what is at

stake and this is clearly more than the technicalities of the implementation of legal rules. It is the perception of EU as a common space, with common values and standards on the basis of equality and freedom, good governance and the Rule of Law. These shape the common European identity. This is how Ombudsman institutions can contribute to EU integration.