the federal **Ombudsman**

a bridge between citizens and the public services

ANNUAL REPORT 2010

the federal **Ombudsman**

a bridge between citizens and the public services

Annual Report 2010

Published by: Guido Schuermans & Catherine De Bruecker
Hertogsstraat 43 Rue Ducale
1000 Brussels

Realisation: Finpress

Mr Speaker of the House of Representatives,
Mr Chairman of the Petitions Committee,
Honourable Members of Parliament,

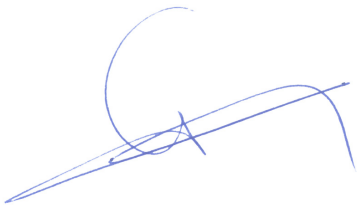
In accordance with Article 15 of the Federal Ombudsman Act of 22 March 1995, we have the honour of submitting the report of the Federal Ombudsman for 2010.

We hope that you will enjoy reading this report and are at the entire disposal of the Lower House of Parliament to present and comment on it before the Petitions Committee and the standing committees.

Yours faithfully,

The Federal Ombudsmen

Catherine De Bruecker



Guido Schuermans

Preface

As every year, this report for 2010 provides a critical view by citizens of the federal public services, but also illustrates the unwavering determination of the federal authorities to improve the quality of service to users.

Our fellow citizens accordingly entrusted us with no fewer than 8,231 complaints and requests for information during the year under review.

This report comprises four parts:

Part I covers the operation and management of the institution.

Part II contains the general figures and graphs: number of complaints received, admissibility rate, evaluation, result, complaint processing time, etc.

Part III provides a thematic approach to complaints processed, illustrated with striking samples from practice.

Part IV contains the general recommendations to Parliament and the official recommendations we sent to the federal administrative authorities in 2010, as well as a summary of the follow-up of recommendations from previous years.

We wish to express our warmest thanks to the many staff members of the different federal public services whom we contacted in 2010 for their active cooperation in helping to solve individual cases and applaud the positive commitment of the directors of these services in seeking solutions to structural problems, through constructive dialogue, with proposals and draft recommendations, for the shared goal of offering quality public service to all.

Special thanks are in order for the team of the Federal Ombudsman, not only for its contribution to the preparation of this report, but also for the work it performs on a daily basis, lending a heedful ear to the difficulties encountered by citizens, to find fair solutions with the administrative authorities.

1. Operation and management

Survey, challenges and prospects

Introduction

The year 2010 was marked by two anniversaries. First, the institution celebrated the fifteen years of the Federal Ombudsman Act of 22 March 1995 establishing the federal ombudsmen. Second, in November 2010, the federal ombudsmen themselves completed the fifth year of their term of office.

These anniversaries provided above all an opportunity to take stock of the progress made and to examine the prospects.

The institution availed itself of this anniversary to hold a colloquium in the Federal Parliament entitled *"A consolidated Federal Ombudsman for the 21st century: need for reforms?"* Organised under the auspices of the "Centre de droit public" [Centre for Public Law] of the (French-speaking) Free University of Brussels, and the "Instituut voor de Overheid" [Public Management Institute] of the Catholic University of Leuven, this colloquium focused on the consolidation of the institution on three fronts: constitutional, institutional environment and competencies consolidation. A volume on the proceedings of the colloquium will be published in the second quarter of 2011, containing the material needed to propose concrete lines for constitutional, legislative and administrative reforms.

The results of our mission as federal ombudsmen after six year in office are summarised below together with actions taken to implement our stated mission and the assessment made year after year of the progress in relations between the federal administrative authorities and the citizens.

Finally, the challenges for the federal authorities and the prospects for the institution are set out.

1. Survey

In November 2005, we stated our mission in the following terms:

As an independent institution, the Federal Ombudsman's task is to:
- *Analyse complaints in a rapid, in-depth and impartial manner;*
- *Implement appropriate and adapted solutions;*
- *Use transparent and correct procedures respectful of everyone;*
- *Make the service accessible to whoever needs it;*
- *Improve the way the federal administrative authorities function and promote the right to good governance;*
- *Convince the federal administrative authorities of the added value of a fair redress in the event of a justified complaint.*

2006

The Federal Ombudsman developed a new complaint evaluation procedure. Focused on the evaluation of the complaint itself against a set of Ombudsman criteria, the new procedure was intended to be more visible for citizens and more transparent for the administrative authorities.

The annual report was henceforth geared to the subject matter of the complaints, without focusing on the administrative authority at issue, so as to draw valuable lessons for all administrative authorities.

Administrative delays constituted the prime concern of citizens: they expect the administrative authority to inform them how long it will take to process their complaint[1]. The Department of Immigration and Naturalisation must catch up with the backlog and review certain practices[2].

2007

The focus in that year was on making the Federal Ombudsman better known and to enhance the accessibility thereto: information campaign, enhancement of local services provided jointly with the regional and community ombudsmen, ombudsman week, cooperation with the European Ombudsman to improve the processing of complaints concerning the implementation of European law, a study day on the "ombudsman and foreign nationals," etc.

Citizens cannot find the information they need easily at the federal level; they want an accessible and interactive central information point.[3]

The complaint procedure for tax matters had to be reviewed. Moreover, the irrevocable effect of the board's decision may not deprive taxpayers from access to the ombudsman before taking the matter to court.[4]

2008

Continuing the accessibility drive, the Federal Ombudsman set up a toll-free information line (0800 99 962) for the citizens.

For the first time since the institution was created, the House of Representatives entrusted the Federal Ombudsman with investigative missions: one on the functioning on certain closed centres managed by the Department of Immigration and Naturalisation, and the other on the functioning of open centres managed and approved by Fedasil (the federal agency for the reception of asylum seekers).

Internal circulars, lack of clarity, contradictory decisions, etc. on the part of the administrative authorities at times put the trust and confidence of citizens to the test. The recommendations are made for the sake of legal security.[5]

The backlog in certain regional departments of the Federal Public Service Finance is alarming.[6]

2009

It is widely recognised that the ombudsman's mission consists of solving cases of "poor governance" and of enhancing "good governance." But what do these concepts cover? The Federal Ombudsman publishes a summary of "Ombudsman criteria".[7]

In June 2009, it submitted the reports of the two investigative missions it had been entrusted with by the House of Representatives.

1 GR 06/01, Annual Report 2006, pp. 55-56.
2 Annual Report 2006, p. 61.
3 GR 07/01, Annual Report 2007, pp. 57-58.
4 Annual Report 2007, pp. 58-62.
5 Annual Report 2008, pp. 47-51.
6 Annual Report 2008, pp. 60-64.
7 Annual Report 2009, pp. 11-15.

Excessively standardised information, impersonal communication, exclusive use of electronic means, etc… the administrative authorities are counting on new information and communication technologies with a vengeance, thereby excluding a segment of citizens from accessing their services.[8]

The Federal Ombudsman's recommendations focus on equal treatment when it comes to adapting the regulations or administrative practices.

2010

The Federal Ombudsman assesses the progress made ever since the Federal Ombudsman Act was enacted 15 years ago. How should the institution develop to assert its function in our state of law and order? It organised a colloquium in the Parliament entitled: *"A consolidated federal ombudsman for the 21st century: need for reforms?"*

Whether it be for delays, errors, changes or new measures, citizens are in fact complaining essentially about the lack of information from the public authorities. The federal authorities must adopt an efficient information and communication policy based on the principles of transparency, pro-activity and fairness to the citizen.[9]

The other recommendations have to do with fundamental rights (right to vote, right to marriage, right to human dignity, equality).

2. Challenges for the federal authorities

The federal ombudsmen cite three challenges which deserve particular attention from the Government and from Parliament from the point of view of relations between the citizen and the federal authorities.

1. Enhancement of good administration

Code of Administrative Conduct

The Lisbon Treaty enshrined the Charter of Fundamental Rights of the European Union in objective binding European rules of law. Article 41 of this Charter proclaims a right to good administration.

The European Union, as well as a number of States, have developed a *Code of Administrative Conduct* that spells our for citizens and for civil servants what good and poor governance means thereby providing a frame of reference for relations between the administrative authorities and the citizens. The federal authorities would do well to adopt such a code as well.

Appropriate processing of complaints at the first level

It is indispensable to continue the development and generalisation of a structured, harmonised, and even regulated procedure for processing complaints about the federal authorities.

Central information point

8 GR 09/01, Annual Report 2009, p. 47.
9 GR 10/01, pp. 49-50

The number of requests for information and guidance received each year by the Federal Ombudsman illustrates the need citizens have for a central service that provides basic information and guides or refers specific requests efficiently to the competent services. The federal administrative authorities cannot simply make do with an electronic portal that gathers information already available on the Internet. The citizens expect a (free) information line from the federal authorities (cf. GR *07/01 - Annual Report 2007*).

Administrative transparency on processing periods

One of the major grievances citizens have about the administrative authorities is the difficulty in obtaining reliable information within the period that said authorities will process their case, and the ensuing feeling of having to depend on the good will of the authorities. The Federal Ombudsman insists that the federal administrative authorities be required to indicate the period within which they will take a decision (cf. GR *06/01 - Annual Report 2006*).

E-government

In all the administrative procedures that rely on new information technologies, the authorities must provide appropriate advice and guidance measures to ensure equal treatment for all users (cf. GR *09/01 - Annual Report 2009*).

2. Enhancement of good governance

Reception crisis

The Federal Ombudsman has since July 2009 cited the need to solve the persistent reception crisis reflecting the failure of the Federal State to apply the law and to respect fundamental rights enshrined in national and international law when it comes to several vulnerable groups (asylum seekers, unaccompanied foreign minors, needy children, etc.).

An administrative authority such as Fedasil cannot hide behind force majeure to refuse knowingly to apply the law. The agency is moreover guilty of direct discrimination when it excludes a particular category of beneficiaries of the legislation on reception. The solution to this crisis requires a better coordination of the roles between the different actors (cf. *OR 09/01, OR 09/02* and *OR 09/03 - Annual Report 2009*).

Sentence enforcement

More than five years after it was adopted, whole sections of the Prison Principles Act concerning the penitentiary system as well as the legal status of the detainees (Dupont Act) are not applied because of the lack of implementing Royal Decrees. Whereas the articles that lay down the fundamental principles for the enforcement of custodial sentences entered into force in the beginning of 2007, many sections of the legislation that transpose these principles into concrete measures remain unenforced. This situation causes serious legal insecurity for detainees, leading to conflicts between the detainees and the penitentiary authorities, whilst the existing system of surveillance is not effective and the mechanism for processing complaints provided by the law is not in force (cf. *GR 10/03* and *OR 10/01 - Annual Report 2010*).

When it comes to probation, a detainee may not be de facto able to meet the conditions set by the court nowadays. This is particularly the case when the reclassification of the detainee requires treatment or monitoring in a hospital, and the hospitals under the purview of the Communities or the Regions, refuse to admit him. Owing to the current situation, detainees return to society after serving their full sentence but the problem that led them to commit serious offences has not been treated, although said problem (psychiatric disorder, addiction, etc.) was deemed serious enough and requires long-term

treatment. Such situations are harmful to both the detainee and society. The reclassification of detainees requires better coordination between the Federal State and the federated entities (cf. GR 06/08 - Annual Report 2006)

Adequacy of the means allocated to the administrative authorities

Certain services are not in a position to meet the objectives set for them because they are not allocated sufficient means and resources: the SECAL (Maintenance Claims Service), Fedasil, the Department of Immigration and Naturalisation, the directorate general of primary health care and crisis management, etc. Our reports are teeming with examples in this sense.

Adequate means and resources are indispensable to guarantee the quality of service provided to citizens and to meet the objectives set for public service.

3. Reinforcement of human rights

Belgium has no National Institution of Human Rights in accordance with the Paris Principles to date. Furthermore, unlike other ombudsmen in the world, the Belgian parliamentary ombudsmen have no explicit powers to promote and protect human rights, either at the federal or the federated levels.[10]

Our country needs an independent mechanism to oversee penitentiaries,[11] given the extreme vulnerability of a detainee to the risks of inhuman or degrading treatment.

3. Prospects for the institution

Consolidation of the Ombudsman at federal level

In the current economic crisis, when public services are under severe pressure from heightened demands for savings and efficiency, the respect owed to the law, the consideration of the citizen as an individual, and the quality of service provided become secondary at times.

An independent and impartial third actor, the ombudsman enables citizens to get an administrative action corrected when necessary. The proposals and recommendations of the Federal Ombudsman identify the improvements that should enable the administrative authorities to perform their primary task, i.e. to provide fair, efficient and quality public service to citizens. In parallel, it safeguards the administrative authorities from unfair or unreasonable criticism from citizens who have unrealistic expectations from them.

Defending the public interest for the sake of good governance is consequently at the heart of the institutional ombudsman's missions.

A consolidation of the Federal Ombudsman should be considered to enable the institution to carry out this delicate mission fully. The House of Representatives had actually given an important signal in this regard during the previous legislature by adopting unanimously a bill to enshrine the institution in the Constitution.

10 With the notable exception of the brand new ombudsman of the German-speaking Community, as well as the general representative for the rights of the child and the commissioner for the rights of the child.

11 As Belgium has undertaken by signing the UN Optional Protocol to the Convention Against Torture (OPCAT) in October 2005.

Follow-up of the Ombudsman's recommendations and investigation reports

The Federal Ombudsman may recommend to the administrative authorities to change an individual decision or administrative practice. It may make all such recommendations to the House of Representative as it should deem necessary, whether to amend a regulation or particular legislation or to put a stop to contestable administrative practices.

Nevertheless, there is no formal procedure for monitoring recommendations made to the administrative authorities, though, given the objective to enhance good governance, such a procedure seems necessary, and would moreover promote transparency for the administration's response to the work of the Federal Ombudsman.

The same reflection applies to the monitoring of the investigation reports requested by the House of Representatives.

Efficient coordination between the administration's complaints services and the ombudsman

It is important to distinguish the process of lodging a complaint with the administrative authorities and the recourse to the ombudsman. A discontented citizen will first turn to the administrative authorities. If he does not get an answer within a reasonable period or if the answer is not satisfactory, he may then turn to the second level, i.e. the Ombudsman, an external and impartial body. The Ombudsman is called upon to delve deeper into cases that require taking a distance from the administrative culture of the organisation concerned. It is essential for the citizen that each level play its role fully.

Efficient coordination between recourse to the Ombudsman and recourse to the courts

The Federal Ombudsman is currently required to suspend the examination of a complaint as soon as organised legal or administrative actions are introduced on the same case. The pertinence of this principle of una via electa is nonetheless strongly challenged in practice, and more and more voices are being raised in favour of having – if not the principle reversed – at least the Ombudsman intervene in parallel with a legal or administrative action.

Protection of human rights

Like the National Institutions of Human Rights, the ombudsmen are key actors for the protection and promotion of human rights and the pre-eminence of the rule of law. The Commissioner for Human Rights at the Council of Europe has for three years been gradually developing, together with them, a system of efficient cooperation on this front.

The UN Committee on the Rights of the Child recently urged Belgium[12] to vest ombudsman institutions with full powers to hear and examine complaints concerning violations of the rights of the child and to take appropriate action.

On 21 December 2010, the UN General Assembly adopted a resolution concerning *"the role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights."*[13]

12 Final observations by the UN Committee on the Rights of the Child to Belgium, adopted in its 54th session, on 11 June 2010.
13 A/RES/65/207.

Conclusion

We shall leave the last word to Professor Bernard Hubeau, in charge of drawing conclusions from the colloquium held to commemorate the 15th anniversary of the Federal Ombudsman Act. He summarised the matter as follows:

" (...) It is no longer a matter of discussing "reasons to exist" or of broaching "existential issues," or ontological or legitimising questions about how the Federal Ombudsman functions. For this institution is widely recognised as an alternative means for solving conflicts which is complementary to other administrative or judicial procedures. The requirements of independence, of the right to investigate, etc. are obviously not negligible – quite the contrary. But after fifteen years of the board of federal ombudsmen and about twenty years of mediation in our country, we have gone beyond that phase once and for all[14] *- and it's a good thing too. The number of complaints, whether or not by comparison with the number of proceedings before the Council of State, attests as much. The volume with the proceedings of the colloquium broaches far more questions as to prospects of deepening (consolidation, anchoring, etc. – a multiple concept) rather than widening the function. At issue, therefore, is a better integration of the institution and a consolidation of its position -- a legitimate concern after fifteen years. It is a crucial moment in the development of a recent institution, as can be gauged abroad as well."*

In the course of the day, the reflection on reforms likely to bolster the place of the Federal Ombudsman in the Belgian federal structure went in three directions:
- Constitutional consolidation;
- Consolidation in the institutional environment;
- Consolidation of competencies.

And Professor Hubeau concluded:

"Valuable ideas have been put forth about how to consolidate the Ombudsman. We must hope that these ideas are heard by those who have the power and the opportunity to adopt them. These are not only our elected officials: our scientists, administrative authorities, mediation services, the citizens themselves, etc. all have their role to play. At times, we are against a recovery of ideas but here, on the contrary, we hope that such a recovery will produce its effects. This interest, confidence and enthusiasm on the part of the academic world should be expandable to the policy and to mediation circles. The reversal of the rule about the suspension of court proceedings, for instance, was far more contested a few years ago. The simple idea of discussing the matter was certainly not accepted by everybody. This propitious climate for ideas must be capitalised on. An initial step forward is required, i.e. to take stock of all the proposed reforms.

(...) Make use of the Lazarus effect, regroup and screen ideas and discuss them yet again. Nearly all these proposals are in line with the traditional, continental mediation model developed and used in many European countries. This is a perfect opportunity, in our view: we shall soon see whether there is any support in this direction, whether the requisite knowledge is available, and whether there are people who want to defend these proposals and the institutions to implement them."[15]

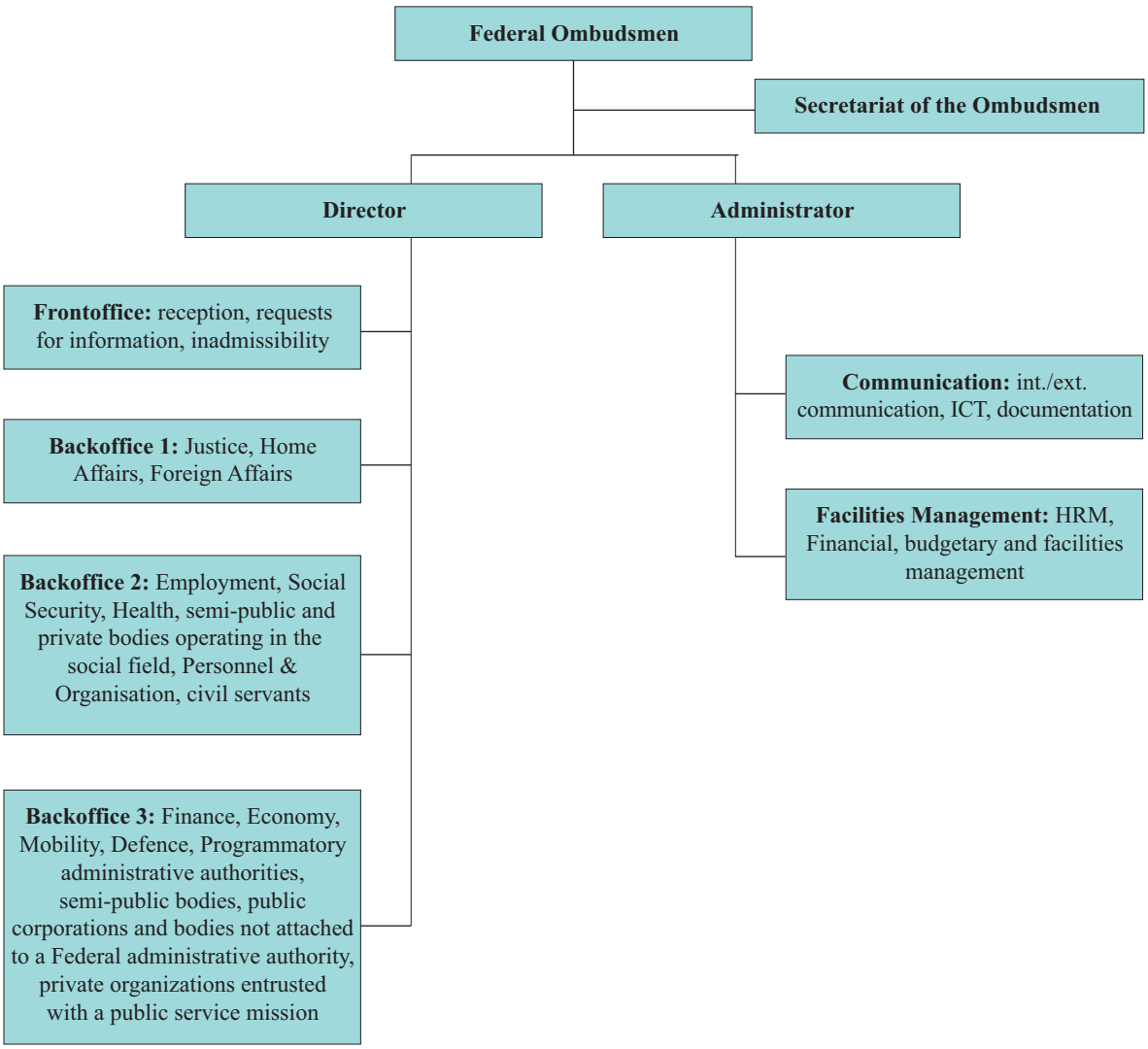
14 R. ANDERSEN et B. HUBEAU, De Ombudsman in België na een decennium/ L'Ombudsman en Belgique après une décennie, Bruges, Die Keure, série Interdisciplinair Centrum voor Ombudsmanstudies/Centre de Recherche Interdisciplinaire sur l'Ombudsman, 2002.

