

# **EQUAL TREATMENT**

## SPECIAL REPORT 2017

(article 25 paragraph 8 Law 3896/2010 and article 19 paragraph 6 Law 4443/2016)





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### **PREFACE**

This report is essentially the first comprehensive presentation of the Greek Ombudsman's activity, as the national body of promoting equal treatment. In the end of 2016, the mandate of the Independent Authority was expanded by Law 4443/2016. The amplification of the Ombudsman's competences, in the area of monitoring the implementation and promoting the principle of equal treatment, pertained to the inclusion of new grounds of discrimination under its control, both in public and private sectors. Responding to the challenges generated by the new fields of competence, the Authority proceeded to an essential internal re-organization of its structure and work, with determination and strategic planning. At the same time, having to align itself with the operating conditions and the common European standards for equality bodies, as these are reflected in the General Recommendation No. 2 of the European Commission against Racism and Intolerance of the Council of Europe (ECRI General Policy Recommendation no 2), the Independent Authority ensured, through its own initiatives and actions, the minimum resources that are necessary for the implementation of its ambitious plans in the field of promotion of the principle of equal treatment. As a result, it succeeded in being recognized as one of the most dynamic, active and efficient bodies of equal treatment in Europe. The Authority also demonstrated a multipurpose, multilevel and multifaceted activity within the Greek territory, through the following:

- By introducing key institutional monitoring and mediation interventions, it contributed to the reform of the access to procedures for occupation and of working conditions and labor relationships both in public and private sectors in order to be aligned with the requirements of the principle of equal treatment.
- By making constructive and meaningful recommendations and proposals pertaining to legislative changes and/or initiatives.
- By training, in a well-organized and well-structured way, the public administration's executive staff and by raising society's awareness concerning

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the international and EU practices and rules, so as to ensure a complete respect for the principle of equal treatment.

 By intervening whenever necessary, in order to remove any unfair, discriminatory treatment against the "other".

Our ambition consists in further shielding and reinforcing of our institution by means of new, more effective tools and capabilities, as these are expounded on the basis of European standards of equal treatment.

Respecting diversity, protecting the most vulnerable social groups, ensuring equal opportunities for all, combating all forms of discrimination are the foundations of our legal culture, the pillars of the construction of every modern state.

Challenges, of course, remain high. Aside from any current institutional framework and the improvement interventions that are made to it, the effective confrontation of discriminations would be judged upon the extent in which this framework is applied in practice and by the degree in which it is transformed into public consciousness. The economic crisis accentuated phenomena of social exclusion. The migration of third-country nationals, seeking protection, security or better living conditions, activated the solidarity reflexes of the Greek society. However, it also fueled behaviors and speeches exhibiting racist motives and hatred. Attitudes, prejudices and intolerance against diversity, such as, in particular religious or other beliefs, sexual orientation and self-identity, gender identity, disability or chronic illness and age, still constitute significant barriers to full and equal access of our fellow humans to their non-negotiable fundamental rights, as well as to their enjoyment thereof.

The Greek Ombudsman, under its new structure, as the national body responsible for monitoring and promoting the principle of equal treatment, will continue to contribute to the consolidation of the principle of equal treatment, at institutional, political and social level, with the same perseverance and the same dynamism, aiming at even greater efficiency.

Andreas I. Pottakis The Greek Ombudsman June 2018



### INTRODUCTION

The issue of equal treatment and non-discrimination, in the context of effective safeguarding of human rights and promoting substantive equality, is extremely complex and multifaceted. In the social field, it constitutes a constant challenge for all European states and has steadily acquired a high priority status on the European agenda. This is so because although equality is a fundamental principle at European and national level, it is not yet a fact everywhere. The European Union (EU) initiative, consisting in promoting a single legislative approach through the issuing of relevant Directives has led to the establishment of a specific national regulation in our country and encouraged the legislative adaptation and further strengthening of the relevant framework in all EU Member States. Legislation is therefore the basic institutional tool for addressing any relevant violation at national and European level.

However, the complexity of the ways and the forms by which discrimination is manifested discloses the need, in addition to adopting legislative provisions, for constant readiness and further search for effective tools for dealing with the real causes of discrimination, in all areas of social development, That is why the framework in question is not only limited to the implementation of specific rules but also encourages initiatives and actions in a wide range of possibilities. In this context, and pursuant to their features and the guarantees they provide (*independence*, *neutrality*, *efficacy*), the role of the promoting equality bodies may prove to be catalytic, since it enables them not only to provide assistance to victims of discrimination and to freely disseminate a consistent notion about the actual respect for human dignity and the equal treatment, but also to establish a creative interaction and connection between legal protection and real social life.

Law 4443/2016, in conjunction with Law 3896/2010 on the equal treatment between men and women, consolidates, to a large extent, the relevant provisions and designates the Greek Ombudsman as the competent national body for monitoring and promoting their implementation. This was done through the abolishment of the prior legislative allocation of responsibilities

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to three different bodies, as it was provided for by Law 3304/2005 (i.e., the Ombudsman, the Labor Inspectorate (SEPE) and Equal Treatment Committee of the Ministry of Justice). Thus, this legislative development which occurred at the end of 2016 was followed by the choice of the Ombudsman to immediate proceed with organizational change of its structure, so as to assign the subject matter of equal treatment into a separate thematic Department of the Authority, an option that is in line with common standards at European level regarding the functioning of the national equality bodies promoting the principle of equal treatment.<sup>1</sup>

This organizational change practically meant the establishment of a unified approach and better management in handling of the complaints submitted to the Ombudsman, as well as a more thorough overview of the issues directly or indirectly related to discrimination. Furthermore, this change has resulted in a significant increase of the relevant complaints and subsequently to the improvement of the analysis, the documentation and the intensification of the interventions of the Authority in these matters. It is, therefore, underlined that although the complaints submitted to the Authority may signify individual violations, however, the relevant investigation may go far beyond the examination of the individual problem. In addition, the principle of equal treatment: a) involves fight against discrimination and effective treatment of identified violations at individual level, b) incorporates the concept of prudential vigilance so as to prevent the recurrence of individual violations, and c) is related to a constantly changing and dynamic nucleus pertaining to the promotion of equal enjoyment of rights, taking into account those particular circumstances preventing persons with protected characteristics or qualities from enjoying such treatment.

This is, therefore, the first Report of the Greek Ombudsman in the context of his extended competence for equal treatment issues and reflects both the work and the strategic planning of the Authority aiming to the effective exercise of its competence as regards both, monitoring and promotion. The classification of the cases and the analysis of the issues and trends highlighted herein are based on gender, ethnic or racial origin, religious or other beliefs, disability or chronic disease, age, social or family status, sexual orientation, gender identity or gender characteristics.

The Report also includes indicative cases of discrimination in areas other than employment and occupation, which pertain to all grounds of discrimi-

<sup>1.</sup> See recent General Recommendation No. 2 of the European Commission (ECRI General Policy Recommendation no 2).

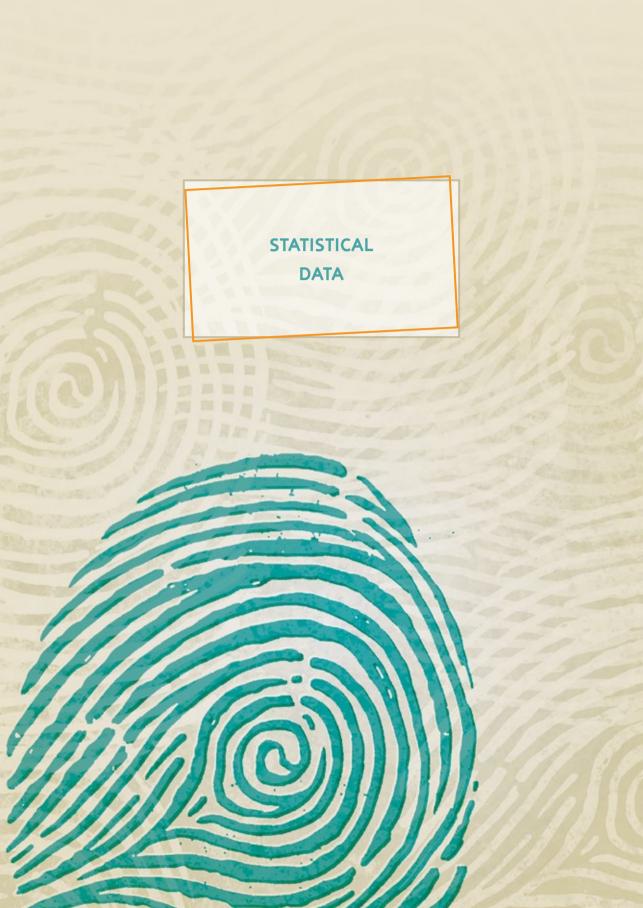
nation. In this way, the Ombudsman intends to highlight and underline the importance of horizontal expansion and uniform treatment of all grounds of discrimination in areas such as education, social protection and in the provision of goods and services.

The recent assignment to the Ombudsman of the competence to promote the Convention on the Rights of Persons with Disabilities (CRPD) under Law 4488/2017, in a clearly wider field than that of employment, is in line with the developments taking place at European level. In any case, however, it is obvious that equal enjoyment of rights in employment presupposes ensuring equal opportunities in a number of areas preceding actual employment. This constraint, as regards the regulatory scope of Law 4443/2016, constituted indeed the key point of criticism.

The individual topic categories of the Report attempt to provide an introductory focus on the main issues raised by the investigation of the relevant complaints. The indicative cases included in the Report show the ways of successful dealing with violations of the principle, the trends of individual complaints by ground of discrimination and the difficulties encountered in the process of combating violations. It is, thus, aimed at facilitating the understanding of the Ombudsman's role and the results of its actions, as well as, to increase the familiarization of the persons affected with the possibilities of their protection provided for by law. Moreover, the aim is to highlight the importance of confronting and gradually breaking down the stereotypes and the prejudices that prevent equal enjoyment of rights, and the need for a wide coordination of the activities of the competent bodies, so that the principle of equal treatment can have a large social impact. All that is mentioned herein constitutes a strategic target and constant challenge for the Greek Ombudsman.

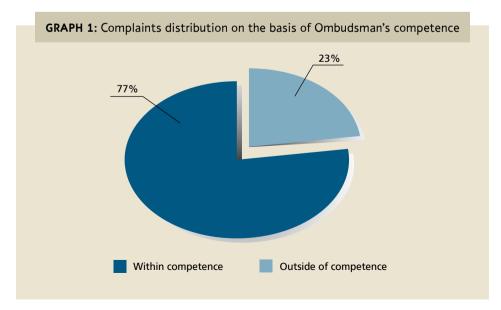
Kalliopi Lykovardi Deputy Ombudsman June 2018

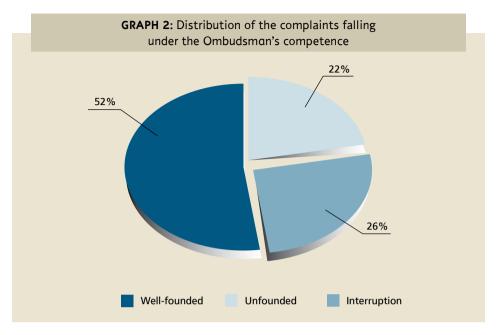


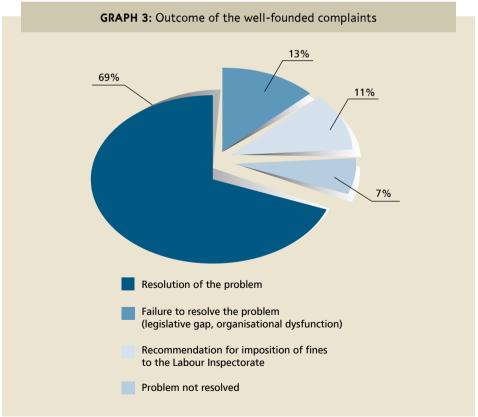


The year 2017 statistical analysis of the cases handled by the Greek Ombudsman, under its competence of monitoring and promoting the principle of equal treatment, includes, for the first time, an overview of the handling of cases examined on all grounds of discrimination, including gender discrimination. This was a result of the internal re-organization of the structure of the Authority, to form a separate thematic Department whose subject matter would include, as a single object, all the topic categories pertaining to Equal Treatment. The statistical analysis also includes some cases that fall under the general jurisdiction of the Greek Ombudsman, although they do not fall within the narrow regulatory scope of Laws 3896/2010 and 4443/2016. These cases have been investigated under the light of them posing a possible discrimination against persons, or groups of persons, having one or more of the special protected anti-discrimination characteristics.

Specifically, in 2017, the Greek Ombudsman received 738 complaints regarding equal treatment issues, 77% of which fell within its competence and, thus, were further investigated (Graph 1).







A considerable percentage, 52% of these complaints, was deemed to be well-founded, leading to the intervention of the Ombudsman for the removal of the violations relating to the equal treatment principle. Amongst the complaints falling within the Ombudsman's competence, 22%, in the end, were deemed to be unfounded, while for 26% of them it was not possible to ascertain the validity of the complaint for discrimination as their investigation was discontinued for various reasons (supervening lack of competence, failure of the complainant to provide evidence for the case, withdrawal of the complaint due to its resolution by the competent service or the individual, etc.) (Graph 2).

As far as the outcome of the well-founded complaints is concerned (Graph 3), in 69% of the cases the problem encountered by the applicant was successfully resolved. It is noteworthy that, particularly regarding labor disputes, the aforementioned successful outcome concerns a significant number of cases whereby the two parties (employer and employee) finally compromised.

At 11% of the well-founded complaints, the complainant was vindicated based on the Ombudsman's recommendation to the competent Labor Inspectorate to impose a fine to the employer for violation of the principle of equal treatment.

The Ombudsman's mediation in 20% of the cases examined did not have a positive outcome, either because the Administration or the individual did not accept the Authority's proposals, or, for reasons relating to the applicable legislative framework or to organizational malfunctions of the relevant body.

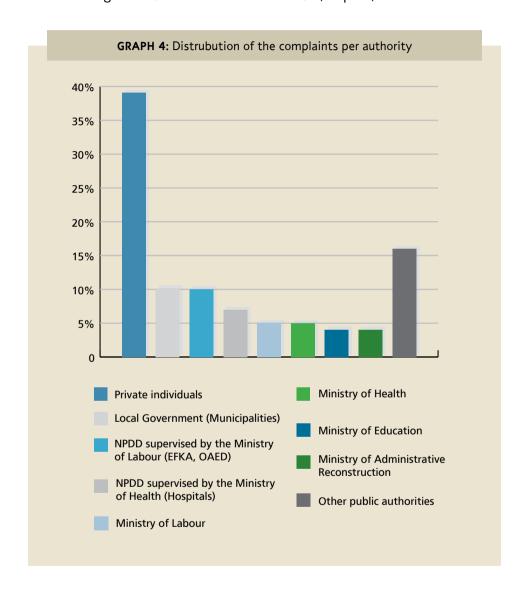
Finally, the outcome of 232 complaints submitted in 2017 is still pending and the investigation thereof will be continued in the next year.

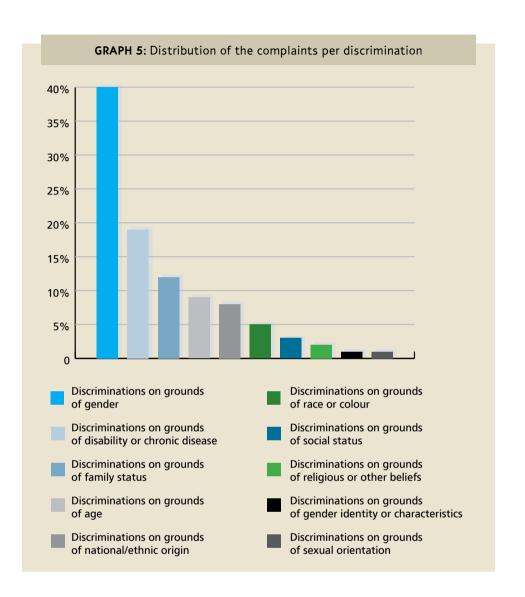
Moreover, 62% of the complaints are directed against the State and, particularly, against the local government (especially the municipalities), the insurance funds and other organizations supervised by the Ministry of Labor, as well as the hospitals. Following are services of the Ministries of Labor, Health, Education and the Ministry of Administrative Reconstruction. Furthermore, 38% of the complaints pertain to discrimination in the private sector, which in many instances –but not exclusively– are forwarded to the Ombudsman for review by the competent Labor Inspectorate (Graph 4).

