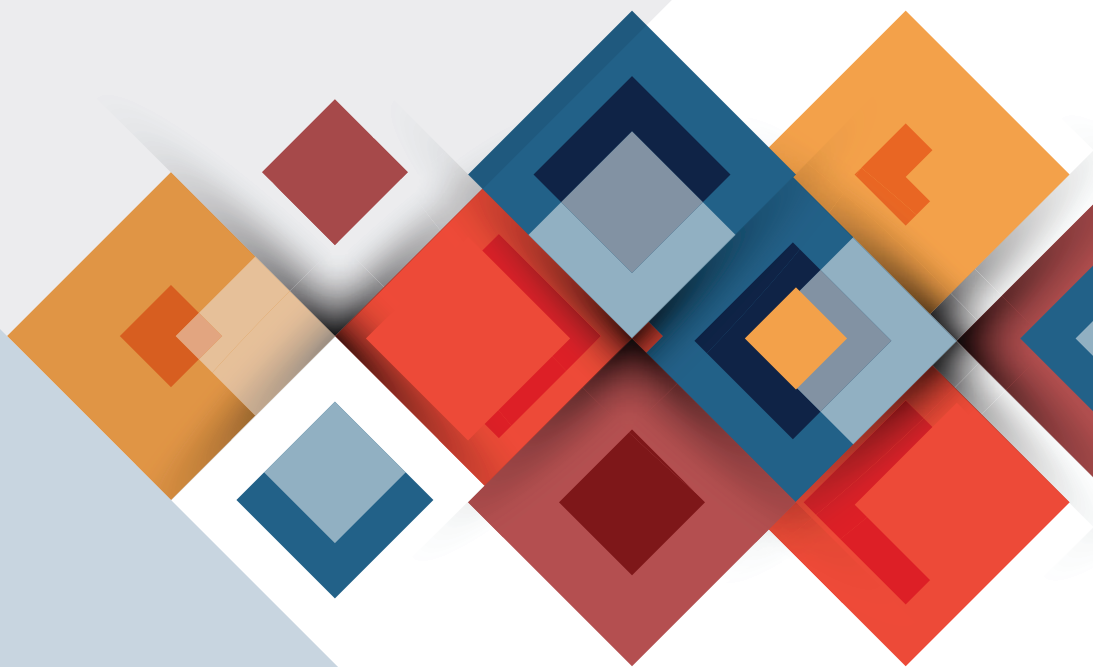


2017

Annual Report



Executive Summary



THE GREEK
OMBUDSMAN
INDEPENDENT AUTHORITY

Annual Report
of the Greek Ombudsman
for the year 2017

Executive Summary

THE ANNUAL REPORT GROUP 2017

All staff members of the Greek Ombudsman contributed to the Annual Report 2017

Specific tasks were assigned as follows:

Design, Coordination, Editing:

Central Editorial Team: Maria Karageorgou, Zoe Karamitrou, Evanthia Benekou

Scientific text processing:

Irini Kyriakaki, Maria Liadi, Olga Lysandropoulou, Evangelia Markaki, Anastasia Matana, Dimitra Mytilineou, Niki Palaska, Aggeliki Panopoulou, Matoula Papadimitriou, Angelina Salamaliki, Maria Tsaggari, Michalis Tsapogas, Dafni Filippaki, Christina Florou, Chryssa Hatz

Executive Summary Translation:

Maria Karageorgou (translator and editor), Evanthia Benekou, Konstantinos Daramaras, Evanthia Papanikolaou, Kalliopi Zouvia (translators)

Retrieving, synthesis and processing of statistical data:

Elias Vouropoulos

Commenting on statistical data:

Ion Sagias

Also contributed:

Dimitris Vrazos, Maria-Aristea Kalamatianou

The Ombudsman's Annual Report for 2017 is available in its full version in Greek at:

www.synigoros.gr

The Annual Report 2017 was printed in 700 copies
at the National Printing Office in March 2018

Cover-Artistic Design

KAMPILI SA

Antigonis 60, 104 42 Kolonos, Athens, Tel.: +30 210 5156810-20-30

Nikoletta Michelaki, E-mail: info@kambili.gr, www.kambili.gr

The Greek Ombudsman:

Halkokondyli 17, 104 32 Athens

Tel: (+30) 213 1306 600

www.synigoros.gr

ISSN: 2653-8814

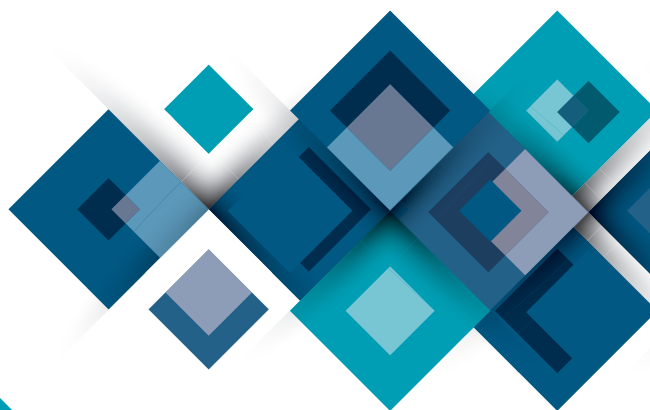
Contents

INTRODUCTION	9
THE YEAR THROUGH THE EYES OF THE OMBUDSMAN	9
Abstract	14
STATISTICAL DATA OF THE YEAR 2017	15
Number and thematic categories of complaints	17
Geographical distribution and seasonality of complaints	19
Inadmissible complaints and effectiveness in mediation.....	22
The “x-ray” of maladministration.....	23
Ministries.....	25
Local Government	26
Legal Entities of Public law	27
Conclusions	28
THE OMBUDSMAN AS MEDIATOR AND LEGALITY CONTROL MECHANISM	29
MAIN DOSSIER	29
Legality: a guarantee for the rule of law	31
When the legislation is not implemented.....	33
When the legislation is misconstrued	35
Selective or problematic application of law	36
Overregulation – Ambiguity – Flawed Legislation.....	38
Legislating beyond the limits of general interest	40
Administrative dysfunctions in implementing legislation	41
Postface	43
THEMATIC DOSSIERS	45
Attachment of earnings for debts to the State	48

Social security and benefits	49
Social solidarity	51
Environment and natural resources management and protection	52
Immigration and political asylum	53
Citizenship and civil status.....	54
Imprisonment.....	55
Integration in the labour market	56
Active employment policies	57
Protection of children’s rights at school.....	58
Protection of minors and activation of support mechanisms.....	59
Parental responsibility and care	59
Higher education	60
THE OMBUDSMAN & HUMAN RIGHTS	63
Introduction	65
Tackling discrimination & promoting equal treatment.....	65
Monitoring returns of third-country nationals	68
The external monitor of returns in 2017 at a glance.....	68
Quantitative data.....	68
Qualitative data	68
The cooperation with FRONTEX reporting mechanism	69
Conclusion.....	69
National mechanism for investigating cases of arbitrary behaviour of law enforcement agencies.....	69
National Preventive Mechanism (NPM) against torture and cruel, inhuman and degrading treatment or punishment.....	71
Detention Centres	71
Police detention facilities	71
Areas for psychiatric care and social welfare	72
Mental Hospitals	72
Third-country nationals Pre-removal Detention Centres	73

Organisation and supply of health services	73
THE OMBUDSMAN AS ADVOCATE	77
LEGISLATIVE AND ORGANISATIONAL PROPOSALS.....	77
PROMOTION OF RIGHTS.....	81
Monitoring and promotion of children's rights	83
Promotion of equal treatment	84
Special report of the Greek Ombudsman on migratory flows and the refugees' protection.....	84
NATIONAL AND INTERNATIONAL COOPERATION ACTIVITIES	85
LEGAL FRAMEWORK AND STAFF	89
Legal framework modifications in 2017	91
Organisation and Staffing of the Ombudsman.....	92

|| INTRODUCTION
|| **THE YEAR THROUGH THE EYES
|| OF THE OMBUDSMAN**



The review of the Ombudsman's action, in yet another year of budgetary adjustment and economic recession or stagnation, highlights identified and long-standing malaises at all levels of public administration as well as deficits in the effective advocacy and the complete and genuine respect of the rights enshrined



in constitutional, EU and international law. This is mainly attributed to the legislative framework, occasionally incomplete or inflated, sometimes unclear or vague, reinforced by the phenomena of misimplementing or even overriding it. Rationalization of administrative action as well as consolidation of the principles of the rule of law are not only conditions sine qua non of a modern, European, democratic State, but also key pillars for solid, sustainable economic growth and social cohesion.

Standing by this principle, the Independent Authority performs its constitutional role by uniquely combining its threefold nature: It is an advocate of the citizen and resident of Greece, mediating to defend his/her rights and resolve his/her disputes with the State (out of court rapidly and inexpensively), but also advising about the boundaries thereof. It is an assistant to the central and decentralized administration, towards its more efficient operation, as well as towards the consolidation of the principles of good administration, legitimacy, proportionality, leniency, continuity, and of course towards the improvement of the quality of services for the citizen. Finally, it is a privileged institutional interlocutor of the legislative and executive powers, offering valuable key recommendations, remarks, proposals and evaluations - ex post and ex ante – on political and legislative initiatives.

In 2017, the administration was in yet another transitional period, since there were pending the full implementation of reform plans for structural changes, a new system of inter-departmental mobility, staff evaluation and promotion. At the same time, the transition to a new social security system, with the launch of a single Social Security Agency, was not supported by appropriate planning and preparation, resulting in more distortions, bureaucratic rigidities, delays and unsatisfactory social security services.

Citizens turned to the Ombudsman by thousands, searching to mitigate the adverse effects of administrative malfunctions or abuses on their rights, their

standard of living, their everyday lives, but also their personal, family and social life planning. In 2017, with a series of persistent mediations and institutional interventions, the Ombudsman achieved measures and decisions, among other things, for: a) protecting salaries, pensions and welfare benefits deposited to bank accounts from attachment for debts to the State, b) recognition of unduly paid health insurance contributions - but also reimbursement of undue deductions or levies - c) protection of the natural and residential environment, d) consolidation of the principle of equal treatment in all areas of human activity and social organization, d) implementation of positive measures in favour of the most vulnerable economic and social groups (such as the disabled, the unemployed, the marginalized, convicts or ex-convicts, and migrants), e) safeguarding the rights of patients/recipients of health services, f) securing the quality of services provided to children, g) protecting refugees and asylum seekers, h) effective and efficient control and limitation of arbitrary phenomena by law enforcement authorities and detention facilities staff. The main aim was broader transparency, more measurable effectiveness, fuller and further accountability; in general, a level of democratic government pertaining to a Member State of the EU.

This report summarises the most typical cases in which the Ombudsman's intervention led to a successful outcome. There are also cases for which the Ombudsman continues to insist, with confidence in its positions, and the certainty that they will ultimately be accepted. This confidence supports the importance and necessity of the multidimensional nature of the institution, and derives from the thorough documentation of its positions as well as its non-negotiable independence.

In order to reciprocate the trust of citizens and residents of the country, but also to ensure the quality and completeness of mediation, interventions and investigations, the Ombudsman accepted the challenges, which pressing, stifling problems and restriction of rights (reaching their core limits) and income (reaching absolute poverty) bring about to the daily lives of the country's residents and their future prospects. The Ombudsman strengthened its extroversion by travelling throughout the country, carrying out systematic, periodic, regular and extraordinary visits for investigations, contacts and communication with public bodies, representatives of the civil society, aiming at making the institution accessible to anyone who needs it. It also aims at intervening in a targeted way, at local, regional or national level, wherever required for making its mediation really felt and effective. At the same time, by activating and capitalizing on all of its human potential, it has launched a series of initiatives, innovative upgrades of its processes, methodologies and functions, whether intermediary, controlling,

institutional or operational, in order to respond, to all intents and purposes, to its established role towards the State, the administration, the citizens, and be ready to respond to new challenges. It utilises its existing potential to the fullest and requests further reinforcement in infrastructure, human resources and institutional tools. It implements a targeted strategy to promote and optimally address the systemic issues of the Greek administration and society, as well as more effectively mediate for the solution of individual disputes. But, at the same time, it stays utterly alert, ready to handle extraordinary and sudden risks of fundamental rights or violations of legality and the rule of law, in sobriety, impartiality and independence. It gives particular emphasis on its collaborations, its international role, its synergies with European and international rights protection bodies and respective institutions, with the aim of actively participating in the development of best practices, recommendations and positions for the management of issues that have a transnational or supra-governmental dimension. It is constantly committed to an upgraded relationship with the members of Parliament, strengthening the credentials and pluralism of political and institutional dialogue, both inside and outside the Parliament. Finally, by fulfilling its constitutional role, the Ombudsman aims to continuously contribute to defending fundamental rights, safeguarding legality, consolidating the rule of law, and through all that, preserving democratic principles and values, reviving the growth of the economy and strengthening social cohesion.

The Greek Ombudsman
Andreas I. Pottakis

Abstract

The Greek Ombudsman's Annual Report 2017 is an abridged and comprehensive look at the Authority's work and activities for the said period. It introduces innovations in appearance, content and structure, with the aim to be easy to read, user-friendly, and representative of the Institution's current multifaceted competencies. Thus, it displays the diversity of the Authority's actions, which are at the same time interrelated and distinct.

In the introduction, the Head of the Authority identifies the landmarks of 2017 and presents the vision of the years ahead. The next part is dedicated to the year statistics, which depict the Authority's work in numbers.

The first part of Section (I) portrays the Ombudsman's work primarily as a mediating body and also a controlling mechanism. It focuses on a key issue that the institution chose to prioritise this year: the implementation of the rule of law and the legitimacy of administrative action in Greece in 2017. It seeks to highlight the multidimensional aspects and characteristics of this matter, as they appear through the daily practice of the citizens as well as the public services, but also the role of the Ombudsman in finding a solution to the problems deriving from it. In the second part, always in connection and interaction with the key issue, specific inflexibilities, rigidities and distortions of the public sector, the most important area of the Ombudsman's competence, are traced and analyzed.

Section (II) is devoted to the Ombudsman as a human rights defender, a pioneer in combating all kinds of discrimination, arbitrariness, or violations of the domestic and international obligations of the country.

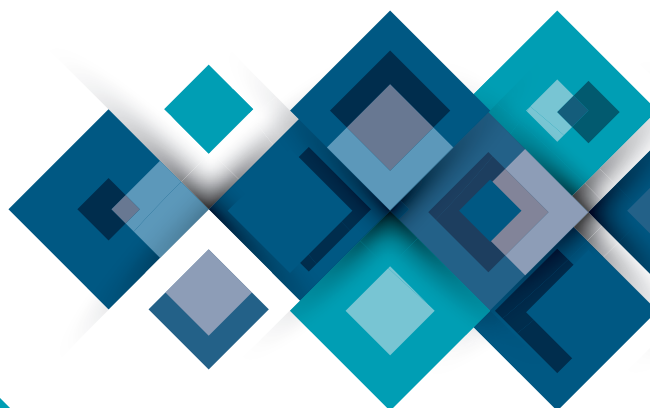
In Sections (III & IV), the Authority presents its multiple actions (such as legislative, promotional, communicative) aiming at advocating its dynamics, disseminating its know-how, expanding its partnerships, and generally supporting its work in Greece and abroad, with the ultimate goal of defending legitimacy as well as the rights and the fair and equal treatment of every resident of Greece and every Greek citizen, whenever s/he comes into contact with the Greek State.