15 Bernard HUBEAU, "A strinkingly Belgian scheme Un médiateur fédéral pour le 21e siècle : quelques conclusions", in Actes du colloque Un médiateur fédéral consolidé pour le 21e siècle : des réformes nécessaires ?, Limal/Antwerpen, Anthemis/Intersentia, 2011, pp.221-237.

Management of the institution

Structure of the organisation

The Front Office handles the first contact with the citizen who calls on the Federal Ombudsman. It investigates the admissibility of incoming complaints, processes requests for information and, insofar as possible, refers the complaints not intended for the Federal Ombudsman to the right authority. The 3 back offices deal with complaints relating to the respective fields. The Communication department supports and implements the communication policy of the federal ombudsmen, whereas the logistical staffs are responsible in particular for the management of human resources and the financial and material management of the institution.



Personnel situation and management

On 1 January 2011, the institution had 47 employees, divided over 4 levels, as shown in the table below.

Grade	Language		Gender		Legal Status		Total workorce in FTE[3]	Staff Framework Total
	F	N	M	F	Statutory	On contract		
A	13	15	14	14	18	10 (a)	28	24(+4)
B	6	8	4	10	8	6 (b)	14	12(+2)
C	1	1	2	0	0	2	2	2
D (c)	2	1	0	3	0	3	2.5	(2.5 FTE)
Total	***22***	***25***	***20***	***27***	***26***	***21***	***46.5***	***38 (+8.5)***

(a) of wich 4 contract staff members, article 4 of the establishment plan (urgent and temporary need).
(b) of wich, 2 contract employees for the front Office, article 4 of the establishment plan (urgent and temporary need).
(c) Cleaning staff, equivalent to Level D, article 4 of the establishment plan (urgent and temporary need): 3 agents (2.5 FTE)

The workforce has remained unchanged compared to the situation as at 1 January 2010.

To enable us to continue to provide quality service to citizens in spite of the constantly higher number of new cases (+ 82.3% in four years), we asked the House of Representatives to bolster our operational services under the budget for 2011 with four full-time employees under contract (two case managers with university degrees and two administrative staff, one French-speaking and one Dutch-speaking).

An external recruitment procedure initiated in 2010 in cooperation with Selor should fill two positions for auditors – coordinators (1 French-speaking and 1 Dutch-speaking). This procedure had not been yet concluded at the beginning of 2011.

The "Institut de Formation de l'Administration fédérale" (IFA) [Federal Administration Training Institute] is regularly called upon to provide employees with opportunities to improve their administrative skills, optimise their personal efficiency, and to develop their managerial skills. Employees moreover regularly attend study days or external training courses in their field (law on foreign nationals, social and tax law, civil service management, communication, etc.). In November 2010, three employees attended the "Sharpening your teeth" training course given in Vienna by the International Ombudsman Institute (IOI). Dedicated to systematic surveys, this training course will be used to conduct such surveys.

Financial and budgetary management

The estimate and monitoring of the Federal Ombudsman's expenditures have for years relied on a long-term projection for personnel expenditures. Since 2009, the various endowed public institutions henceforth submit a multi-year estimate spread over three years to the House of Representatives for their overall expenditure budget.

The Court of Audit checks the financial and budgetary accounts at the end of every budget year.

The basic budget figures for 2009-2011 are given in the table below.

Budgetary year	Accounts 2009	Budget 2010	Budget 2011
Expenditures	4 238 667,17	4 729 000,00	5 228 850,00
Financement	4 519 737,40	4 729 000,00	5 228 850,00
Endowment	*4 108 000,00*	*4 590 000,00*	*5 017 250,00*
Transferred surplus	*397 290,00*	*139 000,00*	*211 600,00*
Other revenues	*14 447,40*		
Balance	281 070,23		

The heading 'Accounts 2009' mentions, for expenditures in 2009, the amount of the actual expenditures made; the headings 'Budget 2010' and 'Budget 2011' the amount of the total expenditure allocations granted by the House of Representatives. These expenditure allocations are financed by the proprietary endowment (the amount entered each year in the federal government's general expenditures budget), the surplus carried forward from previous years and other revenues.

Facilities management

The project to upgrade our IT network was completed in the first quarter of 2010. An efficient, robust and flexible platform will enable us to meet rapidly new IT needs and to offer, as of now, new applications to our employees, including the complaints management system.

To this end, following a preliminary study conducted in 2009, in the first half of 2010 we issued an invitation to tender for a new complaints management system, for which we called on the assistance of the non-profit association Smals asbl, an ICT service provider to the federal public service, to finalise the technical specifications, examine the offers of the tenderers, and then monitor the performance of the missions awarded to the external service provider.

The winning tenderer has undertaken to develop the new application in cooperation with an internal project team in the second half of 2010. This application will be put into production in 2011 and will be used to continue to optimise our work procedures in the coming years.

II. General figures

1. Introduction

In this part, general statistical data provide an overall view of the number of case files, language, means of communication used, processing phase, admissibility and forwarding of case files.

This Annual Report pertains to the entire calendar year 2010. The figures contained in this part reflect the situation as at 31 December 2010.

To give a clear picture of the case files introduced in the year under review, unless expressly indicated otherwise, the tables and graphs will be based on the new case files for the period, thereby avoiding case files from previous years, still in progress in 2010, from being booked twice. The case files introduced in previous years are indicated globally in the comments and explicitely included in certain graphs, so that the overall workload per year is illustrated all the same.

Inasmuch as possible, the general figures compare developments in the year 2009 and 2010.

The registration of the case processing phase was fine-tuned in 2010. The information phase provided by the rules of procedure is henceforth subdivided into the admissibility analysis phase (information – analysis) and the admissible complaint examination phase (Information – admissible complaint). A perfect comparison with the data for 2009, during which this fine-tuning had not yet been carried out, is consequently not possible. The reader should bear in mind that the figures for 2009 established on the basis of admissible complaints as published in the Annual Report 2009 include complaints not yet definitely established to be admissible. [16]

2. General Statistics

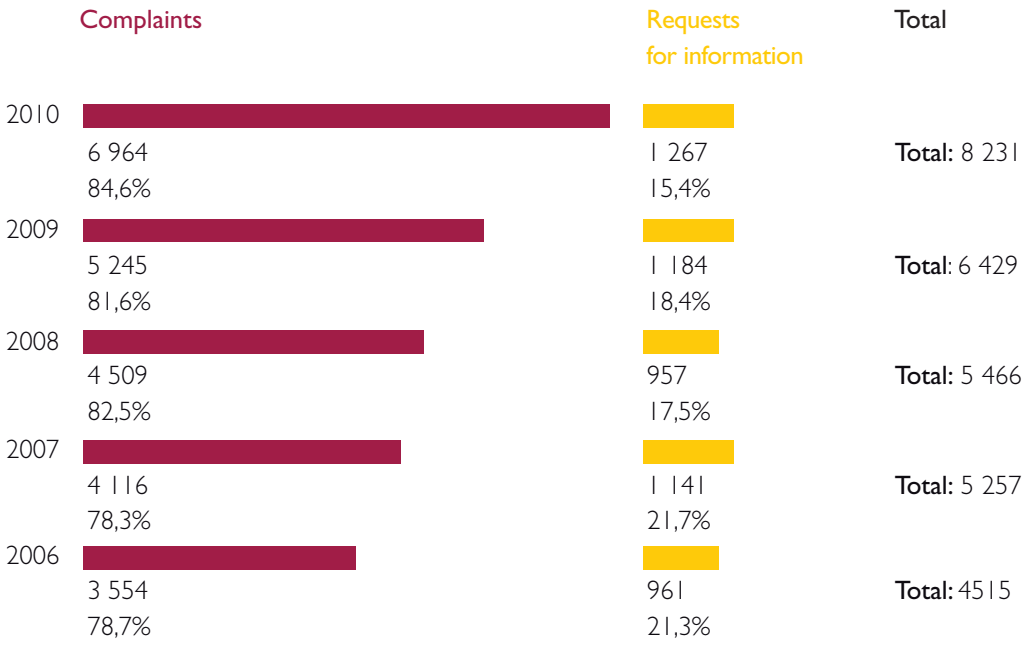
2.1. New case files

The total number of new case files in 2010 amounted to 8,231, including 1,267 requests for information (compared with 6,429 new case files in 2009, including 1,184 requests for information). This is the highest number of new files registered since the office of the Federal Ombudsman was created fourteen years ago. The significant increase in the number of case files (+ 28%) occurred mainly in the "Authority Departments" sector.[17] The drop in the proportion of requests for information in 2010 compared with 2009 is worth noting (-3%).

16 The statistics contained below in points 2.4., 2.5., 2.8. and 2.9.

17 Cf. point 2.10. New admissible complaints per sector.

New case files: comparison 2006 – 2010

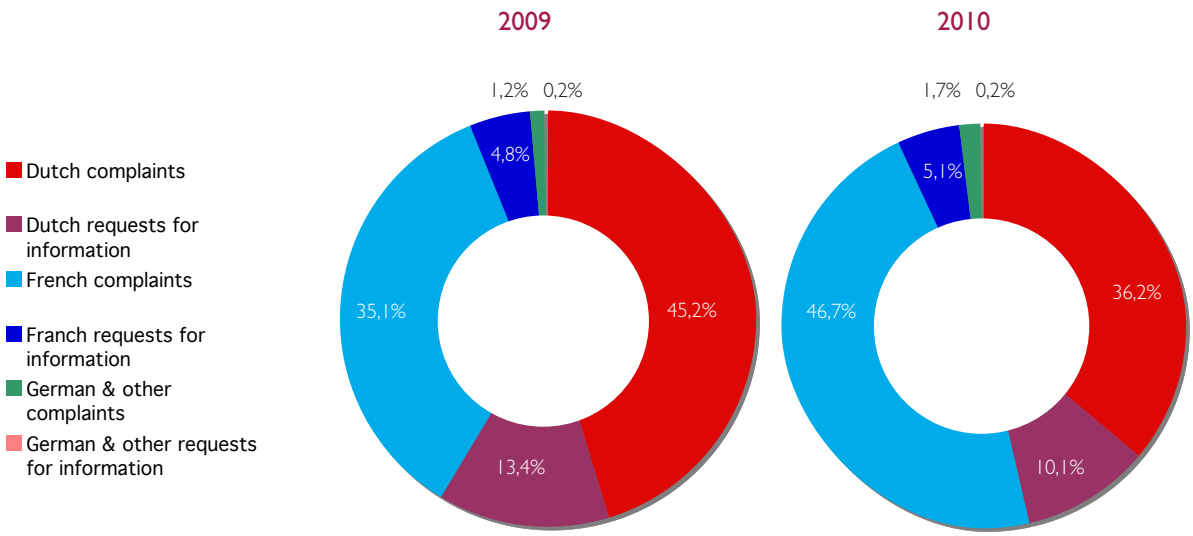


In addition to complaints and requests for information, the Federal Ombudsman receives phone calls with requests for information that are not booked as case files, as they are answered immediately by the Front Office. In 2010, the Front Office recorded 9,273 telephone calls. 2,521 calls did not lead to the opening of a case file. The toll-free telephone number recorded 5,149 calls.

Over a period of fourteen years, the Federal Ombudsman has registered 60,027 case files, including 48,281 complaints.

2.2. New case files by language

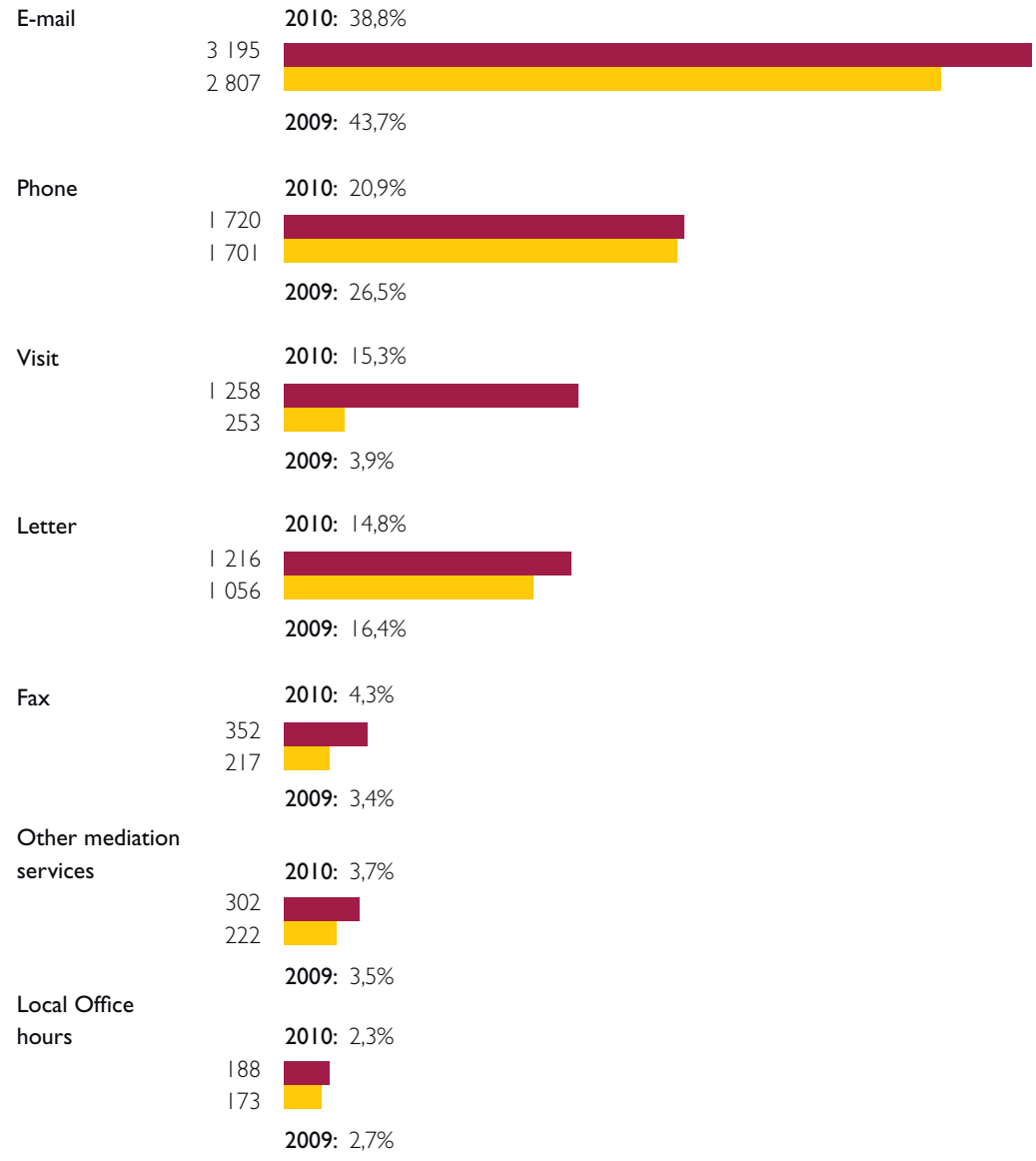
New case files by language : comparison 2009 - 2010



2.3. New case files per means of communication

The means of communication indicates how a complaint was lodged or a request for information made. The predominance of electronic means (by e-mail or via the Federal Ombudsman's website) over the post was confirmed yet again in 2010. The most pronounced trend in 2010 is the very strong increase of visits at the institution's headquarters (+ 1,005 compared with 2009), most of which entailed complaints relating to asylum and immigration authorities.

New case files by means of communication



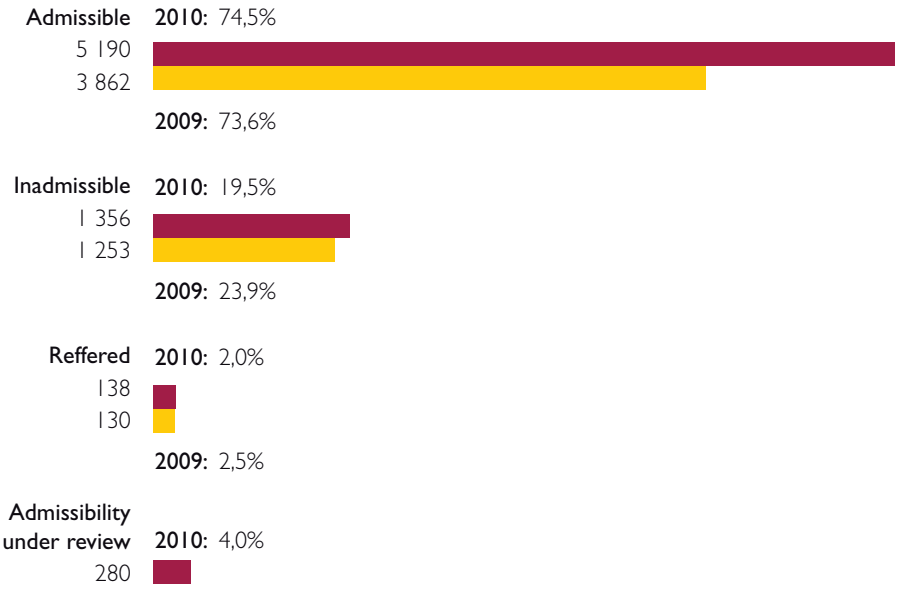
2.4. Admissibility of new complaints

For the first time, statistics show the number of claims still being examined to determine whether they were admissible as at 31 December of the year under review.

Of the 6,964 new complaints, 1,356 were inadmissible and 138 were forwarded to another Ombudsman Service. 5,190 were declared admissible.

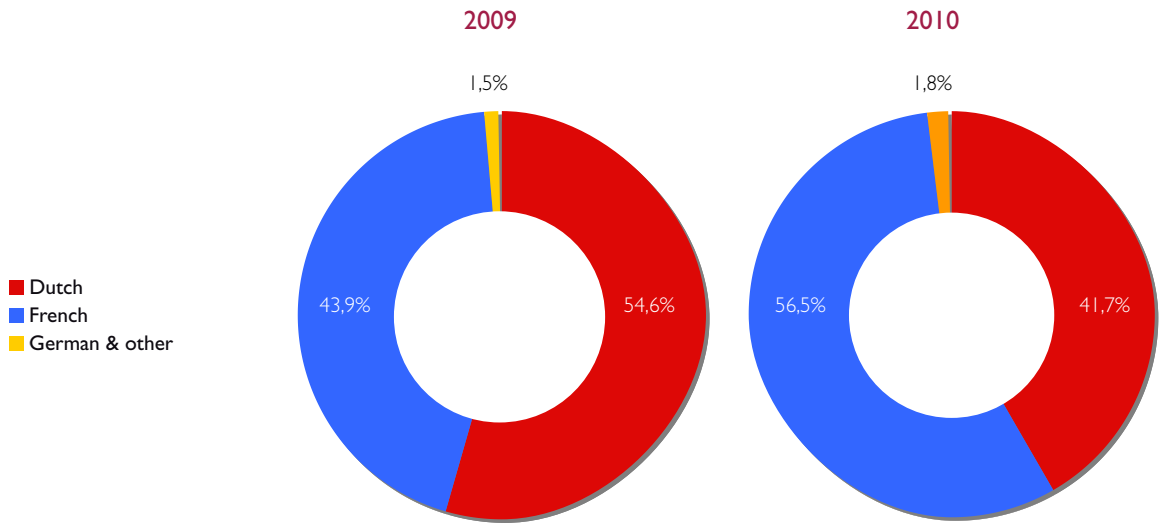
The proportion between the admissible and inadmissible case files remained nearly the same as that in 2009.