Gender, as a ground of discrimination, appears in the majority of the complaints the Ombudsman receives, amounting to 40% of all the cases filed.

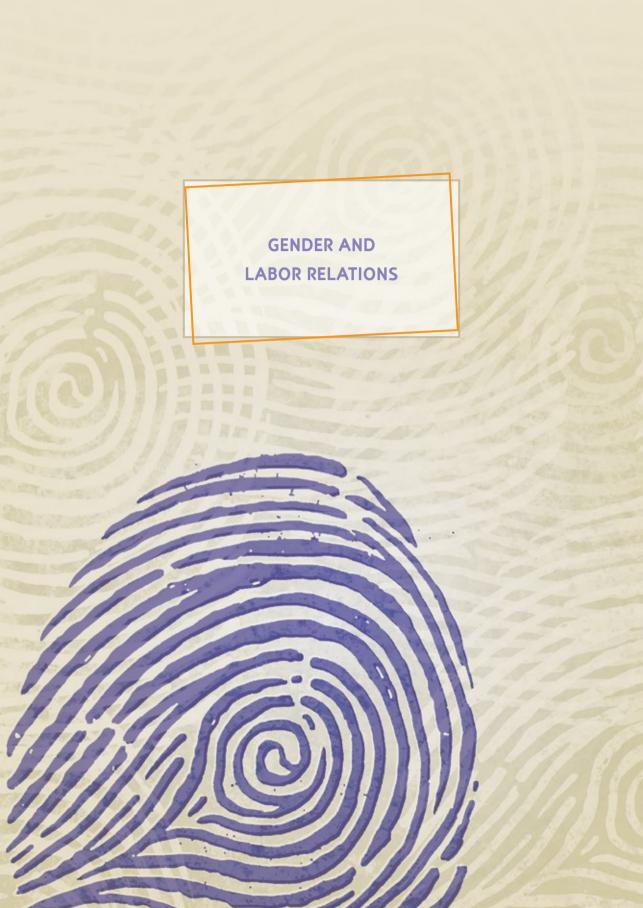


Following are the complaints pertaining to discrimination on grounds of disability or chronic disease at 19%, family status at 12%, age at 9%, national or ethnic origin at 8% and race or color at 5% (Graph 5).









Equality between men and women is a right enshrined in our constitution while it simultaneously is a fundamental political pursuit of the European Union (EU). This is reflected, in a consistent way, in legally binding texts for all Member States. Equal and balanced participation of men and women in employment, occupation and in decision-making bodies, along with an effective combating of gender-based violence and of sexual or psychological harassment, are indicators that determine the level of attainment of the goal of true gender equality. However, towards this end, the data are not particularly positive, a fact that underlines the need to give high priority to this pursuit.

Disparities in employment and occupation, obviously, do not pertain only to gender discrimination. A number of other factors affect the issue of access to employment and occupation, as well as that of the working conditions which prevail at the workplace. Nonetheless, the disparities identified highlight the existing inequalities, especially with regard to equal opportunities for women and men. In any case, it appears that inequalities in employment disproportionally affect women workers. Whether it concerns the employment rate of women in the labor market, their form of employment (e.g. part-time work), their remuneration and placement to leading positions, or the risk of losing their job (dismissal due to pregnancy or maternity), it seems that women are consistently more unfavorably treated compared to men. If in this disadvantageous image of women's position in the workplace we add the responsibility for childcare and the care of elderly or disabled relatives, which socially, in Greece at least, still burden women disproportionately, the position of the woman becomes even more hampered in both their professional and social life.

However, this does not mean that men are not victims of discriminations, especially as regards the caring for their children or other dependants. Besides, work-life balance policies are largely aimed at combating stereotypes and gender roles that have an adverse impact on men and women generally, without gender distinction. In this context, the father's right to parental leave is encouraged and protected in order to both, ensure the necessary presence and the contribution of both parents in the upbringing of their chil-

<sup>1.</sup> See European Commission Report, http://ec.europa.eu/newsroom/just/item-detail.cfm?item\_id=615287.



dren, and the gradual elimination of the social roles that oppose this stand on the basis of gender stereotypes.

The complaints submitted to the Ombudsman highlight the trends indentified in the real life workplace, along with the difficulties that are still encountered in the battle to efficiently confront gender discriminations in the fields of employment and occupation. Individual complaints usually present the symptom rather than the real cause of the discrimination problem. For this reason, the actual solution of a case by the Ombudsman is not usually exhausted in dissolving the individual problem. This Report seeks to present the trends that these complaints entail and to address their causes, while maintaining optimism, at least for those issues which have been successfully resolved or for which there is a prospect for such resolution.

## Different levels of equality protection

The wide diversification of the existing regulations on matters relating to the implementation of the principle of equal treatment between men and women, as regards to employment and occupation, protection of maternity and family, and work-life balance, introduces unfair deviations from the general principle on the basis of gender, as far as the protection owed to the various categories of workers is concerned. As a result, different levels of protection are created, depending on the employment status (permanent, indefinite or fixed-term employment, contract work, etc.) and the employment sector (public or private) of the worker. A typical example of these differentiations is the exercise of maternity rights (e.g. maternity leave, parental leave, etc.), for which different and often very restrictive terms and conditions are set, depending on the employment sector, the type of employment and the working status of workers, even within the same body, resulting in many divergent degrees of protection.

Although the implementation of the principle of equal treatment between men and women pertains to both sexes, in practice it seems that it mostly applies to women. This finding in principle, is associated with the fact that women exclusively suffer the consequences of the breach of the existing protective framework for pregnancy and maternity in their working environment (e.g. more unfavorable working conditions after the maternity leave, impediments in their professional development, restricted placement in high-ranking jobs, dismissals due to pregnancy – often under the pretence of voluntary withdrawal etc.).



At the same time, however, deeply rooted stereotypes pertaining to the distribution of gender roles within the family continue to be reproduced. As a result, working fathers are either totally excluded from the exercise of rights relating to the upbringing of their children, or they become subjects to unfair restrictions in the equal, with women, exercise of these rights. This fact undermines the societal goal of harmonization between work and family life, but also the pursuit of gradually altering people's perceptions regarding gender roles in the upbringing of children.

## A. GENDER DISCRIMINATIONS IN THE PUBLIC SECTOR

In the public and the wider public sector, the Ombudsman systematically identifies unfair deviations from the principle of equal treatment of men and women, as far as both the conditions of access to employment and matters of career advancement are concerned. With the exception of the increased protection provided by the legislation to permanent civil servants, whereby the Ombudsman's intervention is often more effective, the different levels of workers protection according to their employment status in the exercise of their rights and particularly those pertaining to maternity, usually result in the unequal treatment of employees on grounds of gender and family status.

Pregnancy and maternity continue to have a detrimental effect on women's career advancement and on them occupying high-ranking decision making positions. Furthermore, the regulations aiming at the protection of maternity and the family (e.g. family allowances and parental leave of employees) introduce specific conditions, which inevitably lead to the reproduction of gender stereotypes. Thus, although the right of children's upbringing concerns both parents, the protection afforded to working fathers seems to lag far behind compared to that of mothers.

## Maternity protection: The challenge of mothers' equal treatment

Pregnancy and maternity tend to consistently place working women at a disadvantage, as their absence from work for those reasons generally results in negative consequences for their employment rights, despite the increased legal protection provided to them for these particular periods of their life.



## Maternity leave and the adverse consequences on women's career development

The systematic refusal to include the maternity leave period in the total length of service of employees indirectly effectuates a negative impact on their career development. This issue has repeatedly caused relevant interventions by the Authority. The adoption of this practice even by the Supreme Council for Civil Personnel Selection (ASEP), has as a consequence the establishment of systematic and insurmountable obstacles either, in the access to employment or in the career advancement of the working mother.

The Ombudsman, in an effort to definitively resolve this problem, intervened with ASEP, on the occasion of a candidate's administrative appeal within the context of a notice of invitation to employment issued by the Ministry of Finance. By this appeal, the candidate asked that the maternity leave of another candidate would not be calculated in the length of her overall service. ASEP accepted this appeal and removed from the candidate's length of service the maternity leave period (maternity benefit and additional six-month protection). The Ombudsman pointed out that the leaves in question, which have specific characteristics and relate to women exclusively, should be calculated as time of real service, because not including them in the length of service would constitute an indirect discrimination on grounds of gender, as it puts working mothers constantly at a disadvantage. ASEP, although admitting that this was a real issue that must be resolved, determined that it should be done through legislation, given that, according to the relevant national case-law of administrative courts, work experience is understood as the actual service offered by the employees, in contrast to the nominal provision of service, which is what the maternity leave period is considered (cases Nos 226561, 231705).

### Reimbursement for undue payments of maternity benefits

As the Ombudsman has repeatedly pointed out, the revocation of a decision for inclusion in the special maternity welfare protection program, has detrimental effects on the concerned employee, since, in addition to the financial consequences, this cancellation also entails loss of employment and insurance/pension rights. According to the general principle of social security law, the search for recovery of unduly made payments from the part of the Administration is only permitted if the person who received the unwarranted payments was consciously committing fraud against the Administration at the period of time when these amounts were collected. Nevertheless, the

Greek Manpower Employment Organization (OAED), in several cases, still requests the return of unduly made payments under the special maternity welfare protection program. This is done even for periods whereby very long time has passed since the date of granting the approval for inclusion in the program and, furthermore, without evoking any grounds which disclose that fraud was committed from the part of the beneficiaries at the time the payments were made.

On the occasion of investigating such type of complaints, the Ombudsman pointed out that the Administration is not entitled, following its own omissions, for which the citizen is not responsible, to ignore a favorable, real situation that was created for the citizen and suddenly deny the favorable legal consequences that have arisen for the citizen. This sudden change in the attitude of the Administration, longtime after the issuing of the relevant individual administrative acts, is not permissible, especially if no new evidence has emerged proving the fraudulent receipt of the benefit by the beneficiaries. Moreover, the applicant's compliance to the requirements set in the program must be checked at the beginning, when the beneficiary's application is examined, or in a short time thereafter the granting of the benefit. OAED adopted the Ombudsman's proposals and approved the appeals submitted to the Organization (cases Nos 213920, 222820).

## Protection of adopting mothers from dismissal

A particularly important legislative initiative that was adopted in the year 2017 was the extension of the protection against dismissal, reserved only to natural mothers, to women who were in the process of adopting children or who were undergoing the procedure of becoming pregnant, or were in fact pregnant within the context of surrogate motherhood (Law 4488/2017, article 48). This provision of protection of these categories of mothers is based on the fundamental principle of the placement of the child in the family. The relevant provision makes reference to the existing legal stipulations which prohibit the dismissal of pregnant employees, as well as those which constitute null and void any termination of work contract that is done on grounds of discrimination due to maternity. Moreover, the new provision fully assimilates the protection provided to mothers, along with the procedures that must be applied in instances of breaches of the law and the subsequent sanctions that must be imposed.

The Ombudsman, as early as in the year 2015, had emphasized the relative lack of protection for adopting mothers, which is a deviation from the consti-



tutionally established protection of maternity and of the principle of equality. The proposal of the Authority consisted in asking for the extension of protection against dismissal from work of the adopting mothers, once the child's placement within the family for adoption purposes was confirmed (case No. 183370).<sup>2</sup>

### Access to labor

The access of women candidates to labor and occupation is hampered due to the existence of regulations which place them at a disadvantage compared to men. It is characteristic that usually deviations from the equal treatment legislation are not directly included in laws but are indirectly identified due to the effects they produce, while in legislation they stand as serving a fundamentally neutral condition or criterion.

## A neutral condition or criterion as an obstacle to equal access to labor

A characteristic case of indirect discrimination against women candidates is the one that concerns admission to the Hellenic Police Force Academies (ELAS) and the Fire Brigade. A basic criterion for entry to those bodies was the setting of a minimum standard of physical height of 1.70 m common for both genders. Although this appears to be a neutral criterion, in practice, it places at a disadvantage a disproportionately great percentage of women, compared to men candidates.

The Ombudsman, as early as in the year 2008, had put the matter under the consideration of the competent services. The Authority reviewed the same subject upon the occasion of regularly receiving complaints concerning this type of discrimination against women. However, the Headquarters of Hellenic Police did not accept that the introduction of a single criterion as regards to the physical height could result in a violation of constitutional provisions or of the provisions of EU law. Simultaneously, the Headquarters of the Fire Brigade awaited the judgment by the Council of State to a pending appeal, while the later Supreme Administrative Court had already requested a preliminary ruling on the subject from the Court of Justice of the European Union (CJEU).

Pursuant to its judgment of 18 October 2017 (in Case C-409/16), the CJEU



determined that setting a minimum physical height for all candidates, men and women, constitutes an indirect discrimination, since it puts at disadvantage a much higher percentage of women than men. The Court ruled that the minimum physical height is not necessarily linked to the particular physical condition that may be required to fulfill some or all of the police duties. Nonetheless, although the Court accepts that the operational readiness and the proper functioning of the police services constitute a legitimate objective, it also underlines that this goal could be achieved by milder means, by adopting alternative measures, such as a preliminary selection process, whereby the candidates could compete on the basis of specific tests, in order to identify their physical fitness or their aptitude to perform certain duties which require specific physical height requirements. Finally, the CJEU asks the national court to formulate the final substantive judgment on the case under consideration, taking into account the aforementioned guidelines.

In any case, the above-mentioned judgment of the CJEU justifies the consistent position of the Ombudsman, who had successfully intervened in the past to reduce the minimum required standard for physical height of women, from 1.65 to 1.60 m, so that their admission to the Hellenic Military Forces Academies would be made possible (cases Nos 214965, 215138, 215633, 219192).<sup>3</sup>

## **Employment status**

Major deficiencies and serious variations continue to persist in the framework of protection provided to employees who have been absent from work due to maternity or parental leave. Apart from the existing variations, depending on the employment status and the occupation field, working women face strict restrictions or are even totally excluded from the exercise of rights relating to maternity.

## Teachers' matters: Conversion of reduced working hours to continuous parental leave and special allowance for service abroad

The request of a permanent teacher to convert the reduced working hours she was granted due to maternity, into continuous parental leave, for the remainder of the school year period, was rejected on the basis of a circular issued by the Ministry of Education. The circular did not include any provision which would allow the possibility of changing the originally stated preference by the employee regarding the use of parental leave. The Ombudsman

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<sup>3.</sup> See https://www.synigoros.gr/?i=equality.el.imfyloworkpublic.465295.

intervened with the ministry, by making a reference to an opinion issued by the State Legal Council (SLC), according to which possibility of changing the mother's initial preference, regarding the use of the available parental leave options, is allowed to occur only once, provided that there are serious reasons justifying the change requested and also, that there would be no problems in the smooth functioning of the service. Although the Ministry of Education accepted the ad hoc submission and consideration of the particular teacher's request, it maintained its stand that in the existing regulatory system there is no such possibility for teachers, since their work is regulated by more specific provisions which do not allow the flexibility in question.

However, the Ombudsman argued that this practice constitutes unfair discrimination on grounds of gender and family status, contrary to the provisions of Law 3896/2010 and Law 4443/2016. This is because, the specificity of teaching duties compared to the duties of other civil servants, does not automatically imply that they are entirely excluded from the exercise of the right in question. What is needed is to adapt the way of applying the reduced working hours' system to the particularities of the provision of education while ensuring the uninterrupted functioning of the education system (case No. 229122).

An instance of restriction of rights during parental leave arose when, by virtue of a relevant provision of Law 4415/2016, the payment of the special allowance to a teacher positioned abroad was interrupted, while she was in the third year of her appointment abroad and had made use of parental leave. The Ombudsman noted that there is a Joint Ministerial Decision (JMD) which expressly provides that the special allowance for service abroad is also remunerated during the leaves for pregnancy, maternity and childcare, when these occur in the country where the teachers are posted, and that the above-mentioned general provision did not replace the more specific provision of the JMD, thus, it is still in effect. The Authority also underlined that the time-off for reasons of child rearing does not fall under the spectrum of "any ground", which is mentioned in the provisions of the aforementioned law, so as to justify the suspension of the benefit. In this context, the cancelation of the benefit constitutes discrimination on grounds of gender in conjunction with the family status (case No. 221450).

### Promotions - High level positions

Women working in high-rank jobs, who return to their service following a maternity leave, are entitled, in accordance with the law, to recover either the same job or an equivalent one, with no less favorable working terms and conditions, while simultaneously to benefit from any improvement of

their working conditions that they would have been entitled to, during their absence. However, in practice, a serious deficiency is observed in the application of the law for these matters.