Section (V) presents the most recent amendments to the legislative framework of the Authority as well as its staff.

This Report aims not just to fulfil the formal obligation of its submission to the Greek Parliament but to attract the interest of the Greek Parliament (our institutional interlocutor), the official State, every civil servant and mainly every citizen who wants to share our knowledge, experience and effort to turn us all from part of the problem to part of the solution.

|| STATISTICAL DATA OF THE YEAR 2017

Identifying the citizen's problems through
their complaints to the Ombudsman
in 2017



Number and thematic categories of complaints

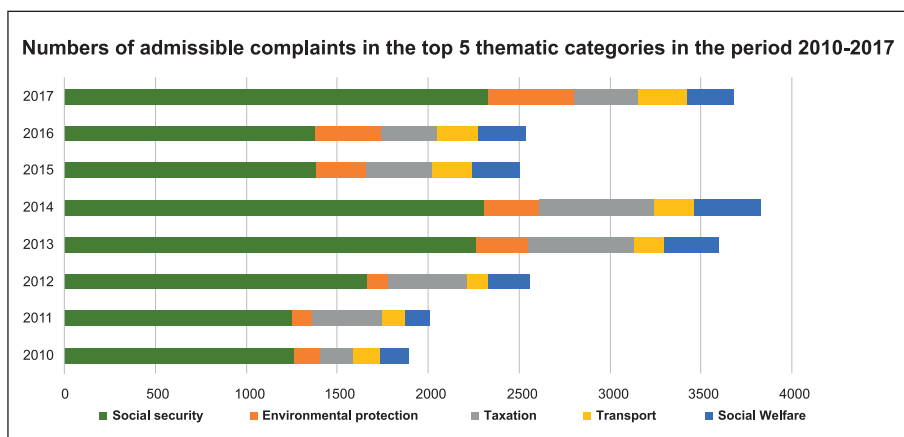
Once again, the number of complaints to the Ombudsman increased this year from 11,915 to 15,438 complaints, namely a 29.6% increase from 2016. This growing trend of the latter years of the fiscal crisis, accumulates, in the period 2010-2017, 47.3% of all complaints filed with the Authority since the beginning of its operation (1998). In addition, the average annual complaints number in the period 2010-2017 stabilises at a significantly higher level than that of the period 1999-2009. In particular, the first decade of its operation, the average annual number of complaints was approximately 10,500, while over the last eight years (2010-17) it has risen to 13,190, an increase of approximately 25%. (See Graph 1)

Graph 1

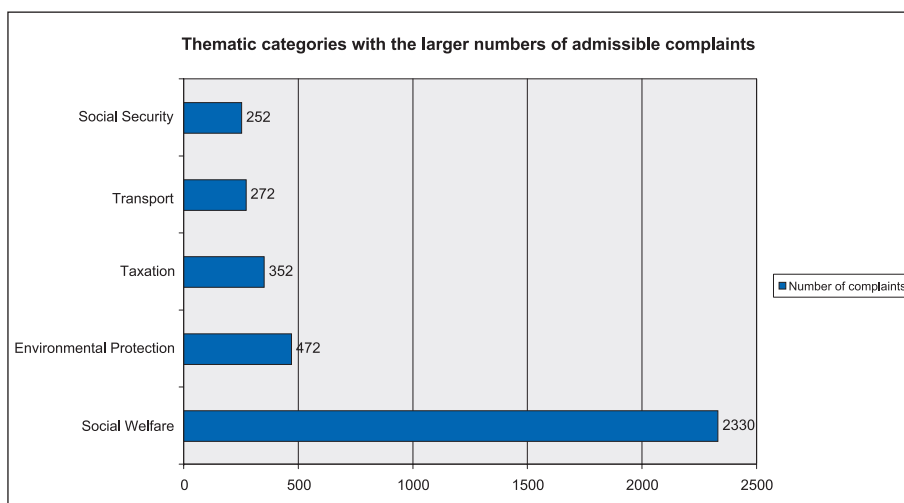


Examining the breakdown into individual thematic categories of complaints which were considered admissible and had indications of some form of maladministration, shows that the 5 larger categories have an impressive stability over time (see Graphs 2 and 2a).

Graph 2



Graph 2a



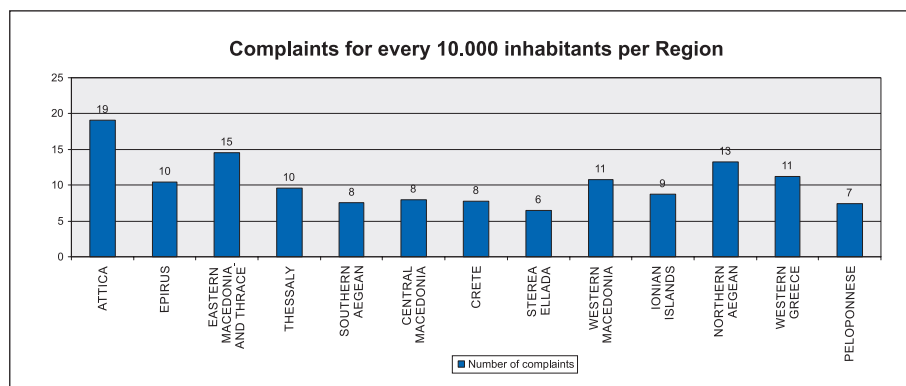
Social Security Issues systematically represent the majority of complaints filed to the Authority; issues of environmental protection, licensing and operations monitoring, which also include problems with public utility companies, follow on a steady basis. Tax issues, although having a slight downturn in recent years, make up the third largest group of complaints investigated by the Ombudsman. Finally, Transport and Social Welfare complaints complete the top five positions of the issues for which the Authority has mediated.

However, particular emphasis should be placed on the increasing trend observed over time in these 5 major thematic categories. Until 2013 these categories represented up to 50% of all admissible complaints. In the last years, the number of these 5 categories of complaints consistently exceeds 45% of the total complaints and in 2017 it amounted to 52%. The “systemic character” of these problems has repeatedly been documented in the Annual Reports of the Authority and, in conjunction with the significant numerical increase of complaints in the Authority, shows the accumulative setbacks in the Welfare State, in the relation between businesses and environmental protection, as well as in infrastructure. These are the challenging areas and deficiencies that affect the everyday lives of citizens.¹

Geographical distribution and seasonality of complaints

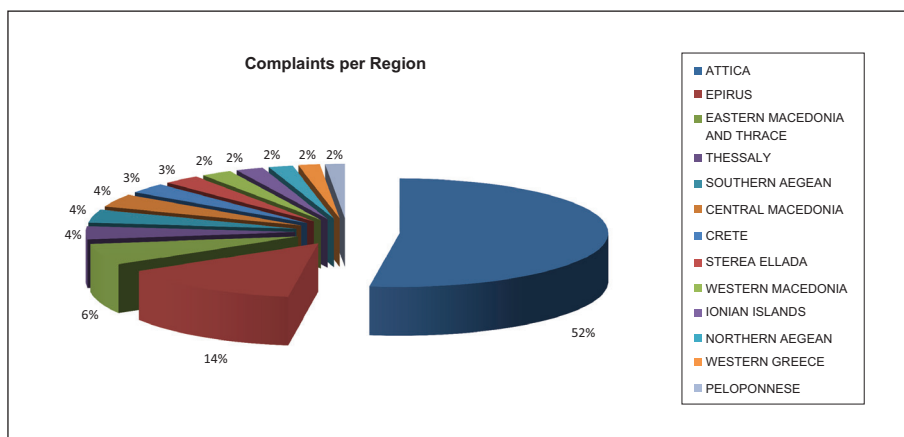
Geographical breakdown of complaints investigated by the Authority in 2017 reinforces the findings of the previous years that the financial crisis and the problems resulting from institutional initiatives undertaken for its management, are no longer limited to the big urban centres, as was the case at the beginning of the crisis. So, in 2017 proportionally more residents of Crete, the Aegean and the Ionian Islands appealed to the Ombudsman than those of other regions of the country with larger populations and urban areas. (See Graphs 3 and 3a).

Graph 3



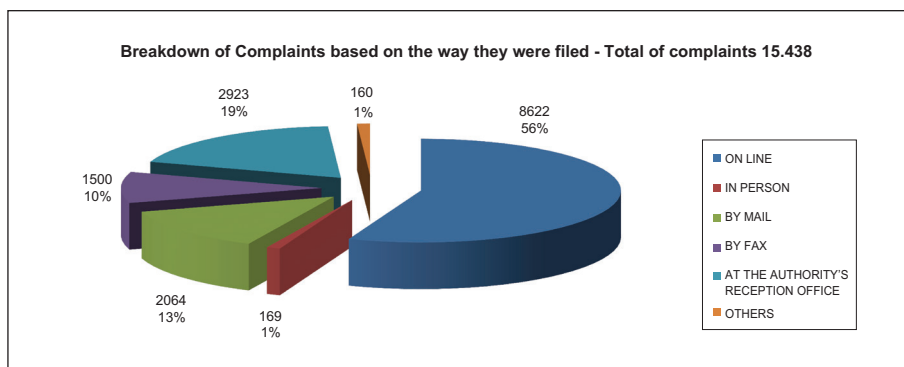
1. See Annual Report 2016 *The Ombudsman in the neighbourhoods of the city.*

Graph 3a



Naturally, the prevalence of Attica is not significantly affected by the “regionalisation” of complaints. Filing complaints on line, through the Authority’s website and by fax, (66% of 2017 complaints were submitted online) in conjunction with on-site visits of the Authority, has greatly facilitated the contact between the Ombudsman and the residents of the Regions.² (See Graph 4)

Graph 4



2. Following the visits of the Ombudsman in the Region of Northern Aegean in August 2017 the number of complaints has increased by around 25%.

In addition to the online complaints, below you can see the frequency of visits of the Ombudsman's website as well as the response to posts in the Social Media, and calls to the Ombudsman's call centre.

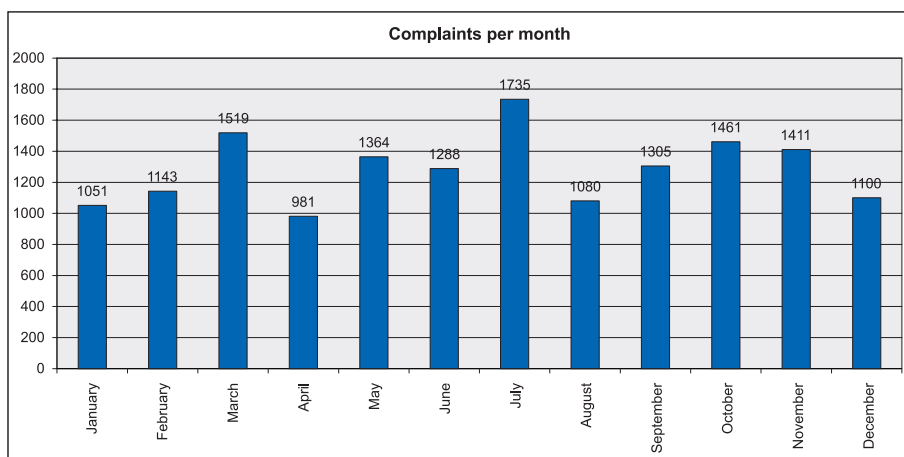
Single visitors in synigoros.gr in 2017 :	299.237 (+ 16.45% compared to 2016)
Page views of synigoros.gr in 2017 :	1.377.006 (+ 18.39% compared to 2016)
Single visitors of synigoros-solidarity.gr in 2017 :	59.908 (+ 149.55% compared to 2016)
Page views of synigoros-solidarity.gr in 2017 :	196.500 (+ 102.93% compared to 2016)
Members of the Authority's public profile on Facebook at the end of 2017 :	17.035 (+ 10.35% from the beginning of 2017)
Followers of the Authority's Twitter account at the end of 2017	5.309 (+ 6.54% from the beginning of 2017)

CALL CENTRE

2017	Incoming telephone calls	Answered Calls ³
January	4390	2457
February	4461	2544
March	5793	3134
April	3786	1941
May	5153	2763
June	5727	2622
July	6270	2817
August	4500	1670
September	5309	2812
October	5637	2954
November	5470	2858
December	3923	2221
TOTAL	60419	30793

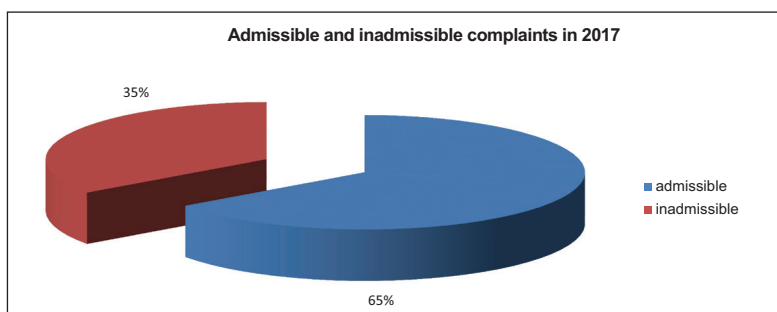
It is also noteworthy that complaints to the Ombudsman do not record seasonality; on the contrary they show significant regularity and spread throughout the year. (See Graph 5).

3. A large number of calls are answered by an answering machine, which provides information to citizens on the competences, operation and ways of communication with the Authority. This number is not included in the "answered calls", which comprise only those answered by the staff members, rotating at the call centre of the Authority.

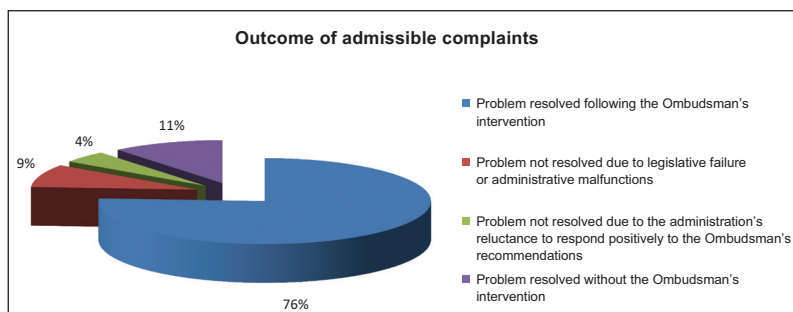
Graph 5

Inadmissible complaints and effectiveness in mediation

Complaints filed to the Ombudsman each year are considerably more than those investigated; those which ultimately show some form of maladministration are even less. Graph 6 shows that in 2017 admissible complaints reached 65%, i.e. significantly increased compared to 2016 (around 52%).