Admissibility of new complaints



2.5. New admissible complaints by language

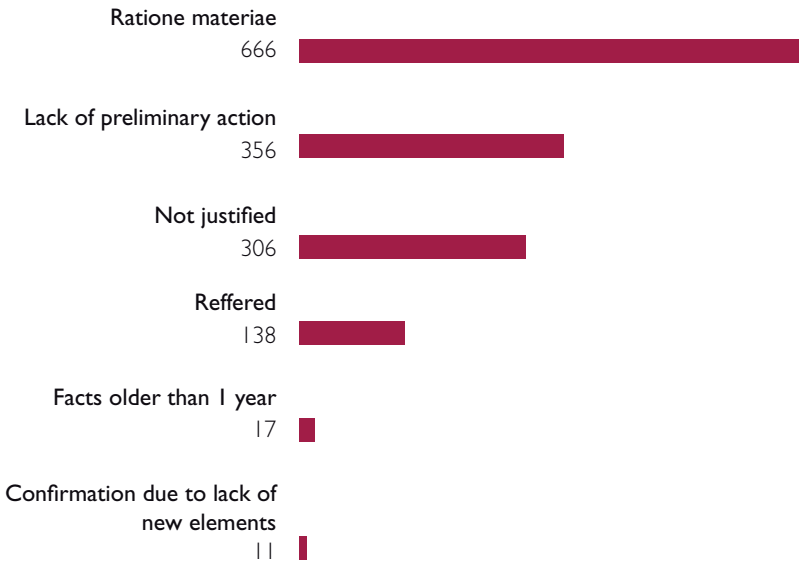
New admissible complaints by language : comparison 2009 - 2010



2.6. Breakdown of inadmissible complaints

This graph shows the number of complaints per reason for inadmissibility as set out in the organic law and the rules of internal procedure of the Federal Ombudsman. Referrals are here considered as a category of inadmissible complaints. The high number of case files in the "clearly unfounded" category is explained, for more than half (177 complaints), by complaints relating to the regularisation campaign of autumn 2009 considered by the Federal Ombudsmen as clearly premature, as the reasonable period that the administrative authorities have to process a request had not yet expired at the time that these complaints were lodged.

Breakdown of inadmissible complaints



2.7. Complaints referred

When a complaint concerns a federal, regional, municipal or local administrative authority, which has its own ombudsman by virtue of a legal regulation, it is systematically and without formalities referred, and registered as such in the statistics.

Destinations of complaints referred	2010	%
Energy Mediation Service	27	19,5%
Mediation body for the telecommunication sector	20	14,5%
Pensions Mediation Service	20	14,5%
Flemish Ombudsman	18	13,0%
Mediation body for the Postal Office	12	8,7%
Ombudsman of the Walloon Region	10	7,2%
Supreme Council of Justice	9	6,5%
Mediation body for the National railroad Company	8	5,8%
Local mediation bodies	7	5,1%
Supervisory Standing Committee for the Federal Police («P» Committee)	3	2,2%
Ombudsman of the Franch-speaking Community	3	2,2%
General representative of the French-speaking Community for the rights of the child	1	0,7%
	138	

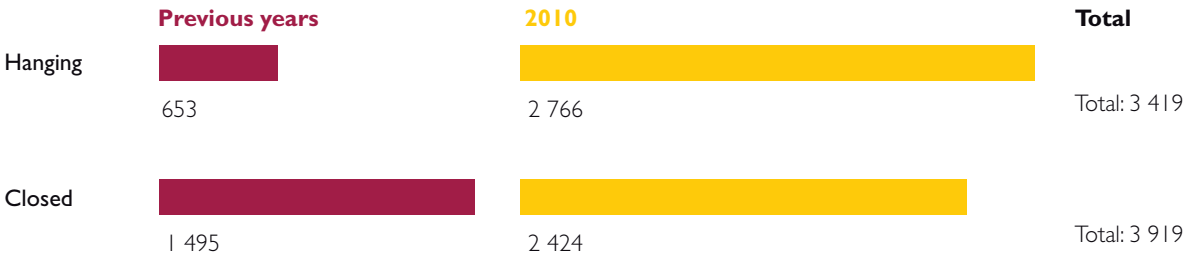
2.8. State of admissible complaints as at 31 December 2010

At the end of the previous year, there were 2,137 case files to be processed (submitted in 2009 or in previous years). 101 of these case files were declared inadmissible or referred to another ombudsman, whereas 112 case files closed in 2009 had to be re-opened in 2010[19]. Consequently, the number of complaints to be processed in the beginning of 2010 must be increased by 11. Of the remaining 2,148 admissible complaints of the previous years, 1,495 were closed in 2010, so that there were still 653 complaints in progress as at 31 December 2010. Of the 5,190 admissible complaints that were lodged in 2010, there were still 2,766 in progress as at 31 December 2010.

The total number of complaints closed was up: 3,919 in 2010 compared with 3,641 in 2009. Nevertheless, the number of complaints still to be processed at the end of the year increased from 2,137 on 31 December 2009 to 3,419 (2,766 + 653) on 31 December 2010 (+ 1,282 complaints) – accountable by the increase in the number of admissible complaints for this year (5,190 in 2010 compared with 3,862 in 2009).

It is worth noting that 644 of the admissible complaints concern the processing time of regularisation applications by the Department of Immigration and Naturalisation which the Federal Ombudsman has decided not to process individually any longer but to group them.

State of admissible complaints as at 31 December 2010



An admissible complaint is closed when the result has been notified to the complainant (3,824) or when the examination of the complaint has been suspended (organised legal or administrative action: 95).

19 Among which some fifty complaints concerning certified training courses organised by the Federal Administration Training Institute.

2.9. New admissible complaints per administrative department: trend in 2009-2010

The following tables show the distribution in the number of new admissible complaints in 2009 and 2010 among the different administrative departments. A distinction is drawn between complaints by users and "complaints by civil servants".

Complaints by civil servants are lodged against their own (current, former or future) administrative department and concern a support staff or personnel service (support service) or an operational service (e.g. a complaint against an immediate superior).

New admissible complaints per administrative department (with the exception of complaints lodged by civil servants)

	2010	2009
Chancellery of the Prime Minister	2	1
Personnel & Organisation	31	127
Information technology & Communication	4	5
Justice	60	84
Home Affairs	2432	972
Foreign Affairs, Foreign Trade & Development Co-operation	184	128
Defence	1	3
Finance	1232	1146
Employment, Labour & Social Dialogue (not including semi-public bodies operating in the social field)	14	7
Social Security (not including semi-public bodies operating in the social field)	184	301
Health, Food Chain Security & Environment	64	55
Economy, SMEs, Self Employed & Energy	137	146
Mobility & Transport	209	154
Federal Public Planning Servics	1	3
Semi-public bodies operating in the social field	320	377
Semi-public bodies, public corporations and bodies not attached to a Federal administrative authority	67	27
Private organisations entrusted with a public service mission	274	304
Others	15	31
	5231	**3871**

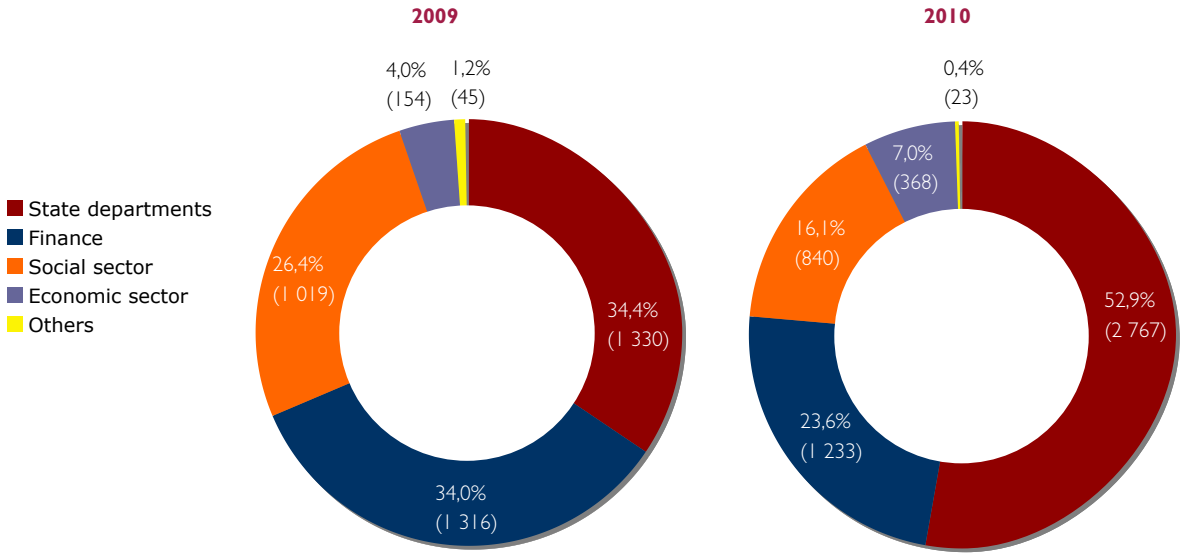
New admissible complaints lodged by civil servants per administrative department

	2010	2009
Justice	17	11
Home Affairs	3	4
Foreign Affairs, Foreign Trade & Development Co-operation	10	6
Defence	4	7
Finance	19	24
Employment, Labour & Social Dialogue (not including semi-public bodies operating in the social field)		1
Social Security (not including semi-public bodies operating in the social field)		2
Health, Food Chain Security & Environment	3	3
Economy, SMEs, Self Employed & Energy	1	1
Mobility & Transport	1	1
Federal Public Planning Servics	1	1
Semi-public bodies operating in the social field	2	9
Semi-public bodies, public corporations and bodies not attached to a Federal administrative authority	4	10
	65	**80**

Since a complaint can pertain to different governmental authorities, the number of complaints per administrative department is always higher than the number of admissible case files (5,231 + 65 = 5,296 authorities concerned; for 5,190 new admissible complaints in 2010).

2.10. New admissible complaints per sector

New admissible complaints per sector (not including lodged by civil servants)



After three successive years of decline, the share of the "Authority Departments," the sector under which the immigration authorities fall, registered an increase (+18.5%: 1,437) and (as in 2006) accounts for more than half of the admissible complaints. The increase comes mainly from complaints concerning regularisation applications. The share of the Finance sector dropped by 10.4% (-83) and that of the social sector by 10.3% (- 179) compared with 2009, while the share of the economic sector was up by 3% (+ 214).

2.11. Evaluation of closed complaints

When a case file is closed, the Federal Ombudsman indicates whether the complaint is justified in the light of its grid of good administrative behaviour standards (ombuds criteria).

The investigation of a complaint can lead to one of the following 4 evaluations:

1. Well-founded: one or more good administrative behaviour standards are not met.

2. Ill-founded: the good administrative behaviour standards were not violated.

3. Partially well-founded.

Three situations are meant:
- The complaint contains various, equally important grievances, not all of which are well- founded however. Nevertheless, if one and the same main concern appears from the complaint, then the evaluation of the complaint will be geared to this main concern;
- Cases where there is shared responsibility between the petitioner and the administrative authority;
- A complaint where material principles are met (e.g. the complainant is not entitled to a subsidy he claims), but which shows that the procedural principles were not respected (e.g. improper reception of the petitioner or the provision of wrong information).

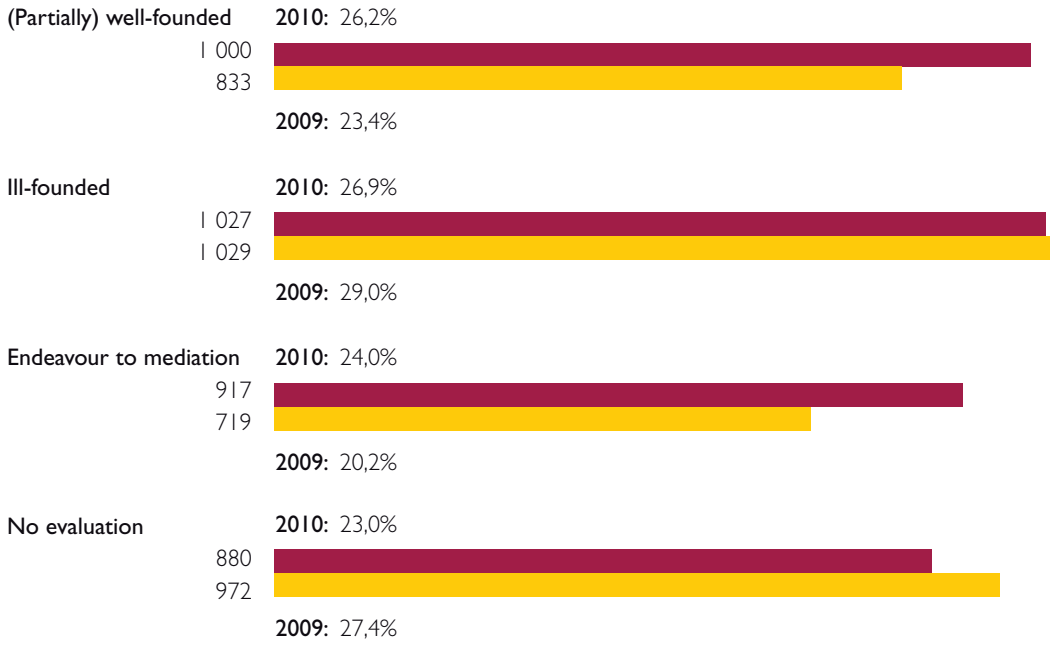
4. No evaluation

Four different suppositions are meant:

- The attempt to mediate is used in complaints that cannot be immediately considered as well-founded or ill-founded (the administrative authority has a discretionary power) or where a solution can be found rapidly without requiring to investigate further into the responsibilities;
- The impossibility to decide on whether the complaint is well-founded;
- The petitioner's failure to answer a request for an explanation by the Federal Ombudsman;
- A complaint that has become pointless; the petitioner informs the Federal Ombudsman that the latter's intervention is no longer justified or that the problem has been solved before it was referred to the Federal Ombudsman.

The graph below provides a general picture of the evaluation of the 3,824 complaints closed in 2010 (not including suspended cases), but including complaints lodged by civil servants.

Evaluation of closed complaints



2.12. Application of the ombudsman criteria

Application of the ombudsman criteria: reasonable period and others

A summary of the ombudsman criteria applied to the 1,000 complaints closed in 2010 with the evaluation *"well-founded"* or *"partially well-founded"* is given below. Several criteria may be violated in the same case file, and the criterion "efficient coordination" in principle goes together with another ombudsman criterion. This explains why the number of violated criteria (1,493) is higher than the number of case files closed (1,000).

The share of the reasonable period principle in the adopted ombudsman criteria is explained in part by the time it takes the Department of Immigration and Naturalisation to process residence regularisation applications.

Expressed in percentage, the proportion of the "reasonable period" declined this year, but remains by far the least respected ombudsman criterion.

Application of the evaluation criteria: reasonable period and others

Evaluation criteria	2010	%2010	2009	%2009
Reasonable period	480	32,2%	440	37,8%
Other criteria	1013	67,8%	724	62,2%
	1 493		**1 164**	

Application of ombudsman criteria: except reasonable period

As the preponderance of reasonable period makes it difficult to read and interpret statistical data, for the first time this year we have provided a graph that does not include "reasonable period." The relative importance of the violation of the fourteen other ombudsman criteria is consequently more visible.

Application of the evaluation criteria: except reasonable period

Evaluation criteria	2010	%2010	2009	%2009
Conscientious handling	217	21,4%	174	24,0%
Proper application of the rules of law	215	21,2%	161	22,2%
Passive information	148	14,6%	112	15,5%
Active information	129	12,7%	72	9,9%
Reasonable and propotionality	97	9,6%	68	9,4%
Effective coordination	57	5,6%	23	3,2%
Equality	56	5,5%	15	2,1%
Justification of administrative acts	36	3,6%	38	5,2%
Appropriate access	31	3,1%	23	3,2%
Legal certainty	11	1,1%	13	1,8%
Courtesy	7	0,7%	8	1,1%
Legitimate confidence	6	0,6%	16	2,2%
Impartiality	2	0,2%		
Right to be heard	1	0,1%	1	0,1%
	1 013		**724**	

2.13. Result of the intervention by the Federal Ombudsman

As soon as a complaint is found to be well founded, the Federal Ombudsman, relying on the new evaluation method introduced in 2007, proceeds to check the result of his intervention:

a) If the complaint is well-founded or partially well-founded:

- Reparation
- Partial reparation
- Reparation refused
- Reparation impossible (if it is materially not possible (any longer) to remedy the existing situation)

b) When the Federal Ombudsman made an attempt to mediate:

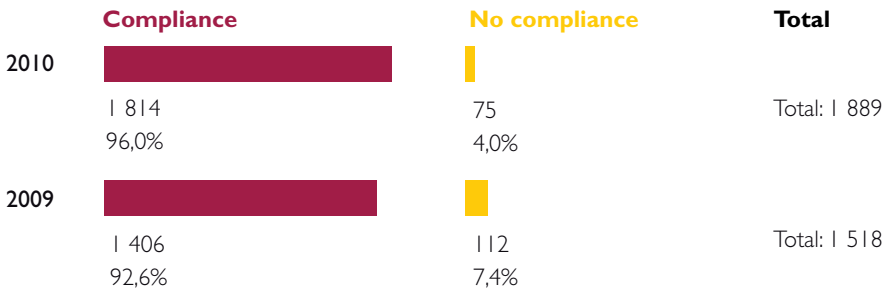
- Successful
- Unsuccessful

The intervention is closed as "successful" when there is a correction or a partial correction. The same applies when an attempt to mediate is brought to a successful conclusion, in the latter case the dispute was settled in a positive manner for the complainant.

On the other hand, the case file is closed "Reparation impossible" when the complaint is well-founded or partially well-founded, but the reparation is refused, or when an attempt at mediation failed.

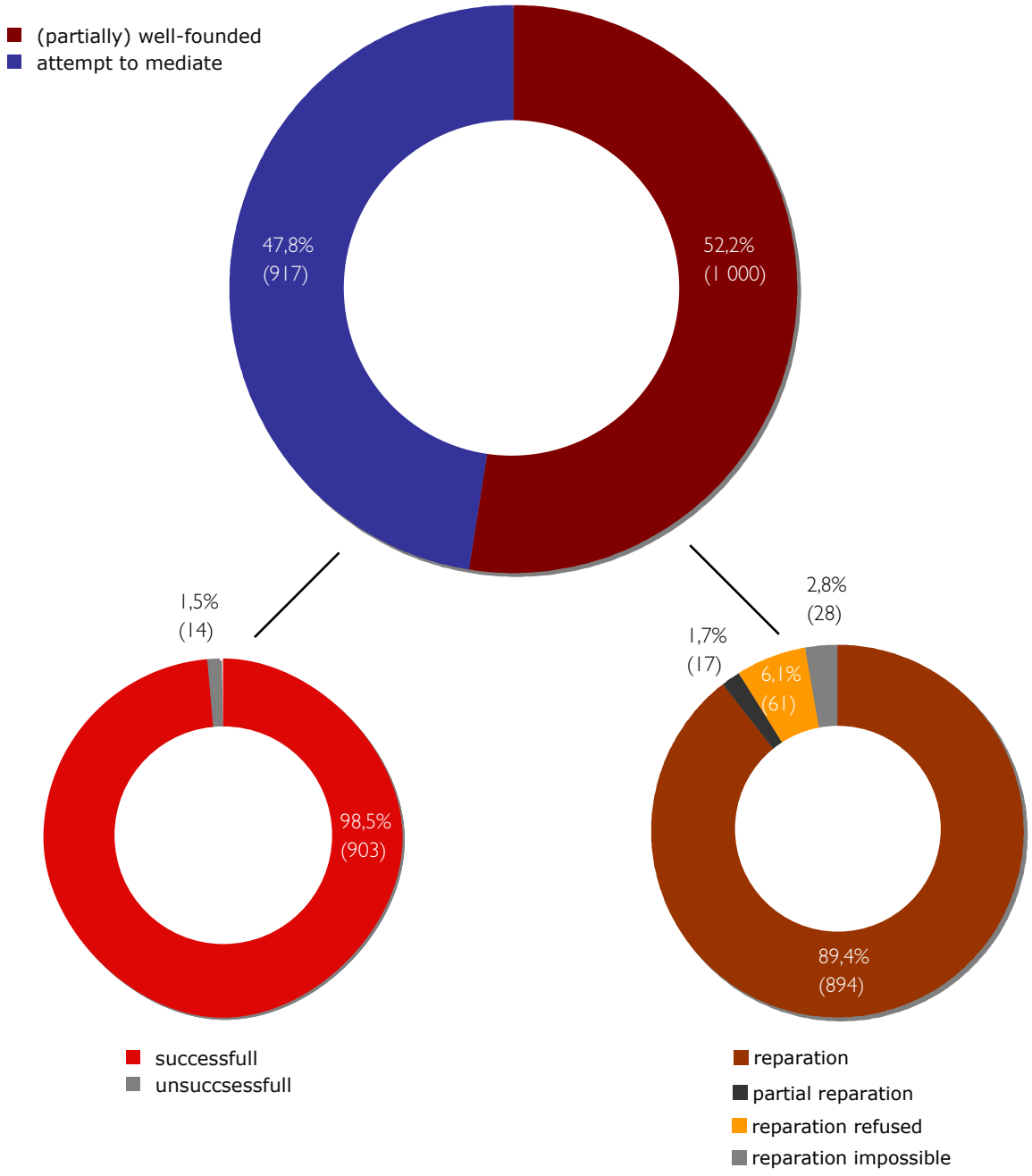
When a correction is not possible, the case file is not taken into account to gauge the result of the Federal Ombudsman's intervention.