The Ombudsman ascertained that this was in fact the case, when the Authority examined a complaint whereby the applicant, a deputy head of a department, was informed, one month before returning to her former position following her maternity leave, that a new deputy supervisor was appointed to her post. The Ombudsman pointed out that this practice constitutes discrimination on grounds of gender. Nonetheless, the competent service replied that the removal of the complainant from the post had been done for reasons concerning the smooth functioning of the service and not for downgrading her. In the end, the case was brought before the competent court (case No. 216005).

### Protection of men's parental right

As an Equality Body for monitoring and promoting the implementation of the principle of equal treatment irrespective of gender, the Ombudsman also focuses his interventions on breaking stereotypes and prejudices pertaining to the distribution of roles in the family, affecting the rights to equal treatment of male workers. Despite the strengthening of the legal framework for the protection of working mothers, working fathers continue to face unfair restrictions in exercising their parental rights, especially when they apply for parental leave. This effectively weakens the objective of the essential contribution of both parents in childrearing.

### Granting cumulative parental leave to DEDDIE male employees

The request of an employee of the Hellenic Electricity Distribution Network Operator (DEDDIE), to be granted cumulative parental leave, instead of working reduced hours due to child rearing, was rejected on ground that this possibility is only provided for working mothers. On the basis of the Collective Bargaining Agreement (CBA) of the company in question, the conditions for granting "lactation" and "parental leave" or "cumulative parental leave" are determined by a decision of the General Manager, following the opinion of the Public Power Corporation (DEI) Workers' Federation. Furthermore, the relevant decision of the Company's Managing Director specifies that the father may alternatively ask for a parental leave, "[...] as this is provided for by the regulations in force", which means that it should be done in the same way as that of the working mothers, thus without the fathers being deprived of their right to cumulative parental leave.

The Ombudsman, addressing DEDDIE underlined that working fathers share the same right to cumulative parental leave. The Ombudsman's intervention resulted in the issuing of an internal -to the Organization- circular by DEI, thus breaking the stereotype of discriminating on grounds of gender and specifying that the same terms of granting parental leave apply to men and women employees (case No. 209648).

### Granting cumulative parental leave to single father

An employee of Athens Road Transport (OSY), single father of two children, whose wife had died at childbirth, requested the parental nine-month paid leave, provided in the maternity protection law. The OSY initially granted a continuous parental leave, equal to the reduced hours employment, of two months and a half, but, then, following the Ombudsman's intervention, found out an error in the calculation of the leave duration and extended it to three months and a half. Although the Organization's last decision was in line with the provisions of the company's Collective Bargaining Agreement, according to which the leave is granted on a continuous basis, taking into account the needs of the service and following the employer's agreement, the Ombudsman requested the extension of the parental paid leave, so that it would be analogous to that which is provided for special maternity protection, taking into account the specific circumstances of the case and the increased responsibilities of the father for the care of his underage children (case No. 228943).

## B. GENDER DISCRIMINATIONS IN THE PRIVATE SECTOR

In the private sector, the status of labor rights is directly linked to the economic crisis and affects, in principle, both genders. However, in the case of working women who are in pregnancy or who have just returned from maternity leave, the consequences are obviously more unfavorable. Employment contracts terminations of pregnant women or mothers, unilateral damaging changes in their working conditions, and arrangements of "voluntary redundancies" by the employer are constant topic categories among the cases of discrimination examined pertaining to the private sector.

In these cases, the Ombudsman works closely with the Labor Inspectorate (SEPE), while the presence of a representative of the Authority in labor dis-

EQUAL TREATMENT SPECIAL REPORT 2017 putes contributes to the positive outcome of the cases and to the out-of-court settlement of the disputes. Employers appear to be more fully informed on their obligations towards mothers, but this does not imply full compliance with the relevant legislative provisions.

### Termination of employment contracts

The termination of employment contracts of employees who are protected from dismissal, either due to pregnancy or due to motherhood, still occurs, without any justification on the basis of formal legal requirements (e.g. absence of important reason for dismissal, violation of labor law provisions). Usually, in case of such complaints, the important reason for dismissal is often communicated to the employee following her dismissal by means of an extrajudicial document. Although the examination of concurrence of an important reason is a legal and factual concept, to be decided by the competent civil courts, the Ombudsman often examines the formal legitimacy of the application of that procedure. In this context, the Authority proposes the imposition of administrative sanctions when it finds that the termination of the employment contract of a protected mother is not adequately justified and when the important reason evoked is communicated to the employee subsequently of the dismissal by means of an extrajudicial statement. In both of these instances, verification of compliance with the formal requirements for the lawful termination of a contract is essential in order to safeguard the employee's rights because: (a) the deadline for appealing the employer's termination of the contract for "important reason" starts from the moment the cancellation occurs and this deadline is not moved or altered depending on the moment of notification of the employee that her contract has been terminated for this reason and (b) the employee, in order to bring a well-founded claim against the validity of such termination of her employment contract (to court or to other relevant body), it is necessary to know what is the "important reason" that has led to the termination of her employment contract.

### Unfair dismissal declarations

The Ombudsman, in a series of cases that have been examined, has identified a particular orchestration from the part of the employers, who, although terminated employment contracts for working women protected against dismissal due to maternity, they subsequently proceeded to make unfair dis-



missal declarations (resignations) for the employees to the Greek Manpower Employment Organization (OAED), even though the women concerned were in fact on their annual leave or had returned to their job after the end of their maternity leave. The result of this unlawful practice is that the women employees were deprived of the relevant protection provided to them by the law.

A typical case regarding this issue is that of a pregnant working woman who submitted a complaint to the Labor Inspectorate, because her employer, following a two-day absence of her job, submitted a statement to OAED about her "voluntary withdrawal" from her position The employee claimed to have informed one of the company's partners by phone about her forthcoming two-day absence due to a relative's death; but three days later, when she contacted the employer to declare her availability for work, she was called in to receive her dismissal document. The employer declared ignorance of the state of pregnancy of the employee and refused the Ombudsman's proposal to re-hire the complainant, as dismissal during pregnancy, without an important reason, is prohibited. Moreover, the Ombudsman's investigation showed that a few days prior to the submission of the employee's "voluntary withdrawal" statement by the employer, an employer's representative had addressed the Labor Inspectorate asking for information on the legislative framework for maternity protection. The Ombudsman concluded that the actions of the employer constituted an unlawful termination of the contract of the pregnant worker and recommended the imposition of an administrative fine for the breach of the relevant provisions (case No. 223576).

To resolve effectively the related problems, the Ombudsman had proposed, especially for the cases of working women protected due to maternity, that the employee's signature should also be required on the voluntary redundancy form submitted by the employer to "Ergani" information system and, that there should be an adequate interval of time following the workers absence due to maternity leave and prior to the submission and registration of the voluntary withdrawal from work statement. It should be noted that, under the former legal framework, which has been in force until recently, the employer's declaration was sufficient to register the employee's voluntary redundancy in the "Ergani" information system. In case that the employee wanted to prove that the registration of his/her voluntary redundancy was false, he/she had to appeal before the competent courts.

Consequently, the provisions of Law 4488/2017 (article 38), which has been recently put into force, stipulate that the announcement of an employee's contract termination should be accompanied by either, a standard



form signed by both the employer and the employee or, by an extrajudicial statement addressed by the employer to the employee, in which the former informs the latter that he/she is considered as having left work voluntarily and that his/her resignation would be registered in the "Ergani" information system. At the same time, strict deadlines have been set for both, for the employer's announcement of the employee's withdrawal (no later than four working days) and for the delivery of any extrajudicial statement by the employer to the employee (within four working days from the date of voluntary resignation and announcement thereof, on the next working day after the delivery of the extrajudicial statement). Thus, if the employer fails to meet his/her obligations to declare the voluntary resignation in due time, the employment contract is considered to have been terminated improperly and therefore the employer has in fact breached the contract.

Irrespective of any matters that may arise upon application of this law, these provisions specify the obligations and responsibilities of the employer and provide a framework for increased protection for each employee. The relevant framework is expected to efficiently solve the aforementioned abuses and the often repeated improper practices of the employers, who used to proceed to false statements of voluntary redundancy of employees protected due to maternity.

### Conciliatory resolutions of labor disputes

The co-operation between the Ombudsman and the Labor Inspectorate (SEPE) leads, in many cases, to the elimination of discriminatory practices on grounds of gender. This often occurs during the tripartite meeting before SEPE. A decisive factor in achieving the settlement of a labor dispute through reconciliation is the provision of complete and objective information to both parties (employer and employee) pertaining to their rights and obligations as regards the crucial issue of any dispute between them. An indicative case is that of a pregnant employee whose services were terminated by the employer when the sick leave she had received expired. The employer terminated her contract on the ground that the business had permanently ceased its operation. Since it was acknowledged that the permanent closure of the business might have concealed a transfer of business, the parties involved agreed, before the competent Labor Inspectorate and with the mediation of the Ombudsman, that the employee would continue to work for the new business operating in the premises of the original one, under the same terms and conditions of employment (case No. 229560).

#### Accident at work during pregnancy

The employer's obligations also include ensuring that the proper measures have been taken to guarantee the safety and health of pregnant women at the workplace. Nonetheless, violations of the principle of workers welfare by the employers are often observed in this field.

A pregnant woman working as a security guard in a museum, under a fixedterm private law contract, was forced, on her fourth day at work, to return to her home due to pregnancy related bleeding. Upon leaving she did not mention the reason for leaving to anyone at her workplace. Afterwards, her husband informed the employer that she had been admitted to the hospital and that she had been given a sick leave of one month. The case was brought before SEPE, following a complaint submitted by the Panhellenic Association of Temporary Personnel, whereby the employee presented the incident as an accident at work. Following a meeting between the involved parties in the offices of SEPE, the employer reported the accident at work to the greek Social Insurance Institute (IKA), claiming, though, that there was not any breach of the health and safety rules at the workplace that led to the specific, damaging of the employee's health, incident. However, since the Regional Directorate for Safety and Health at Work expressed the view that the employer had not ensured the necessary measures for the safety and health of pregnant workers, the Ombudsman, recognizing the presumption of legality of this judgment, made a strict recommendation to the employers to fulfill their obligations under the principle of workers welfare (case No. 229216).

#### C. SEXUAL HARASSMENT

Investigating cases of sexual harassment at the workplace has certain inherent difficulties. These difficulties pertain not only to the lack of evidence that could indisputably prove the occurrence of such acts, but also to the unwillingness of the employer to cooperate, or even to the total denial of any such act or incident having taken place.

The number of cases of sexual harassment that occur in the workplace is obviously inconsistent with the number of complaints submitted to the Ombudsman. This fact highlights the reluctance of the victims themselves to report such behaviors, either out of fear of being stigmatized at work and/or losing their job, or out of fear for facing labor or judicial countermeasures, which could be taken by the employer who is in a position of power to adopt

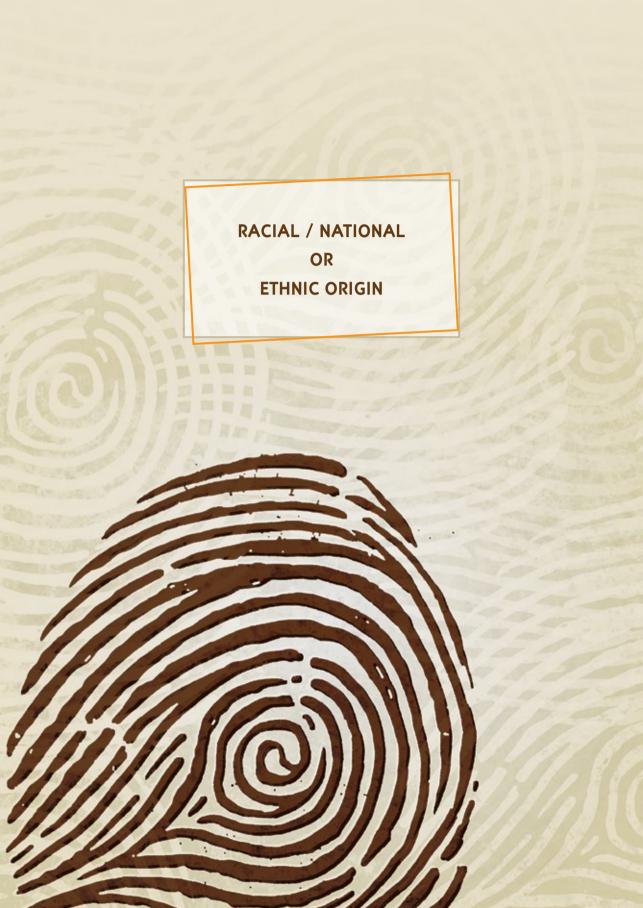


them. The basic institutional tool that is activated in such cases on behalf of the victims is the "reversal of the burden of proof" and the transfer of this burden to the employer. Moreover, the prevention of such phenomena is also proven to be very significant. Prevention primarily occurs through a process of fully informing the employers in regard to both, the relevant legislation and the resulting from it obligations, as well as the obligation of displaying decent behavior at workplace, with respect to the employees' personality, along with avoidance of any act that could be interpreted as discriminatory treatment on grounds of gender.

Despite the serious documenting difficulties of the sexual harassment cases, it is not always impossible to produce serious evidence or even complete proof of such misconduct. A characteristic case on this issue was forwarded to the Ombudsman by SEPE. It concerned a complaint for sexual harassment of a female worker who was fired two years after the harassment, by an employer who succeeded the harasser. During the investigation of the case, it turned out that there were five victims of sexual harassment by the same person at their workplace. Due to the actions of those victims and their relevant written protests the harasser was replaced. However, they themselves were not protected against their final dismissal by the person who replaced him.

The interval of a two years period of employment since the original occurrence of the sexual harassment, under the instructions and the supervision of another person acting as their immediate employer, has not been sufficient to disconnect the employee's dismissal from her initial complaint of having suffered sexual harassment. This was substantiated, according to the evidence submitted to the Ombudsman, by the following facts: (a) the complainant had been employed in that position for more than 20 years; (b) the employer who dismissed the complainant did not prove that she was performing her duties inadequately; (c) the employer in question very rarely proceeded to make redundancies; and (d) from amongst the five employees who initially complained that they had been sexually harassed, one resigned from her job, three were dismissed and only one still retains her position. The Ombudsman concluded that the dismissal of the complainant was an act of revenge. It was abusively used as a countermeasure by the employer against the employee's complaint of sexual harassment. Thus, the Ombudsman issued a report on findings proposing the imposition of administrative sanctions to the specific employer (case No. 211428).





This category mainly includes cases of discrimination against Roma, on grounds of their racial origin, or against alien citizens, especially third country nationals, who are treated unfavorably for reasons relating to their different national or ethnic origin. The main finding of the Ombudsman, as far as the Roma are concerned, is the systematic underestimation of the extent and impact of their social exclusion and the corresponding state's unwillingness to adopt a decisive initiative for both: eradicating the problem of their lack of registration in municipal rolls (identity papers) and resolving their acute housing problem, while mitigating for the dissolution of strong local negative reactions against the Roma.

Correspondingly problematic is the wide range of discriminations encountered by immigrants and refugees living in the country, a fact that demonstrates that the widespread perception of the diffusion of equal access to rights and goods, remains a constant concern and pursuit to be attained. The issues promulgated in the cases that have been examined pertain to procedural barriers that hinder the exercise of rights and conflict with the aim of the social inclusion of refugees and immigrants, while simultaneously disclose illicit exclusions from the provision of goods and services to all for reasons indicating racist motive.

Of particular interest are the cases highlighting unfair restrictions, even to European Union (EU) citizens, despite the increased protection afforded to them and their family members by the current legislation, i.e. Law 4443/2016, which introduced in the Greek legal system, among others, the Directive 2014/54 and provides for the free movement and the exercise of rights of EU citizens and their family members.

Finally, in 2017, the Ombudsman continued to examine cases dealing with the provision stipulating that, candidate civil servants are required to have acquired the Greek citizenship through naturalization for a certain period of time prior to their recruitment. This practice has consistently been regarded by the Ombudsman as unlawful discrimination against Greek citizens on the basis of their national origin.



#### Social exclusion and Roma

The social exclusion of the Roma –and their living under conditions which infringe upon the fundamental rights of human dignity and security– remains a major problem that requires a coordinated response in order to be dismantled. In 2017, the Ombudsman focused its interventions on issues pertaining to Roma civil status/registration in municipal rolls and housing. This was done because it was deemed that eradicating the phenomenon of non-registration and thus of the "invisibility" of this particular social group, constitute prerequisites of the utmost importance, for any successful planning and implementation of policies intended for the effective housing and the social inclusion of Roma in all aspects of economic, social and political life.