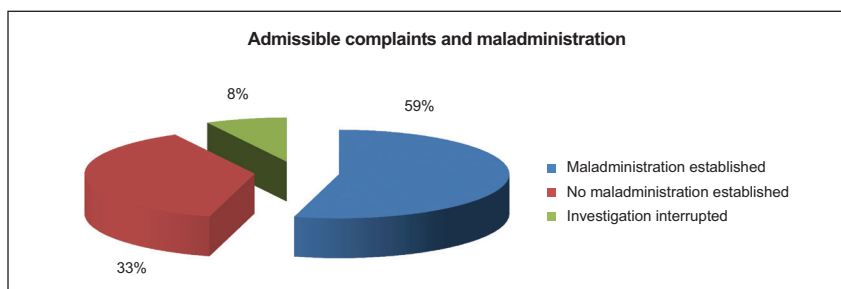
Graph 6

The share of successful interventions in 2017 is once more considerably high with 76% of the complaints resolved in favour of the citizens (see Graph 7); lack of response on behalf of the Administration also appears lower than in other years (4%).

Graph 7

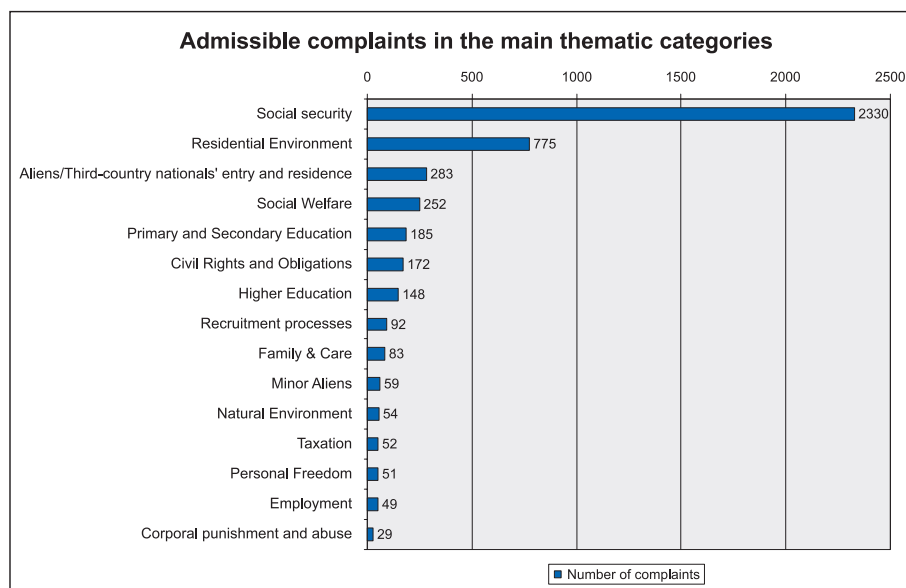
The “x-ray” of maladministration

Tackling maladministration is the main mission of the Authority, as it will be further detailed in the following chapters of the Annual Report (see Main Thematic Dossier). This section sets out quantitative data associated to admissible complaints and connected to specific thematic categories and agencies where most problems are concentrated. In aggregate terms, of all the admissible complaints investigated by the Authority, 59% showed maladministration (see Graph 8).

Graph 8

The examination of the specific thematic categories in 2017, confirms that maladministration is mainly recorded in the State Welfare, Education and Environmental Protection (see Graph 9).

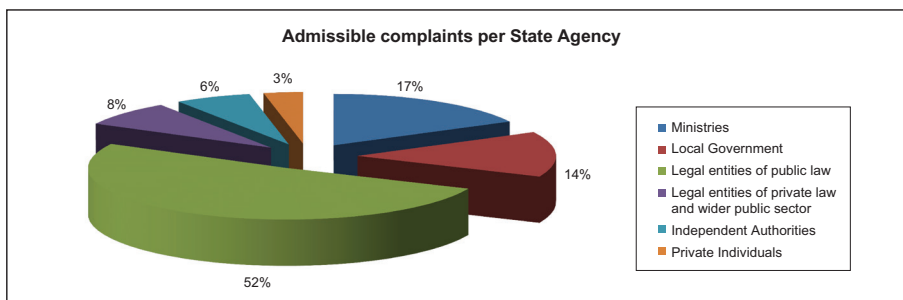
Graph 9



Major phenomena of maladministration are found in the areas of *“Aliens/Third-country nationals’ entry and residence”* and *“Civil Rights and Obligations”*. For the first group of issues the Authority produced and published two Special Reports in 2017, listed in the relevant chapters of this Report.

Regarding the State Agencies where significant maladministration has been detected, they have been divided in the following categories (see Graph 10): Ministries, Local Government, legal entities of public law and other agencies supervised by the Central Government.

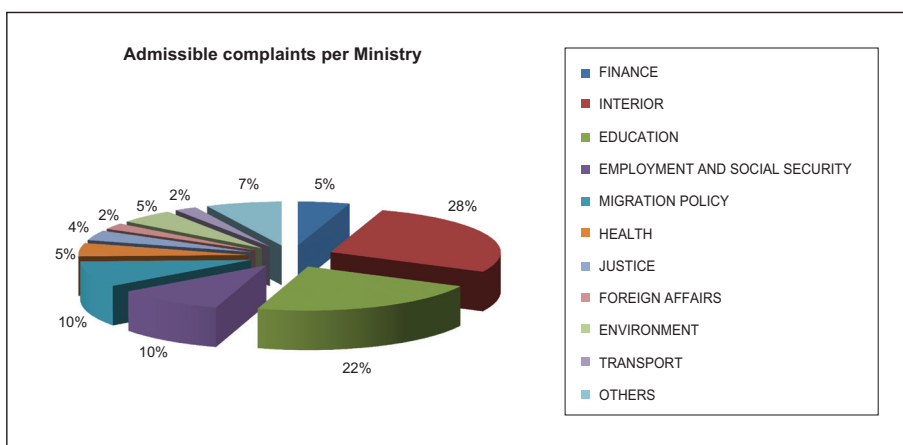
Graph 10



Ministries

Approximately 17% of maladministration cases concern Ministries. The Ministry of Interior has the highest number of complaints where some form of maladministration has been established. It is noted that said Ministry has integrated the Ministry of Citizen Protection as well as complaints relating to Decentralised Administrations. The Ministries of Education, Labour and Migration Policy are next to the list (see Graph 11).

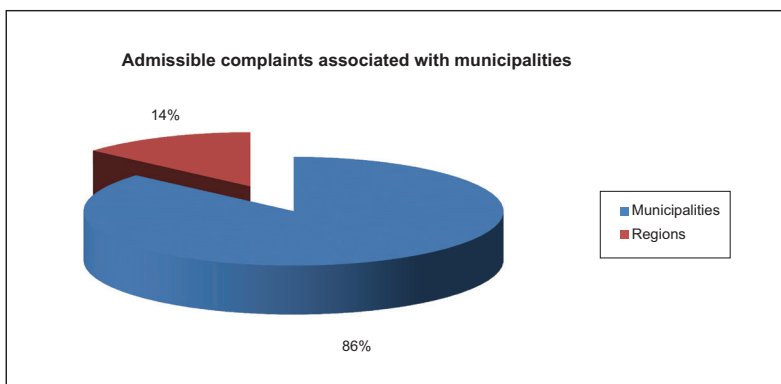
Graph 11



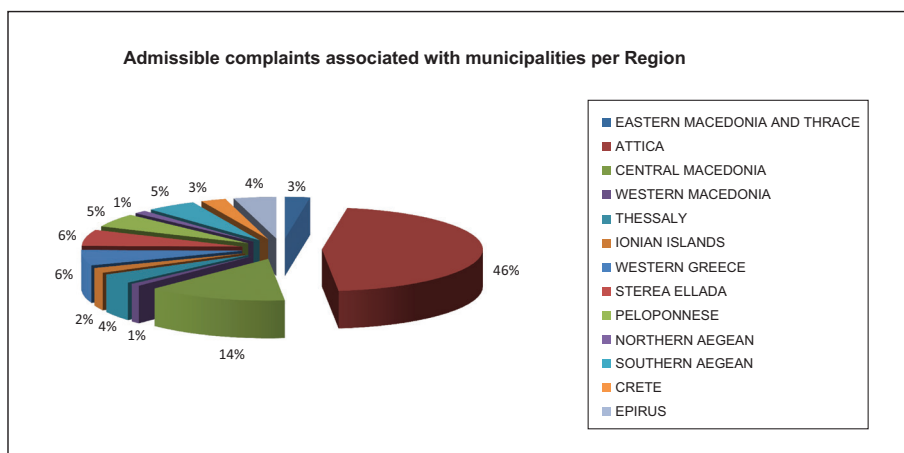
Local Government

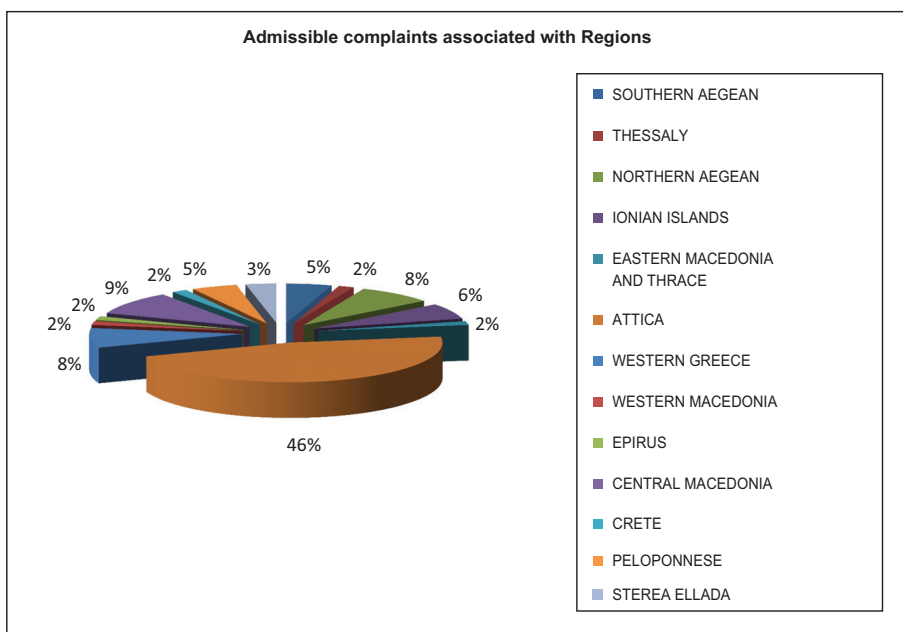
Local Government is responsible for approximately 14% of maladministration cases. Most of the maladministration cases concern the 1st level of local government (municipalities) where, following the recent administrative reform, most issues of everyday life have been assigned, among which the main thematic categories into which complaints are divided (see Graphs 12, 12a, 12b).

Graph 12



Graph 12a



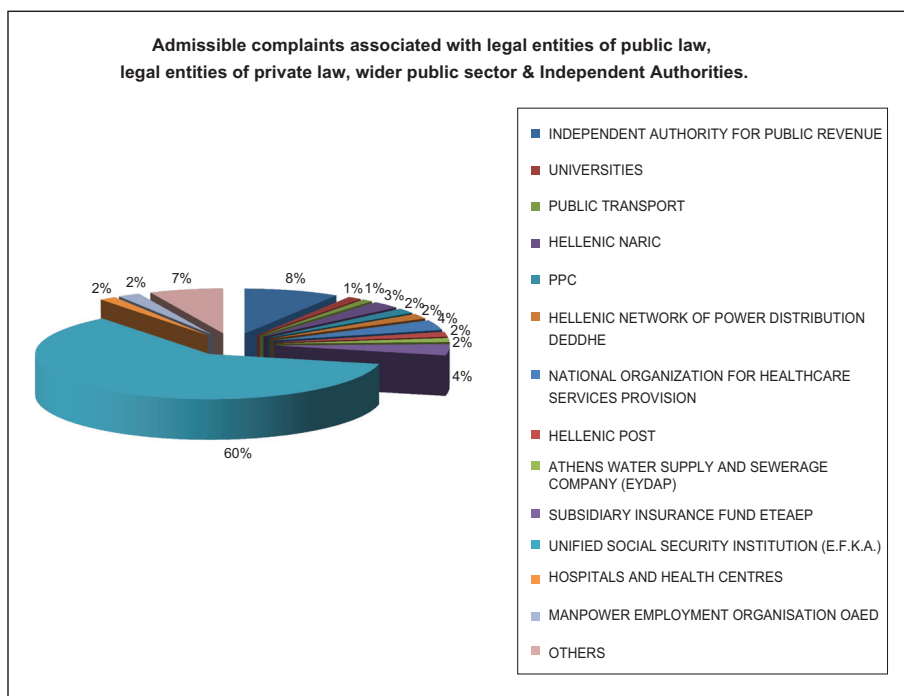
Graph 12b

The geographical distribution of municipalities where there is some form of maladministration broadly follow the population distribution in large urban centres (Athens, Thessaloniki, Patras). This is also consistent with the geographical distribution of the maladministration detected in Regions. Once again, the need appears to review the structure, staffing and funding of State regional and local government agencies called to cope with a large number of requests every day, many of which may lie beyond their mandate and competence. These weaknesses of regional services reinforce a feeling of inefficiency and isolation of citizens residing outside central areas and lead to further deterioration of their living conditions.

Legal Entities of Public law

The largest part of complaints with established maladministration (42%) concern legal entities of public law, and especially those directly related to the Social Security and Welfare, the dominant thematic category of complaints during the last years. In particular, Social Security Agencies represent nearly 71% of complaints, where maladministration was found. Finally, serious maladministration is associated with Taxation and in particular with the Independent Authority for Public Revenue (See Graph 13).

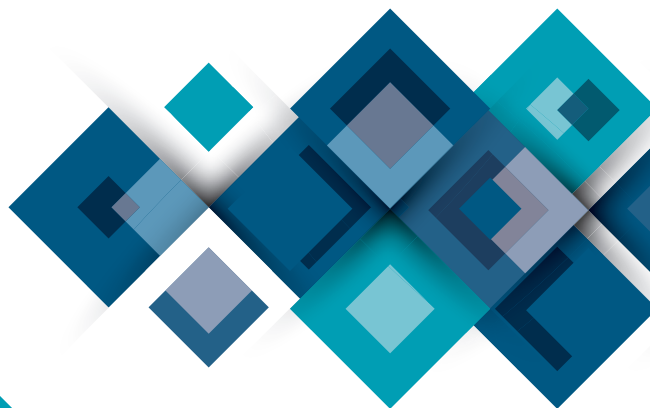
Graph 13



Conclusions

The sharp rise in the number of complaints by 25% since last year, brings to the forefront once again the findings of the Ombudsman that the failure to manage the impact of financial crisis and the severe budgetary constraints increased the number of complaints against the State. At the same time, it reflects the citizens' widening lack of confidence in the State and its services. The main sources of problems and maladministration have been identified for yet another year in those areas where rapid changes have taken place in recent years, but also in areas where the State agencies have proven unable to respond to the citizens' needs, due to the persistent underlying weakness, problematic procedures and, undoubtedly, cuts in financial and human resources.

|| THE OMBUDSMAN AS MEDIATOR
AND LEGALITY CONTROL MECHANISM
MAIN DOSSIER



Legality: a guarantee for the rule of law

Whenever a citizen, annoyed from having waited too long, desperate by the public services' inefficiency, perplexed by the fragmentation of laws and provisions, unprotected in the face of uncontrolled exercise of discretionary power, the bendable implementation of the law, the unclear construction of legal provisions, exclaims "where is the State?", at that very moment, without knowing it, s/he invokes the existence of the rule of law⁴.