Result of the intervention by the federal ombudsman



The graph below gives a more detailed overview of the outcome of the Federal Ombudsman's intervention. It specifies, for (partially) justified complaints, the respective share of complete, partial, impossible or refused corrections, and describes the outcome of attempts to mediate.

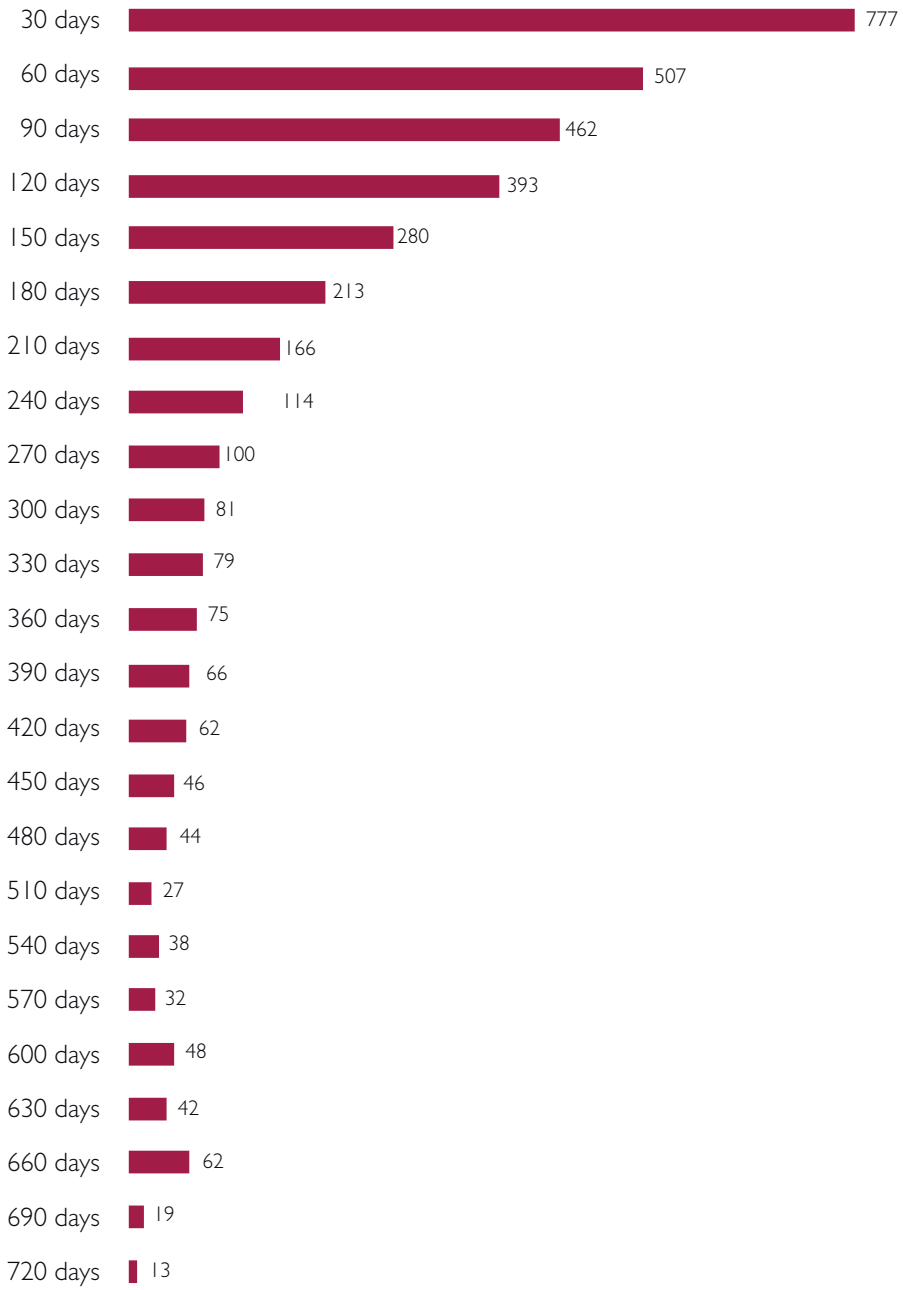
Result of the intervention by the federal ombudsman



2.14. Processing time of admissible complaints closed in 2010

A graph with the number of admissible complaints in 2010 per period of 30 calendar days is given below. It concerns both the new complaints as well as those of the previous year still in progress.

Processing time in calendar days of admissible complaints closed in 2010



A case file is considered "closed" when the result of the Federal Ombudsman's intervention has been communicated to the petitioner.

The data show that of these 3,824 complaints, 2,632 (68.8%) were closed within 6 months (compared with 2,053 complaints or 57.8% in 2009).

An additional 615 complaints (16.1%) were closed within a year (compared with 797 complaints or 22.4% in 2009), 283 other complaints (7.4%) within a year and a half (compared with 365 complaints or 10.3% in 2009), and finally 216 complaints (5.6%) within 2 years (compared with 173 complaints or 4.9% in 2009).

Finally, 78 complaints (2%) took more than 720 days to be processed (compared with 165 complaints or 4.6% in 2009).

The proportion of case files closed during the year increased (84.9% compared with 80.2% in 2009).The curve peak is maintained at 30 days, with 20.3% of the case files closed within this period (compared with 18.9% in 2009).

The long processing time in these cases is attributable to:

- The complexity of the problem, which may pertain to various administrative departments, and even various levels of power;

- The slowness of people in a number of cases to react to the questions of the Federal Ombudsman, both complainants and authorities, during the examination of these complaints.

III. Analysis of complaints processed

Introduction

As every year, this report for 2010 provides a critical view by citizens of the federal public services, but also illustrates the unwavering determination of the federal authorities to improve the quality of service to users.

This year once again, citizens complained about the lack of information provided by the administrative authorities.

How much does a given administrative document cost? How soon will my application be processed? What are the reasons for this refusal in plain terms? Why can the administrative authorities not be reached?

Many difficulties bring about misunderstandings or frustrations about the problems experienced by citizens. Whether they be delays, errors, changes, or new measures, citizens actually expect more communication and greater transparency from the administrative authorities. The federal authorities need an efficient information and communication policy.

The other major concerns of citizens have to do with their fundamental rights: right to vote, right to get married, right to a decent life (for detainees, migrants, or persons with disabilities), the right to equal treatment, and the right to good administration!

The names mentioned in the examples have been changed.

The federal administrative authorities need an efficient communication policy

Mrs Dubois bought a new car. She received her new European number plate and immediately sent the old plate to be deleted. The Motor Vehicle Registration Department did not communicate the deletion of her number plate immediately to the Federal Public Service Finance, which sent Mrs Dubois two road tax bills: one for her new number plate and one for the old. Mrs Dubois tried to reach the contact centre of the Federal Public Service Mobility and Transport to no avail.

The Motor Vehicle Registration Department is inundated by requests for deletion when an old number plate is replaced by the new European number plate, and the contact centre is overwhelmed by calls. Many people are worried about not having received the notice concerning the deletion of their previous number plate. Complaints are piling up on the desk of the Federal Ombudsman. Finally, the Federal Public Service Mobility and Transport and the Federal Public Service Finance issued a joint press release explaining the reason for this delay and reassuring people who were asked to pay the road tax for their old number plate that they will be reimbursed automatically by the Federal Public Service Finance as soon as it has received the notice of deletion.

A transparent and anticipatory communication policy would have spared citizens a lot of misunderstandings. These events which occurred in the beginning of 2011 illustrate that all too often, communication from the administrative authorities is late in coming.

This report, likes its predecessors, is teeming with examples that show that the communication of the federal authorities is rarely commensurate with the citizen's needs and that a real communication policy is lacking.

Whether in case of delays owing to an influx of case studies, a lack of personnel or a temporary exhaustion of budget resources, errors to be corrected, changes of administrative practices, or obligations imposed by third parties, the administrative authorities must not wait until citizens complain to inform them. They would avoid all sorts of frustrations and misunderstandings through clear and open communication.

It is wrong to believe that citizens cannot show understanding for difficulties encountered by the administrative authorities. On the other hand, they expect to be treated like adults and with respect.

The federal authorities need an efficient general information and communication policy for the citizens so that they can inform them, before problems arise, openly and in a clear and understandable language.

To this end, the Federal Ombudsman recommends that general principles be defined on which to base the external communication of the federal administrative authorities (GR 10/01).

Relations between the administrative authorities and citizens are increasingly played out by the day in an international context. The legislation does not always keep pace.

Voting by Belgians abroad encountered difficulties during the elections of June 2010

The obligation to vote does not apply only to Belgians who live in Belgium. Belgians living abroad are also required to vote if they have registered with the Belgian diplomatic or consular post.

To be able to vote, Belgians living abroad must nonetheless ask to be entered, for each election, on the electoral lists in the Belgian municipality of their choice and must specify their method of voting (by correspondence, proxy or at the embassy).

The Electoral Code stipulates that the diplomatic or consular post must provide them with a form between the 8th and the 5th month preceding the date fixed for the elections, and they must submit it in person or by post to the diplomatic or consular post where they are registered.

This stipulation establishes the procedure to be followed during the normal renewal of the legislative chambers. It does not apply to early elections, as such elections have to be held within 40 days after the dissolution of parliament. This date is inevitably never known five months in advance.

The Electoral Code does not include any specific rule for early elections.

The diplomatic and consular posts have tried with all means to get Belgians living abroad to register to vote in the elections of June 2010 (e-mails, announcements on their website, etc.). In spite of these efforts, a sizeable number of Belgians residing abroad did not register or were not able to vote. According to the Federal Public Service Foreign Affairs, some 42,000 were registered to vote in 2010, compared with 120,000 in 2007.

The Federal Ombudsman recommends that the Electoral Code be adopted so that Belgians living abroad can vote without hindrance in case of new early federal legislative elections (GR 10/04).

The law is silent on the way a Belgian can certify his or her capacity to get married abroad

Mrs Finet is engaged to an Ivorian national. The couple wants to get married in Abidjan. The local authorities want Mrs Finet to provide a certificate from the national authorities confirming that she meets all the conditions to get married under Belgian law.

She has to ask the Belgian embassy for a "Certificate of No Impediment to Marriage," commonly known as CNIM.

Mrs Finet knows nothing about the conditions of issuing such a document. The diplomatic post proceeds to conduct a separate interview with each of the future spouses to verify their intentions. After that, it decides to send the file to Foreign Affairs in Brussels to ask the opinion of the Crown Prosecution Service. Finally, the diplomatic post informs the future spouses that it refuses to issue the certificate to

Mrs Finet. She does not receive any reasoned decision and does not know how she can contest this refusal. And yet, it is her right to get married which is at stake!

The issuance of the CNIM actually affects the exercise of the right to get married, enshrined in Article 12 of the ECHR, since in the absence of this document, the local authorities generally refuse to proceed with the marriage.

Belgian law is nonetheless silent on this subject. No provision empowers the consular posts to issue this document, and the conditions and procedure of issuing this document are not established.

To alleviate this silence, the Federal Public Service Foreign Affairs organised the issuance of the CNIM by a simple circular for the attention of diplomatic and consular posts. This circular has not been made public. Moreover, reflecting the prevailing vagueness about the conditions and the limits that can be imposed on the issuance of this document, this circular has changed five times in six years, with serious consequences for the procedure, the reasons for refusal and channels of appeal.

At present, it does not suffice to meet the conditions required to enter into marriage. The diplomatic post must also verify that there are no suspicions of sham or forced marriage. This verification is not however provided with the indispensable safeguards against any abuse of power and the decision is not accompanied by an efficient channel of appeal.

The Federal Ombudsman therefore recommends to provide a legal basis for the issuance of Certificates of No Impediment to Marriage without delay (GR 10/05).

The recognition of professional qualifications acquired in another European country in the health sector is running into obstacles

Mr Verhasselt studied neurolinguistics in the Netherlands. He has applied to have his professional qualifications recognised so as to be able to work as a speech therapist in Belgium. Seven months later, he has received no reply. Finally, he receives a negative decision: the courses taken by Mr Verhasselt in the Netherlands do not correspond sufficiently with the curriculum required by Belgian law.

A European directive stipulates that a professional who has earned his degree in an EU Member State may apply to have his or her professional qualifications recognised in Belgium. The Federal Public Service Public Health is in charge of processing such applications for healthcare professions.

Some professional qualifications are covered by a system of automatic recognition. For others, if the programme in another Member State differs excessively from its equivalent in Belgium, the Federal Public Service Public Health must offer the applicant an opportunity to show that s/he acquired the knowledge and skills required through an aptitude test or an adaptation internship.

The law that transposes the European directive into Belgian law has nonetheless excluded certain professions from its scope of application. These are doctors, nurses for general care, dentists, midwives and pharmacists. As to other professions, the Royal Decree implementing the law does not provide for countervailing measures.

In 2010, the administrative authorities were not capable of meeting the deadlines set for a certain number of applications to have professional qualifications recognised. Moreover, when they refused to recognise professional qualifications, they did not offer the countervailing measures provided by the Directive and the law.

The Federal Public Service argues that it does not have sufficient means to meet the obligations incumbent upon Belgium, in particular to organise countervailing measures.

The Federal Ombudsman has recommended that the necessary measures be taken to act in accordance with the regulations, and to review the Belgian law so as to transpose the European directive in full,

including for doctors, nurses providing general care, dentists, midwives and pharmacists, so that it will no longer be possible to reject an application for the recognition of professional qualifications purely and simply, but to propose countervailing measures (GR 10/08).

Administrative management difficulties do not justify any departure from equal treatment between insured persons

A social security institution may make a mistake in granting social benefits to an insured person. It must therefore take a decision to correct the error.

If the insured person was not able to notice the error made and, by virtue of the new decision, the benefit payable is lower than that initially granted, the new decision will enter into force only as of the first day of the month following its notification.

In concrete terms, this means that the social security institution cannot recover the sums paid by mistake. This rule is laid down in Article 17 of the Charter of the Insured Person, and applies in principle to all social security institutions.

Nevertheless, a programme act of July 2006 had rejected this rule in regard to family allowances. Since 1 October 2006, family allowances paid unduly may be recovered up to one year after payment when an error is made by the family allowances fund.

The Constitutional Court recently declared this article 120bis of the programme act unconstitutional, however.

For the Court, a legislative amendment after the adoption of the Charter of the Insured Person, which introduces in the social security sector regulations less favourable for the insured than those which figure generally in the Charter, creates a difference of treatment between the insured persons. This difference of treatment must be based on a pertinent specific justification to be compatible with Article 10 and 11 of the Constitution.

Now, according to the Court, the complexity of the administrative management incumbent upon social allowances funds due to the fact that family situations change, is not a pertinent justification for treating the beneficiaries of family allowances more severely than the other insured persons, when an undue payment is made by mistake on the part of the fund. In more concrete terms, management difficulties cannot justify that the insured person should bear the consequences of the mistake made by the administrative authorities.

Article 120bis is still in the legal system, however, and the National Office of Family Allowances for Salaried Workers, as well as the family allowances fund must continue to apply it for as long as the Legislator has not amended it. Only the labour courts can forego the application in individual cases referred to them by virtue of the decision of the Constitutional Court.

The Federal Ombudsman therefore recommends that the legislation on family allowances for salaried workers be brought in line with the Charter of the Insured Person so as to put an end to the discrimination noted by the Constitutional Court between insured persons (GR 10/06).

In the meantime, we would like to apprise insured persons confronted with this situation, that taking their case to the labour court is free and does not require a lawyer.

The revision procedure concerning the benefits for persons with disability may not lead to a loss of part of the benefit to which these persons are entitled

Monsieur Delaforge is informed that his benefits as a person with disabilities will be increased as of February 2010. However, during the last medical examination he underwent in June 2009, the Department of Persons with Disabilities had confirmed that his condition had got worse since 1 January 2009. Mr Delaforge cannot understand. Why has the higher benefit not been granted to him since January 2009? And why is he getting no interest for late payment, although it took six months after the examination for the authorities to reach a decision?

The regulations are not always simple.

When the medical condition of a person is provisional or changing, the Department of Persons with Disabilities may take the initiative for a medical review of his file to reassess the entitlement to the benefit.

For his part, the person with disabilities may request a review of his file at all times. In such a case, the new decision will enter into force on the first day of the month following the request, whether the benefit is reviewed upwards or downwards.

When the administrative authority has planned the review, on the other hand, the new benefit will enter into force only on the first day of the month following the notification of the decision. The aim is to spare the person from having to reimburse undue sums if the improvement in the medical condition leads to a reduction of the benefit.

When the medical condition has worsened, however, and the review leads to an increase of the benefit, this principle works against the person with disability, all the more so when the administrative authority delays in notifying the new decision.

Contrary to what is provided for the reviews requested by the person with disabilities, the latter is not entitled to arrears nor to interest for late payment.

In the current process, a person with disabilities loses part of the benefit to which s/he is entitled if his or her situation worsens. Yet this benefit is intended to ensure an adequate level of living and social protection for the beneficiary, as provided under Article 29 of the UN Convention of rights of persons with disabilities.

The Federal Ombudsman therefore recommends adapting the regulations relating to the benefits paid to persons with disabilities so that the increase of such benefits from a scheduled review can take effect as of the 1st day of the month following the date of the review (GR 10/07).

In parallel, and while waiting for this adaptation, the Federal Ombudsman recommended that the Department of Persons with Disabilities improve the information provided to persons with disabilities so that they can assess the interest of filing themselves an application for a review and optimise the processing of this type of case files to avoid any loss of benefits by the person with disabilities. (OR 10/05).

In mid-January, the Department of Persons with Disabilities informed the Federal Ombudsman that it was looking into concrete ways to implement the recommendation so as to avoid any loss of benefits for the person with disabilities.

Safeguarding human dignity in prison requires a clear legal framework and scrupulous compliance with the regulations

The current legal framework is variable

Up to 2005, the rights and obligations of detainees were governed by a general regulation from 1965, supplemented by a multitude of circulars. With the act of principles of 2005 concerning the penitentiary system as well as the legal status of the detainee (better known as the Dupont Act), Belgium finally acquired a legal framework for penitentiary matters.

More than six years after it was adopted, however, the Dupont Act has entered into force only very partially.

In the meantime, the general regulation remains, likewise partially applicable, although it has become obsolete on a good number of points with regard to the European prison rules and international instruments that are binding for Belgium.

Prisons shift back and forth between the Act and the regulation to determine their practice, thereby creating an arbitrary risk. This situation may have negative consequences that are at times more serious for the detainees and their families.

This was the case of the mother of a detainee, prohibited from visiting her son for three months, in what was an obvious misuse of power. The mother had not received the written reasoned decision as required by law, but also, the prohibition had not been subjected to the hierarchical evaluation of the Minister for Justice as required by the general regulations.

In another delicate area, that of disciplinary sanctions, the situation also led to serious legal insecurity.

The entry into force of the Prison Principles Act must be accelerated without fail, in particular the provisions that do not require implementing measures, like those relating to contacts with the outside world or those that define the disciplinary system, and the royal decrees required to implement the other segments of the Prison Principles Act should be adopted as soon as possible (GR 10/03).

Compliance with the rules presupposes effective and independent supervision

A detainee contacted the Federal Ombudsman about the conditions of detention in the cells of Bruges Prison. When the Federal Ombudsman tried to contact the supervisory committee of this prison to gauge the situation, he found out that there had not been a supervisory committee in Bruges for the last three years.

Each establishment must nonetheless have a supervisory committee to oversee how the detainees are treated and to ensure compliance with the rules concerning them.