#### The challenge of the Roma civil registration

The existence of an "invisible" population in our country, that is, people who are either not registered in civil registers, municipal registers or males' registers, or whose registration is partial or incorrect, is a perennial problem, mainly encountered by our Roma fellow citizens.

Eliminating the phenomenon of social marginalization of the Roma cannot be achieved without their prior civil registration in the municipal registers. The absence of basic identification documents – "invisibility" – undermines a person's equal participation in the economic, social and political happening of the society and hinders any state endeavor or action aimed at eliminating the group's social exclusion. Apart from the fact that any official transaction by the individual is hindered due to the lack of presenting a police identity card (inclusion in social programs, issuing a Tax Registration Number (AFM), or a Social Insurance Number (AMKA, etc.), the problem is perpetuated, passed on to the new generations, as the children of persons who are not registered cannot, respectively, proceed in obtaining the necessary identity documents. Moreover, the near universal illiteracy rate amongst the Roma people living in the camps further inhibits any interest from their part in resolving their pending civil registration issues.

Assigning full responsibility for the current situation to the undeclared in the municipal rolls persons themselves, does not make it easier to comprehend the phenomenon and to effectively deal with it. On the contrary, the unwillingness of the central government to recognize the extent of the problem and to adopt the proper legislative measures, coupled with the reluctance of the competent municipal services to proceed with actions aiming at surpassing, in a flexible manner, but within the parameters of the existing legislative frame-

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EQUAL TREATMENT SPECIAL REPORT 2017 work, the problems manifested in individual applications for Roma civil registration, constitute the main cause of the perpetuation of the phenomenon.

An effort of major importance in dealing with the issue of "statelessness" (lack of civil registration) of the Gypsies was undertaken in the period 1978-1979. Since then, although data from the early 2000s show that this issue constitutes a major societal problem, the central government has not taken any appropriate initiative to improve the situation. In an effort to raise awareness on this issue and to contribute to the process of resolving it, the Ombudsman published, in 2009, a Special Report proposing three alternative solutions for its handling, but since then no relevant legislative initiatives have been undertaken.

Given that the economic crisis disproportionately affects the most vulnerable groups of the population, the Ombudsman considers that it is necessary to review and facilitate the process of registering the undeclared persons in the municipal registers, with a particular focus on providing effective legal assistance to the persons concerned so that the financial cost and the complexity of the procedure would not constitute for them a deterrent to follow it.

Referring to indicative cases of the Ombudsman's intervention concerning recent complaints, the Authority reverts to the issue in order to highlight, besides the importance of taking a central initiative, the need to alert the competent authorities as for the cases that can be dealt with in the existing framework of the administrative procedure.

### Crosscheck of municipal civil records and cooperation between municipal offices

A municipality refused to include in the registries of males and in the municipal civil register a child of Roma origin, despite the fact that there was a document proving the birth registration of the child in a different municipality. Following the Authority's intervention, both were made possible, the submission of the relevant application together with the available supporting documents required, and the in-house search for the pertaining to the case administrative documents. This was accomplished through the cooperation of the two involved municipalities. It is, thus, expected that the registration of the child will be completed soon, first though the enrollment of his name

<sup>1.</sup> According to a survey conducted by the Roma Network and the Ministry of Labor, 50% of the Roma in our country are not registered at all, 10% have no identity card, 5.5% have no birth certificate, while 25% are not registered in the voting records (*Report of the National Committee on Human Rights: "The status of Gypsies in Greece"*, 2001, pg. 16).

<sup>2.</sup> See https://www.synigoros.gr/?i=equality.el.imnationetc.438344.

in the males register list of the Directorate of Civil Status and Social Affairs of the Regional Administration and subsequently, though the entry of the child's data in the municipal civil register (case No. 232156).

#### Procedure of issuing identity card and provision of legal aid

In cases which disclose ambiguities or erroneous civil registrations, it is necessary to provide the legal assistance required to overcome existing procedural obstacles and to ensure the application of the rule of law. An indicative example of such case is that of a Roma woman who appealed to the Ombudsman following difficulties she encountered in obtaining an identity card, which is a necessary precondition to receive an AMKA –health insurance— number.

The concerned woman carries the last name of her father, although her parents are not married and although there is no notary deed pertaining to her recognition by her father as his child. Thus, despite the fact that she possesses an Extract of Birth Certificate drawn up by a municipality, albeit other than the one in which her mother maintains a family entry number, the competent municipal office refused to register her and to issue her a birth certificate. This was due to the fact that her personal data in the above mentioned administrative document were not the same as the one's appearing in the registration of her mother in her family entry. This was due to the fact that the mother had since legally changed her name following a court decision.

The Ombudsman asked the municipal office to proceed with to the registration of the complainant, provided that the family relationship could be with certainty established and given the fact that there was official entry of the existence of the court decision regarding the legal change of her mother's personal data. In this context, the Ombudsman proposed the use of recent circular issued by the Directorate of Civil and Municipal Status of the Ministry of Interior (document No. TADK 146/2017), which provides that, if from the crosschecking of the data, performed by the municipal office securely transpires the identity of the concerned person, then the municipality may proceed with the registration of the person in the municipal civil register.

However, due to the complexity of the subject, the competent municipality required the issuing of a final court decision pertaining to the correction of the complainant's birth registration record. The Ombudsman consequently provided detailed instructions to the complainant of how to proceed in order to obtain legal aid to file her case in court (case No. 229013).

#### Arbitrary Roma Settlements - Social cohesion - Preventing demolition

A resident of Elefsina, requested the intervention of the Ombudsman, citing inaction from the part of the Administration in addressing problems generated due to the proximity of her residence to a nearby new Roma settlement, inside an abandoned factory (e.g. delinquency, sanitary issues, noise pollution, illegal electricity connections). The Roma in question, 16 individuals in total, including minors, were settled in four makeshift shacks and were living under terrible conditions. The Ombudsman found that the Municipal Council of the Municipality of Elefsina had issued a decision for the removal of the Roma, accusing them of engaging in dangerous delinquency, while simultaneously the municipality did not take steps to find a proper place to relocate them.

Regarding the accusation of collective delinquency of the Roma in question, from the part of the municipality, the Ombudsman pointed out that this action does not contribute at all to the equitable and proportionate treatment of people and to the resolution of complex social issues pertaining to socially vulnerable groups, such as the Roma, as it should be expected from the Administration and the local government; in addition, it does neither contribute to the necessary social integration of Gypsies, provided for by the law, nor to the decisive assistance of the local government in doing so. Besides, this practice undermines the social cohesion in the area and further contributes towards the creation of a climate of local "ethnic / racial" conflict. Therefore. the administrative staff of the municipality should abstain from any action of collective negative characterization of the Roma, while any specific infringing behavior of individuals who happen to be Roma should be attributed to them and not be assigned collectively to the group. However, following in addition relative intervention of the Ombudsman towards the Police Station of Elefsina, the attribution of dangerous delinquency to members of the Roma settlement in question was not confirmed by the police records.

Finally, the Ombudsman recommended that all bodies involved in the case (municipality, police department, Region of Attica, DEDDIE of Elefsina) avoid undertaking any measures of violent expulsion or forced eviction of the Roma from their place of residence, underlying that their departure from the area requires prior actions from the part of the competent services, that is to indicate a specific place of relocation, suitable for permanent residence, which would meet the minimum conditions of dignified and secure living.

As far as the illegal electricity connections are concerned, the DEDDIE of Elefsina found one case of illegal connection and proceeded to its cancellation thereof. Furthermore, the Attica Health District Directorate performed several on–site investigations, in view of which it assigned to the municipality

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to undertake specific measures to restore cleanliness in the area, while the Deputy Regional Officer of the Region of Attica made a positive intervention proposing alternative housing solutions. However, the City Planning Office of the Municipality of Elefsina issued individual reports of illegal constructions for the shacks of the Roma and, on the basis of those reports, the Regional Administration of Attica issued a decision for their demolition, under the condition that, before the demolition, the Roma should have left or relocated. Following a new intervention by the Ombudsman and given that not all families had already departed from the area, there was a postponement of the implementation of the demolition decision. Finally, the last Roma remaining in the area left voluntarily and thus their settlement and shacks were demolished (case No 226272).

#### Asylum seekers and refugees

The problems faced by asylum seekers and recognized refugees during their stay in the country often relate to unfair restrictions which hinder their social integration and constitute direct or indirect discriminations against them due to their status in the country. In cases of asylum seekers, immigrants and refugees, the Ombudsman in parallel investigates the likelihood of discrimination against them on the basis of gender or other grounds (such as, disability, age, sexual orientation, gender identity or gender characteristics) within the framework of the protection provided, in order to highlight the need for co-assessing this aspect of their treatment during the implementation of procedures which concerns them, as for both: the identification of vulnerable groups amongst them and the provision of adequate protection to them, and to ensure the existence of adequate living conditions in the open accommodations centers.

#### Refusal by a bank to open a bank account to an asylum seeker due to his inability to present a passport

A citizen of Turkish nationality appealed to the Ombudsman because, although he was holder of a valid asylum seeker's card, a branch of bank refused to open a bank account for him with the justification that he lacked an identity card or valid travelling document (passport). The Ombudsman intervened, at first by contacting the Bank of Greece (BG), in order to be informed of the procedure and the required supporting documents that are deemed necessary for establishing any transaction between banks and third-country citizens. The Banking Supervision Department (BSD) of the BG informed the Ombudsman that, pursuant to the relevant regulatory framework, the identification of third-country nationals may be based on either the travel documents issued by the Asylum Office of the Ministry of Migration Policy or the documents pertaining to their status as beneficiaries of international protection. Following this, the Independent Authority contacted the pertinent bank branch, pointing out that, under the provisions of Law 4375/2016, the International Protection Applicant's Card constitutes a temporary residence permit document, which ensures that the holder should enjoy all the provided rights, including those concerning transactions with institutions during the entire time of the validity of the card. Consequently, the possession of an International Protection Applicant's Card is a sufficient document in order for the holders to validate their identity and to carry out transactions with Public Services and private institutions, without being obliged to present any other identity proof documents. Contrarily, the refusal to deal with asylum seekers constitutes discrimination against them on the basis of their status as applicants of international protection. Furthermore, the refusal by a bank to open a bank account to a holder of International Protection Applicant Card, that is to a holder of a valid official document permitting the transactions as mentioned herein above, conflicts with Law 4465/2017, through which the Directive 2014/92 of the European Parliament and of the Council of 23 July 2014 was incorporated in the national legislation. In case of violation of the provisions of the aforementioned law, administrative sanctions are prescribed which can be made public. However, thus far, the bank has maintained its position (case No. 230236).

# Problems in the access of third-country nationals to provision of free health services

Following a great number of complaints, the Ombudsman ascertained the refusal of many Citizens' Service Centers (KEP) to issue AMKA to unaccompanied minors and international protection seekers, whose applications were at the stage of pre-registration, on the grounds that International Protection Applicants have access to labor market only after the final registration of their request. The investigation showed that problems in issuing AMKA were also encountered by third-country nationals in general, as they too were asked to provide additional supporting documents in order to prove that they already have employment, such as an employment contract or Tax Registration Number (AFM), despite the provisions of the relevant legislation. For this reason, and in conjunction with the non-activation yet of, the prescribed in law, Foreign Citizen Health Insurance Card (KYPA), these groups of population encountered serious problems as to their access to health services, to

which after all they were entitled to under the current legislative framework, as well as, access to other services requiring AMKA.

Following the intervention of the Authority, the Ministry of Migration Policy asked the Ministry of Administrative Reconstruction to provide adequate instructions to KEP, so as not to impede the process of issuing AMKA to the holders of asylum seeker card. The Ombudsman, following the Authority's recent intervention with a document addressed to all the co-competent ministries regarding this issue, was informed that it was deemed necessary to specify, through a Joint Ministerial Decision (KYA) the minimum required supporting documents that would be used for the issuing of AMKA, so that it would be granted to third-country nationals entitled to free health services, at least until the issuance of KYPA or until they are offered alternative covered (cases No 221556, 226847, 228384 and 232752).

### Refusal of Road Transportation bus drivers to board asylum seekers

The Ombudsman received complaints by members of a Non-Governmental Organization (NGO) concerning three cases of refusal by bus drivers of the Athens Road Transport (OSY) system to serve passengers with visible national-racial characteristics. The Ombudsman intervened with a written request addressed OSY, asking for the thorough investigation of the complaints. The Ombudsman also emphasized the provisions of the Law 4443/2016, regarding the implementation of the principle of equal treatment, irrespective of race, color, national or ethnic origin, as far as access and provision of goods and services is concerned (in the form of services provided to the public in general), as well as, the obligation to investigate such complaints in the light of the provision of the rule of the reversal of burden of proof and the strict application of the sanctions provided for by the law.

Specifically, in regards to the first complaint submitted, concerning the refusal of the bus driver to let two foreign mothers carrying babies in strollers to board the bus, the driver claimed that the passengers owed to know that boarding the bus with open strollers was prohibited and declined to inform the mothers that there was such prohibition. He also behaved inappropriately towards other passengers who came to the support of the mothers. They were the ones who finally submitted the complaint to the Ombudsman. The administration of OSY apologized for the reported incident and informed that, following an investigation conducted in collaboration with the competent department of Votanikos bus depot, disciplinary proceedings were initiated against the driver involved. Following the completion of the disciplinary procedure, the human resources department of OSY informed the

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EQUAL TREATMENT SPECIAL REPORT 2017 Ombudsman that, pursuant to resolution of the First Instance Disciplinary Board, a reprimand was imposed on the driver involved (case No. 223060).

The two other cases pertain to the refusal of a driver to stop in front of a refugee accommodation center to let foreigners board. These cases are being investigated by the administration of OSY, and especially in one of these cases, the disciplinary proceedings provided for in the General Staff Regulation of the company were initiated against the involved driver, who was formally called to account for his actions. At the same time, OSY apologized to the complainants in writting The Ombudsman's full updating about the progress and the outcome of the investigation of these incidents it is still pending (cases Nos 228717 and 228718).

#### **European Union citizens**

### Exclusion of EU Member States nationals from OSE employment competition notice

On the occasion of a large number of complaints submitted to the Authority concerning the legality of the Hellenic Railways Organization (OSE) employment announcement, which set age limits, the Ombudsman examined the case and found that this notice also presented other issues of violation of Law 4443/2016. Particularly, it excluded EU citizens from employment positions of university education level Civil Engineers and secondary education level Station Managers. The OSE justified this exclusion by referring to article 1 of Law 2431/1996, which in fact provides for the possibility of excluding EU Member States nationals from accessing posts or specialties that involve direct or indirect exercise of public power, or which connect with the protection of the general interests of the State.

The Ombudsman pointed out that the above-mentioned provision must be implemented in the light of the principles of the EU law, according to which the EU citizenship now constitutes a fundamental quality that ensures, within the context of the implementation of the Treaty on the Functioning of the European Union (TFEU), the same legal treatment for all EU citizens irrespective of nationality, while the aforementioned exclusion should be applied only in exceptional circumstances. In the present case, there wasn't any apparent link of the OSE job posts with the exercise of public power duties or the safeguarding of the State's general interest, compared to the other posts included in the same announcement whereby the participation in the competition of other EU Member States citizens was permitted.

The OSE, responding to the Authority, mainly invoked the assignment of "police" and investigative duties to such specialties, as prescribed in the OSE's Station Managers Regulation and circular directives, in order to justify the exclusion of EU candidates. The Ombudsman returned to the issue considering that the objection raised by the OSE was inadequate, and invoked relevant case-law of the Court of Justice of the European Union (CJEU), according to which, the exclusion of EU Member States citizens from specific positions or specialties is lawful only when the duties required, for the exercise of power in these positions, are not minor part of their work but constitute their main task. The response of the Organization is expected (indicatively, cases Nos 225783 and 235361).

## Refusal to promote an EU citizen employee as head of department on grounds of citizenship

A relevant to this issue case is the one investigated by the Ombudsman, pertaining to the refusal of the Ministry of Labor to assign head of department duties to an employee who is EU citizen. The Ombudsman requested from the involved public service to justify this decision, given the fact that the failure to promote an employee on the basis of his/her EU nationality alone appears to be illegitimate.