When later, usually somewhat calmer, s/he comes to the Ombudsman to expose the problem and file a complaint, seeking the Authority's mediation, s/he finally notices that the rule of law does exist, and is not merely a structure in legal theory and policy.

The pillars of the rule of law are the creation of laws following a specific procedure, their incontestable application and respect to all human beings. Legal principles, such as proportionality and equality, legitimate expectations and good administration, as well as the principle of reasonable time and general interest (as applied by the administration or construed by the courts) constitute fundamental elements of the rule of law. The existence and functioning of the rule of law guarantee the protection of society and, in particular, of its more vulnerable groups, from the unrestrained exercise of power, while legitimizing this power by making it acceptable by the citizens.

In this context, legality has two dimensions: formal legality, i.e. making a State decision according to a particular procedure and a prevailing rule, ensures the rule of law. At the same time, substantive legality dictates the compliance of power with law and its values, such as freedom, self-determination, respect for personality and individual autonomy, equality, such as equal treatment, equal opportunities, equal participation and elimination of unjustified discrimination, social solidarity as a mechanism for strengthening social cohesion and serving the general interest.

The principle of legality is opposed to arbitrariness and requires the Administration to act only if it is based on applicable law, which forms the pillar as well as the limit of its authority.

But why is it that the rule of law and the principle of legality have returned to the public debate, not as a scientific search and political rivalry, but as a determining factor of its functioning?

4. Translator's note: <https://legal-dictionary.thefreedictionary.com/rule+of+law>
Rule according to law; rule under law; or rule according to a higher law.

The loss of guarantees, the endangerment of the very core of rights in the eyes of the citizens, the scepticism over the rights of minorities, the actions of the State which are not always in harmony with the guarantees of legality, separation of powers, legal protection and certainty, establish the imperative need for the functioning of the rule of law.

Responding to this request, the Ombudsman seeks to exercise its competences on the State mechanism and public administration on a daily basis and give citizens the right to choose the way in which they will deal with the administration. Thus, it creates conditions embedding the rules of function and conduct that give citizens the possibility to fully enjoy the rights granted to them by a democratic State. From their side, the citizens operate within the framework of the fundamental principle of liberty and recognize the existence of mechanisms that promote and reinforce the sense of justice, while assuming responsibility for their participation in the administrative procedures which concern them.

Through the citizens' complaints, the Ombudsman faces the whole spectrum of violation of the principle of legality in the production as well as in the application of the rule of law. The formalistic approach of legality, aiming more at securing the position of the civil servant or agency, rather than at dealing with the citizen's needs, or facing disputes with rivalry, suspend crucial principles of the rule of law. The principles of good administration, leniency, proportionality, transparency and the right to information, legitimate expectations and good faith are put to the test every day. The administration's refusal to recognize and apply these principles in the decision-making process, violates lawfulness and affects the hard core of citizens' rights. This view, of course, serves formal legality but places the citizen and the State in constant confrontation, undermines the legitimacy of the administration in the citizen's eyes whom it puts in a position of defence, challenging the function of society as an interlocutor of the State on a par.

In this context, which is burdened by the excessive perennial social, economic, and political crisis, lies the strategic choice of the Authority to act as an intermediary, alternative, extrajudicial mechanism of control and accountability, capable of providing citizens and anyone who deals with the Administration, with options for dealing with his/her dispute, with a view to resolving the issue and aiming at an essential and wider application of legitimacy.

The problems identified and highlighted in this report have, as a common reference, the ostracism of the rule of law from the function of the Administration. The non-implementation of law, its misinterpretation, its selective application, the ambiguities, the ad hoc legislation serving specific demands and finally the pure administrative malfunctions, are the areas on which the Ombudsman focuses.

Mediation between two demanding interlocutors, the citizen on the one hand and the Administration on the other hand, is a constant challenge. We embrace it with awareness of our responsibility.

When the legislation is not implemented

The Ombudsman constantly witnesses cases in which legislation is skilfully or naively circumvented. In everyday issues, which may sometimes seem small and insignificant, but are vital for the citizen filing the complaint, as well as in other more serious ones, the law is by-passed, thus putting in doubt the legislator's will. This is an indicative list of the cases:⁵

- Continuing efforts, even longstanding court proceedings, which resulted in obliging the administration to reimburse beneficiaries for unduly paid contributions to social security funds, remain ineffective due to the inadequate software used by IKA-ETAM (social insurance fund). The lack of specific plan for upgrading the software, results to the detriment of the beneficiaries.
- The management of environmentally protected areas suffers due to the great delays in the administrative procedures as well as the lack of coordination of the numerous State agencies involved. Typical examples are those of Chrysi Island in Lasithi (Gaidouronisi) - Crete, the Cave of Thermal Springs of Kaiafas - Peloponnese and the wetland of the estuary of the River Aposelemis in Heraklion - Crete:
 - After long-term dealing with the problem of environmental degradation of Chrysi Island, the Ombudsman sent a Findings Report to the competent Ministries, concerning the coordination and effectiveness of the actions of the authorities involved and requested the issue of an updated special environmental study for the establishment of a Regional Management Body and the implementation of the legislative framework for the protection of Natura 2000 areas.
 - In a similar intervention for the protection of the Cave of Thermal Springs of Kaiafas, the Ombudsman stressed the necessity of developing studies for the protection of the Cave and submitted suggestions on the draft Presidential Decree, in order for the wider area to be characterized as a Nature Conservation Area.

5. *Translator's note: In the Executive summary, only abstracts of the individual cases are included. The cases are detailed in the Greek version of the Annual Report 2017.*

- In the case of the wetland of the estuary of Aposelemis River in Heraklion, Crete, following the mediation of the Ombudsman, an Administrative Eviction Protocol was issued against the Municipality of Hersonissos for illegal interventions that degraded the area. The approval of the Special Environmental Study is still pending.
- The Municipality's refusal to register a child born by a mother under judicial custody and an alien father, joint in a registered partnership, constitutes a case of non-application of the law. The Ombudsman's argued in favour of the child's registration, and managed to convince the administration.
- Professional unions/associations choose to adopt a special protectionist policy towards their members, with two main axes: to limit memberships when membership is a prerequisite for practising a profession and to increase financial contributions for the self-employed members. Protectionism is manifested in numerous and diverse ways: typical examples of circumvention of the existing legislation are the refusal to register holders of a professional equivalence decision and the self-registration of freelancers in chambers.
- Also, the fact that the tax authorities require a certificate of control of corporate name and distinctive title from the competent chamber, in order to register a company, is illegal and abusive, since this requirement has been abolished,.
- The elimination of arbitrary age limits on access to employment is a consistent objective of the Ombudsman, especially since the current legislative framework has banned such discriminations. Stereotypic perceptions, prejudices, lack of legal or legitimate purpose, constitute a barrier to employment for those above certain age. Additionally, the Administration, sticking to its fixed perceptions, fails to meet the obligation of specific and in-depth justification for age restrictions on recruitment.
- The implementation of consecutive insurance system was clearly affected by the non-application of existing legislation. Typical example is the Insurance Fund for Bank- employees, which paid reduced pensions, through calculating insurance time only for the entitlement to a pension and not for the determination of its amount. The issue is still pending, while the Ombudsman has requested for a review and justified answer to citizens' requests for a retroactive adjustment to the legal amount.
- Finally, the Authority treated as non-implementation of the existing legislation the case of non-payment of nine archaeologists who had worked in projects of the Municipality of Lesvos, included in a subsidized programme under a memorandum of cooperation with the Antiquities Authority of Lesvos. The issue

was resolved through an out-of-court dispute resolution, which resulted in the payment of the employees.

When the legislation is misconstrued

The phenomenon of misconstruction of existing legislation may be attributed to a distorted approach of the legislative framework due either to ignorance or deliberate adaptation by the Administration. In any case, the citizen is at the mercy of uncontrolled administrative practices. See characteristics example below:

- The issue of calculating deductions for the sickness fund from pensions, without taking into account their current reduction, was serious and affected a lot of people. The Authority considered that legislation was applied in a misleading way at the expense of the citizen. A lot of pensioners filed complaints for the unlawfully withheld sums; finally, reimbursement of these amounts was announced as of December 15, 2017.
- The fact that Municipalities, misconstruing the relevant legislation, imposed cleaning and lighting fees to the owners of vacant and non-electrified properties, triggered the Authority's intervention.
- While investigating appeals against decisions for legalisation of illegal buildings by the Councils of Urban Planning Issues and Disputes (SYPOTHA), the Ombudsman noticed that the appeals were examined on a first-in first-out basis, thus resulting to decisions issued beyond the statutory deadlines. Those decisions were invalid because they were taken by an agency that had lost subject matter jurisdiction, after the expiry of the prescribed deadlines. The Authority has highlighted the issue at official and political level.
- Although the Authority has dealt with a lot of problems concerning the expropriation procedures for the protection of antiquities, for the first time the subject of rejection of compensation for deprivation of the use of property came up. The Authority, in an in-depth opinion, highlighted the limitation period for the pecuniary claims of the owners as well as the loss of the right to judicial protection.
- Meanwhile, in the sensitive field of disability, the amendment of the provisions concerning the reimbursement process by the National Organisation for Healthcare Provisions (EOPYY), combined with the introduction of contracts between EOPYY and private healthcare providers, wiped out the prospects of special treatments of children with disabilities.

- Misconstruction of the current legal framework is also noticed in the processing of students' applications for transfer from one University to another, where economic and social criteria are applied. Especially when it comes to the transfer of a distinguished athlete, the Authority pointed out as indispensable the criterion of facilitating the athlete to continue to train.
- Also, the law was misconstrued in the case of a third-country national's application for modification of his residence permit to a ten-year lasting one.
- The Ombudsman encountered issues of misconstruction of the law in complaints with purely economic subject, which, due to the current crisis and financial difficulties, were of special importance. The Authority, for example, suggested that family benefits, such as child support benefits and special benefits for families with three children or larger families, should not be included in the annual income, in order for them not to lose the exemption from the tax for the immovable property. The tax authorities rejected the proposal and justified the rejection by making reference to the restricted fiscal possibilities of the country.
- Similarly, the fact that a citizen was forced to take legal action to regulate his family relationships in order to be eligible for a student housing benefit, is a manifestly distorted approach of the administration's discretionary power to specify additional supporting documents.
- Finally, the Authority established a different approach regarding the issue of cancelling fines imposed on unemployed persons who had not paid a ticket when using public transport. The Underground company accepted and processed applications for cancellation, on the grounds provided by law, while the Bus company refused to do so. After the Ombudsman's intervention, the practice of the two companies was harmonized in line to the legal provisions.

Selective or problematic application of law

Selective or even problematic implementation of law by the Administration is not circumstantial or accidental: provisions are being systematically isolated and applied on a case by case basis, discriminatory criteria are introduced, real conditions are ignored or neglected. As a result the citizen feels exposed and powerless against an administrative procedure characterized by inconsistency and opportunistic treatment. Some indicative issues follow:

- The difficulties often created by the Administration in including Roma popula-

tions in the population registers, result in their classification as “invisible”. The problematic implementation of the legislation, the inadequacy of regulations, the choice of implementing specific provisions and refraining from others, leads to the continuous intervention of the Ombudsman, so that Roma populations can be identified and registered in the public registers without discrimination or disproportional bureaucratic obstacles.

- In the case of public use truck owners that had lost possession of their vehicles, the full payment of all their relevant debts was required, before being entitled to discontinue their activities. This is an excessive and disproportionate measure, especially given that other self-employed persons, ensured by the Unified Social Security Institution (E.F.K.A.), can discontinue their business activities as well as their insurance, regardless of the existence of overdue debts. The issue of that different and unfavourable treatment has not been addressed and is still pending.
- For years the Authority has been addressing the issue of legitimate licensing of mobile communication stations. Nevertheless, a new obstacle has arisen concerning the removal of illegal antennas. Decentralised Administrations are reluctant to exercise their pulling down authority, under the pretext of an ongoing administrative process and showing total ignorance of the management of this problem.
- The Authority has dealt with the conditions for alternative service of the conscripts conscientious objectors, given that, twenty years after the introduction of the relevant legislative framework, its implementation remains problematic. After the Authority’s mediation, the Hellenic National Defence General Staff committed to placing conscientious objectors to State agencies which meet the requirements of the law.
- Discriminatory fees policy of the Municipalities on the basis of the payer’s permanent/non-permanent establishment within their territory, led to the Ombudsman’s intervention. The distinction between permanent and non-permanent residents for the imposition of municipal taxes, was identified by the Authority as selective application of law and led to the conversion of the current decision.
- According to a circular from the IAPR, when there is a court ruling, acknowledging that a vehicle owner has sold it to someone else, who hasn’t completed the procedure of issuing a new registration in his/her name, the first owner should be exempted from road taxes. Nevertheless, the tax authorities chose not to implement the circular, and imposed taxes on the citizens, without any legitimate base. The Authority’s intervention smoothed the problem.

- Finally, the authority questioned a Municipality's decision not to grant the parent of a disabled minor the right to an exclusive parking space, because, according to the competent service, the condition of reduced mobility was not satisfied.

Overregulation – Ambiguity – Flawed Legislation

Multiple and conflicting, rarely complementary, sometimes contradictory legislative contexts form a challenging environment of administrative action and increase the citizen's insecurity. In addition, ambiguous provisions do not allow the authorities to resolve the citizens' matters in a dependable, stable and understandable way. This poor legislative framework tends to create problems, instead of solving them, and aggravate the position of law enforcement agencies. Citizens' confidence is shaken both vis-à-vis the legislation and the State agencies called to implement it. Some characteristic cases follow:

- The recent law on the built environment requires fifty ministerial decrees in order to be implemented. The Ombudsman's experience has shown that such regulatory acts are either never issued or extremely delayed, so that the Administration cannot perform its duties. A typical example is that of the offsetting of fines paid during the regularization of illegal constructions.
- Poor legislation, without any convincing justification, is the introduction of a new deadline of 105 days for objections against released forest maps; the administration already has normal deadlines for appeals, known to citizens, which makes this new deadline seem bizarre, especially since it was extended twice.
- The failure to regulate safety standards of sports facilities within a school unit, thus resulting in questioning the legality of protective reinforcement of light posts, is also poor legislation.
- The inability of engineers of the technological education (TEI) to obtain professional rights as 2nd class energy inspectors, highlighted the long-term failure of the State to define their professional rights and prompted the Ombudsman's proposal to grant such rights to 1st first class engineers who qualify.
- When the administration failed to respond to the citizens' applications within the deadlines set by the Code of Administrative Procedure, citizens claimed compensation referring to their constitutional right. The Ombudsman sent a report to the Minister of Administrative Reconstruction highlighting the lack of a relevant legislative framework.