Coordinated by the Central Prison Supervision Council, these committees must pay regular visits to prisons and draw up an annual report on the situation in the different prisons and submit it to the Minister for Justice and to the Speaker of the House of Representatives and the President of the Senate.

In practice, the conditions in which these supervisory committees have to perform their duties are far from optimal and the Central Council has difficulties finding candidates. Several of them do not have the members required and are therefore not operational.

The Central Council itself is encountering difficulties to perform its own tasks. No report has been submitted since 2007.

The supervision system clearly does not work.

However, the position of dependence in which an incarcerated person finds himself makes him particularly vulnerable to bad treatment.

Aware of the need for supervision at the places of detention, in October 2005 Belgium signed the Optional Protocol to the Convention Against Torture (OPCAT). It has undertaken to implement a prevention mechanism to visit the prisons and to examine the conditions under which detainees are held.

In November 2008, the UN Committee Against Torture reminded Belgium of its commitment. The country will presently be subjected to the universal periodic review of the UN Human Rights Council, although not much has happened since.

The Federal Ombudsman recommends independent and effective supervision of penitentiaries and other federal prisons (GR 10/02).

IV. Recommendations

1. Introduction

Recommendations based on observations made during the examination of complaints about the way the federal authorities function constitute one of the missions entrusted explicitly to the federal ombudsmen by Article 1, 3°, of the Federal Ombudsman Act of 22 March 1995[20] (hereinafter referred to as "the Act").

There are two types of recommendations:

a) Recommendations to Parliament (GR)[21]: Article 15, section 1, of the Act, stipulates that the annual report on activities and any interim reports that the ombudsmen submit to the House of Representatives shall contain such recommendations as they deem useful and shall expose any operating difficulties that they should encounter in the exercise of their office.

b) Recommendations to the administrative authorities (OR)[22] : by virtue of Article 14, section 3 of the Act, the ombudsmen may, when processing complaints, make such recommendations as they deem useful to the administrative authority.

2. Recommendations to Parliament

Cross-thematic recommendation 2010

GR 10/01: Endow the federal authorities with an efficient information and communication policy by defining general principles on which the external communication of the different federal administrative authorities can rely.

This year once again, the citizen's grievance in more than one complaint out of four had to do with the lack of information on the part of the administrative authorities, either because they had failed to reply to a question from the citizen (passive information), or had omitted to provide unsolicited information that is useful or necessary (active information). If we add the cases in which the citizen did not understand the reasons for the decision taken about him, or those where the administrative authorities could not be reached, then one out of three complaints was lodged because the authorities failed in their duties of information, transparency and accessibility.

Whether it be delays, growing pains when faced with new procedures or regulations, errors, or changes in decision-making practices, the administrative authorities must not wait for the citizens to complain before they inform them correctly.

They must accompany the initiative of implementing new measures or procedures with appropriate communication.

Quite a number of misunderstandings or frustrations could be avoided through an active information and communication policy on the part of the federal authorities, based on the principles of transparency, openness and fairness to citizens.

20 pp. 81-85.
21 Hitherto known as "General Recommendations", whence the abbreviation "GR".
22 Hitherto known as "Official Recommendations", whence the abbreviation "OR".

It is wrong to believe that citizens cannot show understanding for difficulties encountered by the administrative authorities. On the other hand, they expect to be treated like adults and with respect. This entails providing clear and correct information about the causes of delays, the origin of a correction, the reasons for a change in decision-making practices, and the concrete impact that these elements will have on their personal situation.

An efficient and transparent communication policy is the indispensable cement needed to boost the trust and confidence of citizens in the public authorities.

The public authorities consequently need an efficient general information and communication policy for the citizens in a clear and understandable language, geared to its target audience. The communication of the federal authorities must be correct, reliable, neutral, anticipatory, and systematic, and must be disseminated in good time.

To this end, the federal authorities must lay down general principles for the external communication of the different federal administrative authorities.

Thematic recommendations 2010

GR 10/02: Ensure independent and effective supervision of penitentiaries and other federal places of detention.

Supervision of places of detention

The supervision of the treatment of detainees in penitentiaries is currently devolved to a Central Prison Supervision Council and local supervisory committees established in the different prisons.[23]

Each penitentiary must have a supervisory committee in charge of exercising independent supervision on the treatment of detainees and the compliance with the rules concerning them. It can also issue opinions or make proposals concerning the well-being of detainees. It draws up an annual report for the Central Prison Supervision Council.

The Central Prison Supervision Council in turn submits a report to the Minister for Justice and to the Speaker of the House of Representatives and the President of the Senate that comprises the report of the supervisory committees and general recommendations concerning the prisons and the treatment of detainees. It may also issue opinions on the administration of the prisons and the enforcement of sentences and incarceration measures.

The Prison Principles Act of 12 January 2005 concerning the administration of prisons as well as the legal status of detainees provides for vesting supervisory committees with a mediation task if an informal complaint is lodged by a detainee against the prison. It moreover establishes a real right to complain for the detainees concerning any decision taken about them by the prison warden before a complaints committee established within the Supervisory committee.

These provisions of the Prison Principles Act are not yet in force because of the lack of an implementing decree.

The mission of the supervisory committees and of the Central Council is currently still limited to the supervision of prisons and the treatment of detainees.

Each supervisory committee is composed of at least six and at most twelve members, including at least a lawyer, a doctor and an investigating magistrate. The members are nominated by the Central Council and appointed by the Minister for Justice.[24]

23 Royal Decree of 21 May 1965 concerning the general rules for prisons (General Regulation), articles 129ff.
24 General Regulation, Article 138quinquies.

The Bruges Prison Complex (BPC) has had no supervisory committee since the expiry of the term of office of that committee in 2007. At the time, all the members of the committee decided to withdraw and no longer to accept a new term of office, in protest of the conditions under which they have to perform their duties.

Since then, the Central Prison Supervision Council has tried in vain to recruit new members for the supervisory committee of the BPC.

Unless circumstances change, the Bruges bar association no longer wishes to cooperate in the composition of the supervisory committee.

A magistrate has accepted to chair the supervisory committee, but is not taking part in the search for other members.

The medical association is waiting for additional information about the powers of the supervisory committee and the duties of the doctor who has to sit on that committee.

So there has been no operational supervisory committee at the BPC, in violation of articles 129 ff. of the general regulation on prisons.

The BPC is not the only prison where there is no (fully) operational supervisory committee at this time.

The Central Council is having serious difficulties in finding sufficient candidates for the committees. Several supervisory committees do not have the six minimum members required, including at least one lawyer, one magistrate and one doctor.

According to the Central Prison Supervision Council, the members of the supervisory committees are discouraged by the difficulties encountered in the performance of their missions. Their task must be carried out scrupulously. It is complex and requires a great deal of time. They are nonetheless only entitled to a travel allowance, which is not always paid in time. Not all prison administrations are always willing to cooperate with the supervisory committee. Finally, their discouragement is aggravated by the fact that they are not always competent to deal with complaints from detainees, as provided in the Prison Principles Act of 12 January 2005 concerning the administration of prisons and the legal status of the detainees.

The Central Prison Supervision Council is itself experiencing practical difficulties in performing its mission. It has only a minimal logistical support (an office for its chairman and a part-time secretariat assumed by two officials from the FPS Justice). The Central Council is supposed to get its own budget, but neither the allocation nor the amount of that budget are yet known. According to the current chairman, this budget will be devoted essentially to cover the travel costs of members of the committees, to finance their training, and to produce a brochure on the powers of the supervisory committees and of the Central Council.

The supervisory committees have not submitted an annual report since 2007 because the Central Council has been revising the questionnaire on the basis of the European prison rules. The reports for 2008 to 2010 are currently being produced and should be submitted by the end of March 2011. The Central Council has not submitted an annual report in the last three years either.

Developments

The position of dependence in which incarcerated persons find themselves makes them particularly vulnerable. A stringent supervision of compliance with the rules on the part of the authority in charge of their detention is consequently indispensable to avoid any inhumane or degrading treatment.

In the absence of external, independent supervision, there is a real danger that the individual interests

of the detainees will give way to the interests of the institutions and to the primacy of order, security and internal rules.

The importance of independent supervision of places of detention requires no further proof. Yet saying so will not suffice: the supervision must be effective.

The current supervisory system does not work. It does not guarantee independence nor the professionalism of the bodies in charge of exercising such supervision.

As the Minister for Justice is vested with the powers to appoint the supervisory authorities, to define their operating rules and to allocate their means and resources, the executive branch controls the degree of supervision exercised in the prisons.

The Federal Ombudsman recommends organising an independent, effective supervision on the places of detention.

In October 2005 Belgium signed the Optional Protocol to the Convention Against Torture (OPCAT), under the terms of which the signatories undertake to implement a prevention mechanism to visit the prisons and to examine the conditions under which detainees are held.

In November 2008, the UN Committee Against Torture recommended that Belgium take the necessary measures to ratify the protocol as soon as possible and to introduce a mechanism for the prevention of torture and other cruel, inhumane or degrading types of treatment.

The technical and legal difficulties in ratifying this protocol cited by the Belgian delegation during the presentation of its periodic report to the Committee Against Torture[25], does not dispense the federal government from introducing, as of now, an efficient system for supervision and prevention in places of detention under its purview.

GR 10/03: Have the provisions of the act on the principles concerning the administration of prisons and the legal status of detainees of 12 January 2005 (Prison Principles Act) that do not require an implementing measure enter into force at once, and adopt promptly the Royal Decrees required to implement the other sections of said act.

Context

Deprived of his freedom, a detainee is put in a situation of dependence in regard to the prison administration to carry out most of his other rights, which he still enjoys, and for his vital needs (accommodation, food, clothing, hygiene, healthcare, family and social contacts, etc.). This situation requires a legal framework to define the rights and obligations of detainees in prison and to determine the types of interference that the prison administration is entitled to in the exercise of the rights of detainees during the serving of their sentence.

Whereas the executive branch is in charge of the enforcement of sentences and of incarceration measures, only the legislator can impose restrictions to the rights and liberties of detainees and set the basic conditions thereof.

Up to 2005, the rights and obligations of detainees in prison were still governed by a Royal Decree of 21 May 1965 concerning the general rules for prisons (general regulation), to which a multitude of ministerial circulars was added. The Prison Principles Act of 12 January 2005 finally provided Belgium with a legal framework for penal correction law.

25 Introductory presentation of the Belgian delegation in Geneva on 12 November 2008 during the 41st session of the Committee Against Torture: "This adherence has, on the technical front, come up against the implementation of a national mechanism for the prevention of torture. Before this optional protocol can be ratified, all the authorities concerned must reach an agreement on the structure, composition, remit and financing of this mechanism."

The legislator has delegated to the executive branch the task of setting the date on which the Prison Principles Act is to enter into force, if necessary by steps. Some provisions moreover call on the king to define the terms and conditions of their execution.

Six years after it was adopted, the fact remains that the Prison Principles Act has entered only partially into force because of the lack of implementing decrees. Only two sections of the Act, that contain the fundamental principles for the enforcement of sentences and incarceration measures, and the section concerning order and security in prison, entered into force in the beginning of 2007, together with certain scattered provisions. The other sections remain unenforced.

In anticipation of their entry into force, the general regulation is still applicable, although it has become obsolete on many points in regard to European prison rules and the obligations incumbent upon Belgium concerning fundamental rights.

Examples

a) Maintaining family relations

The right of detainees to maintain family relations is protected by Article 8 of the European Convention on Human Rights. This protection is reflected in Articles 59, 133, 135, 140 and 179 of the Prison Principles Act. Guarantees are provided as to the legality, need and proportionality of interference by the administrative authorities in the exercise of this fundamental right. The Prison Principles Act requires the administration of the prison to provide reasons for prohibitions of visits and to notify them in writing. Visits by family members may be prohibited only when there are personalised indications that they could entail a serious danger for order and security in the prison and that particular arrangements such as a screened visit do not suffice to preclude said danger.

These provisions are not yet in force however.

The general regulation for prisons stipulates only hierarchical supervision by the Minister for Justice on the prohibition of family visits decided by the prison.

When a mother of a detainee filed a complaint because she was prohibited from paying visits for 3 months without any written reasoned decision, the Federal Ombudsman discovered that this hierarchical supervision is no longer exercised.

The prison administration considers that this provision of the general regulation is outdated in view of the Prison Principles Act, which vests the prison warden with exclusive powers on the matter, and that it provides no guarantee against arbitrary decisions by the administration, inasmuch as it does not require the Minister to react. The administrative authorities noted that even if the Prison Principles Act is not in force, the visit prohibition is subject to the requirement to provide reasons pursuant to the Act of 29 July 1991 relating to formal reasons for administrative acts, and already includes the guarantees provided by the Prison Principles Act in its instructions to wardens.

The example cited above nonetheless illustrates that compliance is far from secured through this channel. A correctly exercised hierarchical supervision would have corrected the abusive action of the prison. The Federal Ombudsman reminded the administration that it did not have the power to forego the application of a Royal Decree that has not yet been repealed. [26]

Only the entry into force of the provisions of the Prison Principles Act cited above would provide effective protection of the detainee's right to maintain family relations.

26 OR 10/01, p.66.

b) Disciplinary rules

1. A detainee complained that he was subjected to a disciplinary sanction of 9 days of confinement in a punishment cell followed by six months of solitary confinement.

This sanction is not subject to criticism in regard to the general regulation. It is however an inordinate and disproportionate measure in regard to the provisions of the Prison Principles Act.

More specifically, Article 143, §3, of the Prison Principles Act prohibits the combination of confinement in a punishment cell or solitary confinement with any other disciplinary sanction, and Article 132, 3°, limits the duration of solitary confinement to 30 days, extendible, according to Article 142, by a new decision, without "exceeding, under any circumstances, 45 days following successive decisions."

The administration's action, although compliant with the general regulation still in force, clearly violates the provisions of the Prison Principles Act.

2. Another detainee complained about the disciplinary sanction imposed on him for having disturbed the order of the prison. The administration had imposed two weeks of solitary confinement, accompanied by a prohibition to telephone except to his lawyer or to the ombudsman.

The prison could not deny him his right to telephone. The facts that had led to the disciplinary sanction actually had nothing to do with the use of the telephone. Article 82 of the general regulation that lists the punishments that can be imposed on a detainee does not provide for the prohibition of the telephone. Only improper use of the telephone can lead to a temporary prohibition of telephoning.

The detainee was consequently subjected to a disciplinary sanction not authorised by the general regulation. The department of prisons nonetheless considered that, in view of the pending entry into force of the Prison Principles Act which provides for the restriction of the right to telephone during solitary confinement, it is not necessary to give instructions on this subject to prison wardens in the meantime. The sanction imposed nonetheless goes beyond the provisions of the Prison Principles Act, since when a detainee is punished with solitary confinement, he retains the right to one telephone call per week.

Developments

These examples illustrate the legal insecurity and the arbitrary risks that ensue from the co-existence of two sets of regulations, whereby one gradually replaces the other, and the prison authorities oscillate between the two as they decide on their course of action.

In anticipation of the entry into force of the Prison Principles Act, the Federal Ombudsman has recommended to the Directorate General for Penitentiaries to see to the scrupulous application of the provisions of the general regulations that flank the measures pertaining to interference with the rights of detainees, while integrating therein the fundamental principles of the Prison Principles Act already applicable, and the limits and guarantees required by other higher national or international legislation (OR 10/01).

It is nonetheless necessary to accelerate the implementation of the Prison Principles Act to put an end to this legal insecurity.

Many of the provisions of the Prison Principles Act not yet in force do not, as such, require enforcement measures apart from a royal decree to determine their date of entry into force. This is particularly the case of most articles under Title V, Chapter III – Contacts with the outside world and Title II – Disciplinary rules. Some of these articles transpose into Belgian penal correction law the limits to interference by the prison authorities in the fundamental rights of detainees, the protection whereof is guaranteed by international treaties that are binding for Belgium.

It is not acceptable that these articles are not yet in force, six years after the legislation in question was adopted.

The Federal Ombudsman therefore recommends to have the provisions of the Prison Principles Act concerning the administration of prisons as well as the legal status of detainees of 12 January 2005 that do not require implementing measures enter into force immediately. It is moreover necessary to adopt royal decrees implementing said Act as soon as possible.

GR 10/04: Adapt the Electoral Code so that Belgians living abroad can vote without hindrance in case of early federal legislative elections.

A certain number of Belgians residing abroad contacted the Federal Ombudsman because they were not able to vote during the federal legislative elections of 13 June 2010.

Gap in the Electoral Code

By virtue of Article 180 of the Electoral Code, the obligation to vote in federal legislative elections applies also to Belgians abroad who are registered in the population registers kept in Belgian diplomatic or consular posts. They are registered as voters in the Belgian municipality of their choice.

To be able to exercise their right to vote, these Belgians abroad must however ask to register in the electoral lists for each election, in accordance with Article 180bis of the Electoral Code. To this end, they must complete a form provided to them by the diplomatic or consular post and submit it in person or send it by post to the diplomatic or consular post where they are registered.

Article 180bis, §1, of the Electoral Code stipulates:

"Between the first day of the 8th month and the fifteenth day of the 5th month prior to the date fixed for an ordinary renewal of the legislative chambers, each diplomatic or consular post shall send to Belgians registered with it a registration request form, the format whereof shall be defined by the King."

This provision is geared explicitly to the procedure to be followed during the ordinary renewal of the legislative chambers. It does not, therefore, apply to early elections, since such elections have to be held 40 days following the dissolution of Parliament, i.e. a date that is never known five months in advance.

The Electoral Code does not, however, include any specific rule about early elections.[27]

Faced with this gap in the Electoral Code, the diplomatic and consular posts have tried every means to get Belgians abroad to register as voters in early elections. In spite of these efforts, a sizeable number of Belgians residing abroad did not register or were not able to vote. According to the Federal Public Service Foreign Affairs, some 42,000 were registered to vote in 2010, compared with 120,000 in 2007.

The Federal Ombudsman recommends therefore that the Electoral Code be amended so that Belgians residing abroad can vote in early federal legislative elections without hindrance.

GR 10/05: Adopt at once a legal basis for the issuance of Certificates of No Impediment to Marriage for Belgians who wish to get married abroad.

The capacity to get married is governed by the national law of each of the future spouses.

In many countries, when a Belgian wishes to get married before the competent local authorities, the latter require a document from his or her national authorities certifying that s/he meets the terms and conditions required by Belgian law to enter into marriage.

27 Several bills to amend the Code have been introduced in Parliament.

The issuance of this document actually affects the exercise of the right to get married, enshrined in Article 12 of the European Convention of Human Rights, since in the absence of this document, the Belgian national risks having the local authorities refuse to proceed with the marriage.

This document, commonly known as a "Certificate of No Impediment to Marriage (CNIM)" is issued by the consular posts.

There has been no legal basis in Belgian law to date however which authorises the consular posts to issue this document and which defines the conditions of the issuance procedure.

In international law, the issuance of such certificates is governed by Convention n° 20 of the International Civil Service Commission, to which Belgium is party. It is not yet in force, because Belgium has not ratified the Convention. It nonetheless requires the States Parties not to pursue a policy contrary to the convention's provisions.

To mitigate the missing legal provision, the issuance of CNIMs is organised by internal instructions of the FPS Foreign Affairs to Belgian embassies and consulates. These consular instructions are not, however, published, and Belgian citizens cannot consult them.

These instructions have undergone major changes in recent years, without however any verification of the legality of such changes.

These changes have led to complete reversals on the qualification of the nature of the document and on the capacity in which the head of a diplomatic post issues said certificate, with serious consequences on how the application is processed, the reasons for refusal, and appeal procedures.

For a long time, the CNIM was considered as a simple consular certificate issued by the civil servant at the consular post as part of his general consular duties. No appeal procedure was indicated to the applicant in case of refusal, and the department used its power of injunction with regard to consular officials.

After an initial intervention by the Federal Ombudsman in 2004, which relied on the case law of the Brussels Court of Appeal, the FPS Foreign Affairs reviewed its instructions. The CNIM was henceforth considered a document issued by the head of the consular post in his capacity as a registrar of births, marriages and deaths. A link was established with the instructions of the Minister for Justice concerning the fight against sham marriages in Belgium. If the head of the consular post deemed it necessary, he could request the opinion of the Crown Prosecution Service, but could not receive any injunction from the department on the matter. His decision had to be reasoned and indicate the possibility of lodging an appeal before the district court.