Specifically, the Ombudsman underlined that the TFEU expressly establishes the principle of free movement of workers, meaning that any discrimination on grounds of citizenship in the field of occupation is prohibited. In Directive 2000/43, this principle acquires a legally binding content, while Directive 2014/54, also incorporated in the Greek legislative system through Law 4443/2016, specifies several rights and services that should be provided to EU workers and to members of their family. In the same direction, the CIEU has consistently held that the restriction of rights pertaining to access to public administration, as an exception to the rule, is to be interpreted narrowly. Furthermore, the concept of "public administration", as used in article 45 paragraph 4 TFEU, refers to positions that presuppose the existence of a special relationship of solidarity between their occupant and the involved State, as well as, the reciprocity of the rights and obligations which are constitutive of the foundation of the bond of citizenship.<sup>3</sup> On this basis, the Ombudsman requested that there be a review of relevant provisions of the national legislation (Law 2431/1996) in the light of the above mentioned

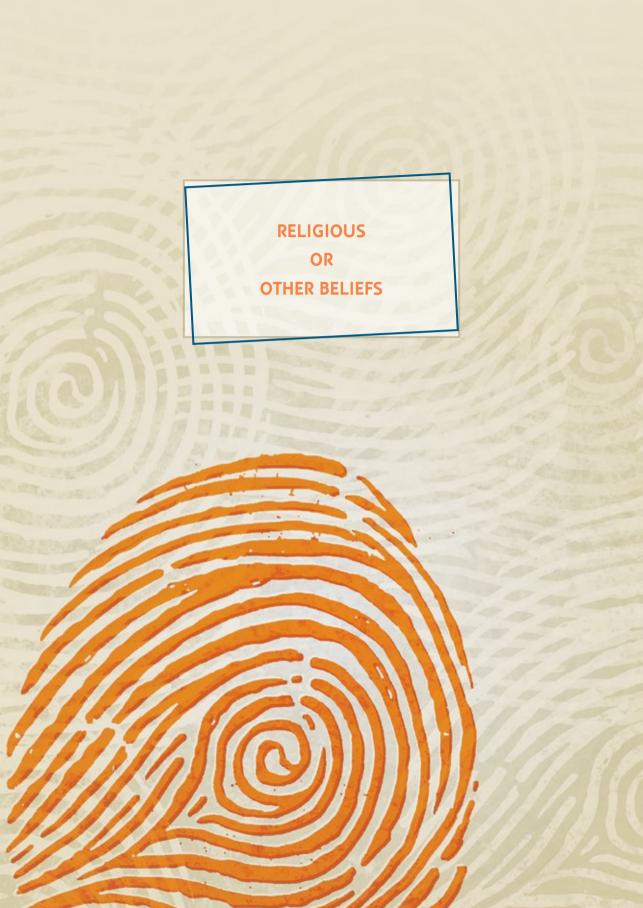
<sup>20</sup> 

provisions of EU law, and to be specifically informed about the competencies of the Department of Monitoring of the Directorate for Social Integration and Social Cohesion of the Ministry of Labor, as well as about the duties of the head of this department. The case is pending (case No. 228627).

# Greek citizens who acquired citizenship through naturalization

The issue of exclusion of Greek citizens who have not completed a specified period of time since their acquisition of citizenship through naturalization, was brought back into surface this year on the occasion of the examination of a complaint regarding the legality of a relevant notice by the Ministry of Foreign Affairs, pertaining to hiring staff for positions in its Branch of Experts. The announcement included provisos, amongst which was the one which excluded candidates who were naturalized Greek citizens and who had not yet completed 3 years from the date of their acquisition of the Greek citizenship from participating in the employment competition. The Ombudsman underlined that the prerequisite of three-year waiting period following the acquisition of Greek citizenship in order to participate to the notice in question conflicts with the prohibition of discriminations entailed by the provisions of Law 4443/2016. This is so because the principle of equal treatment presupposes the equal exercise of a right or the enjoyment of a legitimate good among Greek citizens, irrespective of their national origin. These regulations have over-national-legislative power as they incorporate the letter of the Directive 2000/43 and override any contrary national regulation. Thus, according to the aforementioned provisions, such direct discrimination does not appear to be objectively justified on the basis of a legitimate aim that could be achieved through the use of appropriate and necessary means, as the particularity of the body for which the posts are opened allows, in principle, the exclusion of foreigners. However, the clause permitting the exclusion cannot be applied as a criterion to discriminate among Greek citizens. The Ministry of Foreign Affairs replied to the Authority that they would take into consideration its remarks in the context of a future amendment of its organizational framework (case No. 236691).4





A persistent finding by the Authority in recent years has been that complaints submitted to the Ombudsman claiming discrimination on the grounds of religion or belief, do not fall within the scope of the anti-discrimination legislation. The broadening of Ombudsman's competency, as the body responsible for the promotion of the principle of equal treatment in the labor sector in the private domain did not bring any change in the kind of complaints the Ombudsman continues to receive as far as matters of equal respect for religious or moral conscience are concerned. This is they do not fall under the category of discriminations on grounds of religious or other beliefs in the field of employment and labor. In this context, the cases investigated in 2017 do not differ in terms of their essential features from the cases examined in previous years. They mainly concern either regulatory choices of the State on issues that are sensitive to persons holding different than the majority religious or other beliefs (for instance, licensing of places of worship, dealing with conscientious objectors), or problems reflecting the insufficiently established perception of the Administration on the distinction between the secular and the religious character of certain administrative acts (burial, registration of children's name).

### Licensing of places of worship

An Association of Muslims, based in Thessaloniki, complained to the Authority against the decision of the Police Directorate of Thessaloniki to close down a place used by the members of the Association to exercise their religious duties, due to the lack of relevant licensing for its operation (case No. 229295). According to the law, a license issued by the Ministry of Education is required for the operation of any place of worship, except from the Orthodox ones. It has been considered that this prior licensing does not violate the right of the free exercise of religious worship, as enshrined in article 9 of the European Convention on Human Rights (ECHR) and in article 13 of the Constitution, in so far as this process aims to ascertain that the formal requirements for the lawful exercise of worship duties are met.¹ A basic prerequisite

<sup>1.</sup> Manousakis & others versus Greece, ECtHR decision of September26th, 1966.

for granting such a license is that it concerns, in principle, a religion which is qualified as "known", meaning that its doctrine is clear and accessible.<sup>2</sup> In this context, the license is granted provided that the basic urban planning and health protection rules are complied with the regulations prescribed in obligatory law, which safeguard both, not only the safety of believers and that of people in the neighborhood, but that of public health as well.

The standpoint of the Authority is, that the practice of giving precedence to the urban planning and construction approvals does not constitute restriction of the right to freedom of religion, provided that this practice is, of course, applied under the rules of good administration and are accompanied by the corresponding communication of this matter to the applicants, pursuant to article 4 paragraph 2 of the Code of Administrative Procedure.<sup>3</sup> Although the fulfillment of the relevant conditions for obtaining a license is not easy, since it requires the examination and collaboration of different involved authorities (fire brigade, urban planning office, health authorities), it nevertheless corresponds to what is generally applicable for operating public meeting places, regardless of the scope or operation thereof. To facilitate the licensing procedure, the Ministry of Education regularly updates its directives relating to the procedure, as well as the required supporting documents (most recently document no 118939/TH1/19.07.2016).

It is noteworthy that most of the cases relating to the licensing of places of worship have been resolved, while the Administration is by now generally familiarized with their administrative handling thereof. This is mainly due to the interpretation and the guidelines established by the case law of the European Court of Human Rights (ECtHR) and the Council of State and not to the legislative framework that dates back to 1938. Even the amendments that have been made on this law reflect the spirit of older times, which is inconsistent with the modern perception of freedom of religion rights. Such an example is the provision of the article 1 of the EL 1363/1938 about the criminal treatment of those who operate places of worship without the Ministry of Education's license.

#### Conscientious objection to military service

The recording of the problems relating to the implementation of the institution of alternative civilian-social service, and the submission of proposals for the improvement of the existing legislative framework and the functioning of the institution, on the basis of the religious and moral conscience of the citizens, constitute one of the first systematic interventions of the Authority.<sup>4</sup> Since then, the relevant legislation has improved resulting in the resolution of several issues pertaining to conscientious objection in the direction proposed by the Greek Ombudsman. However, there are still unsolved issues that are pending and need to be resolved promptly. Amongst those issues are: the clarification of the fulfillment of conditions of the alternative service (duties. accommodation, leaves), the duration of the service, the excessive, in comparison with those doing their service in the army, duration of the redeemable service, as well as the composition and the functioning of the conscientious objection recognition committees, in order to ensure impartial judgment. This last issue especially has been urgently reintroduced in view of the ECtHR judgment of 15.9.2016 upon the case of "Papavasilakis versus Greece", pursuant to which Greece was convicted for violation of the article 9 of the European Convention on Human Rights, which pertains to the respect of thought, conscience and religion. The conviction was based on the absence substantive guarantees for representativeness in the composition of the committees. The Ombudsman is preparing a new overall intervention on all outstanding issues herein listed, taking also into account issues that have arisen from the complaints recently submitted to the Authority (for example, case No. 237397).

#### Terms of fulfillment of the alternative service

The issue of the suitability of the housing provided by the competent institution, for the fulfillment of the alternative service by a conscientious objector, has been systematically addressed by the Ombudsman since the implementation of Law 2510/1997 took effect. The Authority reexamined this issue when the case of two conscientious objectors fulfilling their alternative service in a Hospital arose submitted a complaint. To the complainants concerned, accommodation was offered in the form of a small room without any individual hygienic facilities. The only facilities available to them were those commonly used by the patents in the hospital floor. The complainants refused to use these facilities, and instead opted to rent a house outside the

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<sup>4. «</sup>The institution of the Alternative Civilian and Social Service – Proposal for Reform», Special report of the Greek Ombudsman, July 1999.

hospital and subsequently requested to be reimbursed for the accommodation amount provided for by the law in case that the relevant institution was incapable of providing housing (article 64 of Law 3421/2005). The administration of the hospital admitted the insufficiency of space but argued that there was no corresponding budget line for accommodation.

The Ombudsman pointed out that the pertinent legislative regulation, twenty years after its initial enforcement (Law 2510/1997), has never been practically implemented, since there is neither, a protocol defining the minimum requirements for adequate accommodation and kitchen facilities, nor, an evaluation of the housing facilities before the conscientious objectors are placed there. Furthermore, the institutions are not obliged to have ensured the necessary funds timely, in case that they do not have the suitable facilities.

The Hellenic National Defense General Staff (GEETHA), responding and expressly referring to the proposal of the Ombudsman, issued, in January 2017, a circular forwarded to all occupational bodies. In this circular, there is, on the one hand, a detailed description of housing adequacy requirements and, on the other hand, a clear instruction that the relevant bodies should ensure the necessary funds ahead of time, even before they request the services of conscientious objectors. This was further emphasized with a commitment by the GEETHA stating that there would no longer be appointment of any conscientious objectors to bodies which, although they declare they are able to provide them with food and accommodation, in the end it is determined that these provisions are inadequate (cases Nos 217272 and 218216).<sup>5</sup>

#### Rights of burial of heterodox

The burial of heterodox people in the cemeteries constitutes a constant point of discord that highlights both, the disregard of the secular character of the cemeteries, which fall within the municipality's competency and, the underlying misconception that, depending on the religion of the deceased, there need not be equal burial rights.

### Arbitrary displacement of boundaries of an heterodox's family grave

An indicative case is the following complaint to the Ombudsman by a Jehovah's Witness, dealing with the arbitrary displacement of the boundaries



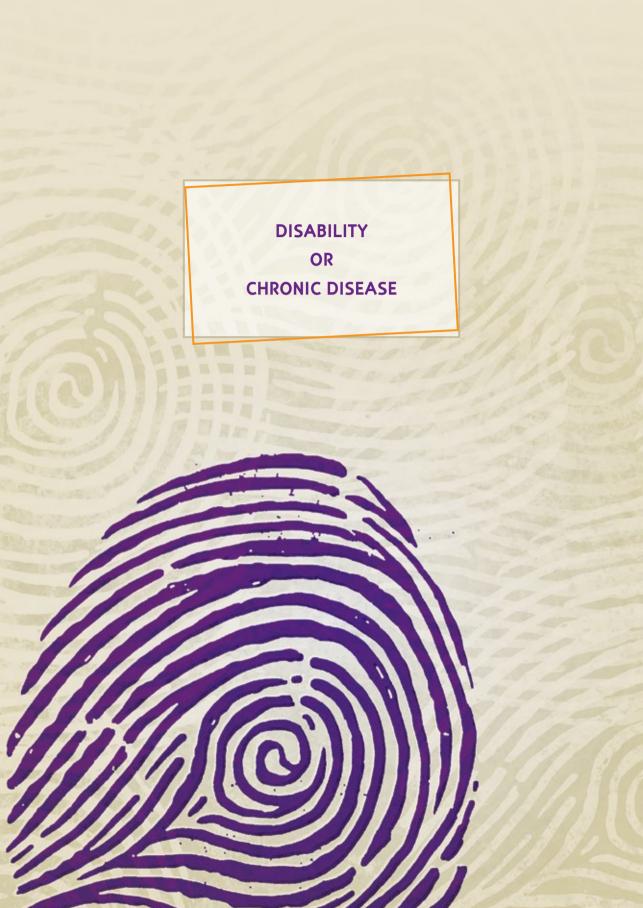
of her family grave, by the users of the adjacent family grave. The result of this transposition of tomb boundaries was the narrowing of the space of the grave of the complainant, to such an extent that the local municipality could not issue the requested permit for the decoration of the grave. The Ombudsman, in an on-site investigation, found that, while the whole cemetery had burial areas rationally divided, the only asymmetry noticed concerned the grave in question. Furthermore, responding to the reservations raised by the municipality regarding the latitude of its competency to decisively intervene to resolve the dispute between the interested parties, the Ombudsman pointed out that the issue in question was not a conflict between individuals. Rather, it concerned the enforcement of the municipality's legal administrative duties, amongst which is the rational and legitimate management of cemeteries. In this context, the obligation of the municipality to intervene in order to restore legitimacy and to ensure equal access of the citizens to burial rights, regardless of their religious beliefs was underlined, provided, of course, that the procedure of prior hearing of the involved persons was observed and that any suspicions of religious intolerance were thoroughly examined. As to the last point, it is important to clarify that these suspicions were confirmed through the information provided by the Deputy Mayor to the Ombudsman, pertaining to the explicitly declared motives of the users of the adjacent family grave, by which they expressed their refusal to consent to any proposed resolution of the problem due to the religion of the complainant. In order to solve this case, the Ombudsman proposed the voluntary re-arrangement of the grave boundaries, towards the unused part of the particular burial sector. In the opposite case, the municipality must proceed with the compulsory re-transportation of the tombs boundaries, in order to re-instate the legitimate dimensions of the two graves. The municipality's response is expected (case No. 224638).

#### Religion and registration of name

The misunderstanding about the meaning of the religious acts at administrative level sometimes leads to the impression that they constitute substitutes of formal statutory administrative procedures. This, in turn, may create suspicion to the citizens that, when they are called up to declare their religion directly or indirectly, they are or they may be discriminated against on grounds of their religious beliefs. An indicative case of such misunderstanding concerns the registration or the requirement to declare a child as "unbaptized", when no forename has yet to be declared for that child.

## Registration of a child as unbaptized, when no forename has been declared yet, in order to submit a family allowance application

In a specific field of the computerized form A21, which is submitted by applicants in order to obtain the standard child-care allowance and/or the special allowance offered to families with three-children or large families, the term "unbaptized" is used as a choice to be filled in when the child has not yet been given a forename. The Ombudsman reminded that, pursuant to Law 344/1976, children can only be given a name by means of a name registration declaration, which is submitted at the competent municipal registry office. On the contrary, the declaration of baptism refers to the registration of the individual's religion and is written on the margins of the act of their birth certificate, while does not relate, under any circumstances, to the acquisition of the name. Therefore, the use of the term "unbaptized" is factually erroneous as it equates two completely different processes, the registration of the name and the baptism. Simultaneously, however, the use of this term generates confusion to citizens who think that they are really obliged to declare if they have baptized their child or not. This results to either, the erroneous completion of the application form or the impression that they are discriminated against on grounds of their religious beliefs. Thus, the Authority asked for the correction of the field in question in the application form with a term that corresponds to the correct required element, such as "name registration pending" or "without forename". In the end, the competent public service (OGA) informed the Authority that the term "unbaptized" was replaced with the term "without forename" (case No. 23190).



The enactment of the prohibition of discriminations on grounds of disability and the promotion of the principal of equal treatment in this field, are part of a broader process of transition from the medical-welfare approach to the social model of disability (see also *Special Report 2013*, pg. 107-108). According to the medical-welfare model, disability was conceived as an individual problem, while the ensuing inability to find a job or to participate in the social/economic life was considered as natural and inevitable. On the basis of this model, the choices of an organized State were limited to the medical rehabilitation and the organization of welfare benefits programs.