- Also, within the context of the Code of Administrative Procedure, the right to access to documents is exercised by studying the document at the premises of the agency or by issuing a copy. Thus, a Municipality cannot suggest electronic access to document if the citizen does not consent to that, especially in case the citizens have no electronic address.
- Another important issue is that of non-exemption from the business tax of businesses located in villages with up to five hundred inhabitants, because the concept of “village” is construed as it was defined prior to the “Kapodistrias” project for the local government. The Hellenic Statistical Authority was asked to clarify the concept of “village”.
- The law defining the process of applications for students entitled to housing benefit is also unclear. The mediation of the Authority helped to issue a joint ministerial decision in order to remove ambiguities.
- In the extremely sensitive field of addressing disability, belongs the issue of different categories of disability certificates along with the legislative ambiguity that prevails in terms of the span and type of rights that these certificates provide.
- Despite the consistent and systematic intervention of the Ombudsman, inequalities in the adoption and implementation of legislation in the field of maternity protection continue to exist. Different scales of protection in the public, wider public and private sector, as well as among employees with fixed-term or open-ended contracts, uniformed personnel, civil servants, employees and self-employed persons establish a sense of unequal and discriminatory treatment. Legal fragmentation in this field, accompanied by ambiguities, creates the grid of deep and widespread diversification.
- Lack of clarity leading to misapplication exists when it comes to determining the reference year of income taken into account in order to grant pensioners the Social solidarity allowance. The provision of the law stating “income declared in the previous tax year”, which can be construed in several ways, and the ministerial decision that failed to clarify the law, led to a dead end. The Ombudsman asked the General Secretariat of Social Security to fill the legislative gap.
- Furthermore, the Authority proposed amending the Ministerial Decisions on Unemployment Benefits in order to replace the term “fiscal year” with the term “tax year” so that the social legislation adapts to the amendment of the tax legislation.
- Finally, the Ombudsman has argued that, according to the relevant provisions, someone is allowed to receive severe disability benefit, while at the same

working at a community programme of the Manpower Employment Organisation (OAED). The Legal Council of the State is anticipated to adhere to the Authority's point of view that a disabled beneficiary may continue to receive the benefit in cases s/he takes up such employment.

Legislating beyond the limits of general interest

Far from being exceptional to our legal order, legislating beyond the limits of general interest is an existing, customary practice, often linked either to clientelism or urgent revenue collecting need. In reality, it is a circumvention of any concept of legitimacy, where the citizen is looked exclusively as a voter whose requests for legalization of illegal acts are satisfied. On the other hand, the same citizen is treated as a stable source of public income, when public revenue is in shortage.

- The practice of legalising illegal constructions serves both the above-described circumstances. Constantly extending the relevant deadline, while simultaneously imposing fines, invalidates any concept of environmental protection, spatial planning and balanced built environment. A recent legislative initiative allows for disregard of court judgments cancelling building permits and those illegal buildings may also be legalized.
- Similarly, the country's forest wealth is threatened by a novel notion called "residential densifications", which are in fact clusters of illegal buildings in the woodland. Their establishment forecasts that on time they also will be legalised at the expense of our forests.
- The licensing of a food and beverage store by an agency of the Local Government without such authority, also suggests clientelism.
- The payment of fees as a prerequisite for exercising certain rights also falls within the field of money-collecting policy. After the Authority's intervention, the administrative fee required for filing an objection to a recruitment decision by the Supreme Council for Civil Personnel Selection (ASEP), where unemployed citizens usually participate, was significantly diminished. The Authority also intervened in the case of payment of an electronic fee for uninsured vehicles, and the fee was adjusted.
- In the field of rescheduling outstanding debts to the State, a company's refusal to be automatically transferred to the rescheduling of 2015 and be excluded from the possibility to reduce the debt to the threshold of 15,000 EUR, which would allow for the previous rescheduling to remain valid, constitutes not only

violation of lawful collection of receivables but also infringement of the principle of protection of the citizen's legitimate expectations.

- Finally, excessive charges on behalf of public utility companies, such as the Athens Water Supply and Sewerage Company (EYDAP S.A.) as well as the Regional Water Supply and Sewerage Companies, caused the Authority to intervene in favour of the protection of the use of water, and the rationalization of the monopoly of those companies in relation to the financially weaker consumers.

Administrative dysfunctions in implementing legislation

Administrative dysfunctions that invalidate the implementation of the legislative framework appear in numerous areas of the administrative action. Understaffed public services, complex and bureaucratic procedures, unpredictable administrative practices, are some forms of dysfunction, examples of which are shown below:

- The Authority has dealt with the extremely sensitive and important issue of protecting minors in a lot of different ways, such as prevention of refugee and immigrant detention, elimination of geographical restraints in travel, and lift of administrative detention under certain circumstances.
- Correspondingly, the process of integrating infants and toddlers into municipal and private nursery schools participating in an NSRF⁶ programme remains complex and dysfunctional. Meanwhile, the Authority successfully dealt with various administrative failures regarding the provision of social services to minors and their families.
- Since entering the digital era, Greek public administration has been trying to gain significant benefits in terms of simplification of procedures, speed, transparency of administrative action and credibility. However, public services often appeal on computer limitations in order to cover other inflexibilities.
- The different approach of the various Municipalities on writing off traffic fines forced on the heirs of the offender, has triggered the Ombudsman's intervention. The Authority caused the issue of an opinion from Legal Council of the State which clarified the situation regarding the obligation of the heirs. Furthermore, after mediating to the Representative of the Court of Auditors in the

6. *Translator's note: National Strategic Reference Framework (EU funding tool).*

Ministry of Health and the competent Tax Authority, a citizen's debt, which was already removed through a court decision, got written off.

- The Authority has expressed the opinion that some diplomatic missions exceed their legal competence, while operating. The Greek Embassy in Moscow doesn't legalise documents by Uzbek citizens (e.g. birth certificates), destined to be filed with Greek Authorities, because it questions their authenticity. The Embassy's cooperation with private lawyers is being considered as alternative solution of dubious efficiency.
- Finally, foreigners with no passport, mainly because they cannot go to their countries of origin, where there is war, have applied for a residence permit, but their applications don't get examined because the Special Committee of art. 134 L. 4251/2014 does not convene.
- Issues related to the operation of urban planning agencies in local authorities, after the issue into force of the "Kallikratis" programme for municipal reorganisation, are described as administrative malfunctions. Since not every Municipality could set up an urban planning agency of its own, due to lack of human resources, support between Municipalities was foreseen by law. That provision also proved ineffective, because it led to the excessive burden of the already existing agencies, while Municipalities without an agency had no reason to ever set one up.
- As far as expropriation for the protection of antiquities is concerned, the Authority dealt again, during 2017, with the complex, time-consuming processes that go back and forth between the different departments. bring about
- Lastly, the conditions in the reception and identification centres for refugees are of utmost importance so long as they may have serious effects on their lives. As detailed below, the overpopulation of immigrants and refugees in the centres of Samos and Lesvos and the severe housing deprivation led to loss of lives. However, the improvement of those conditions is an organizational and procedural problem that could be quite rapidly solved.

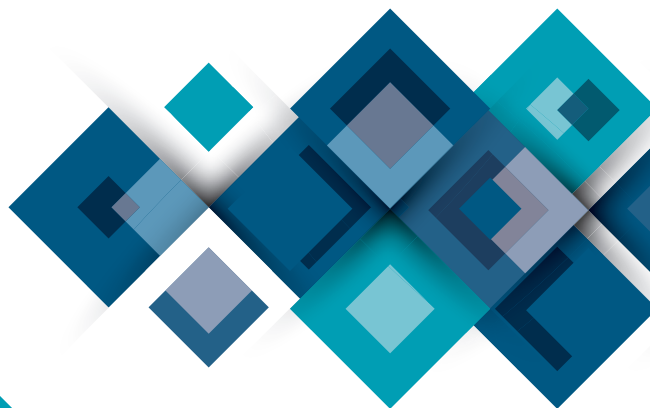
Postface

The multiform violation of law, as presented and supported by characteristic examples of complaints, is the imprint of administrative malaise, often accompanied by malfunctions in the daily operations, as shown in the above examples.

The tactic of easily bending and adjustable legality is not recent to the Greek administration; it has been around continually, though varying in intensity and frequency. In our days, it has been intensified by economic recession and social asphyxia. The problematic functioning of the State, ascertained for years by the Ombudsman, is not an outcome of the crisis, but as pre-existing and embedded, it now brings about more severe consequences, hindering the development of the economy, social cohesion and prosperity.

The Ombudsman highlights violations of the law, controls practices that devalue the administrative function, mediates for the restoration of legality and fights these phenomena with a firm orientation towards the consolidation of an innovative culture in both the Administration and the citizen. Priorities of the Authority are State rationalisation and equality, as an antidote to pathogenetic situations and unwavering function of the rule of law, as a safeguard to the democratic State. These priorities have currently become a one-way choice for the return to growth and consolidation of the European path of the country.

|| THE OMBUDSMAN AS MEDIATOR
AND LEGALITY CONTROL MECHANISM
THEMATIC DOSSIERS



The work of the Ombudsman covers an extensive range of issues affecting all areas of everyday life. The thematic dossiers discussed below are the ones which stood out particularly during the year, because of their seriousness, timeliness and the broader public interest they attracted:

- Attachment of earnings for debts to the State
- Social security and benefits
- Social solidarity
- Environment and natural resources management and protection
- Immigration and political asylum
- Citizenship and civil status
- Imprisonment
- Integration into the labour market
- Active employment policies
- Protection of the children's rights at school
- Protection of minors and activation of support mechanisms
- Parental responsibility and care
- Higher education

In each of these specific areas, the Ombudsman points out the main problems encountered, cites its principal interventions, sets out proposals for legislative, organizational and operational arrangements and assesses any positive or negative developments as well as the response of the competent authorities. The main aim and challenge is to deal effectively with the administrative deficiencies and ensure the proper exercise of the citizens' rights.

Attachment of earnings for debts to the State

Dedicated to the memory of Calliope Stougiannou, a valuable member of the Ombudsman's working group on Tax Issues, who contributed so effectively in handling tax related complaints

Attachment of earnings is becoming an increasingly common practice, as the State and legal entities of public law, such as Social Security Funds, attempt to collect the citizens' tax and social security liabilities. At the same time, the current legal framework proves incapable of effectively protecting salaries, pensions and welfare benefits of the financially and socially vulnerable groups. Even in cases where protection of earnings against attachment is provided by law, administrative problems and procedural difficulties weaken it considerably and citizens feel powerless and unprotected.

Given its long experience on the issue of attachment of earnings by tax levy⁷, the Ombudsman records the major problems which arise from the citizens' complaints:

- Attachment always comes as a surprise, as the debtor has not been previously notified of the enforcement measures against him/her. However, this lack of notification was found to be constitutionally tolerable by the Greek Council of State (STE⁸), for reasons of efficiency of the measure.
- The protection of a specific amount per month from attachment has also been extended to bank deposit accounts, provided that the account holder electronically declares to the administration a specific bank account as "protected". The tax authorities however consider that deposit accounts are "protected" only as of the date of the electronic declaration. This applies even in cases that the deposit amount derives from salary or pension, thus circumventing the explicit pre-existing provisions of the Code for the Collection of Public Revenue (KEDE) on the protection of salaries, pensions and social security benefits from attachment.
- In cases of deposit of arrears from salaries or pensions, the attachment is imposed on the total amount deposited in the bank account. However, according

7. *Translator's note: A tax levy is an administrative action by the IAPR under statutory authority, generally without going to court, to seize property to satisfy a tax liability. The levy includes the power of seizure by any means.*

8. *Supreme Administrative Court.*

to recent opinions of the Legal Council of the State (NSK), banks are obliged to allocate the amount into monthly instalments and to implement the protective clause regarding the amount protected from attachment, a position also shared by the Ombudsman.

- Attachments are imposed on joint bank accounts even when only one of the account holders is the State's debtor and the other account holders have declared the account "protected" from attachment. The amounts attached often derive exclusively from pensions or welfare benefits belonging to the account holder who does not have a debt to the State.
- A recent law provided that welfare benefits granted by the municipalities as emergency aid to financially weak citizens and citizens with large families, cannot be attached, which had been a long-standing request of the Ombudsman. However, the benefits paid on a regular basis are still not protected from attachment, despite the fact that they are granted with the same purpose to these specific vulnerable groups.
- Due to technical shortages of the banks' computerised system, citizens did not have free access to the protected unattachable amount of their attached account for credit cards and electronic transactions. After the intervention of the Ombudsman to the Ministry of Finance and the Hellenic Bank Association, the necessary adjustments were made and the situation has greatly improved.
- There is no effective procedure for writing off debts to the State. Citizens with a proven financial weakness can only benefit from the provisions of the law for indebted individuals that might lead to a partial write-off of their debts following a judgment entered by the competent Magistrate's Court.

Despite the problems in the quality and implementation of the legislation, as well as the administrative practices, it is important to point out that the Ombudsman and the Independent Authority for Public Revenue (AADE) have established a close and regular cooperation in order to jointly address, as directly as possible, the issues that affect the taxpayers, including attachments.

Social security and benefits

Bureaucracy, delays, administration mistakes passed on to citizens, as well as problems related to computer systems, create an environment of insecurity and uncertainty for the insured, and, in some cases, pose a serious threat to their rights.

At the same time, incorrect or incomplete information from social security institutions, as well as intricate legislation, often force citizens to miss deadlines and make mistakes, resulting in reimbursement of unduly paid benefits.

- When a woman filed for old age pension to the former Social Security Organisation (IKA-ETAM), it was discovered that her insurance booklet had been lost. The Ombudsman asked for her pension to be issued on the basis of her insurance days, already calculated by IKA-ETAM when integrating her in a programme for voluntary insurance of the long-term unemployed. The Ombudsman's proposal has been accepted.
- A pension application, filed on the last day of June, was recorded in the system the next day. As a result, newer legal provisions were implemented and the beneficiary was entitled to a much smaller pension. After the Ombudsman's intervention, the date of the application was corrected and the insured was granted the corresponding pension.
- The IKA-ETAM deposited funeral expenses not to the lawful beneficiary but another person's bank account. Given the responsibility of the administration, the Ombudsman asked for the fastest resolution of the issue. In the end, IKA-ETAM decided to pay the money to the beneficiary and, at the same time, ask for reimbursement from the one that received it by mistake.
- A pensioner was called to return an amount unduly paid to him twice due to IKA-ETAM's negligence. After the Ombudsman's intervention, the relevant administrative decision was revoked.
- A private company's debt to IKA-ETAM had been inflated due to the failure of the competent services to timely examine its request for settlement. After the Ombudsman's intervention, the company was exempted from all surcharges due to the delay.
- Pensioners already entitled to low pensions, were awarded a lump-sum benefit in December 2016, but did not actually receive it, because, for various reasons, they did not appear as 'active pensioners' in the computerised system. The Ombudsman's request to the competent Ministry for resolution of the problem remains unanswered.
- Equally pending are requests for reimbursement of contributions which correspond to supplementary insurance, because the process for accessing the computerised systems of the (former) Engineers and Public Contractors' Pension Fund (TSMEDE) has not yet been completed.