This revision led the FPS Foreign Affairs to conduct a global review of its practices concerning the issuance of CNIMs, in regard to the existing law and to case law. A new instruction was issued in 2006.[31] It restricted the scope of the CNIM to the verification, by the consular post, that there were no legal impediments to the marriage as far as the future Belgian spouse was concerned, without considering the other future spouse. Henceforth, it is no longer up to the consular post to assess the intent of the future spouses – a mission which is incumbent upon the authority that performs the marriage.[32] As indicated by the Minister of Foreign Affairs at the time, the presumption of a marriage of convenience may not justify a refusal to issue the certificate. The Department of Foreign Affairs does not have the legal authority to open an investigation regarding the future spouse.[33]

28 nternational Civil Service Commission: Convention n° 20 signed in Munich on 5 September 1980.
29 Brussels (1st Chamber), 24 November 1998.
30 Circular TC 567 of 14 September 2004.
31 Circular TC 2006/49 of 23 January 2006.
32 Question n° 306 of Mrs Nahima Lanjri of 4 January 2006, Q&A, House of Representatives, 2005-2006, n° 113, pp. 21, 624 ff.
33 Question n° 13 220 of Nahima Lanjri of 9 January 2007, C.R.I., House of Representatives, 2006-2007, 51 COM 1149, pp. 11ff..

Although nothing had changed since 2006 – the legal framework had not been modified[34] and there was no new case law of the courts and tribunals on the subject – the FPS Foreign Affairs changed its practices radically in 2009. A Circular of 12 May 2009[35] cancelled and replaced the Circular of 2006 and ruled, without providing any reasons, that the CNIM did not fall under the personal purview of the head of the consular post in his capacity of registrar of births, marriages and deaths. It is necessary, but no longer enough, to meet the conditions required in order to get married.

Henceforth:

- The head of the consular post must also verify that there are no suspicions of a sham marriage within the meaning of Article 146bis of the Civil Code or of forced marriage within the meaning of Article 146ter of the Civil Code.

- If, having interrogated the future spouses separately, the head of the consular post has suspicions of a sham or forced marriage, he must send a detailed report to the Department of Consular Affairs in Brussels.[36]

- The Department of Consular Affairs sends the entire file to the Crown Prosecution Service. The certificate is refused if the Crown Prosecution Service gives a negative opinion.[37]

- The notification of the refusal must be reasoned and must indicate the possibility of lodging an appeal against the FPS Foreign Affairs before the district court.

The action before the district court is not organised specifically. It falls under the general competence of this court. It is therefore far from providing the same guarantees as an action instituted against a refusal by the registrar of births, marriages and deaths to register the declaration of marriage in Belgium, which follows the forms of summary proceedings.

The legal void surrounding the issuance of CNIMs at present seriously undermines the exercise of the fundamental right of marriage.

It is consequently imperative to legislate on the matter.

The Federal Ombudsman recommends providing a legal framework without delay for the issuance of certificates of no impediment to marriage for the sake of legal security and to guarantee an effective course of action for Belgian citizens if their right to marriage is undermined.

34 Several bills have been introduced in the House of Representatives on the matter.

35 Circular TC 2009/326 of 12 May 2009 relating to certificates of no impediment to marriage, supplemented by Circular TC 2010/0576 of 12 July 2010 and amended by Circular TC 2010/770 of 14 October 2010.

36 Unless the applicant does not reside in Belgium. In such a case, the consular post may refuse the CNIM directly on the basis of the outcome of the interview.

37 This raises questions about the legal basis of the circular on which the prosecutors relied to issue this opinion.

GR 10/06: Bring the legislation on family allowances for salaried workers again in compliance with the provisions of Article 17 of the Charter of the Insured Person and thus put an end to the discrimination between insured persons cited by the Constitutional Court; this discrimination consists of enabling family allowances organisations for salaried workers to recover for one year family allowances paid unduly due to an error on their part, whereas the Charter makes such a recovery impossible under the same circumstances for other social security institutions.[38]

When a social security institution has made an error in granting a social benefit, it must take a new decision. If the insured person could not notice the error made, and the new decision entails that the benefit will be lower than that initially recognised, the new decision may enter into force only as of the first day of the month following the notification thereof. This rule is laid down in Article 17 of the Charter of the Insured Person and applies in principle to all social security institutions.

The Programme Act of 20 July 2006 set aside the application of Article 17 in the legislation relating to family allowances for salaried workers. This Programme Act amended the consolidated acts concerning family allowances for salaried workers so that, as of 1 October 2006, the family allowances paid unduly can be recovered up to one year after payment, even in the case of an error made by the family allowances fund.[39]

The Constitutional Court nonetheless considered that a *"legislative amendment subsequent to the adoption of the Charter of the Insured Person, which establishes or results in establishing a regulation applicable to a social security sector that is less favourable for the insured person than that generally accorded in the Charter, creates a difference of treatment between insured persons which can be deemed compatible with Articles 10 and 11 of the Constitution only on condition of a pertinent specific justification."*[40]

The constitutional Court also considers that *"the complexity of the administrative management incumbent upon the family allowances funds, owing to the fact that family situations change, would not justify requiring the beneficiary of family allowances paid unduly owing to an error made by the fund, although he was unable to notice the error, to reimburse sums received unduly for a year, while the beneficiaries of other social benefits received unduly under the same conditions are not required to reimburse them. More specifically, in the eventuality considered, the beneficiary made no error, so that the family allowances fund is correctly informed of his family situation. The management difficulties caused by changing family situations may not therefore be the reason for the undue payment in such a case. They can therefore not justify that the consequences of the error made by the fund in granting the benefits be borne by the insured person."*

The Constitutional Court moreover considers that *"authorising sums, paid because of an error on the part of the fund, to be recovered for up to a full year risks having consequences out of proportion for the beneficiaries who cannot be blamed for any error or negligence."*

38 Article 17 of the Act of 11 April 1995 aimed at establishing "the charter" of the insured person stipulates that: "When it is noted that the decision is vitiated by a legal or material error, the social security institution shall take the initiative of a new decision which shall produce its effects on the date on which the rectified decision were to enter into force, without prejudice to the legal and regulatory provisions on the matter. Without prejudice to Article 18, the new decision shall produce its effects, in case of error due to the social security institution, on the first day of the month following the notification, if the entitlement to the benefit is less than that initially recognised. The preceding section shall not apply if the insured person knew or should have known, within the meaning of the Royal Decree of 31 May 1933, concerning declarations made in connection with subsidies, compensation or allowances, that he was not was no longer entitled to receive the entirety of a benefit.".

39 The amended Article 120bis of the consolidated acts on family allowances stipulates that: "The recovery of family allowances paid unduly cannot be claimed after the expiry of a period of three years effective as of the date in which the payment was made. In addition to the causes provided by the Civil Code, the limitation is interrupted by the claim for undue payments notified to the debtor by registered letter. By way of derogation from section 1, the period of limitation shall be: 5 years, if the benefits paid unduly were obtained through fraudulent dealings or false or deliberately incomplete declarations; 1 year, if the undue payment was made because of a legal or material error on the part of the family allowances organisation, and the person erroneously credited was not or could not be aware that he was not or no longer entitled, in whole or in part, to the benefit paid."

40 Constitutional Court, Decision n° 1/2010 of 20 January 2010 (Belgian Official Gazette of 5 March 2010).

Regarding the preliminary question raised, the Constitutional Court concludes that *"Article 120bis of the laws relating to family allowances for salaried employees, consolidated on 19 December 1939, as replaced by Article 35 of the Programme Act of 20 July 2006, violates Articles 10 and 11 of the Constitution in that it authorises family allowances funds to recover, for one year, benefits paid unduly to their affiliates owing to an error attributable to the organisations, provided that the person credited erroneously was not and could not be aware that he was not or no longer entitled, in whole or in part, to receive the benefit paid."*

Although the afore-cited Article *120bis* was declared unconstitutional, it nonetheless continues to exist in the legal system, and the National Office of Family Allowances for Salaried Workers as well as the family allowances funds continue to apply the provisions therefore as long as the Legislator has not adapted them,[41] while the labour courts may at all times refuse the application thereof in individual cases referred to them, on the basis of the Constitutional Court's decision.

The Federal Ombudsman therefore recommends amending the legislation on family allowances for salaried employees to bring it again in line with Article 17 of the Charter of the Insured Person and thus put an end to the detected discrimination.

GR 10/07: Amend the regulation concerning benefits for persons with disabilities, so that the increase of benefits arising from a scheduled medical review takes effect on the 1st day of the month following the review date.

Benefits for persons with disabilities are granted, after a medical examination, as of the month following the filing of the application. The amount of these benefits depends on the degree of the applicant's disability as determined during the medical examination. Nevertheless, the medical aspects taken into consideration may be of a provisional or changing nature. In such a case, the Department of People with Disabilities is required to schedule a date to review the medical file.

It is clear that this provision was intended primarily to deal with cases of eventual or probable decrease of the disability, since the administrative decision taken after the scheduled review produces its effects only as of the month following the notification of that decision, thereby avoiding unfair effects if the allocation has to be reduced or cancelled. There is always a period between the scheduled date for the review and the medical examination, in fact, followed by an additional period for notifying the administrative decision. That decision which fixes the amount of the benefit is consequently notified months after the date scheduled for the review. Retroactive effect as of the date of the scheduled review would entail sizeable sums recovered from the person with disabilities if the benefit were decreased.

Nevertheless, when the benefit is increased because the medical condition is aggravated, this procedure works against the person with disabilities, all the more so when the Department of Persons with Disabilities is late in notifying the new decision. The benefit supplement is granted only as of the month following the date of notification, although the medical condition worsened much earlier. Furthermore, contrary to the provisions for processing reviews requested by persons with disabilities themselves or new requests, beneficiaries are not entitled to arrears nor interest for late payment, if the Department of Persons with Disabilities takes more than six months to make a decision.

In other words, the rule for the entry into force of a new benefit after the decision is notified, in the event of a scheduled medical review, is detrimental to a person with disabilities whose medical condition has worsened. This situation arises directly out of the regulation concerning benefits for persons with disabilities. [42]

41 Bill intended to protect insured persons from the recovery of social benefits when they are not at fault, Parl. Doc., House of Representatives, 2010-2011, 27 October 2010, n° 0486/001.

42 Articles 23, §1, 5°, and 23, §2, section 5, of the Royal Decree of 22 May 2003 relating to the procedure for the processing of cases concerning benefits for persons with disabilities.

The UN Convention on the Rights of Persons with Disabilities affirms the right of persons with disabilities to an adequate standard of living and social protection.[43] When the Department of Persons with Disabilities schedules in advance a date to review the medical condition of a person with disabilities and that person has not applied himself for a review, the regulatory procedure protects his interests by sparing him from having to reimburse a surplus of benefits received if those benefits should be reduced. In the opposite case, on the other hand, when the scheduled review shows that the medical condition has worsened, this same procedure cannot secure an adequate standard of living for the person with disabilities. The right to an adequate standard of living requires that persons with disabilities be granted the benefit supplement to offset the worsening of their medical condition as soon as possible.

To avoid the undesired and unfair effect of the afore-described procedure, it is necessary to review the rule concerning the entry into force of the administrative decision that fixes the new benefit, when the scheduled medical review leads to an increase of benefits.

GR 10/08: Transpose European Directive 2005/36/EC fully into Belgian law, and more specifically, exclude, for practitioners of healthcare professions (generalist physicians, specialists, nurses, dentists, midwives, pharmacists) the possibility of rejecting the application for the recognition purely and simply by providing compensation measures as set out in Article 14 of said directive.

The Member States had to comply with the provisions of European Directive 2005/36/EC on the recognition of professional qualifications by 20 October 2007. [44]

The EU Member States may, in certain specific cases, subordinate the recognition of the professional qualifications of a migrant to compensation measures.

Where the duration of the education and training [of the migrant] is at least one year less than that required in the Member State, where the matters covered by the education and training he has received differ substantially from those covered by the diploma required in the host Member State (...), the host Member State may require the applicant to complete an adaptation period not exceeding three years or to take an aptitude test.[45]

The Act of 12 February 2008 introducing a new general framework for the recognition of EU professional qualifications provides compensation measures concerning non-healthcare sector professions (such as speech therapists or assistant nurses). The professions of doctor, nurse, dentist (veterinary surgeon), midwife, pharmacist (and architect) are nonetheless excluded from the scope of application of said act.

The rule for healthcare professions is to consider that if the professional qualification does not fall under the automatic recognition system[46] and all the documents submitted do not meet the recognition conditions required to practice the profession concerned in Belgium,[47] the application for the recognition of this professional qualification is rejected, purely and simply. No compensation measure is provided.

Directive 2005/36/EC is consequently not transposed correctly into Belgian law.

The Federal Ombudsman therefore recommends that European Directive 2005/36/EC be transposed fully into Belgian law, and in particular to provide in the regulation compensation measures, as set out in Article 14 for recognition, when the professional qualification of a practitioner of a healthcare profession differs fundamentally from the education and training required in Belgium to access or exercise that profession.

43 Article 28 of the UN Convention on the Rights of Persons with Disabilities of 13 December 2006.

44 Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications.

45 Article 14 of Directive 2005/36/EC.

46 The automatic recognition provided under Title III, Chapter III of the same circular.

47 Article 44quater, §1, and article 44octies, §4, of the Royal Decree n°78 of 10 November 1967.

GR	Title	Object	Status	Comment	Petitions Committee
Recommandations transversales					
97/11	Dispute between two administrative authorities as to which of the two must disburse expenses incontestably payable	Cross-thematic	Pending	Recommendation that is still topical, pertaining to a more rapid processing of claims for compensation of expenses when several administrative authorities can be involved but are trying to pass the responsibility for paying to each other so that a settlement is delayed or remains outstanding.	
06/01	Require of every federal administrative authority to indicate the period within which it will take a decision, by inserting a new provision in the Act of 11 April 1994 on the transparency of governance.	Cross-thematic	Pending	The complaints received in 2010 confirm again the need of this measure.	26 April 2007
07/01	Develop a central information point that provides basic information as well as efficient orientation and referral to the competent services. This information point can assume the form of a(n) (free) information line of the federal government.	Cross-thematic	Pending		24 November 2008
09/01	Provide appropriate accompanying measures in all administrative procedures based on new information and communication technologies so as to safeguard equal treatment for the users.	Cross-thematic	Pending		
10/01	Endow the federal authorities with an efficient information and communication policy by defining general principles on which the external communication of the different federal administrative authorities can rely.	Cross-thematic	Pending	Cf. pp. 49-50	
Recommendations relative to the FPS Finance					
02/03	The tax trap of unemployment.	FPS Finance	Pending	Recommendation presented to the Finance and Budget Committee on 17 November 2010.	
06/07	Exoneration of road tax on vehicles that are rented with driver: deletion of the wording: "on the occasion of ceremonies» in article 15, §2, 2°, of the Royal Decree of 8 July 1970.	FPS Finance	Pending	Recommendation presented to the Finance and Budget Committee on 17 November 2010.	26 April 2007
07/02	Amend article 366 of the Income Tax Code 1992 so that a notice of objection lodged with a service involved in the establishment or levy of the tax that contests the taxpayer's notice of objection, can also be considered as lodged and officially sent to the competent director of taxes	FPS Finance	Pending	Recommendation presented to the Finance and Budget Committee on 17 November 2010. Bill of 2 February 2011 amending the Income Tax Code 1992 as regards the introduction of a written complaint. [48]	24 November 2008

48 *Parl. Doc., House of Representatives*, 2010-2011, n° 1161/001..

GR	Title	Object	Status	Comment	Petitions Committee
07/03	Amend Article 371 of the Income Tax Code 1992 (WIB92) so that the sending date of the notice of objection is valid as the lodging date.	FPS Finance	Pending	Recommendation presented to the Finance and Budget Committee on 17 November 2010.	24 November 2008
07/04	Amend Article 375 of the Income Tax Code 1992 so that the director of taxes is unequivocally empowered to cancel a decision on a notice of objection.	FPS Finance	Pending	Bill of 9 August 2010 amending Article 375 of the Income Tax Code of 1992.[49] Recommendation presented to the Finance and Budget Committee on 17 November 2010.	24 November 2008
08/01	Adopt a Royal Decree implementing Article 394, §4 of the Income Tax Code (ITC 92) so as, in the case of joint taxation, to define the way in which the part of the tax pertaining to the taxable income of each of the taxpayers is established.	FPS Finance	Met	Recommendation presented to the Finance and Budget Committee on 17 November 2010. Royal Decree of 22 December 2010 adopted pursuant to Article 394, §4, of the Income Tax Code of 1992.	29 April 2009
Recommendations relative to the FPS Justice, Home Affairs and Foreign Affairs					
01/01	Greater transparency and greater legal security in the application of the Act of 15 December 1980 and its implementing decree.	FPS Home Affairs	Partially Met	On 29 March and 19 July 2009, the Department of Immigration and Naturalisation received instructions concerning situations that may justify granting authorisation to stay on humanitarian grounds, which have been published on its website. [50]	
03/01	The time limit for processing case files submitted on Belgian territory and referred to the Department of Immigration and Naturalisation.	FPS Home Affairs	Pending	This recommendation is monitored with the Department of Immigration and Naturalisation (cf. OR 06/03 and 06/04).	
06/08	Take the necessary measures to guarantee that detainees are actually given an opportunity to prepare for their reintegration into society. This entails that the Federal State must conclude efficient and effective cooperation agreements with the Communities and/or Regions.	FPS Justice	Pending	No action has been taken on this recommendation.	26 April 2007
08/02	Take such measures as necessary to remove the contradiction arising out of the combined application of the Act of 15 December 1980 on access to the territory, the stay, establishment and deportation of foreign nationals and article 31 of the Private International Law Code.	FPS Home Affairs FPS Justice	Pending	No action has been taken on this recommendation.	

49 *Parl. Doc., House of Representatives, 2010-2011, n° 0060/001.*

50 The instructions of 19 July 2009 were cancelled by the Council of State (cf. Decision no. 198.769, 11 December 2009).

GR	Title	Object	Status	Comment	Petitions Committee
08/03	Define directives to ensure the uniform application of article 31 of the International Private Law code, in accordance with the capacitation given by this provision to the Minister for Justice, in order to prevent contradictory decisions regarding the recognition of a civil status document and to ensure the formal reasoning of decisions to refuse a mention in the margin of a civil status document, a transcription in a register of births, marriages and deaths, or the registration, on the basis of said document, in the population, aliens or waiting register.	FPS Home Affairs	Pending	No action has been taken on this recommendation.	29 April 2009
09/03	Do away with the existing discrimination in drawing up marriage contracts so that every Belgian national, irrespective of his or her gender and that of the future spouse, may have a marriage contract drawn up by a Belgian diplomatic or consular official vested with notarial powers.	FPS Foreign Affairs	Met	Article 23 of the Act of 29 December 2010 concerning various provisions (I) amends Article 5, 2°, of the Act of 10 July 1931 concerning the competence of diplomatic and consular officials on notarial matters and does away with the discrimination that existed on concluding a marriage contract: any Belgian national, without distinction as to his or her sex or that of his or her future spouse, may henceforth have a marriage contract drawn up by a Belgian diplomatic or consular official.	
09/04	Do away with the inadmissibility sanction in the absence of a registered letter for filing an application for authorisation to stay on medical grounds based on Article 9ter of the Act of 15 December 1980 – a sanction enshrined in Article 7, § 2, section 1, of the Royal Decree of 17 May 2007 defining the implementing procedures of the Act of 15 September 2006, amending the Act of 15 December 1980 on access to the territory, stay, establishment and removal of foreign nationals.	FPS Home Affairs	Met	The Act of 29 December 2010 on various provisions (I) amends Article 9ter of the Act of 15 December 1980: henceforth, the requirement to file an application for an authorisation to stay on medical grounds by registered letter and the inadmissibility sanction in the absence of a registered letter are enshrined in the Act and no longer in a Royal Decree. There is consequently a legal basis at this time for the inadmissibility sanction.	
10/02	Ensure independent and effective supervision of penitentiaries and other federal places of detention.	FPS Justice	New	Cf. pp. 50-52	
10/03	Have the provisions of the act on the principles concerning the administration of prisons and the legal status of detainees of 12 January 2005 (Prison Principles Act) that do not require an implementing measure enter into force at once, and adopt promptly the Royal Decrees required to implement the other sections of said act.	FPS Justice	New	Cf. pp. 52-55	
10/04	Adapt the Electoral Code so that Belgians living abroad can vote without hindrance in case of early federal legislative elections.	FPS Home Affairs FPS Foreign Affairs			