On the contrary, the social model is focused on the interaction between the individual and the environment, and treats disability as the result of the failure of the latter to respond to the special conditions it generates for certain persons suffering from a long-term physical, mental, intellectual or sensory illness/condition. Under this spectrum, the social, legal, economic or environmental factors, which hinder the full exercise of persons' with disability rights, must be identified and eliminated. The implementation of this line of thinking about disability and thus for the effective transition from the medical to the social model, a change is required in the approach and the perceptions of the competent state authorities as well as of the socially active subjects in general, so that disability would be considered as a manifestation of human diversity and the persons with disability would no longer be treated as recipients of charity or as subjects for the execution of third-party decisions, but as independent agents with rights.

This transition has been evolving gradually at international level. The first significant step towards this direction has been the adoption, in 1993, by the General Assembly of the United Nations Organization (UN), of the Standard Rules for the equalization of opportunities for persons with disability, which were implemented in Greece through the article 3 of Law 2430/1996. Subsequently, at European Union (EU) level, the revision of article 13 of the European Communities by the Treaty of Amsterdam included disability in the prohibited discrimination criteria and provided the basis for the adoption of the EU Directive 2000/78 on employment and occupation. The transition to the new model was further promoted by the entry into force, in 2008, of the UN Convention on the Rights of Persons with Disabilities (CRPD) and the

Optional Protocol thereto, not only because it specifies the obligations of the contracting States as regards to the respect, protection and the realization of the conditions for the real exercise of the disabled persons' rights, but also because it gives definitions and general principles which are compatible with the new model. These new notions permeate the entire legal system and are now consistently reflected in the relevant case-law of the Court of Justice of the European Union (CJEU).<sup>1</sup>

In Greece, all the aforementioned have been recently updated at the legislative level, by Laws 4443/2016 and 4488/2017. Part A of the first law re-incorporates the Directive 2000/78 in the Greek legislation (and abolishes Law 3304/2005). The basic changes occurring through this modification regarding disability pertain to the addition of the chronic disease as a non-permissible criterion of discrimination (article 1) and the inclusion of the denial of reasonable accommodations as a ground for discrimination (article 2 paragraph 2 line h), together with the notion of discrimination on grounds of relationship with Persons with Disability (PwD). The Part D of Law 4488/2017 specifies the guidelines and organizational provisions for the implementation of the CRPD (which was ratified by Law 4074/2012), designating the Minister of the State as the Coordination Mechanism (article 69), the Secretary-General for Transparency and Human Rights of the Ministry of Justice-Transparency and Human Rights as Central Focal Point (article 70), the General or the Administrative Secretaries of the Ministries, the Heads of Regions and the Mayors as Regional Focal Points, and the Greek Ombudsman as framework for the promotion of the convention implementation (article 72).

The Ombudsman cites below indicative complaints which were submitted and investigated in 2017. These cases demonstrate the points of view and the approach of the Authority in regards to issues concerning the implementation of Law 4443/2016 provisions that pertain to the principle of equal treatment, irrespective of disability of chronic disease.

#### Occupational prejudices towards specific diseases

Stereotypes and prejudices, which stigmatize individuals, at the occupational and at social level and do not allow for the substantial assessment of the real capacities of the employees or of the candidates' fitness for specific



jobs, have been object of investigation by the Ombudsman and significant topic categories this year compared to previous ones.

## Reinstatement to the Hellenic Police of a student who was removed from the force due to Hepatitis B

An indicative example is the case whereby, according to Law 4420/2016 (article 5), students who in the past were expelled from the Police Academy were subsequently allowed to submit to the Hellenic Police (ELAS) an application for re-admission to the Force. A prerequisite for the acceptance of such application was the re-assessment of the applicants as capable for office work by the competent Supreme Medical Committee (SMC). Thus, a student expelled from the Force in 2006, because he was diagnosed with Hepatitis B, submitted a relevant application that was rejected by the SMC without a specific justification as to the reasons for deeming the applicant as unfit to perform office duties. This negative decision was based solely on the fact that the particular disease was listed in the general table of diseases, conditions and impairments of PD 11/2014, which was after all the reason for his initial expulsion from the police force.

The Ombudsman considered that the negative decision of the SMC needed to be specifically justified and that the reference to the general table of diseases, conditions and impairments was inadequate, given that this table concerns full police duties and not the capacity to perform office duties. The Ombudsman intervened in the case and asked for a re-examination of the application, underlining that Hepatitis B is a disease causing social and occupational stigmatization, on the basis of prejudices that are not scientifically founded, with severe consequences on the private life of the patient, which must be weighed specifically. The Medical Review Committee finally accepted the applicant's re-admission request, deeming the interested person as capable of performing the duties in question. This decision constitutes a significant contribution to the process of effective assessment of the actual skills of the candidates in regards to the performance of concrete duties, beyond stereotypes and prejudices (case No. 224423).

#### Dismissal of an HIV positive employee

A relative case is the one of a HIV positive employee working in a clothing store, who submitted a complaint to the Labor Inspectorate protesting his dismissal on grounds of his chronic disease. Following the forwarding of his file by the Labor Inspectorate to the Ombudsman, representatives of



the Authority participated in the discussion of the labor dispute and subsequently carried out their own investigation of the case.

The data submitted to the Ombudsman showed that the collaboration of the employee with the company was harmonious during the first years of his employment. However, the working environment was reversed and made unfavorable to the employee when his illness was disclosed. Specifically, at some point, the employee showed signs on his face and hands, which caused strong rumors among his colleagues that he suffered from a contagious disease. During that time, an accident occurred at work with an antitheft device, leading to the injury of himself and a colleague. Following that incident, the complainant informed his colleague of the fact that he was HIV positive and they went together to see his treating doctor so that his colleague would take the necessary medical tests. Although no infection was detected, the colleague concerned asked to follow a preventive antiretroviral treatment, whereas, few days later, she voluntarily guit her job. On the basis of the data submitted to the Authority it appears that the head of the branch, where the claimant was then working, when she was informed of the events, notified the administration of the company of the HIV positive status of the employee. The employee was immediately transferred to the warehouse of the branch. He was then transferred to another branch as salesman and shortly after he was assigned with duties of storekeeper's assistant. About sixteen months later from the time of the incident with the antitheft device, the work contract of the employee was terminated.

The company claimed that they were not aware of the employee's HIV positive status, as he had never disclosed it to them and that his contract was terminated because he was performing his duties inadequately. However, from the evidence submitted to the Ombudsman, there were serious indications that, after the incident with the antitheft device, the employer (specifically a number of its managerial staff) was aware of the employee's health issue.

In this context, the Ombudsman determined that, even if the employee did not himself notify the company of his HIV positive status officially, possibly fearing his likely occupational stigmatization that would ensue upon the disclosure of such sensitive medical data, the company bears the burden of proving that it was never informed, not even indirectly, about the employee's condition and that his occupational treatment was not related to that knowledge.

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However, the claim of the employer that they were not aware of the employ-

ee's condition was not confirmed. In assessing the evidence, the Ombudsman considered that the critical actual facts invoked by the employee and supported by additional evidence provided by him during the investigation, were consistent with each other, linked to the employee's HIV positive status and were not adequately refuted by the company, given, in particular, the requirement of the reversal of the burden of proof.

From all the evidence submitted, the Authority found that there had been a violation of the legislation against discrimination (article 2 of Law 4443/2016) and that the termination of the employment contract of the employee in question was invalid. The Ombudsman included his findings in his final report and forwarded it to the relevant Labor Inspectorate Department, recommending the imposition of the provided administrative sanctions, which were ultimately imposed on the company (case No. 227412).

### Indirect discriminations on grounds of disability or chronic disease

The indirect discriminations on grounds of disability or chronic disease constitute a broad range field of acts of discrimination pertaining to both the public and the private sector. These acts are manifested as a consequence of the use of apparently impartial criteria or the adoption of neutral practices, which, nevertheless, end up placing particular persons with special characteristics or qualities at disadvantage compared to their colleagues who are at a comparable position.

# The right to take sick leave and its unlawful connection with a regular vacation

A police lieutenant, who, in the course of 2013, faced an impediment in the exercise of his duties, due to serious health problems, upon his return to work, was not allowed to take his annual vacation for that year, pursuant to a relevant provision (article 2 paragraph 5 of the PD 27/1986, as in force). According to this provision, employees who return to their service following a long sick leave are not entitled to receive their annual vacation before a time lapse of six months from the date of their return. In this context, it is possible, depending on the time of return from the leave, that the employee may not take his/her annual vacation.

The Ombudsman pointed out to the ELAS that the above-mentioned provision seems to introduce discrimination on grounds of disability or chronic



disease, since the right to take the normal annual vacation is not allowed to be dependent on or connected with potential absence of the employee due to a sick leave or to the potential accidental timing of that leave. The annual vacation concerns the organization of working time and the necessary rest of the employee and, therefore, it has independent application. The Ombudsman, supplementarily evoked the provisions of PD 88/1999, as in force, which incorporated into national law the Directive (2003/88/EC), which lays down the minimum requirements for the organization of working time and the right of an employer to paid annual leave. The Authority also underlined that, pursuant to CJEU case-law, the purpose of the right to the leave in question is to allow the employees to rest and have at their disposal time for relaxation and entertainment. On the contrary, the sick leave aims exclusively to the recovery of an employee from illness. On the basis of what is mentioned herein above, the Ombudsman considered that the provision at issue of PD 27/1986 is problematic, as it puts persons with health problems at the disadvantage of being deprived of their right to annual leave on the basis of random and circumstantial reasons related to the time of sick leave. For this reason, the Ombudsman asked for its amendment. The ELAS accepted the relevant recommendation and informed the Authority that the Deputy Minister of Interior had already decided to abolish the relevant provision. The implementation of this decision is expected (case No. 217005).

# Positive measures as a means to promote the equal treatment principle

The adoption of positive measures constitute a way to compensate for the unfavorable position persons with disability or chronic disease may be placed under. Thus, they are of the utmost importance for the promotion of the principle of equal treatment and for the implementation of activities pertinent to the reinforcement of real equality. In practice, however, sloppiness or incomplete planning is often observed in the adoption of cohesive measures to promote the principle of equal treatment of persons with disabilities or chronic disease. An indicative case is the example of issuing of a free travel pass for PwD and accompanying persons, as well as the procedural requirements for issuing such a pass.

#### Procedure of issuing PwD free travel pass

The Ombudsman received complaints concerning a variety of problems arising from the implementation of the procedure of the issuing to PwD free travel passes, on the basis of a relevant ministerial decision.<sup>2</sup> The investigation of the complaints demonstrated the need to rationalize the relevant procedure, to attend to the issue of collaboration of the involved services, and the weighting of particular circumstances under which each case evolves, given that often unjustified restrictions obstruct the exercise of the right to movement of the PwD. Specifically, the Ombudsman identified as being the most significant the following problems:

The Ministry of Labor, through its circular clarifying the mode of implementation of the relevant ministerial decision, had provided that, in case of loss of a free travel pass document, it would be possible for his/her holder to replace it with a certificate which would be issued by the relevant Regional Office. However, the Athens Urban Area Transport Organization (OASA) does not accept any other document or proof of evidence of the right to free travel by a PwD other than the pass itself. The Ombudsman intervened with the Ministry of Labor and the OASA administration pointing out that the inability to exercise a right following the loss of the relevant certifying document, especially as it regards to vulnerable groups of population, is an extremely unfair practice introducing an unwarranted restriction to the right of travel of PwD. OASA invoked the contract signed between the organization and the Ministry of Labor, which is binding for all parties and clearly provides for the obligation to show the free travel pass. On the other hand, the Ministry of Labor supported that the loss of the certification document should not lead to the loss of the relevant right. In view of the above, the Ombudsman suggested the inclusion of a specific provision in the future contract between the OASA and the Ministry, pertaining to the loss of the free travel pass, so as to ensure both the exercise of right and the prevention of potential abuse (case No. 224744).

Notwithstanding, the more recent ministerial decision concerning the issuing of PwD free travel pass<sup>3</sup> does not differ from the previous one. Nevertheless, the clarifying circulars of the Ministry of Labor,<sup>4</sup> apparently in an effort to

<sup>2.</sup> Ministerial Decision No. D24a/F.11/GFRint.36017/780/04.08.2016 (FEK 2456/B'/2016).

<sup>3.</sup> JMD No. D24b/F.11/GFRint.38784/921 (FEK B' 2964/29.08.2017).

<sup>4.</sup> With file registration number D24b/GFRint.48112/1116/17.10.2017 as regards the Regions other than Attica and Thessaloniki, and with file registration number D24/12/ GFRint.62527/1650/29.12.2017 for the Region of Thessaloniki. As regards the Region of Attica, no circular was issued by the end of 2017.

resolve the issue in a manner that could be acceptable by the OASA, provided that, in case of loss of the pass, the competent Regional Office would be able to issue, once, a new free travel pass, contingent upon the number of passes available.

### Procedure of issuing free travel passes for companions of PwD

The relevant ministerial decision provides for the issuing of free travel pass for persons who accompany PwD. However, this right is applied only to PwD suffering from specific conditions<sup>5</sup>. The Ombudsman underlined, in its address to the Ministry of Labor, that the provision of free travel pass to PwD and, consequently, the granting of the pass to their companions, serves the social need of facilitating their movement and for this reason constitutes a positive measure, meant to compensate for the disadvantages ensuing from the disability. Thus, if there is need of a PwD, who may be suffering from a condition which is not mentioned in the aforementioned list, to be accompanied by another person when travelling, and this fact is overlooked, then the core of this positive measure is directly undermined. For this reason, the Ombudsman proposed to the Ministry to consider, alternatively, the issuing of a companion free travel pass for PwD whose condition or disability makes it necessary for them to be accompanied or assisted by another person, pursuant to a relevant medical opinion by the Disability Certification Center (KEPA). The ministry informed the Ombudsman of their intention to review the matter of the PwD movement, in order to better serve them and facilitate their movement (case No. 229540).

### Bureaucratic obstacles in issuing PwD free travel passes in the Citizens' Service Centers

Finally, the Ombudsman identified procedural hindrances during the implementation of the process of issuing PwD free travel passes by the Citizens' Service Centers (KEP). Indicative cases include certain KEP offices in the Region of Attica, which refused to provide PwD with the pass, either on the grounds that the produced beneficiary's certificate of registration in the relevant municipal register did not indicate the percentage of handicap or, in other cases, with the justification that the relevant handicap certificate was not recent, despite the fact that in it was recorded that its validity was "life-

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<sup>5.</sup> Blindness or visual disability or Severe Mental Retardation or pervasive developmental disorder.

long". The Ombudsman informed the Ministry of Administrative Reconstruction on the above-mentioned issues in order to proceed with the pertinent clarifications towards the KEP and to harmonize the practices followed. (case No 224136).

## The refusal to adopt reasonable accommodations measures as a violation of the equal treatment principle

The need to restrict or eliminate the environmental or other external factors, which interact with some long-term disease or disability, causing impediments to the concerned individual, was transferred to the field of employment and occupation, under the auspices of an obligation to adopt measures of reasonable accommodations. This means that employers shall take appropriate measures, depending on the needs of each particular case, in order to enable a PwD to have access to, participate in, or to be promoted and receive training, provided that these measures do not entail disproportionate burden for the employer (see article 5 of the Directive 2000/78 and article 5 of Law 4443/2016). The measures of reasonable accommodations may be of organizational nature, while their enumeration is not in any form exclusive (see *Annual Report 2014*, pg. 122 onwards).

However, beyond the field of employment and occupation, ensuring the necessary measures of reasonable accommodation is recognized in the CRPD as a means of promotion of the equality in general and of elimination of discriminations against persons with disability, while the failure to take such measures, unless they result in a disproportionate or unjustified burden for the employer, is clearly characterized as a form of discrimination. It is also pointed out that, pursuant to article 60 paragraph 1 of Law 4488/2017, which follows article 1 of the CRPD: "By the term 'Persons with disabilities (PwD)' are meant the persons with long-term physical, mental, intellectual or sensory impairments, which, in interaction with various barriers, especially institutional, environmental or barriers of social attitude, may hinder their full and effective participation in society on an equal basis with others".

## Transfer of an employee as a measure of reasonable accommodation

An indicative case of handling a complaint as a matter of reasonable accommodation was the successful mediation of the Ombudsman towards the administration of a public hospital in order to satisfy an assistant nurse's



request to move to a department where the use of latex would be limited as she had developed a serious allergy to that material (case No. 224843).