- A former IKA-ETAM's employee, dismissed as unfit for work, was not informed as to the last date of his pensionable service and as a result he delayed to submit an application for retirement on the grounds of disability. One month's salary, which corresponded to the period elapsed between the day of his dismissal and the day that he started getting his pension, was retained as unduly paid. After the intervention of the Ombudsman, his objection was sustained and the money was returned.
- IKA-ETAM charged an interim pension with an interest at 5%, on the grounds that it had been unduly paid, but later accepted the Ombudsman's recommendation that the law expressly provides that in cases where the pensioner acts in good faith, an interest-free return of the money is applicable.

Social solidarity

The Ombudsman has enhanced its cooperation with both the Sample Checks Committee, whose contribution has been crucial to the correction of errors in the opinions of Medical Committees as well as with the Directorate for Medical Assessment of the Unified Social Security Institution (E.F.K.A.) in improving procedures. However, the care for vulnerable groups includes not only procedure smoothing, but also the need to support them financially. In this area:

- The issue of exemption from payment of an administrative fee for those applying for a disability benefit and already holding a valid opinion from the Disability Certification Centre (KEPA) certifying a disability of at least 50%, is still pending despite the fact that the competent authorities admit the need to find a solution.
- Unduly paid welfare benefits are treated by municipalities like any other kind of debt, which means that they are certified and collected according to the provisions of the Code for the Collection of Public Revenue (KEDE). The Ombudsman requests that the vulnerability of this group of debtors be taken into account and special beneficial provisions be introduced, so that the return of such sums can go hand in hand with the protection of individual and social rights.

Environment and natural resources management and protection

Environmental management and natural resources protection are governed by a number of laws and regulations, which are not applied at all, poorly applied or totally circumvented. In particular, the Ombudsman notes the following:

(a) The management of protected areas is affected by long delays in the release of administrative acts and by lack of coordination between the co-responsible services. The previously analysed cases of Chrysi Island, the Kaiafas Cave and the wetland in the estuary of Aposelemis River in Heraklion, Crete, are indicative examples.

b) Municipalities often break the law to the detriment of the environment, choosing to serve local interests and political aims. They also remain inactive in cases where they have clear obligation to act, although their intervention could effectively contribute to the solution of the problem.

- The Municipality of Anafi widened a traditional path to allow the passage of vehicles, altering its morphology, despite the relevant restrictions in the intervention license. The Ombudsman achieved the municipality's sanctioning and the prohibition of vehicles, but it is uncertain whether the decision to restore parts of the path to their original state will be implemented.
- The Municipality of Ermionida transferred solid waste to an area in Kranidi where only the collection of recyclable materials is provided. Following the Ombudsman's intervention, administrative penalties were imposed on the municipality due to environmental degradation.
- An individual failed to restore the road to its original state after the works he carried out, as required by the law. The Municipality of Ermionida also failed, for its part, to take the necessary measures for the protection and unimpeded access of citizens to public areas.
- In the Municipality of Agioi Anargiri-Kamatero, land owners delayed the cleaning of their land, thus endangering public health, the protection of which is an ex-officio obligation of the municipality. The problem was finally resolved after the intervention of the Ombudsman.

c) Major delays in procedures prevent the restoration of environmental damage which is required by the environmental legislation

- In 2017 the Ombudsman completed a long-lasting intervention on the restoration of environmental damage in the cave of Agia Anna in Viotia, which had

served for a long time as a waste disposal site. The restoration works in the cave have been completed by the Municipality of Levadia, the waste has been removed and all the provided fencing and fire protection measures have been taken.

- On the contrary, the lengthy tendering and procurement procedures for the works that need to be carried out, set back environmental damage restoration in Aspropyrgos, where the disposal of solid waste in an area for recyclable materials even led to a fire in 2015.
- The Ombudsman has initiated investigation on environmental liability in the very serious case of oil leakage from the tanker Agia Zoni II in the Saronic Gulf in September 2017 and awaits information and data by the competent authorities

Immigration and political asylum

Through its constant presence on islands with reception centres for migrants and refugees and through its continuing cooperation with the agencies concerned, the Ombudsman has a full and clear picture of the existing problems and malfunctions, about which it has repeatedly notified the competent bodies:

- The procedures for first reception and examination of applications of asylum seekers must not be circumvented in favour of administrative detention, which should be a last resort. Moreover, in the Ombudsman's view, which is also the view of the Hellenic Police, families with children should be excluded from detention.
- It is necessary to identify vulnerable persons in order to examine their asylum applications as well as explore the possibility to exempt them from geographical restriction. Alternatively, if exemption is not feasible, the Ombudsman recommends that the Administration indicates structures of social or medical support that could integrate them.
- Flexibility and special handling is required in cases of detention or geographical restriction of minor refugees, in order to preserve their safety and protect their rights

With regard to the issue of residence permits, efforts made to simplify and speed up the procedures run into bad planning and legal ambiguities. It is therefore necessary to make full use of technology and e-services, which could contribute substantially to the solution of many problems.

- In April 2017, the jurisdiction to examine and issue residence permits for exceptional reasons for irregular residents in the country, was transferred from the Ministry to the decentralised administrations, as the Ombudsman had repeatedly requested. This transfer created expectations for a faster examination of such requests. However, the transition to the new structure was not properly planned, the staff and premises are not sufficient and the transfer did not bring the expected results. There are also important delays in the examination of earlier applications that were kept in the Ministry, which results to incomplete protection of applicants and slows down the examination procedures for other categories of residence permits.
- The Ministry also needs to clarify the provisions regulating the re-submission of applications for a residence permit for exceptional reasons, as their handling by the territorially competent services varies substantially.
- Following the positive development of the issuing of residence permits in the form of an electronic card, the administration should consider any other possibility of modernising the system of permits in order to simplify and accelerate the procedure.

Citizenship and civil status

There are still malfunctions and bureaucratic rigidities in the procedures for acquiring citizenship and there is a clear need for simplification and acceleration. The Ombudsman's intervention was required in the following indicative issues:

- There are major delays in the examination of naturalisation processes, which are partially due to the fact that the competent authorities, notably the consulates, fail to respond on time. Furthermore, the reasons for the delay are not communicated to the person concerned, despite the explicit legislative provision and the recommendations of the Ombudsman. Likewise, the review of the recommendations made by the Naturalization Committees is a very slow procedure and the rejected applicants are late with exercising their right to submit a new request.
- The competent Directorate of decentralized administration refused to accept an application for citizenship due to lack of substantive requirements. On this occasion, the Ombudsman pointed out that the assessment of applications is the exclusive responsibility of the Naturalisation Committees. Therefore, the Directorates may inform the interested parties where there is a substantive obstacle, but they cannot refuse to accept an application.

- The Ombudsman pointed out that citizens of FYROM, descendants of former Greek citizens, maintain the Greek nationality, when it has not been legally taken from them. The Authority had to intervene to prevent the implementation of a relevant circular by the Ministry of Interior which was contrary to the law.
- After the intervention of the Ombudsman, the Ministry of Education issued a circular, stating that the years of study at foreign schools in Greece, which are recognised under Article 35 of Law 4186/2013 and apply the Greek educational programme, should also be counted towards acquisition of Greek nationality.

In the field of civil status, the competent authorities demonstrate lack of flexibility and willingness to find a solution in respect of incorrect entries, even in cases where the administration itself is responsible for the mistake.

- As recommended by the Ombudsman, the application of a Roma woman for entry in the municipal roll was finally accepted, despite the existing differences in the name and surname, after cross-checking of the data safely proved that she was the same person.
- The Ministry of Interior refuses to correct the naturalisation decisions in cases where differences in the name and surname data of foreign nationals are later found. The Ministry considers that the foreign national has to check the official translation of the identification documents for mistakes, since the data for the naturalization decisions are drawn from the translated documents. The Ombudsman does not accept this view and considers that decisions should be corrected, like any other administrative act having errors.
- The police orders holders of ID cards to replace them, as invalid, when the place of birth is abbreviated, and then to apply for a new passport by paying a new fee. It also obliges the person concerned to make a new request for a passport, with new fees, in the case of error in the taking of fingerprints. In both cases, however, the citizen is not responsible for the error; therefore, in the opinion of the Ombudsman, there should be no payment of fee.

Imprisonment

In the sensitive field of imprisonment, where, by definition, the exercise of rights is difficult, the Ombudsman's interventions on several occasions urged the Administration to revise the current legislative framework and seek solutions to procedural issues.

Regarding the execution and the length of sentences:

- The Ombudsman noted the right to parole⁹ cannot depend on the will or the application of the detainee and that the provided deadlines must be respected. Subsequently the Secretary-General of Anti-crime Policy instructed the administration of all Detention Centres on how to handle cases where the detainee declared that s/he did not wish to activate the process.
- The Ministry of Justice, in the context of the revision of the Penal Code, forwarded to the Parliament the Ombudsman's proposal on including the time served from a sentence which was later annulled by court, in the time of another sentence, imposed later.

As regards welfare and insurance benefits for prisoners:

- The Ministry of Labour informed the Ombudsman, following its intervention, that it had submitted a question to the Legal Council of the State in order to clarify whether the persons executing prison sentences can be integrated in the programme of financial support for Severe Disability.
- The Ombudsman's comments on the payment of pension in case there is a criminal conviction against the beneficiary, have been taken into account and were incorporated in the relevant Article 27 of Law 4488/2017. Under this article, the pension shall be suspended for as long as the pensioner is sentenced to custodial sentences of more than a year, provided that s/he is convicted for an offence against the insurance agency.

Integration in the labour market

Phenomena such as omission of prescribed actions, lengthy certification processes and problems in the recruitment procedures that fall outside the competence of the Supreme Council for Civil Personnel Selection (ASEP) constitute serious obstacles to professional reintegration, at a time when unemployment rates are very high, particularly among young people. The following examples are indicative:

- The National Organization for the Certification of Qualifications and Vocational Guidance (EOPPEP) failed to process an application for a teacher's licence in private language schools, made in 2014, since it failed to get the criminal record certificate ex-officio, as it was supposed to. The citizen's request was

9. *Temporary release of a prisoner who agrees to certain conditions before the completion of the maximum sentence period.*

satisfied following the Ombudsman's intervention.

- The certification examinations on new specialties by EOPPEP were delayed, because the Secretariat-General for Lifelong Learning had not drafted the Study Guide provided for those specialties. The Guide was drafted and the examinations were finally carried out after the Ombudsman's intervention.
- The Ombudsman investigated a Call for recruitment of permanent staff of marine specialties and confirmed that no objection procedure had been established, the assessment criteria were not explicitly defined, and an additional selection criterion was arbitrarily introduced down the way. The Ministry of Shipping and Island Policy promised that such practices will not be repeated in subsequent calls.

Active employment policies

Although community service programmes run by the Manpower Employment Organisation (OAED) aim to directly deal with unemployment and are primarily destined for the long-term unemployed, the relevant procedures are neither simple nor user-friendly. The electronic system of applications is cumbersome, the Call is particularly lengthy, the deadlines are very strict and the support from the OAED local services is not efficient. The above factors complicate the implementation of the programmes and discourage the candidates.

In many cases the Ombudsman's intervention was decisive for the resolution of procedural problems. In particular the Authority:

- Asked the competent services to apply the law and include in the programme of the Municipality of Egaleo a candidate who was originally rejected because of a criminal conviction
- Intervened in order to attribute to another candidate the evaluation points she was entitled to, as a beneficiary of the Social Solidarity Income
- Enabled the integration in the programme of an unemployed person who had originally been excluded because of his participation in another programme. However, the candidate had never worked in a community programme before.
- In a similar case, an unemployed person was rejected due to his participation in another programme, but it was clarified that he was never actually hired as there was a problem with his qualifications.

As regards Young Self-employed Persons, the Ombudsman has intervened to Manpower Employment Organisation (OAED) in order to define the concept of “seasonal” business which is often used as a reason to exclude candidates from programmes of financial assistance.

Protection of children's rights at school

The largest number of complaints received by the Ombudsman on violation of children's' rights, are school-related. When it comes to the protection of children and their rights within the school environment, the need for proper regulation and readiness by the Administration to address any organizational or operational problems, is all the more important. This is because each one of the problems outlined below, primarily affects the children themselves.

- The amounts allocated for the recruitment of supply teachers to accommodate students with special needs, are insufficient to cover all the requests for parallel support. Therefore, either some pupils are given priority, or parallel support is provided to more students, but on a partial basis. In any case, the programme is inadequately implemented.
- The Special Needs Schools (SMEAE) are poorly housed, which affects their operation. In two specific cases, the Ombudsman intervened and achieved significant improvements by the competent bodies
- There is a lack of information in schools regarding gender identity of transgender students. The Ombudsman has identified the need for guidance from the Ministry in order to ensure that transgender students are treated equally, with flexibility and respect for their personal needs by the entire school community.
- Delays and inapplicability of the legislation is observed as regards the transport of pupils from home to school. The Ombudsman has successfully addressed a case where early childhood children were denied school transport on the grounds that attending nursery is optional. In another case the Ombudsman intervened in order to grant a parent an allowance for his child's transport expenses.
- The Ombudsman provided assistance and guidance in order to find consensual solutions in many cases of violence, tensions and misbehaviour by teachers within the school environment, but also in cases of children coming from problematic family environments.
- In the case of a pupil with a chronic condition, the school nurse claimed that

she was unable to provide the special emergency care required. This case highlighted the need to recruit school nurses and to clarify the legal framework for the performance of their duties.

- There is often scepticism about minor aliens attending Greek schools, depending on the reaction of the local society. The Ombudsman had to intervene in order to ensure the award of a certificate of graduation from primary school to minor aliens, but also in order to enable school registration for unaccompanied minor aliens living in a hostel. However, the recent amendment to the relevant legislative framework is expected to resolve any misinterpretations.
- Problems occurred due to the recent institutional changes, related to transfers of pupils from general senior high schools to vocational senior high schools and also due to the sudden elimination of a specific specialty in the third grade. However, the Ombudsman's proposal that students already attending the second grade should be able to continue to the third grade has been accepted.

Protection of minors and activation of support mechanisms

The children's best interest and their safety may be undermined not only within the family environment, but also when children are put under the responsibility of the State, in child protection services. The role of the Ombudsman is important in both cases:

- Following the Ombudsman's intervention, minors hosted in the Skaramanga Hospital for chronic conditions were moved to a new location, due to the insufficient care provided and the malfunctions of the unit.
- The Ombudsman mediated in order to support minors at risk of neglect, harassment or violence, by providing advice, involving competent social services or referring the case to the Minors Prosecutor.

Parental responsibility and care

The Ombudsman frequently intervenes to regulate family matters, when the parties fail to reach a consensual solution, or when there are other procedural issues that cannot be solved by the unclear legislation. Indicatively, the Authority intervened:

- To restore communication between a father in a prison hospital and his minor children, by cooperating with the mother and specialized child psychologists
- To allow a father to take a child-care leave. The father and the mother of the child were not married and had made a written agreement on the exercise of parental responsibility. However, the fathers' employer (the Hellenic Army), insisted on a court judgment in order to grant the father a child-care leave.
- To clarify the limits between supervision and privacy of a seventeen-year-old, whose care was entrusted to his grandfather
- To ensure the protection of children's privacy and pictures of minors on the Internet as well as their public exposure in general, especially in cases of different attitudes between divorced parents
- To clarify the terms and conditions under which minors can receive medical and psychological surveillance by specialized health centres, especially in the event of parents' discord.
- To ensure the insurance coverage of a child from a previous marriage, by the current spouse of the mother.