GR	Title	Object	Status	Comment	Petitions Committee
10/05	Adopt at once a legal basis for the issuance of Certificates of No Impediment to Marriage for Belgians who wish to get married abroad.	FPS Foreign Affairs	New	Cf. pp. 55-57	
Recommendations relative to other federal administrative authorities					
06/02	Adapt article 24, §2, of the Royal Decree of 22 May 2003 on the procedure concerning the processing of applications for disablement benefit -- which stipulates that the social insured must give his consent in order to proceed to the recovery, via his banking institution -- - to the Act of 27 February 1987 on disablement benefit, article 16, §2 of which lays down the terms and conditions that must be met by decisions to recover sums paid unduly.	FPS Social Security	Pending	No action has been taken on this recommendation.	26 April 2007
06/03	Provide a legal basis for the administrative practice that allows self-employed workers to pay social security contributions after the expiry period and determine the procedure to be followed.	FPS Social Security	Pending	An updated version of the two draft Royal Decrees dating from 2007 was submitted to the Minister responsible for the self-employed in April 2010. No action has been taken on the recommendation since.	26 April 2007
06/04	Provide, in the Act of 3 July 2005 on the rights of volunteers, the possibility for disabled civil servants and self-employed workers to do volunteer work.	FPS Social Security	Partially met	A Royal Decree of 29 June 2007 enables disabled self-employed workers to do volunteer work. The means of offering this possibility to disabled civil servants are still under study. A draft Royal Decree aims at entrusting Medex with the mission of consulting physician in accordance with Article 15 of the Act of 3 July 2005. This draft has not yet become a royal decree, however.	26 April 2007
09/02	Put an end to discrimination resulting from the fact that an unemployed person whose partner is a salaried employee earning a limited income is considered to be a cohabitant with family responsibilities, whereas an unemployed person whose partner is self-employed is automatically considered to be a cohabitant without family responsibilities, irrespective of the amount of income (which may be limited) of his or her self-employed partner. As of the second year of unemployment, this distinction entails a considerable difference in the amount of unemployment benefit granted.	National Employment Office	Pending	In September 2010, the Minister for Employment replied that it is impossible, under a caretaker government, to implement this recommendation in the regulation, and that it will consequently be up to the next government to broach the issue. Proposal for a resolution of 1 December 2010 to amend the regulation on unemployment so as to do away with this discrimination.	26 April 2007

GR	Title	Object	Status	Comment	Petitions Committee
10/06	Bring the legislation on family allowances for salaried workers again in compliance with the provisions of Article 17 of the Charter of the Insured Person and thus put an end to the discrimination between insured persons cited by the Constitutional Court: this discrimination consists of enabling family allowances organisations for salaried workers to recover for one year family allowances paid unduly due to an error on their part, whereas the Charter makes such a recovery impossible under the same circumstances for other social security institutions.	National Office of Family Allowances for Salaried Workers	New	Cf. pp. 58-59	
10/07	Amend the regulation relating to benefits for persons with disabilities, so that the increase of benefits arising from a scheduled medical review takes effect on the 1st day of the month following the review date.	FPS Social Security	New	Cf. pp. 59-60	
10/08	Transpose European Directive 2005/36/EC fully into Belgian law, and more specifically, for practitioners of healthcare professions (generalist physicians, specialists, nurses, dentists, midwives, pharmacists) exclude the possibility of rejecting the application for the recognition purely and simply by providing compensation measures as set out in Article 14 of said directive.	FFPS Public Health	New	Cf. p. 60	

3. Recommendations made to the administrative authorities in 2010

FPS Justice – Directorate General of Penitentiaries

OR 10/01: The Federal Ombudsman recommends to the prison authorities to:
- Ensure compliance with the provisions of the Royal Decree of 21 May 1965 concerning the general regulation on penitentiaries that flank the measures concerning interference in the rights of detainees, for as long as the provisions of the Act concerning the administration of prisons and the legal status of detainees (Prison Principles Act) which are to replace them have not entered into force;
- Include the general principles of the Prison Principles Act already in force as well as the higher standards required of the administrative authorities in the application of the general regulation.

Secretary of State for Migration and Asylum Policy

OR 10/02: The Federal Ombudsman recommends that the Royal Decree of 8 October 1981 concerning access to the territory, stay, establishment and removal of foreign nationals be amended to draw up a specific decision-making model for the removal of EU citizens and to avoid that an EU citizen is erroneously served an order to leave not only the Belgian territory but also the territory of other Schengen States.

FPS Public Health

OR 10/03: The Federal Ombudsman recommends to the FPS Public Health to:

1. Offer practitioners of a non-sectoral healthcare profession who apply, by virtue of Directive 2005/36/EC, for the recognition of their professional qualifications acquired in another EU Member State but which differ fundamentally from the education and training required in Belgium to access or to practice the regulated healthcare profession, the possibility to show that they have acquired the missing knowledge and skills, by means of an aptitude test or a practical training scheme (“compensation measures”); and thus no longer reject without further ado, their application for recognition, but to subordinate such recognition to the fulfilment of the proposed compensation measure;
2. Reply within the regulatory period (three or four months depending on the case) to applications for the recognition of a professional qualification obtained in another Member State to practice a regulated healthcare profession.

Selor

OR 10/04: The Federal Ombudsman recommends to:

1. Mention, in accordance with the status of State officials, in the notice published in the “Moniteur Belge” [Belgian Official Gazette] announcing the organisation of comparative selections, both the duration and scope of the reserve pool of the successful participants where such a reserve is provided, and to ensure that all information relating to the selection published on the Selor website is compliant with the notice published in the Official Gazette;

2. Refrain from amending subsequently the duration or the scope of such a reserve pool;
3. Take the measures necessary to integrate all the successful participants (who obtained a result of equal to or greater than 12/20) of the ANG09863 / AFG09863 selection in the reserve pool of successful participants, which is valid for two years.

FPS Social Security – Department of Persons with Disabilities

OR 10/05: the Federal Ombudsman recommends to:

- Improve the information provided to persons with disabilities on the effects of a scheduled medical review (entry into force of the new benefit for the future only even if the worsening of the medical condition was established in the past as well);
- Optimise the processing of this type of cases so as to avoid a loss of benefits for persons with disabilities.

FPS Justice

OR 10/06: The Federal Ombudsman recommends to:

1. Refrain from imposing any additional conditions during the application of Article 3, 3°, of the Royal Decree of 25 October 2005[51] concerning chaplains working full-time after having worked part-time; accordingly, when calculating the seniority in order to determine the annual basic salary of these officials, take into consideration, at least in proportion to the full-time work, the services rendered on a part-time basis by such chaplains;
2. Re-examine the individual cases of chaplains working full-time after having worked part-time.

51 Royal Decree defining the framework for chaplains and Islamic counsellors belonging to one of the recognised religions as well as non-denominational moral philosophy counsellors of the Central Secular Council in prisons, and fixing their pay brackets.

Outline of Official Recommendations

OR	Title	Object	Status	Comment
Recommendations relative to FPS Finance				
06/11	To guarantee equal treatment for all taxpayers and remove all legal insecurity, the Federal Ombudsman recommends that the new administrative position concerning Article 169 of the Income Tax Code be upheld. When a taxpayer gets no advantage from an outstanding debt insurance, he cannot be taxed on the fictitious income from the disbursed capital.	FPS Finance	Met	Administrative circular of 14 February 2007. Ci.RH.241/580919
08/04	The Federal Ombudsman recommends that complaints about the fixing of the cadastral income be processed within the reasonable period provided under article 4 of the Charter of Good Governance, i.e. within 4 to 8 months, extended, where necessary, by the time taken by the interested party to provide the information requested by the services of the Land Registry, which is needed to take a decision.	FPS Finance	Met	In reply to a parliamentary question,[52] the Minister for Finance declared that since 1 June 2009, under the approach plan BRU-CELLS for regrouping services outside the Brussels-Capital Region, a "litigation" pool had been specifically assigned to process administrative disputes. Thanks to this restructuring, several personnel members have been assigned the specific task of processing only complaints about the amount of the cadastral income. Since then, all new complaints lodged are processed within the period recommended by the Federal Ombudsman (4 to 8 months).
08/05	In order to be able to fulfil its duty to provide information and ensure equal treatment for taxpayers in all case files in progress, the Federal Ombudsman recommends to the FSP Finance to adopt a staggered plan to curb the backlog of complaints about the fixing of cadastral income in the Regional Offices of the Land Registry where the situation is alarming.	FPS Finance	Met	In reply to the same parliamentary question mentioned above, the Minister for Finance declared that the priority given to complaints against the amount of the cadastral income had made it possible to reduce the complaints still outstanding by 51.5%. Given the particular situation of the Regional Land Registry Department in Brussels, this methodology should not be generalised for all the regional departments.
08/06	The Federal Ombudsman recommends that petitions to reduce the advance levy on income derived from real estate be examined within the reasonable period provided in article 4 of the Charter of Good Governance, i.e. within 4 to 8 months, extended, where necessary, by the time taken by the interested party to provide the information requested by the services on the advance levy on income derived from real estate, which is needed to take a decision.	FPS Finance	Pending	The administrative authorities specify that it is not possible at this time to foresee a period of 4 to 8 months for the processing of appeals on this matter. When the legislature requires waiting for the expiry of the tax period, the taxpayer is informed accordingly. In other cases, the administrative authorities wish to intensify their cooperation with the Land Registry to reduce processing times.
08/07	The Federal Ombudsman recommends to the FPS Finance to adopt a staggered plan to curb the backlog of complaints about the reduction of the advance levy on income derived from real estate in the Regional Offices of Direct Taxation where the situation is alarming..	FPS Finance	Pending	The administrative authorities have not yet draw up a plan to make up the backlog of complaints in the Regional Offices of Direct Taxation. The backlog of cases not solved by the end of the year shows a slight upward trend (51,174 appeals pending at the end of 2010 compared with 50,524 at the end of 2009). As priority is given to processing recent litigation, the backlog of older complaints is managed in accordance with the availability of each regional service.

52 Q & A, House of Representatives, 4th session of the 52nd Legislature 2009-2010, question no. 110 of 17 December 2007 (Xavier Baeselen), *"Cadastral income – petition processing period,"* DO 20092010, Bull. No.92 of 1 February 2010, pp. 48 ff..

OR	Title	Object	Status	Comment
09/06	The Federal Ombudsman recommends that the services of the FPS Finance take the following measures concerning tax refunds in special cases: - Accelerate the processing of special cases through greater coordination between the different services involved; - Provide more detailed information to taxpayers at every stage of the liquidation procedure, in particular as regards the date of payment of a claim; - Designate a contact point to inform taxpayers about the progress of their case; Conduct an audit of the reimbursement process as soon as possible.	FPS Finance	Pending	Since October 2010, the Revenue Service has some additional days to process tax reimbursements under the ordinary procedure. The Treasury will soon be equipped with an Interactive Voicemail Response (IVR) system, and will adapt its website as well. The STIMER project will focus on the "reimbursement module" as of 2012.
09/07	The tax authorities must ask de facto separated taxpayers who file separate tax returns to provide proof of the time of their de facto separation, before regrouping the two separate returns for joint taxation purposes.	FPS Finance	Pending	The tax authorities have informed the Federal Ombudsman that a correction notice (Article 346, Income Tax Code of 1992) to taxpayers separated but not legally divorced before the regrouping of their tax returns, was not necessary, in their view, and is bound to cause more red tape.
Recommendations relative to the FPS Justice, Home Affairs and Foreign Affairs				
06/01	The Federal Ombudsman recommends that a receipt be issued for every application for a residence permit.	FPS Home Affairs Department of Immigration and Naturalisation	Met	As regards applications for authorisation to stay on humanitarian grounds, pursuant to Article 9bis of the Act of 15 December 1980, the circular of 21 June 2007 relating to the amendments to the regulations on the stay of aliens provides that the municipal authorities issue an acknowledgement of receipt for the foreign national's application (Annex 3), having first verified his or her residence. Applications for authorisation to stay on medical grounds, pursuant to Article 9ter of the afore-cited Act must henceforth be filed directly with the Department of Immigration and Naturalisation by registered letter.
06/02	Indicate, at the request of the users, the period within which a decision concerning a residence permit can be expected..	FPS Home Affairs Department of Immigration and Naturalisation	Refused	For the Department of Immigration and Naturalisation, the Helpdesk is not capable of providing information as to the processing time owing to the high number of applications for regularisation as well as the complexity of the cases.

OR	Title	Object	Status	Comment
06/03	Process residence permits within a reasonable period, as provided in article 4 of the Charter for a user-responsive governance, i.e. 4 to 8 months, and where appropriate, extend said period by such time as the department concerned or another governmental authority needs to provide the information requested by the Department of Immigration and Naturalisation which is needed in order to take a decision.	FPS Home Affairs Department of Immigration and Naturalisation	Pending	This recommendation is followed by the Department of Immigration and Naturalisation. The number of proceedings initiated with the Humanitarian Regularisation Service as at 1 October 2010 amounted to 41,654, including 1,070 applications based on the previous Article 9, section 3, of the Act of 15 December 1980; 30,208 applications based on Article 9bis; and 10,376 applications based on Article 9ter (medical grounds). The Humanitarian Regularisation Service took nearly 30,000 decisions in the first months of 2010.
06/04	Adopt a staggered plan to catch up with the backlog of the Bureau *Article 9, paragraph 3 – Humanitarian considerations.*	FPS Home Affairs Department of Immigration and Naturalisation	Pending	In March 2006, the Humanitarian Regularisation Service had 25,448 applications for authorisation to stay that still had to be processed. In November 2008, the total number of case files to be processed had been brought down to 15,500. This figure has gone up constantly in 2009 and 2010 to reach 45,673 applications in May 2010. On 1 October 2010, 41,654 applications were still pending. The sizeable increase in the number of cases to be processed is due in large part to the publication, in March and July 2009, of new instructions concerning the situations that may justify authorisation to stay on humanitarian grounds. At the end of 2010, the Department of Immigration and Naturalisation took on 25 additional staff, including 5 doctors.
06/05	Take all necessary measures to guarantee that the Department of Immigration and Naturalisation takes a decision on the application to renew or extend a temporary authorisation of stay before the limit date expires.	FPS Home Affairs Department of Immigration and Naturalisation	Partially met	Article 33 of the Royal Decree of 8 October 1981 on access to the territory, stay, establishment and deportation of foreign nationals was amended by a Royal Decree of 27 April 2007 to require foreign nationals to file earlier their application to renew or to extend their residence permit, i.e. between the 45th and the 30th day prior to the expiry of said permit. Since then, the Federal Ombudsman has noted no further structural delays in extending residence permits. Delays still encountered sporadically were usually due to punctual factors (holiday periods, forwarding errors by the municipality, encoding errors at the Department of Immigration and Naturalisation, etc.). The main persisting problem is that an error is often detected when the permit expires, when the person concerned gets worried about a decision not being forthcoming, and is not capable at that time to prove when s/he went to the municipality and with what documents. The Department of Immigration and Naturalisation will continue the logistical effort to avoid delays or identification errors when processing applications to extend permits, but for reasons to do with costs, has excluded setting up an electronic exchange network with the municipal authorities in the short term in order to limit the risks of errors and to accelerate the processing of applications.

OR	Title	Object	Status	Comment
06/06	Before giving an order to leave the territory, the Department of Immigration and Naturalisation should process the pending application for a residence permit.	FPS Home Affairs Department of Immigration and Naturalisation	Partially met	The Department of Immigration and Naturalisation no longer serves notice to foreign nationals to leave the territory when the latter have filed, before their application for asylum was rejected: • An application for authorisation to stay on medical grounds pursuant to article 9ter of the Act of 15 December 1980; • An application for authorisation to stay for humanitarian reasons pursuant to article 9bis, based either on the unreasonable length of the asylum procedure, or a violation of articles 3 or 8 of the European Convention on Human Rights (ECHR). In these two cases, the Department of Immigration and Naturalisation examines the application for authorisation to stay before issuing, where warranted, an order to the foreign national concerned to leave the territory.
06/07	Issue a temporary authorisation to stay to stateless individuals, who are waiting for a decision on their application for a residence permit.	FPS Home Affairs Department of Immigration and Naturalisation	Partially met	The Department of Immigration and Naturalisation henceforth examines the admissibility of applications for authorisation to stay filed by stateless individuals on a case-by-case basis. If the foreign national cannot be regularised on the basis of another criterion, the Department of Immigration and Naturalisation verifies concretely whether it is not possible for that person to return to another country, having regard to Article 3 of the ECHR. The government agreement of 18 March 2008 provided for the introduction of a new procedure for granting stateless status by the General Commissioner for Refugees and Stateless Persons accompanied by a temporary right to stay while the application is examined.
06/08	A decision by the Federal Public Service Home Affairs settling a dispute concerning difficulties and/or objections as to the determination of the main place of residence should be made retroactive to the date of application for registration in the official population register or to the date as close as possible to the date of the actual occupation of the dwelling.	FPS Home Affairs Institutions and Population	Met	An internal note of 30 August 2007 defines the cases in which an SPS Home Affairs decision on a dispute concerning the determination of the principal residence may have retroactive effect. When the dispute pertains to an automatic removal, the decision will have retroactive effect if an investigation shows that the person concerned had his or her main residence at the address where s/he claimed to reside. When the dispute concerns a refusal of registration, such registration may have retroactive effect as of the day of the actual occupation of the new dwelling, on condition that the person concerned is able to prove said date by means of sufficiently probative documents and data.

OR	Title	Object	Status	Comment
06/09	During the transition phase from the ordinary to the electronic identity cards, and for as long as there is no express legal basis, no identity cards that are still valid should be cancelled for the sole reason that the holder has not responded to the summon to have the identity card replaced before the expiry of the period of validity.	FPS Home Affairs Institutions and Population	Met	The Royal Decree of 18 January 2008 amending the Royal Decree of 25 May 2003 on transitional measures relating to the electronic identity card (Belgian Official Gazette of 28 February 2008) determines the cases in which an identity card may be cancelled. This Royal Decree therefore introduces a legal basis for the cancellation of existing identity cards.
08/01	Give instructions to the municipal authorities so that they can extend, automatically and in accordance with the circular of 21 June, the registration certificates of the strikers of the Rue Royale and of Forest while waiting for the reasoned decision of the Department of Immigration and Naturalisation on their applications for authorisation to stay on medical grounds.	FPS Home Affairs Department of Immigration and Naturalisation	Refused	The Department of Immigration and Naturalisation informed the Federal Ombudsman that the Minister of Immigration and Asylum Policy had refused to act on this recommendation.
08/02	Make sure, in general and irrespective of the circumstances, to process applications for authorisation to stay filed by foreign nationals in compliance with the law.	FPS Home Affairs Department of Immigration and Naturalisation	Met	All foreign nationals who henceforth cite medical grounds to be authorised to stay, including through a hunger strike, must henceforth file an application pursuant to Article 9ter to be issued, where warranted, a certificate of registration (A1 form).
08/03	Reduce legal insecurity by defining directives for the processing of applications for the regularisation of residence on humanitarian grounds monitored by the Department of Immigration and Naturalisation, preferably by a circular made public and updated regularly as soon as the new applicable procedures are defined or the administrative practice has changed. This recommendation is in extension to the general recommendation GR 01/01, which was aimed at a greater transparency and greater legal security in the application of the Act of 15 December 1980 by the Department of Immigration and Naturalisation.	FPS Home Affairs Department of Immigration and Naturalisation	Partially met	The instructions received on 29 March and 19 July 2009 by the Department of Immigration and Naturalisation specify the situations that can justify granting authorisation to stay on humanitarian grounds. The Department of Immigration and Naturalisation published these instructions on its website. Nevertheless, when the instruction of 19 July 2009 was cancelled by the Council of State, it was removed from the website and the current directives of the Secretary of State for migration and asylum policy have not been made public.
08/08	In processing an application for authorisation to stay based on article 9bis or on former article 9, section 3, of the Act of 15 December 1980, filed by the foreign parent of a Belgian child, to limit the examination to the exceptional circumstances required by these articles to the existence of a link between the foreign parent and his Belgian child, and to cease to require proof of emotional bonds and/or material/financial links between the Belgian child and the applicant for regularisation and the Belgian parent of this child.	FPS Home Affairs Department of Immigration and Naturalisation	Met	The instructions given on 29 March 2009 to the Department of Immigration and Naturalisation relating to the application of the former Article 9, section 3 and Article 9bis of the Act of 15 December 1980 provide that the parent of a Belgian minor leading an actual family life with that child is henceforth considered as being in an urgent humanitarian situation justifying the granting of authorisation to stay. The Department of Immigration and Naturalisation need no longer verify the ties that the Belgian child maintains with its Belgian parent. [53]

53 These instructions also deal with the case of Ecuadorian nationals whose child obtained Belgian nationality pursuant to Article 10, section 1, of the Belgian Nationality Code and whose application for authorisation to stay was declared inadmissible (cf. Annual Report 2004, p. 42). The Minister for migration and asylum policy confirmed at the Lower House's Home Affairs Committee meeting of 6 May 2009 that the instructions of 29 March 2009 applied also to the latter hypothesis. Full Report, Lower House of Parliament, 3rd session of the 52nd Legislature 2008-2009, Question no. 12474 of 6 May 2009 (Karine Lalieux) on *"Families composed of Brazilian parents and Belgian children."* CRIV 52 COM 547.