In any case, the request for measures of reasonable accommodation cannot imply waiver from the part of the employee for actual work from his/her employer. Simultaneously, the right of the employee to real occupation also includes the demand to be able to exercise, his/her skills and abilities during the execution of labor, so as to ensure respect for his/her personality. Employment is no longer solely linked with the employee's claim for proper remuneration but rather it is connected with other rights and interests worthy of protection, since it is that through them the employees develop their personality, they make use of their physical, mental and psychic powers and establish their professional and social position. Based on this reasoning, the Ombudsman successfully mediated so that duties were assigned to a qualified nurse, employed a public hospital. The nurse's request for transfer to another service was granted on grounds of her disability, without, however, having her entrusted with specific duties in her new position (case No. 225630).

#### Provision of exclusive parking spaces for disabled people

A citizen with certified disability of total blindness asked the Municipality of Elliniko-Argiroupoli for an exclusive parking place, near his house for a mobility vehicle for his use, driven by his wife. The competent office of the municipality replied requesting a medical assessment for his mobility incapacity. pursuant to a relevant Joint Ministerial Decision (JMD) (D2/3311/1992). The Ombudsman emphasized that, as it also determined in the past,6 the provisions of this particular IMD go beyond the existing legislative mandate and are therefore invalid Moreover, there is no particular provision regulating the granting of exclusive parking spaces, on municipal or community streets to PwD who have no mobility incapacity. For this reason, the Ombudsman intervened with the municipality asking for a re-examination of the citizen's request, on the basis of the constitutional provision regarding the right of PwD to enjoy full autonomy, employment integration and participation in the social, economic and political life of the country. Furthermore, for reasons of transparency, reliability of the measure and for prevention of likely abuses, the Ombudsman suggested that the City Council adopts a regulatory for this matter decision, which will specify the process, the conditions and all the other details pertaining to the granting of exclusive parking spaces on

streets of the administrative boundaries of the municipality, for use by PwD, as well as, that the holders of a parking card for mobility vehicles are the actual beneficiaries, making use of the relevant authorization provisions of the Highway Code and the Community and Municipal Code.

The municipality replied to the Ombudsman that: a) they are in the process of adopting a regulatory decision for the regulation of controlled parking spaces in the area of "Elliniko" Metro Station, which also includes parking spaces for PwD; b) in the future, and provided that the economic conditions allow it, the possibility of creating parking spaces for PwD in other central points would be considered and (c) the City Council has decided to grant an exclusive parking space for the vehicle of the complainant (case No. 226391).

#### The meaning of "discrimination by association"

One of the important changes introduced by Law 4443/2016, compared to the previous legislative framework, regards the incorporation in it of an explicit reference to "discrimination by association" in all specified fields (article 2, paragraph 2, case e). "By the term 'discrimination by association' is meant the less favorable treatment of a person due to the close relationship with a person or persons having specific characteristics of race, color, national or ethnic origin, genealogical descent, marital or social status, sexual orientation, gender identity or characteristics". These legal provisions reflect the CJEU case-law in the Coleman judgment (case C-303/06) on disability, whereby it was clarified that the principle of equal treatment does not apply to specific categories of persons but to specific characteristics, except in cases where the interpreted provision expressly refers to a category of persons, as is the instance, for example, in article 5 of Directive 2000/78 on reasonable accommodations required for the employment of persons with disabilities.<sup>7</sup>

On the basis on the previous legislative framework, the Ombudsman treated as unsubstantiated under the field of protection of Law 3304/2005, all complaints submitted by public sector employees, requesting shift flexibility or accommodations in regards to the place of work, considering the care they provided to persons with disabilities with whom they were closely associated. These matters, then, were treated as issues pertaining to the statutory public service staff working conditions, a field excepted from the

<sup>7.</sup> The CJEU confirmed and reinforced this position in the judgment CHEZ Razpredelenie, in the case C-83/14, concerning discriminatory treatment on grounds of "association" with a group of specific racial or ethnic origin.

Ombudsman's competence (see *Special Annual Report 2010*, pg. 14· *Special Annual Report 2009*, pg. 16-17· *Special Annual Report 2008*, pg. 13).

Under the current legislative framework, such cases are thoroughly examined and constitute a significant part of the Ombudsman's subject matter of intervention, as regards to discrimination on the ground of disability. The following cases are indicative of this process of examination.

#### The refusal to transfer an employee's as discrimination by association

A permanent University Level municipal employee, working in the administration requested the Authority's mediation following rejection of her request to be transferred to an office closer to her home, in order to enable her to care easier for her severely disabled sister, of whom she was appointed as the legal guardian. According to the complainant, the rejection of her request constituted an unfair treatment and discrimination, given that, as she pointed out, in the period following her initial transfer application, several other transfers of employees occurred. The Ombudsman examined this complaint under the prism that this rejection puts the employee in a disadvantageous position, compared with her other colleagues, on grounds of her close relationship with a disabled person, given that they did not have any such association with persons in a corresponding situation, or who bear the same characteristics (article 2, paragraph 2, case b and e of Law 4443/2016). Simultaneously, however, ensuring the orderly and efficient functioning of the municipality offices constitute, in principle, a fair purpose, for the achievement of which appropriate and necessary measures are allowed to be taken (article 2, paragraph 2, line b case b of Law 4443/2016). In this context, the mediation of the Ombudsman towards the municipality was focused on the question whether it was estimated that the relocation of the employee would have a negative impact on the efficient and orderly functioning of the service from which she asked to be transferred. The Authority also notified the municipality of the complainant suggestion to have a mutual in-service transfer with another employee employed in the office where she wished to be transferred. In its reply, the Human Resources Department of the municipality claimed, on the one hand, that the needs of the office where the complainant worked were such that were not conducive to her transfer and, on the other hand, that her request for mutual relocation will be re-examined when a corresponding interest would be expressed by one of her colleague's. Consequently, the Ombudsman informed the interested parties that no violation of the principle of equal treatment, as this is specified in part A of Law 4443/2016, could be identified in this case.



However, the complainant came back informing the Ombudsman that the competent service preceded with a transfer of another employee working in the same department, shortly after the above-mentioned reply to the Ombudsman. Responding to this new complaint, the Human Resources Department justified the other employee's transfer by invoking the serious and urgent health reasons of the employee in question, notifying the Ombudsman of the supporting medical documenting that were relevant in the case. The Ombudsman accepted that the transfer occurred within the context of the municipality's obligation, as employer, to provide reasonable accommodation to the employees with disability or chronic disease, pursuant to article 5 of Law 4443/2016. In view of the aforementioned, the Ombudsman completed the investigation of the case and informed the complainant about its assessment, without disclosing any health data of the employee who was transferred, pursuant to article 1 paragraph 3 of the PD 28/2015 (case No. 228624).

Refusal to grant part-time employment status to parents of children with disabilities, when the children live in an institution, as discrimination by association

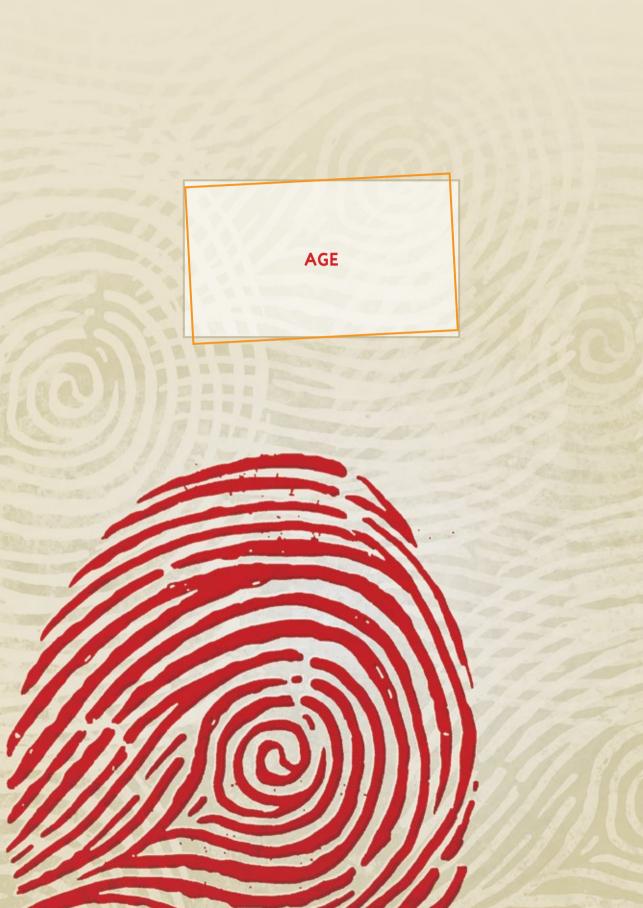
An employee of a hospital, (on a contract for indefinite time work), mother of a child with disability, complained to the Ombudsman when she was informed by her service that she did not fulfill the requirements to be granted part-time employment due to the fact that she was not cohabiting with her child, who resides in an institution. The decision of the hospital was based on two circulars of the Ministry of Administrative Reconstruction,<sup>8</sup> according to which cohabitation with the child is a prerequisite for granting the right to part-time employment to parents with disabled children.

The Ombudsman, intervening with the Ministry, pointed out that the provision to grant the right to part-time employment to employees, who are parents of children with disability, does not exclusively intends to support the working parents in the handling of the increased daily needs of their children, but also to encourage the parents to have continuous and not occasional contact and/or interaction with their children. Furthermore, the Ombudsman also underlined that the provisions of Law 4443/2016 protect not only the persons with disability or chronic disease but also those closely associated with them, especially when they have undertaken their care. The

<sup>8.</sup> File registration numbers DIADP/F.B.3/14395/02.06.2009 and DIDAD/F.70/27/14984/01.07.2016.

Ombudsman requested the re-examination of the interpretation of the article 16 paragraph 4 of Law 2527/1997, as in force, towards the direction of disconnecting the granting of the right to part-time employment from the condition of cohabitation with the child, especially in case where the child lives in an institution.

The Ministry, responding directly to the Ombudsman's proposal, issued the circular No. DIDAD/F.69/2/int.24248/21.07.2017, according to which the granting of the right to work part-time to employees who are parents of children with disability rate of 67% or more is possible, even when the child lives in an institution, in the same city, or in a place where, by experience and common sense, the parent can visit the child. Consequently, the hospital granted the request for part-time employment to the complainant employee (case No. 225581).



Any form of direct or indirect discrimination on grounds of age in the field of employment and occupation is in principle prohibited, pursuant to Law 4443/2016. The commonest violations in this field are identified in the area where a maximum age limit is set as a prerequisite for access to employment, which is only allowed in exceptional cases and under concrete, strict conditions. The age criterion, in order to be deemed as justified, must constitute an essential characteristic necessary for the execution of the specific work activity, must serve the achievement of a legitimate aim and finally, must be a reasonable and absolutely essential requirement. Indeed, it is imperative that all regulatory provisions setting a maximum age limit for accessing specific sectors or job specialties provide specific justification proving the fulfillment of the aforementioned clauses, while in the absence thereof, the legitimacy of the relevant selection procedure could be called into question.

## Inadequate justification of the age criterion and the absence of objective data

The Ombudsman has, since the enforcement of Law 3304/2005, investigated a number of complaints concerning the arbitrary and abusive setting of maximum age limits as a criterion for accessing specific employment positions, without any particular justification as to the reasons for its use. In the vast majority of these cases, the justification provided by the Administration –if any– is vague and inadequate, and not founded on objective evidence. Thus, the efforts of the Ombudsman focus on the familiarization of the Administration with the obligation to specifically justify the maximum age limit setting, as well as its obligation to proceed with the removal of arbitrary age restrictions, especially when these are set as a result of stereotypical perceptions or prejudices. Generally, persons belonging to older age groups are excluded from the possibility of accessing numerous professional activities, due to the generalized assumption that these persons lack –due to their age– characteristics that would enable them to efficiently perform their duties.

An indicative example of setting a maximum age limit (of 40 years) is the case pertaining to entry positions at the Hellenic Post Office (ELTA) for mail

delivery staff (Secondary Education candidates). Although, following the Ombudsman intervention, the competent Minister of Digital Policy, Telecommunications and Media required the removal of the age restriction for such positions (see *Annual Report 2016*, pg. 118-119), the particular organization insisted on the necessity to maintain the specific maximum age limit, considering that the performance of the duties of the jobs in question requires particular physical abilities not possessed by people over that age. The Ombudsman pointed out, once again, that ELTA have to present concrete objective evidence (e.g. specific job duties, manner and means for performing them, number of employees according to age group, etc.) in order to be possible to validate the adequacy of the special justification offered for setting the age limit.

A similar case is one where a maximum age limit is set -40 years old for University Education applicants and 28 years old for Secondary Education candidates- concerning hiring for staff posts in the Hellenic Railways Organization (OSE), on the basis of Notice No. 3K/2017 of ASEP (Supreme Council for Civil Personnel Selection). The ministerial decision laying down the specific age limits was adopted 11 years prior to the implementation of Law 4443/2016. For this reason, it did not contain any special justification for the necessity thereof. OSE, referring only to later applicant staff category, failed to convincingly link the requirement of being of young age with, either, the physical and mental capacity and/or stamina required for carrying out the specific job duties, or to the need to be able to complete a rigorous twoyear long theoretical and practical training in order to be able to perform the duties of these jobs. Furthermore, OSE invoked the fact of its already aging Secondary Education staff, without, however, providing concrete figures substantiating the need to recruit younger persons for these positions, so that the justification offered for setting age limit could be evaluated under the scope of Law 4443/2016 (cases Nos 225783, 226954, 227095, 227269, 227802, 227834, 227866, 227937, 227986, 228161, 228239, 228349, 234896, 235361).

# The practical skills testing as an alternative and adequate measure to evaluate the suitability of the candidates

Besides the vague assertion of the "[...] exceptional nature and the particularities of the personnel duties", usually identified as justification for setting a maximum age limit in many ministerial decisions, the Ombudsman has also found that certain personnel selection procedures, for jobs with a maximum

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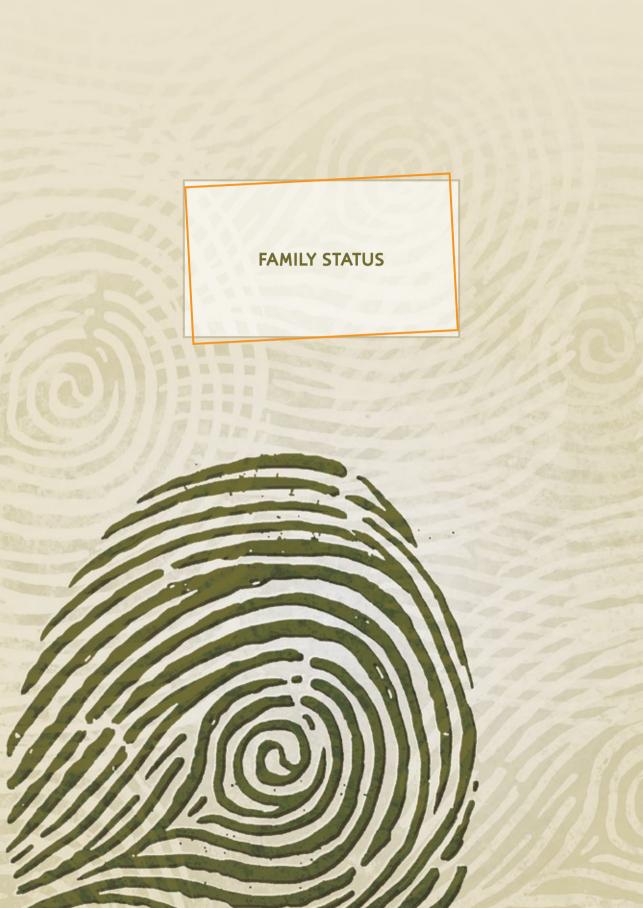
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age limit, provide for the participation of the candidates in practical skills testing. Submitting candidates to practical skills tests aims to evaluate their suitability and capacity to respond to the requirements of the job in realistic conditions, regardless of their age. As far as these cases are concerned, the Ombudsman has pointed out that the provision about the obligation of the candidates for specific job-specialties to undergo practical skills tests puts into question the legitimacy of the adoption of a maximum age limit for these jobs, given that the age limit is set inadequately and disproportionally in comparison to the objective. Characteristic examples of this issue are the Notices No. 10K/2017 (FEK 27/04.08.17, ASEP notices issue) for staff recruitment in the Independent Power Transmission Operator (ADMIE) and No. 11K/2017 (FEK 26/04.08.17, ASEP notices issue) for staff recruitment in the Bank of Greece (indicatively, cases Nos 233124, 233329, 233388, 233477, 234322).