Higher education

Distance learning, as a more flexible model, allows citizens who are unable to carry out studies in the traditional way for various reasons, to pursue undergraduate and postgraduate studies. However, unfortunately the procedures related to the attendance of distance learning courses are not flexible enough. The Ombudsman identified that:

- All higher education institutions should have a mandatory procedure in order to consider important reasons that would justify reimbursement of paid tuition fees. Such a procedure is not yet provided.
- The places and times of Counselling Group Meetings be communicated on time, since in many cases they are the criterion for choosing a specific programme.
- The legal framework on granting educational leaves of absences must be applied

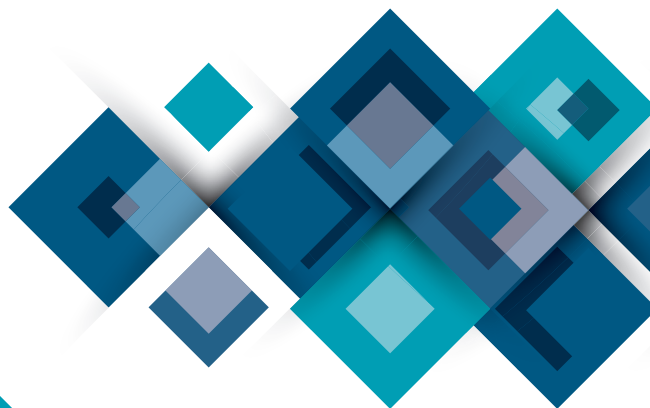
The Ombudsman also found that Higher Education Institutions do not respect the criteria set out in the calls for expressions of interest for participation in post-graduate studies

- In the case of a candidate for a postgraduate programme of the School of Engineering of the Aristotle University of Thessaloniki, there were a lot of deviations from the criteria set out in the Call. The Ombudsman has not received any satisfactory explanations from the Institution and will raise the issue with the Ministry of Education

Finally, regarding the grant and recognition of degrees, the Ombudsman:

- Continued its intervention in order for graduates of Higher Technological Educational Institutions to receive the Diploma Supplement which is granted to the graduates of higher education institutions
- Intervened to the Hellenic NARIC regarding the recognition of foreign degrees awarded upon the completion of programmes of studies identical to the domestic ones.

|| THE OMBUDSMAN & HUMAN RIGHTS



Introduction

Since its establishment in 1998, the Ombudsman, in addition to its role as mediating and controlling mechanism, has been equipped with a series of new mandates. Also, in areas where it already intervened on the basis of its general competences, specialised legislation has endowed the Authority with wider tasks, as well as new competences, relating to:

- human rights monitoring and promoting, as well as tackling discrimination;
- monitoring third-country nationals returns to their home countries;
- fighting arbitrary behaviour of law enforcement and prison authorities;
- protection of public health;
- prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Those powers, some of which extend beyond the public and into the private sector, highlight the Ombudsman's multi-faceted role, as a Mediator, a Legality Control Institution, a National Equality Body, a National Prevention Mechanism and a Monitoring Mechanism.

All these new mandates have given to the Ombudsman the opportunity to deal with a vast range of problems and rigidities in the public sphere, but also in the private sector and the labour market; to develop multiple and complex skills to address these issues; to acquire a thorough knowledge of the domestic and European legislation and case law, but also of the respective actions and policies, thus rendering it into a think-tank of knowledge and human capital, undeniably unique for Greek standards.

Tackling discrimination & promoting equal treatment

- The present chapter outlines the issues and trends that emerged through the complaints examined by the Ombudsman that promotes the principle of equal treatment on the basis of Laws 3896/2010 & 4443/2016, which brought about the following major changes:
- The Greek Ombudsman became the sole competent authority for the promotion of the principle of equal treatment, both in the public and the private sector;
- New grounds of prohibited discrimination were added in the field of employment, professional training and the labour market, such as chronic conditions, family and social status and sex characteristics;

- the types of discrimination are expanded to include: multiple discrimination, alleged discrimination (i.e. on the grounds of features that a person is thought to bear), as well as discrimination by association with persons who bear one of the qualities protected by law;
- the refusal of employers for reasonable accommodation of persons with disabilities and/or chronic diseases is added to the prohibited grounds of discrimination;
- the term “reasonable accommodation” is defined in accordance with the International Convention for the Rights of Persons with Disabilities.

The Ombudsman’s findings can be summarised as follows:

In the public and the wider public sector, excessive deviations from equal treatment between men and women still exist, both in terms of access to employment and professional advancement. The absence from work due to maternity negatively affects the labour rights of women, especially when women occupy managerial positions. In the private sector, legislation protecting pregnant women and women returning from maternity leave is often infringed. In such cases, the Ombudsman works closely with the Labour Inspectors.

The Ombudsman examined the complaint for sexual harassment of a female worker, who was dismissed two years later. The Ombudsman ascertained that she had been unlawfully dismissed, despite the period elapsed in-between.

The Ombudsman intervenes in cases traditionally treated as discriminatory, on the basis of racial, national or ethnic origin (e.g. Roma, persons of a non-Greek origin, members of minority groups etc.). Discrimination on the basis of religious or other beliefs, mainly concern, either State legislation in sensitive issues regarding non-dominant religions or other beliefs (i.e. licences for places of worship, conscientious objectors), or the insufficiently grounded perception of the competent authorities as to the separation of religion from the secular nature of certain administrative functions, such as burial and registration of new-borns.

As to the protection of persons on grounds of disability or chronic illness, the Ombudsman has intervened for the readmission of a student dismissed from the Hellenic Police (ELAS) due to chronic disease. It also mediated for the satisfaction of applications of civil servants with disabilities or chronic illnesses, to be relocated or be given suitable tasks. The Ombudsman also established breach of the principle of equal treatment on behalf of a private undertaking, which dismissed an HIV-positive employee.

In the light of discrimination by association, the Ombudsman examined appli-

cations made by civil servants for more suitable working hours or work location, on the ground that they were carers of persons with disabilities.

Maximum age limits as a prerequisite for access to employment, either continues to lack any specific justification, or is based on an incomplete or a vague one. Gradually, but not yet adequately, the Administration appears to acknowledge its statutory obligation to precisely justify such limits.

The cases investigated by the Ombudsman in the field of family status concern discriminatory treatment of persons due to their relation with a person of the same or the opposite sex (e.g. civil or religious marriage, registered partnership). These cases usually camouflage an indirect discrimination on the grounds of sexual orientation, because a registered partnership is concluded between people of the same sex, who cannot legally come into matrimony.

The Ombudsman has also intervened in cases of unjustified different treatment of divorced couples and their children, as well as single-parent families and their children. In light of the discrimination on the grounds of social status, it has also examined issues raised by vulnerable groups (unemployed, ex-convicts, people living in marginalised areas etc.)

Finally, it has investigated complaints suggesting discrimination on the grounds of gender identity or sex characteristics in public workplaces, in public hospitals in terms of medical care, and in primary and secondary education. In principle, the Ombudsman sees Law 4491/2017 as a positive step towards the legal recognition of gender identity. However, during the bill's consultation process, it stressed out the importance of maintaining the right of transgender minors to gender reassignment at Registry Offices.

Monitoring returns of third-country nationals

The Ombudsman has a special competence for monitoring as an external mechanism enforced return of third-country nationals to their countries of origin (European Return Directive (2008/115/EC, Article. 8.6, and Law. 3907/2011, Article 23.6). The Authority has the competence to proceed to random checks during all the steps of the procedure following the issue of a return decision, the potential administrative detention of a foreign national and the enforcement of police operations for returns, by land, sea or air.

The external monitor of returns in 2017 at a glance

The Ombudsman visited 7 Pre-removal centres and police detention centres, where foreign nationals destined for return were held.

The Ombudsman oversaw the following removal operations until November 2017:

- 9 joint European operations (flights) to Pakistan and Georgia, under the coordination of FRONTEX;
- 24 readmissions to Turkey by sea and air;
- 2 land removal operations to the Albanian border, from Athens and Thessaloniki.

Quantitative data

- 11.187 forced returns were carried out during the first ten months of 2017, slightly increased compared to 2016.
- 2.598 foreign nationals were detained in Pre-removal Centres on 1/11/2017, 60% up compared to 2016

Qualitative data

The image of the generalisation of pre-removal detention, although provided as an extreme measure, is coupled with the problems detected during removal operations, in particular in the case of readmissions to Turkey:

- No timely information to those destined for return;
- Lack of individual assessment as to the need, or not, for handcuffing.

- Failure to equip those to be returned with a “fit to travel” certificate;
- Inadequate official documentation accompanying the detainees, depending on the police station of origin.

The smooth cooperation between police authorities and the Ombudsman brought about some procedural as well as substantial improvements in ensuring the rights of those for readmission, such as the adoption of the Ombudsman’s proposal for abstaining from forced removal operations when petitions for interim measures are filed to court.

The cooperation with FRONTEX reporting mechanism

Frontex contacted the Ombudsman in three readmission cases during 2017, in view of the latter’s competence as rights’ protection mechanism, thus activating the provision of European Regulation 2016/1624 (Article 72.4) on filing complaints relating to operations at the EU external borders.

These three cases had also been referred to the Ombudsman by citizens, which is indicative of the people’s trust in the mechanism. In one of these cases, in which Syrian nationals were readmitted at 21.10.2016, despite their will to seek asylum, the Ombudsman pointed out that the internal investigation by the General Inspector of Public Administration lasted for more than one year, something that manifestly exceeds any reasonable limit. In the other two cases, the Ombudsman noted the positive response of the Hellenic Police (ELAS) in exempting foreign nationals from readmission due to their pending petition for interim measures of protection.

Conclusion

The Ombudsman plays an active role in the external monitoring of returns/readmissions, a process which does not cease to be a focal point of the European immigration policy. However, at the same, various issues are raised with regard to fundamental rights and transparency of administrative action.

National mechanism for investigating cases of arbitrary behaviour of law enforcement agencies

In June 2017, when Articles 56-58 of Law 4443/2016 came into force, the Om-

budsman became the National Mechanism for Investigating Cases of Arbitrary behaviour by the law enforcement agencies, i.e. the Hellenic Police, the Hellenic Coast Guard, the Fire Department, as well as the staff of State penitentiaries.

Under this competence, the Ombudsman is also entitled to investigate possible disciplinary offences on behalf of these bodies' staff. It intervenes *ex officio* and/or it investigates cases following a referral by the competent Minister or Secretary General, examining the following: behaviour that constitutes torture (under Article 137^A of the Greek Penal Code); intentionally illegal threats against life or physical integrity or health or personal or sexual freedom; illegal use of a firearm and unlawful conduct for which there is evidence of discrimination.

The Ombudsman assesses each case falling within its jurisdiction and decides whether to investigate it or to forward it to the competent disciplinary body. It is also competent to review judgements of the European Court of Human Rights and to decide as to further investigation of the case, either in order for a disciplinary action to be initiated or completed, or for the imposition of the appropriate penalty, regardless of any proceedings.

From the beginning of its operation, a total of 117 complaints have been submitted, 11 by individuals, and 112 by the authority conducting the disciplinary investigation and/or other public bodies. In four cases, the Ombudsman did not have competence to intervene. In most of them, however, the Ombudsman decided to monitor the disciplinary investigation and to express its views on its findings report. Among the seven (7) findings reports, which have already been submitted, the Ombudsman referred two (2) back to the body that conducted the investigation for further action; in one (1) case it has already expressed its views. In the remaining four (4), examination is pending.

In four (4) cases, the Ombudsman conducted the investigation itself. These cases concerned: incidents of a conduct constituting torture (15); incidents of use of a firearm (15); 14 sexual offences and 53 offences against life or physical integrity. Finally, 11 cases had to do with racism.

During 2017, the Ombudsman also investigated the pending compliance of Greece with the *ECtHR Zontul v Greece* Judgment of the European Court of Human Rights, dated 17.1.2012, after the case's referral by the Legal Council of State. Following a letter of the Ombudsman, the Hellenic Coast Guard has ordered a re-examination of the case. In a recent meeting (5-7/12/2017), the Committee of Ministers of the Council of Europe welcomed the aforementioned recommendation of the Ombudsman.

National Preventive Mechanism (NPM) against torture and cruel, inhuman and degrading treatment or punishment ¹⁰

Detention Centres

The following conclusions can be drawn from the NPM's spot checks in detention centres around Greece (e.g. Diavata, Korinthos, Corfu, Ioannina, Chios, Kassándra, Nigríta, Komotini, Korydallos Prison Hospital), as well as the analysis of statistical data provided by the Ministry of Justice:

- In general, the total number of detainees continues to be under the threshold of 10.000. At any rate, the NPM still deems its earlier proposition that the improvement of detention condition requires a holistic approach vis à vis the phenomenon, as highly relevant.
- The lack of creative occupation for detainees, coupled with the inadequate permanent staffing of centres with doctors, nurses, psychologists and sociologists, still poses a significant problem. Another problem is the total absence of a criminologist assigned to the detention centres.
- The absence of permanent medical and nursing staff is observed in the vast majority of detention centres.

Police detention facilities

The spot checks of the NPM to said facilities have once again highlighted the pre-existing problem of the premises' unsuitability for long-term detention.

A serious issue repeatedly outlined by the Ombudsman is the administrative detention and the protective custody of unaccompanied minors in police stations, which occurs due to the lack of sufficient openings in hostels and safe zones in temporary accommodation areas. Following previous interventions, the Ombudsman visited police stations where unaccompanied minors were detained for long periods in overcrowded premises and without been given any outdoor time.

Furthermore, as to the detention facilities of Thessaloniki Third-country na-

10. In implementation of the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

tionals Directorate, the NPM reiterates its proposal that detainees should be transported directly to a pre-removal centre because the Directorate's premises are unsuitable for long-term detention due to a complete lack of outdoor time.

Detention conditions aside, the staff workplace is also thought to weigh down not only on the employees themselves but also on the quality of their work.

Transfer Departments visited by the NPM have significant building problems, inadequate natural lighting, ventilation and heating, as well as lack of outdoor time.

Areas for psychiatric care and social welfare

The NPM continues to work on the living conditions of people with disabilities at the Lechena Branch of the Social Welfare Centre of the Region of Western Greece.

The Ombudsman carried out a spot check in 19-12-2016, in order to examine the living conditions of minors and adults with severe mental disabilities and/or autistic spectrum disorders, at the Skaramanga Unit of the branch of the Welfare Centre of the Attica Region for the recovery and rehabilitation of children with disabilities in Voula (Athens). Said Unit was shut down after relocation was completed in October 2017, with the relocation of 6 persons to the Disability Branch of Eastern Attica, 20 persons to the Disability Branch of Western Attica, and one person to a mental health facility.