OR	Title	Object	Status	Comment
09/04	The Federal Ombudsman recommends not to cross out voters on the Belgian electoral list for the sole reason that they are also on an electoral list of an EU Member State, as this possibility is not provided by the Belgian electoral legislation.	FPS Home Affairs Institutions and Population	Met	In March 2010, the Minister for Home Affairs decided to follow the Federal Ombudsman's recommendation. If it should again turn out at the next elections that Belgian voters are also on electoral lists provided by other Member States, those persons will nonetheless take part in the community and regional parliamentary elections. They will be excluded from the European voting only if it is established by probatory documents that they had already voted in another Member State. If these documents are provided after the election, they may be liable for criminal sanctions if they vote twice.
09/05	The Federal Ombudsman recommends that the detention section of the penitentiary at Merksplas be closed because it is not suitable for receiving detainees.	FPS Justice Penitentiaries	Partially met	The Directorate General for penitentiaries has given instructions to turn two cells on every floor of the detention section into toilets and showers as rapidly as possible. These sanitary facilities will be accessible during the day thanks to an adjustment in the rules of the detention section. The Department of Buildings is in charge of the performance of these works.
09/08	The Federal Ombudsman recommends that the inadmissibility decision taken on 28 January 2009 on the application of Mrs X[54] for authorisation to stay on medical grounds on 18 March 2008 be overturned and that the merits of the case be examined.	FPS Home Affairs Department of Immigration and Naturalisation	Met	Mrs X was issued a temporary authorisation to stay given the seriousness of her state of health.
10/01	The Federal Ombudsman recommends to the prison authorities to: - ensure compliance with the provisions of the Royal Decree of 21 May 1965 concerning the general regulation on penitentiaries that flank the measures concerning interference in the rights of detainees, for as long as the provisions of the Act concerning the administration of prisons and the legal status of detainees (Prison Principles Act) which are to replace them have not entered into force; - Include the general principles of the Prison Principles Act already in force as well as the higher standards required of the administrative authorities in the application of the general regulation.	FPS Justice	Pending	Cf. p. 66

54 Pursuant to Article 15 of the Act of 22 March 1995 establishing the Federal ombudsmen, the identity of the complainants and of the staff members of the administrative authorities may not be mentioned in their reports.

OR	Title	Object	Status	Comment
10/06	The Federal Ombudsman recommends to: 1. Refrain from imposing any additional conditions during the application of Article 3, 3°, of the Royal Decree of 25 October 2005[55] concerning chaplains working full-time after having worked part-time; accordingly, when calculating the seniority in order to determine the annual basic salary of these officials, take into consideration, at least in proportion to the full-time work, the services rendered on a part-time basis by such chaplains; 2. Re-examine the individual cases of chaplains working full-time after having worked part-time. .	FPS Justice	Met	In the beginning of 2011, the FPS Justice announced that it had submitted a proposal to the Inspectorate of Finance to implement the recommendation in the cases of chaplains who find themselves in this situation. Cf. p.67.
Recommendations relative to the FPS Social Security and semi-public social bodies.				
06/10	To ensure equal treatment between persons with disabilities and to spare some of them from an additional formality, the Federal Ombudsman recommends to the Department of Persons with Disabilities to pay interest on arrears automatically in the event of a court decision reforming the entitlement to benefits for persons with disabilities, without the latter having to apply expressly.	FPS Social Security	Met	In mid-2007, the Secretary of State for the Family and Persons with Disabilities instructed the Department of Persons with Disabilities to apply the recommendation.
07/01	The Federal Ombudsman recommends to the NSSO, in connection with the application of the specific sanction for the C02 contribution, to apply, by analogy, the general regulations on the waiver or reduction of the civil sanctions and, in particular, Articles 54ter and 55 of the Royal Decree of 28 November 1969 for the (representatives of) employers who invoke arguments to justify or explain a late return (or payment) of the CO2 contribution.	National Social Security Office	Met	The National Social Security Office accepted to apply the recommendation in anticipation of a clarification of the legal text. An exemption or reduction is henceforth also possible for the specific sanction of the C02 contribution under the conditions set out in Article 55 of the Royal Decree of 28 November 1969.

55 Royal Decree defining the framework for chaplains and Islamic counsellors belonging to one of the recognised religions as well as non-denominational moral philosophy counsellors of the Central Secular Council in prisons, and fixing their pay brackets.

	Title	Object	Status	Comment
07/02	The Federal Ombudsman recommends that Article 17 of the Act of 11 April 1995 on the introduction of the Charter of the Socially Insured persons be applied to new decisions (within the meaning of Article 17) concerning family allowances that date prior to 1 October 2006 and which entail that entitlement to the benefit was smaller than the initially attributed entitlement.	National Office of Family Allowances for Salaried Workers	Met	The National Family Allowances Office for Salaried Workers followed the recommendation in 2008 and regularised the files concerned.
10/05	The Federal Ombudsman recommends to: - Improve the information provided to persons with disabilities on the effects of a scheduled medical review (entry into force of the new benefit for the future only even if the worsening of the medical condition was established in the past as well); - Optimise the processing of this type of cases so as to avoid a loss of benefits for persons with disabilities..	FPS Social Security Department of Persons with Disabilities	Pending	In the beginning of 2011, the Department of Persons with Disabilities informed the Federal Ombudsman that it was examining the possibilities of implementing the recommendation concretely. Cf. p. 67.
Recommendations relative to the FPS Public Health, Food Chain Security and the Environment				
10/03	The Federal Ombudsman recommends to the FPS Public Health to: 1. Offer practitioners of a non-sectoral healthcare profession who apply, by virtue of Directive 2005/36/EC, for the recognition of their professional qualifications acquired in another EU Member State but which differ fundamentally from the education and training required in Belgium to access or to practice the regulated healthcare profession, the possibility to show that they have acquired the missing knowledge and skills, by means of an aptitude test or a practical training scheme (“compensation measures”); and thus no longer reject without further ado, their application for recognition, but to subordinate such recognition to the fulfilment of the proposed compensation measure; 2. Reply within the regulatory period (three or four months depending on the case) to applications for the recognition of a professional qualification obtained in another Member State to practice a regulated healthcare profession.	FPS Public Health	Pending	Cf. p. 66

	Title	Object	Status	Comment
Recommendations relative to other federal administrative authorities				
07/03	The Federal Ombudsman recommends that, in anticipation of a possible amendment of Article 20, §1, of the Royal Decree of 8 March 2001, candidates who were registered for a language test, be not excluded from taking part in subsequent language tests during a period of one year, when they have notified Selor in advance that they would not be sitting for the language test, without any additional explanation afterwards. The Federal Ombudsman moreover recommends doing away with the exclusion from participation in language tests for one year, that was imposed on candidates that had informed Selor in advance that they would not be participating, but had not provided reasons for their absence afterwards.	Selor	Met	Selor adapted its practices in 2007. * Candidates who notified Selor by e-mail, post or fax at the latest on the day before the language examination for which they had been asked to sit, are henceforth no longer excluded for a period of one year; * Candidates who did not notify Selor, but who give reasons for their absence within five working days after the day of the examination by a detailed letter or certificate are likewise not excluded for a year.
09/01	The Federal Ombudsman recommends that Fedasil put an end immediately to the refusal to receive needy minors residing on the territory illegally with their family..	Fedasil	Pending	Fedasil has pointed out that the lack of places available makes it impossible to accommodate this target group. In individual cases, Fedasil nonetheless does take action on the Federal Ombudsman's recommendation. On 24 September 2009, the Federal Ombudsman submitted an interim report on this subject to the House of Representatives. In 2010, Fedasil continued to refuse systematically to receive needy minors residing illegally on the territory with their family. In individual cases, the Agency nonetheless continued to follow the Federal Ombudsman's recommendation by receiving this target group.
09/02	The Belgian State must provide, at all times and under all circumstances, reception in accordance with the fundamental human rights and dignity to all beneficiaries of the Asylum Act, without discrimination. Given the current saturation of the reception network, the necessary measures must be taken immediately – either by making sufficient human and material resources available, or through an adequate legal mechanism, so that Fedasil can fulfil its reception mission for all beneficiaries correctly at all times. While waiting for these measures to produce the expected effect, the State may not hide behind the saturation of the reception network to refrain from receiving certain beneficiaries and must allow the legal exemption mechanism provided for asylum seekers by the legislation on reception to produce its effects in full so as to guarantee that under particular circumstances, all beneficiaries of reception will receive the aid needed to meet their basic needs.	Secretary of State for social integration and the fight against poverty	Pending	The Secretary of State instructed Fedasil to prepare proposals for amending the Asylum Act to introduce a specific reception procedure for needy minors residing on the territory illegally with their family. On 24 September 2009, the Federal Ombudsman submitted the interim report on this matter to the House of Representatives. On 17 September 2010, Fedasil and the Department of Immigration and Naturalisation signed a memorandum of understanding on guidance and support for families residing illegally on the territory and accommodated in an open centre. Two options are being considered: put an end to the illegal stay, or undertake to help them with voluntary repatriation. The implementation of this memorandum of understanding requires additional instructions nonetheless. At the end of 2010, Fedasil was drawing up these instructions.

OR	Title	Object	Status	Comment
09/03	The Federal State must provide accommodation immediately to all persons entitled to material reception so that they can meet their basic needs. Compliance with the law, fundamental rights and good governance require the federal authorities to coordinate their efforts efficiently to that end.	Prime Minister in charge of coordinating the migration and asylum policy and Secretary of State for social integration and the fight against poverty	Pending	The Prime Minister answered that he was aware of the urgent need of additional accommodation places. In spite of the many measures taken in the previous months and the mobilisation of additional resources, the problem is as acute as ever. The Prime Minister contacted the different members of the government concerned and supports the Secretary of State for social integration and the fight against poverty in the ongoing search for solutions in the short as well as in the longer term. Fedasil indicated that in 2010, the lack of available space made it impossible to receive 6,284 people, in spite of the tcreation of 2,800 additional reception places. In 2010, the measures taken seemed to have produced results. In December 2010, Fedasil announced that it was able to receive all asylum seekers.
10/02	The Federal Ombudsman recommends that the Royal Decree of 8 October 1981 concerning access to the territory, stay, establishment and removal of foreign nationals be amended to draw up a specific decision-making model for the removal of EU citizens and to avoid that an EU citizen is erroneously served an order to leave not only the Belgian territory but also the territory of other Schengen States.	Secretary of State for Migration and Asylum Policy	Pending	Cf. p. 66
10/04	The Federal Ombudsman recommends to: 1. Mention, in accordance with the status of State officials, in the notice published in the "Moniteur Belge" [Belgian Official Gazette] announcing the organisation of comparative selections, both the duration and scope of the reserve pool of the successful participants where such a reserve is provided, and to ensure that all information relating to the selection published on the Selor website is compliant with the notice published in the Official Gazette: 2. Refrain from amending subsequently the duration or the scope of such a reserve pool; 3. Take the measures necessary to integrate all the successful participants (who obtained a result of equal to or greater than 12/20) of the ANG09863 / AFG09863 selection in the reserve pool of successful participants, which is valid for two years.	Selor	Pending	Cf. pp. 66-67.

Appendix

The Federal Ombudsmen Act, Kingdom of Belgium, March 22, 1995.[56]

CHAPTER 1. The federal ombudsmen

Article 1. There are two federal ombudsmen, one French-speaking, the other Dutch- speaking, whose mission it is :

1°) to examine the claims relating to the operation of the federal administrative authorities;
2°) at the request of the House of Representatives, to lead any investigation on the functioning of the federal administrative services that it designates;
3°) to make recommendations and submit a report on the operation of the administrative authorities, in compliance with Article 14, paragraph 3, and Article 15, paragraph 1, based on the observations made while implementing the duties referred to in 1 and 2, above.

The ombudsmen carry out their duties with regard to the federal administrative authorities referred to in Article 14 of the coordinated laws on the Council of State, except for those administrative authorities endowed with their own ombudsman by a specific legal provision.

When the ombudsman's office is assumed by a woman, she is designated by the French term "médiatrice" or the Dutch term "ombudsvrouw" (in English : ombudswoman).

The ombudsmen act collectively.

Article 2. The ombudsmen and the staff who assist them are subject to the provisions of the laws on the language used in administrative matters, coordinated on July 18, 1966. They are regarded as services which are extended to the entire country.

Article 3. The ombudsmen are appointed by the House of Representatives (lower house of parliament) for a term of six years, after an open invitation to candidates to apply. At the end of each term of office, there is an open invitation to submit applications to renew the board of federal ombudsmen. An ombudsman's term of office can be renewed only once for the same candidate. If his term of office is not renewed, the ombudsman continues to perform his duties until a successor is appointed.

To be appointed ombudsman, it is necessary :

1°) to be Belgian;
2°) to be of irreproachable conduct and to enjoy the civil and political rights;
3°) to hold a degree, giving access to the functions of level 1 of the Civil Service departments of the State;
4°) to demonstrate sufficient knowledge of the other national languages, according to the standards laid down by the House of Representatives;
5°) to have had relevant professional experience of at least five years, either in the legal, administrative or social spheres, or in another field relevant to carrying out this function.

The same person may not serve as ombudsman for more than two terms of office, whether successive or otherwise.

Article 4. Before taking up duty, the ombudsmen take the following oath before the Speaker of the House of Representatives : "I swear fidelity to the King, obedience to the constitution and to the laws of the Belgian people".

56 As modified by Act of February 11, 2004 and by Act of May 23, 2007.

Article 5. During their period in office, the ombudsmen may not carry out the following duties or hold any of the following positions or offices :
1°) magistrate, notary public or bailiff;
2°) lawyer;
3°) minister of a recognised religion or delegate of an organisation recognised by the law which gives moral assistance according to a non-religious philosophy;
4°) a public office conferred by election;
5°) employment remunerated in the public services referred to in Article 1, paragraph 2.

The ombudsmen cannot hold an office, public or otherwise, which could compromise the dignity or the performance of their duties.

For the application of this article, the following are treated as a public office conferred by election : a position as mayor appointed separately from the communal council; director of a public interest organisation and a position as a Government commissioner, including that of Governor of province, Deputy Governor or Vice-Governor.

The holder of a public office conferred by election who accepts a nomination for the office of ombudsman is legally excluded from his elective mandate.

Articles 1, 6, 7, 10, 11 and 12 of the Act of 18 September 1986 instituting political leave for the members of staff of the public service are applicable to the ombudsmen, if they are entitled to such leave, and the necessary adaptations are made.

Article 6. The House of Representatives can terminate the ombudsmen's functions :
1°) at their request;
2°) when they reach the age of 65;
3°) when their health seriously compromises the exercise of their duties.

The House of Representatives can remove the ombudsmen from office :
1°) if they carry out the duties or hold one of the positions or offices referred to in Article 5, paragraph 1 and paragraph 3;
2°) for serious reasons.

Article 7. Within the limits of their mission, the ombudsmen do not receive instructions from any authority.

They cannot be relieved of their duties due to activities conducted within the framework of their functions.

CHAPTER II. Complaints

Article 8. Any interested person can lodge a complaint with the ombudsmen, in writing or verbally, regarding the activities or functioning of the administrative authorities.

As a preliminary matter, the interested party must contact these authorities in order to obtain satisfaction.

Article 9. The ombudsmen can refuse to investigate a complaint when :
1°) the complainant's identity is unknown;
2°) the complaint refers to facts which occurred more than one year before the lodgement of the complaint.

The ombudsmen will refuse to investigate a complaint when :
1°) the complaint is obviously unfounded;

2°) the complainant obviously took no steps to approach the administrative authority concerned tc obtain satisfaction;
3°) the complaint is primarily the same as a complaint dismissed by the ombudsmen, if it contains no new facts.

When the complaint refers to a federal, regional, community and other administrative authority which has its own ombudsman by virtue of legal regulation, the ombudsmen will pass it on to the latter without delay.

Article 10. The ombudsmen will inform the complainant without delay of their decision of whether or not the complaint will be handled, or whether it will be passed on to another ombudsman. Any refusal to handle a complaint will be substantiated.
The ombudsmen will inform the administrative authority of their intention to investigate a complaint.

Article 11. The ombudsmen can impose binding deadlines for response on the agents or services to which they address questions in the course of their duties.

They can similarly make any observation, acquire all the documents and information that they consider necessary and hear all persons concerned on the spot.

Persons who are entrusted with privileged information by virtue of their status or profession, are relieved of their obligation to maintain confidentiality within the framework of the enquiry carried out by the ombudsmen.

The ombudsmen may seek assistance by experts.

Article 12. If, in the performance of their duties, the ombudsmen note a fact which could constitute a crime or an offence, they must inform the Public Prosecutor in compliance with Article 29 of the Code of Criminal Procedure.

If, in the performance of their duties, they note a fact which could constitute a disciplinary offence, they must inform the competent administrative authority.

Article 13. The examination of a complaint is suspended when the facts are subject of judicial appeal or of organised administrative appeal. The administrative authority will inform the ombudsmen of legal proceedings.

In this event, the ombudsmen will report to the complainant of the suspension of the examination of his or her complaint without delay.

The lodgement and the examination of a complaint neither suspend nor stop time limits for judicial or organised administrative appeal.

Article 14. The complainant is kept periodically informed of the progress of his or her complaint.

The ombudsmen will endeavour to reconcile the complainant's point of view and those of the services concerned.

They can send any recommendation to the administrative authority that they consider useful. In this case, they will inform the minister responsible.

CHAPTER III. Reports by the ombudsmen

Article 15. Every year, by March 31st at the latest, the ombudsmen send a report on their activities to the House of Representatives. They can, in addition, submit intermediate quarterly reports if they consider it useful. These reports contain the recommendations that the ombudsmen consider useful and expose possible difficulties that they encounter in the performance of their duties.

The identity of the complainants and of members of staff in the administrative authorities may not be divulged in these reports.

The reports are made public by the House of Representatives.

The ombudsmen may be heard by the House at any time, either at their request, or at the request of the House.

CHAPTER IV. Various provisions

Article 16. Article 458 of the Penal Code applies to the ombudsmen and their staff (professional secrecy).

Article 17. The ombudsmen adopt house rules.

The house rules are approved by the House of Representatives.

After seeking the advice of the ombudsmen, the House of Representatives can modify the house rules. In case the advice has not been given within the 60 days following the request, it is considered favourably.

Article 18. Without prejudice to the competence of the House of Representatives – assisted by the Auditor's Office – to examine the federal ombudsmen's detailed budget propositions and to approve their budget as well as to verify its implementation and to audit the books, a part of the Kingdom's general expenditure budget is allocated for the state grant covering this budget.

For their budget and accounts, the federal ombudsmen follow a scheme comparable to the one that the House of Representatives uses for its budget and accounts.

Correspondence sent as part of the ombudsmen's office is sent free of postage.

Article 19. Without prejudice to the assignments agreed upon by collegial decision, the ombudsmen appoint, dismiss and direct the members of staff who will assist them in the performance of their duties.

The staffing and the members status are decided by the House of Representatives at the suggestion of the ombudsmen.

After seeking the advice of the federal ombudsmen, it can modify this status and staffing. In case the advice has not been given within the 60 days following the request, it is considered favourably.

Article 20. The ombudsmen enjoy a status identical to that of the counsellors of the Court of Auditors. The rules governing the financial status of the counsellors of the Court of Auditors, in the Act of 21 March 1964 on the salaries of the members of the Court of Auditors, as amended by the acts of 14 March 1975 and 5 August 1992, are applicable to the ombudsmen.

The ombudsmen's pension on retirement is calculated on the basis of the average salary for the last five years, determined in accordance with the applicable arrangement for retirement pensions to be paid by the State, at a rate of one thirtieth per year of service as an ombudsman, providing he or she has carried out his or her functions in the aforementioned capacity for twelve years.

Services by the ombudsmen which are not governed by the previous paragraph and which are acceptable for the calculation of a pension on retirement to be paid by the State, are calculated according to the laws fixing retirement pensions pertaining to these services.

If an ombudsman is not considered fit to carry out his or her functions due to illness or infirmity, but has not reached the age of 65, he or she may draw a pension irrespective of age.

The ombudsmen's pension on retirement shall not be higher than nine tenths of the average salary for the last five years.

Except in the cases referred to in Article 6, Paragraph 1, 1° and 2°, and Paragraph 2, and in the case referred to in Paragraph 4 of this article, an ombudsman whose term of office expires shall receive a severance allowance calculated on the basis of a monthly salary per year of service.

Table of contents