The NPM will continue to monitor the living conditions of persons with severe mental and development disorders in their relocation facilities.

Finally, the NPM carried out, for the first time, a spot check at a private elderly care unit.

Mental Hospitals

NPM visited the mental hospital of the University of Ioannina and the Psychiatric Department of the "G. Hatjikostas" General Hospital of Ioannina. In particular, the spot check involved the two hospital hostels and at a city apartment.

A team of the NPM also visited several Departments of the Mental Hospital of Thessaloniki, namely (a) The Emergency Department (b) The University Department of Standard & Emergency Treatment (c) The Department of Prolonged Treatment (d) The Department of Forensic Psychiatry (article 69 of the Penal Code) as well as (e) the Reintegration Department, where they talked with the hospital Deputy Manager, the heads of the Departments of Administration and Patients' Office, and the President of the local Social Association for Mental Health. The

team also sought information on patients' restriction measures, nutrition and heating, as well as their everyday sanitary products.

Third-country nationals Pre-removal Detention Centres

In 2017, the Ombudsman's spot checks in such Centres reconfirmed some of the problems already identified in its annual report, such as the detention in premises which are overcrowded or unsuitable in terms of the Return Directive's specifications (Article 30 *et seq.* Law 3907/2011).

The problems highlighted by the Ombudsman in its 2017 special report, such as the complete lack of interpreters, as well as the infrequent provision of medical services, still remain to be solved. Another difficulty that remains unanswered is the irregular provision of health services due to the termination of the contract with HCDCP (KEELPNO). Finally, it must be noted that, in February 2017, the Ombudsman undertook an *ex officio* investigation as to the death of a third-country national at the Tavros Pre-removal Centre.

Organisation and supply of health services

With Article 18.1 of Law 3923/2004, the Greek Ombudsman was entrusted with the duties of the Ombudsman for Health and Social Solidarity.

In the exercise of its powers concerning the rights to health, welfare and social solidarity, the Greek Ombudsman suggests measures to be taken by the competent agencies for the reinstatement and protection of citizens' rights, the elimination of maladministration phenomena and the improvement of health and social solidarity services, as well as improvement of their relations with the public (Art. 18.2). Furthermore, it has been provided that the Minister for Health and Social Solidarity may refer to the Ombudsman citizens' complaints against public health and welfare services (Art. 18.3).

In the context of this competence, the Ombudsman examines a wide range of problems faced by health services' users, either relating to the organisation and operation of public health services or arising from the violation of the rights of health services' users. Problems which have been repeatedly brought to light include the lack of staff and infrastructure, failure to meet the minimum safe care standards, such as granting safe anaesthesia, inadequate cleaning and disinfection, as well as undergoing of medical operations without prior consent of the patient. Emphasis is also given to the protection of the rights of sensitive

social groups, such as the elderly, the disabled, the physically and mentally ill, third-country nationals and others.

During the course of 2017, the interventions of the Greek Ombudsman's Health and Social Solidarity are summarised as follows:

As far as the Health Services Organisation, it was noted that:

- existing organisational and operational problems do not justify the failure to perform bariatric (weight-loss) operations in Northern Greece and the Ombudsman requested that the problem be addressed;
- percutaneous interventions for aortal valve implant should be preceded by the granting of the proper authorisation to the hospital and the Ombudsman was asked to investigate why these interventions were performed by the University General Hospital of Patras without prior authorisation.

In relation to patients' rights, it was highlighted that:

- Notwithstanding the consolidation of the right of access to medical files, there are still problems as to its implementation;
- compassion should be shown by professionals in the sensitive area of health and efforts to accommodate the needs of health services users should be exhausted by the public health units, in particular of those belonging to vulnerable groups, such as the elderly;
- the problems related to the issue of Social Security Number (AMKA) to third-country nationals should be resolved, in particular to unaccompanied minors and applicants for international protection, so that they can have unprohibited access to free health services, in accordance with the legislation in force;
- unprohibited access to medicines and treatments for HIV-positive people is a fundamental and a non-negotiable right towards the eradication of the disease. Measures must also be taken to satisfy the current and accumulated needs of the National Reference Centres in reagents, used for the quantitative measurement of viral load and genotyping tests, both pending and future ones.
- As regards public health, the Ombudsman stresses out the Administration's inability to implement anti-smoking legislation due to the inadequacy of control mechanisms, but also the overlapping of mandates for the monitoring of violations and the imposition of fines.

Finally, the Ombudsman conducted the following two ex officio inquiries:

On the refusal of the General Hospital of Samos anaesthesiologists to engage in artificial termination of pregnancy, the Authority stressed that the right of public health system doctors to refuse termination of pregnancy on grounds of conscience is soundly consolidated, however the exercise of this right should not impede the provision of public health services.

On the termination of operation of a private cord blood bank, the Authority stressed that the organic material of the company concerned should be secured and measures should be taken by the Ministry of Health, the National Transplant Organisation and the Data Protection Authority for the licensing of private banks, their control and the protection of the rights of those dealing with them.

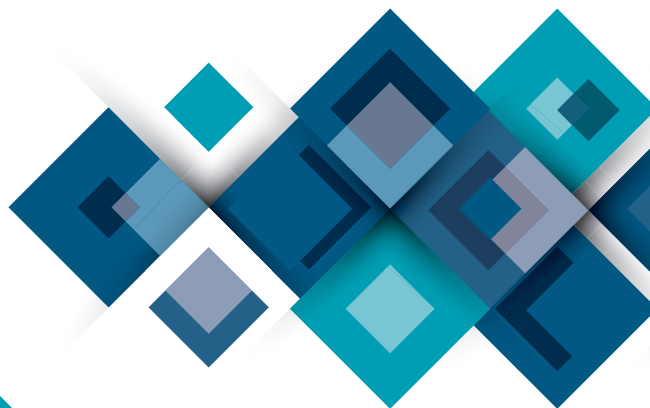
THE OMBUDSMAN
AS ADVOCATE

**LEGISLATIVE AND
ORGANISATIONAL PROPOSALS**



The Greek Ombudsman has acquired a predominant role as a key interlocutor of the Administration and the executive power as well, concerning the organisation of public services, policy making and the promotion of recommendations, which require not only a legislative initiative aiming at improving the legal and regulatory framework, but also commenting on legislative initiatives, projects and reports forwarded by various bodies of the State. Having the privilege of gathering broad knowledge, thorough expertise and global monitoring of the situation, the Ombudsman submits a significant number of legislative and organisational proposals to the competent services, bodies and the political leadership of the Ministries. Occasionally the Ombudsman's proposals are accepted from the start, at times they need to be submitted repeatedly or even are rejected by the Administration, which often leads to dead-end situations. There are cases when the State is forced by other means (e.g. court judgments) to adopt the Ombudsman's views after long delays. In most cases, had these views been implemented in due time, they would have entailed significant benefits for both the Administration and the citizens.

|| THE OMBUDSMAN
|| AS ADVOCATE
|| **PROMOTION**
|| **OF RIGHTS**



Given the broad scope of the Ombudsman's mission and authority, a large and important part of its actions aims at promoting and enhancing the rights of certain groups of the population, such as minors, vulnerable groups, and groups suffering discrimination and unequal treatment. The target of these actions is dissemination of information, transfer of knowledge about rights and raising awareness of both the experts and the general public. These actions may include working meetings, meetings of information exchange and cooperation with national and international agents, either public or private, organisation or participation in events, printed and electronic publications, consultancy and training seminars, as well as any initiative that can contribute in the achievement of the objectives pursued.

Monitoring and promotion of children's rights

The Ombudsman, having undertaken according to specific legislation the safeguarding and promotion of the Rights of the Child since 2003, and following the internationally established practices and standards also adopted by the European Network of Ombudsmen for Children, develops on its own initiative a range of actions aiming at promoting the rights of the child. Constantly seeking to be close to children, the Ombudsman listens carefully to their concerns, is always informed about the developments in the relevant fields, in which minors live, are educated and socialise and constantly raises awareness in minors about their rights through specially designed material and using children friendly means of communication. At the same time the Ombudsman raises awareness in general public about children's rights and cooperates with other competent public authorities, non-governmental organisations, agents and professionals working with and for minors in order to draft proposals and promote measures in favour of children. Furthermore, being the agent of advocacy in favour of children, the Ombudsman sets the framework and the procedures, which enable children to express their views on issues of their concern, highlights the best procedures and forwards them to policy makers.

This year's review includes meeting children and interacting with them, undertaking special initiatives, promoting networking and enhancing cooperation with the competent Ministries, public services, bodies and non-governmental organisations. Thus, the Ombudsman, acting in the context of this special authority, has become an important factor in monitoring and enhancing the implementation of the UN Convention on the Rights of the Child in Greece.

Promotion of equal treatment

As a body which monitors and promotes the principle of equal treatment, in 2017 the Ombudsman undertook various actions in order to disseminate information and raise awareness about protection against discrimination. Within this framework, a number of visits to public services, workshops with public officials and training seminars for civil servants took place.

At the same time, the Ombudsman participated in conferences, conventions and workshops, which took place in Greece or abroad, highlighting the issues of discriminatory treatment and capitalizing on its experience due to the monitoring of such issues for many years.

Special report of the Greek Ombudsman on migratory flows and the refugees' protection

In April 2017, the Ombudsman published a special report entitled: *"Migration flows and refugee' protection. Administrative Challenges and Human Rights issues"* (<https://www.synigoros.gr/?i=human-rights.el.files.434102>). This special report highlights the extent and the level of the administration's response to the demands of the situation, both in its extreme phases and in the current more predictable and manageable phase. The report includes the Ombudsman's findings and conclusions after dozens of inspections in hotspots on islands of the Aegean, in mainland centres of temporary accommodation, and in places of detention throughout Greece.

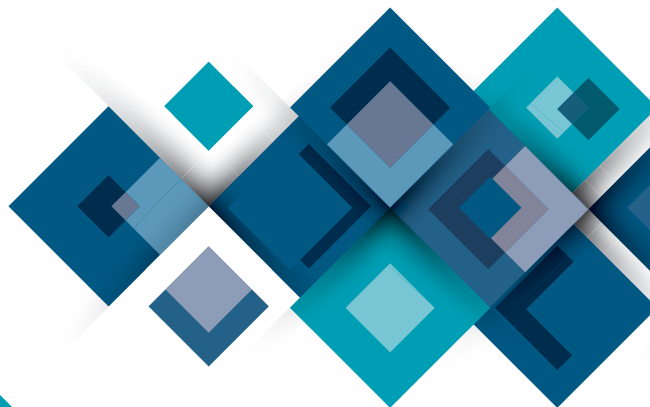
THE OMBUDSMAN
AS ADVOCATE

**NATIONAL AND INTERNATIONAL
COOPERATION ACTIVITIES**



The Ombudsman is an institution particularly extrovert and cooperative. The Authority acknowledges that thorough cognition of the legal and regulatory framework, assertive mediation, controlling intervention and ardent protection of the citizens' rights, are put to good use when communicated. Therefore, it works for having effective synergies with counterparts and similar institutions, but also with private and public bodies, with which its path intersects in the exercise of its powers. The Ombudsman is active in setting up meetings and events and in participating in events organised by other agents, Greek or international. It also produces a very important promotion work, which can be found on the website www.synigoros.gr, which is constantly and thoroughly updated and completed both in Greek and in English, and contains all news and activities of international interest <https://www.synigoros.gr/?i=stp.en>

|| LEGAL FRAMEWORK AND STAFF



The Greek Ombudsman is an independent authority constitutionally endorsed in Article 103 (9). The Ombudsman was established on 1 October 1998 and it provides its services to all citizens free of charge.

The organisation, staffing and operation of the Ombudsman are defined in Law 3051/2002 (as amended by Law 4055/2012), and in Law 3094/2003 (as currently in force), and its by-laws defined in the Presidential Decree 273/1999 (as amended and currently in force), according to the Constitutional provisions since its revision in 2001. The full texts concerning the function of the Ombudsman can be accessed at: www.synigoros.gr.

The Ombudsman's mission is to mediate between the Administration and the citizens in order to protect their rights, to safeguard due process and to combat maladministration. The Ombudsman also deals with the protection and promotion of human rights.

As a mediator, the Ombudsman submits recommendations and proposals to public administration. The Ombudsman does not impose sanctions nor does it invalidate any illegal acts of the administration. Any Greek citizen or third-country national living in Greece or abroad and dealing with the Greek State may resort to the Ombudsman. As far as abuse of children's rights is concerned, the minor him/herself or a parent or a relative or even a third party having direct knowledge of the minor's rights abuse, can resort to the Greek Ombudsman, and so can legal entities or Associations of Persons.

Legal framework modifications in 2017

In 2017 the Ombudsman's mandate was expanded with four new statutory texts:

- Law 4488/2017 Article 72 Framework for Promoting the Implementation of the Convention for the Rights of the Persons with Disabilities
- Law 4491/2017 Articles 9 and 10 National Mechanism for the Development, Monitoring and Evaluation of Action Plans on the Rights of the Child
- Law 4443/2016, articles 56 and 57: National Mechanism for the Investigation of Arbitrary Behaviour of Law Enforcement Agencies.
- Law 4509/2017 Measures for the treatment of persons exempt from punishment due to mental disorders.

Organisation and Staffing of the Ombudsman

On 31.12.2017 the Ombudsman's human resources (scientific and administrative staff) amounted to 194 members - including the secretariats of the Ombudsman and of the Deputy Ombudsmen - of whom 55 are men (28.3%) and 139 (71.6%) are women. The scientific staff consists of 132 Senior Investigators (SI) and the administrative staff of 62 employees (Administrative Staff, AS).

Among the scientific staff 40 people (30.3%) are doctorate holders (PHD), 73 (55.3%) are holders of a postgraduate title and 19 (14.4%) are university graduates. Among the administrative staff and the staff of the secretariats, 1 person (1.6%) is a doctorate holder, 19 people (30.7%) are holders of a postgraduate title, 12 people (19.4%) are university graduates, 4 people (6.5%) hold a degree from Technological Education, 23 people (37%) hold a secondary education certificate 3 people (4.8%) hold a compulsory education certificate.

The Ombudsman's human resources cover a broad range of scientific disciplines, including: 80 lawyers, 8 political scientists, 6 classical studies graduates, 1 theologian, 9 economists, 10 sociologists, 7 archaeologists, 4 communication scientists, 2 architects, 5 psychologists, 3 geologists, 1 physicist, 1 chemist, 2 chemical engineers, 2 civil engineers, 2 scientists of education, 3 graduates of statistics and insurance science, 1 medical doctor, 2 surveying engineers, 1 mathematician, 5 IT scientists, 2 librarians, 3 business administration graduates, 3 Management graduates, 3 humanities graduates, 2 graduates of hospitals and health units management and 1 translator.

ISSN: 2653-8814
NATIONAL PRINTING HOUSE



17 Halkokondyli St., T.K. 104 32 Athens, Tel.: (+30) 213 1306 600, Fax.: (+30) 213 1306 800, 210 7292 129
e-mail: press@synigoros.gr • www.synigoros.gr