The National Sports Center of Corfu (Legal Entity Governed by Public Law of the General Secretariat of Sports) announced the recruitment of Secondary Education level staff as Lifeguards, under a fixed-term contract. Pursuant to PD 23/2000, the candidates should not be older than 45 years of age. The Ombudsman contacted the Ministry of Mercantile Marine and Island Policy and pointed out that the establishment of a maximum age limit must be specifically justified, in accordance with the provisions of Law 4443/2016. The ministry claimed that the job in question requires high level of physical and health condition and that the assessment of the interested lifeguards regarding their athletic performance is carried out once, upon issuing the lifeguard work license, while during the renewal of the license the evaluation applies only to the criminal record and health condition of the interested person, based simply on supporting documents. Nevertheless, the ministry declared to the Ombudsman both, its intention to reassess the maximum age limit with the prospect to raise its upper limit and the fact that it already started elaborating on the matter in collaboration with other co- competent ministries (case No. 221992).

#### The need to disconnect age from established stereotypes

It is noteworthy, however, that, in recent years, there has been a shift from the part of the Administration towards the gradual recognition of the institutionally provided obligation thereof to adequately justify any deviations from the principle of equal treatment, regardless of age. In certain, recently issued, ministerial decisions an effort has been made to include in the rationale of these decisions the required, based on the law, specific justification for the establishment of a maximum age limit. Such an example is the ministerial decision No. DIPAAD/F.IL./53/33414/25.01.17 (FEK B' 397/13.2.17), setting a maximum age limit at 45 years for the recruitment of Secondary Education staff for different posts at the Thessaloniki Water Supply and Sewerage Company (EYATH). In this case, although the justification provided for setting maximum age limit for recruitment seems to be more adequate, compared to previous ministerial decisions of similar content, in the end it does not succeed to distance itself from the established administrative practice of the, almost self-evident, direct connection of age to the physical state of the candidates and, consequently, to their capacity and suitability to perform the duties of the jobs to be assigned (cases Nos 227380, 227863).



The protection of family status has been already provided for by Law 3896/2010. However, this was not done independently, but in direct correlation with the prohibition of any form of direct or indirect discrimination on grounds of gender. Pursuant to Law 3896/2010, the provided protection covers in principle the potential of unfavorable treatment of a person on grounds of gender, under the spectrum, however, or as a result of the person's family status in general. It especially pertains to the unimpeded exercise of the rights of parents, irrespective of their gender, directly relating to the upbringing, care, adoption or fostering of children, and mainly comprises the bonds developed between parents and children, in the context of different forms of family structure. Through the application of this relevant legal provision, it was mainly sought to deal with the cases of persons facing unfavorable treatment on grounds of their gender and particularly, with the reasons related to the increased obligations ensuing from the care or the upbringing of a child, which most often are stereotypically borne by women. Simultaneously, however, the effort focused on encouraging the adoption of measures which aim at the reconciliation of work and family life, regardless of gender, a field where men are also often discriminated against.

By means of Law 4443/2016, the legislator made an effort to cover a significant gap of protection by including family status as an independent ground of discrimination. The concept of family status includes any form of family relationship that creates strong family ties and living arrangements. More particularly, it includes the bonds developed in a couple, between children and their parent(s) and amongst children themselves. The complaints investigated by the Ombudsman in this field especially concern a differential treatment of persons due to the type of their union with another person of similar or different sex (religious or civil marriage, civil partnership agreement), as well as, the unfair treatment of parents or children of single-parent families and, of divorced persons or their children.

## Civil partnership agreement and protection on grounds of family status

According to the explanatory proposal report of Law 4443/2016, the principal objective for the addition of the criterion of family status as an in-

dependent protected characteristic from discrimination is the proportional equalization of the rights of persons as they arise from the provided in the Civil Code types of marriage and civil partnership agreement under Law 4356/2015. Based on the complaints investigated, the Ombudsman ascertained that, although the legislation in force recognizes similar to marriage rights to persons having a legally binding, under Law 4356/2015, civil partnership agreement, in practice there is a serious difficulty, from the part of the administration, to make their equal treatment applicable. The problem is further accentuated in instances whereby the partnership concerns persons who are not Greek citizens, or when the partners are not both Greek citizens. This issue becomes even more complicated in case of same-sex couples.

#### Civil partnership agreement and same-sex couples

The matters examined by the Ombudsman concerning discriminations on grounds of family status, and particularly those arising from the signing of a civil partnership agreement, negatively affecting a wide range of rights of the cohabiting couples, pertain, indicatively, to the following:

a) the shorter duration of residence permit granted to third-country nationals who have formed a civil partnership agreement with a European Union (EU) citizen or Greek citizen, compared to the corresponding one granted following a formal marriage (cases Nos 221796 and 227991); b) the exemption of cohabiting partners from obtaining a residence permit equivalent to the one provided to spouses of third-country nationals who are holders of permanent residence permit as investors, pursuant to article 20 of Law 4251/2014 (case 233510), and c) the exclusion, of third country nationals resident doctors, who have a civil partnership agreement with a European Union (EU) citizen or Greek citizen, from placement in hospitals, a matter also relating to the implementation of the Directive 2014/54 which has been incorporated together with Law 4443/2016 in the Greek legal system and pertains to the implementation of the principle of equal treatment, not only for the EU citizens, but also for the members of their families (case No. 221796).

Specifically, as regards the right of residence of third-country nationals and EU citizens, a bill that was put into public consultation in February 2016<sup>1</sup>

<sup>1. &</sup>quot;Amendments of Law 3907/2011 (FEK A´ 7), amendments of Law 4251/2014 (FEK A´ 80), adaptation of the Greek legislation to the provisions of the Directive 2013/32/EU of the European Parliament and of the Council 'on common procedures for granting and withdrawing international protection (recast)' (L 180/29.6.2013) and other provisions".

already included provisions modifying the existing provisions of the Code of Immigration and Social Inclusion (Law 4251/2014), in order to explicitly recognize the cohabiting partners' rights correspondingly to the rights of the spouses. The Ombudsman had submitted remarks<sup>2</sup> on this bill, pointing out that its proposed provisions were considered as absolutely reasonable and necessary, in light of the fact that the Greek state owed to recognize as family members the parties of the civil partnership agreement, regardless of whether they were of the same-sex or heterosexual couples.

However, these provisions have not yet been incorporated into the Code of Immigration and Social Inclusion, and, as a result, the competent departments of the Ministry of Migration Policy refuse to grant a residence permit to partners in the context of their civil partnership agreement, similar to the one granted to spouses. Even so, other involved authorities (e.g. Ministry of Health or Ministry of Labor) refuse to recognize rights to cohabiting partners due to the fact that they do not possess a residence permit as family members.

Nevertheless, the Minister of Health, in order to lift the above identified issue of direct discrimination on grounds of family status and until the modification of the relevant provisions of the legislation pertaining to the status of residence of third-country nationals occurs, has already accepted the Ombudsman's proposal, proceeding to the issuance of the ministerial decision No. A2d/G.P. int. 55852/19.07.2017. This decision provides for the possibility of placement in hospitals, as resident doctors, of third-country nationals who have signed a civil partnership agreement with a Greek citizen (case No. 221796).

# Single-parent families and protection on grounds of family status

The adoption of measures for the protection of the family and the child is an obligation of the common legislator, who specifies the content of constitutional requirements and establishes the framework for the implementation of the international obligations of the country. The state guarantees the protection of the family by taking relevant measures either, through the establishment of specific institutions and services or through the granting of financial support and social benefits. The content of the protection measures in question vary and are adapted according to the needs of the target group.

Particularly, as regards the protection of parents and children of large families, beneficial provisions are implemented in the field of access to employment and occupation, and in particular to the area of reconciliation of work and family life, as well as to the occupational status of employees.

Nonetheless, deficiencies of the level of protection offered are identified in other types of family structures, such as the single-parent family. The single-parent mode of family, although is nowadays more commonly present in the social field, as a type of family, often faces distinctive and very acute social problems and for this reason it has been deemed as a vulnerable category requiring special protection and allowances<sup>3</sup> of various forms. Despite this, the protection range of the single-parent families in occupation and employment is still limited. It is indicative that, while this family category enjoys a special allocation of points for access to fixed-term employment in the public and wider public sector, nevertheless it has not been included as an independent category, which is awarded access to employment points, when the positions concerned are of permanent or indefinite term in nature.

The Ombudsman, on the occasion of the examination of a relevant case, intervened with the Ministry of Labor and asked to consider the possibility of including in the system of allocation of points for access to employment the single-parent families as an independently protected category, in regards to their access in case of permanent or indefinite term staff jobs, as a form of positive measures in favor of single-parent families, aiming at counterweighing the disadvantages faced by these families, in the context of the provisions of the article 7 paragraph 1 of Law 4443/2016. The Ombudsman underlined, however, the need to take into consideration the specific, in each case, family circumstances of this family sub-category, given that they present diversifications. Thus, the unmarried or widowed parent who is having a child or children outside marriage (without them being formally recognized as their child by the other biological parent in the case of unmarried parents), who assumes parental responsibility and exercises, de facto, exclusive care in regards to the child, is obviously not under the same conditions as the divorced parent, who, even if he/she maintains parental custody of the child, may not have his/her exclusive care (case No. 225093).

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<sup>3.</sup> The Employee's Code (article 53 Law 3528/2007) provides that, for the public servant who is an unmarried or widowed or divorced parent, the reduced by one hour working time or the continuous parental leave increase up to six (6) months or one (1) month, respectively. The same legal clause provides that, in case of separation, divorce, widowhood or birth of a child outside of marriage, the parent having the custody is entitled to the leave of paragraph 1 and the benefits of paragraph 2 of this article.

Moreover, matters of equal treatment of single-parent families also arise in the process of granting social benefits. An indicative case is that of a single parent, an unmarried merchant navy officer, who was receiving, as she was entitled the unemployment allowance granted by the Naval House. The woman concerned applied for the supplementary unemployment allowance, which is granted to naval personnel with children, having attached to her application the court judgment showing that she had the custody of her child. She was informed, orally, that she was not entitled to receive the supplementary unemployment allowance. She submitted a written request for a justification of the refusal to accept her application without, however, receiving an answer.

The Ombudsman pointed out to the Naval House that the different treatment of single-parent families, compared to other types of family, in regards to the process of granting the social benefit in question, constitutes discrimination on the basis of family status of the applicant, as she was denied the benefit, although she had submitted, as a single mother, the equivalent prerequisite documents required for married people to obtain this benefit. The case is pending (case No. 219588).

## Divorced parents and protection on grounds of family status

The divorced parents, as the case may be, encounter different family circumstances. The usual forms of discrimination against divorced persons in the field of employment mostly pertain to matters that are relevant to the issue of work-life balance.

A divorced special police guard, who has custody of one of his two children, requested to be posted to a different city from the one he was working, for family reasons, pursuant to a relevant provision stipulating that special police guards (and border guards) may be posted to departments of the Hellenic Police (ELAS) where there are positions of the category in which they have been assigned, if they are divorced and have custody of an underage child. In his application the complainant stated that the mother of the child was working in the city where he requested to be transferred and therefore his constant presence and that of the child was necessary in order to preserve a sense of family cohesion and to ensure the child's contact with both parents. His application was rejected for reasons pertaining in general to the interests of the Service, without provision of any further justification.

The Ombudsman intervened with the Hellenic Police Headquarters underlying both, the general obligation of the State to ensure the interaction and contact of the child with both parents in case of a divorce, and the obligation of the Service to implement the principle of equal treatment, irrespective of the applicants' family status. The Ombudsman pointed out that secondments in the police of divorced parents should be re-examined under the auspices of the particular sensitivity that must be shown to the issue of enabling the employees to cope with their professional and family obligations adequately, unless, of course, the needs of the Service are prohibitive to such flexible handing of the situation. If, however, there are serious official reasons for denying such request, these reasons must necessarily be specified, since, in the opposite case, they would have unjustified adverse consequences for both the employee and his child (case No. 229234).

## Family status as a ground for discrimination in the workplace

The unfavorable treatment of the employees in the public, wider public and private sector, which is linked, directly or indirectly to their family status, is also identified in cases whereby there is no direct reference to a specific type of partnership (marriage, civil partnership agreement). It has been determined, however, that unlawful restrictions depending on the family status exist for various reasons, as for example, the requirement to have a specific time lapsed from the date of marriage before an employee may request a transfer or co-service with a spouse. In addition, there may be restrictions on granting parental leave to employees who share the same family characteristics but differ in terms of their employment status.

### Unfair criteria for the renewal of secondments of teachers working abroad

The Law 4415/2016 abolished the possibility of extending a five-year period of a secondment of a teacher working abroad. However, through transitional to the law provisions this possibility was preserved for specific categories of teaching staff who fulfilled certain criteria. Notwithstanding that, it was determined that some of those criteria entail discrimination on grounds of family status. Concretely, the prerequisites for the renewal of posting of teachers working abroad were: the permanent residence and the uninterrupted working relationship of the spouse in the country, for a period of more than seven years and, a lapse of time for a period of three years after

the marriage had taken place. These are the requirements that must be met before submitting the application for the first extension of the secondment abroad, that is, over the initial five years period.

The Ombudsman underlined that the above-mentioned criteria discriminate between the teaching staff on the basis of their time of marriage or the duration of their employment in the residence of the spouse, creating thus special categories of teaching staff for no evident reason. The Ministry of Education, following the Ombudsman's intervention, agreed to consider an amendment of the law, so as to delete the restrictive wording (cases Nos 223985, 227514).

### Secondments on grounds of join spouse assignment for spouses of military personnel

The possibility of posting of public servants abroad for reasons of co-service with a spouse who has already be stationed abroad is a measure to protect family life and to ensure family cohesion by facilitating the cohabitation of its members.

The Ombudsman, following the examination of complaints submitted by spouses of military personnel working abroad, determined that there were hindrances in the procedure of handling such requests. The problems ensue from both, on the one hand, the lack of familiarization of the competent services with the rather recently adopted legislative framework (article 48 of Law 4440/2016), which often leads to erroneous implementation, and, on the other hand, from the controversy over which body is responsible for drawing up and issuing the required regulatory decisions.

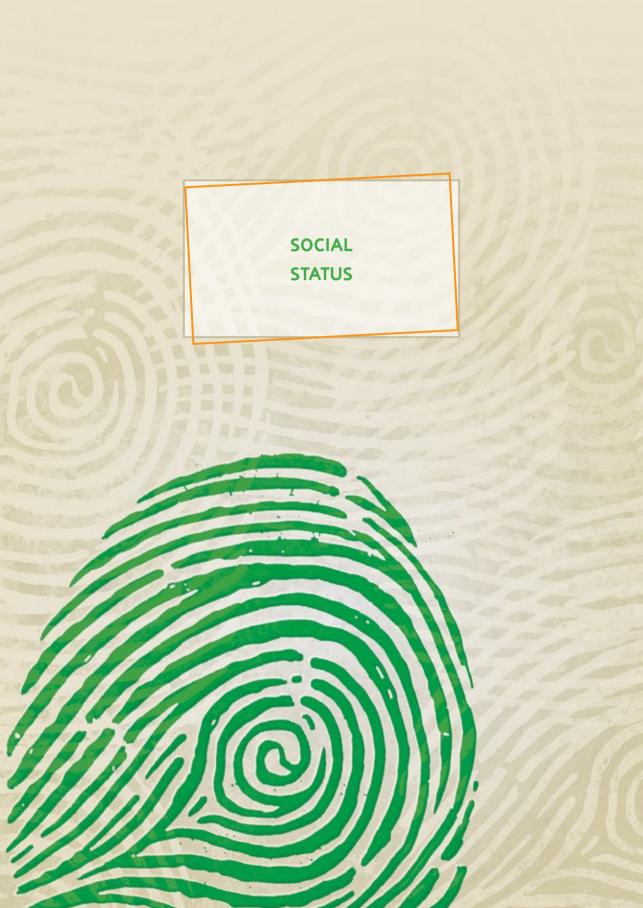
The Ombudsman, addressing the competent ministries (Ministry of Interior and of National Defense), underlined the long overdue examination of such requests and the need for immediate and effective co-operation between them. The Authority called all the involved services to step up their efforts in order to complete the procedures promptly. Nonetheless, the claimants' applications are still pending, because both sides disagree on which one has the competence to undertake the initiative to issue the required Joint Ministerial Decision (cases Nos 229746, 230514).

### Refusal to grant parental leave to employees having the same family status

An employee of the Hellenic Electricity Distribution Network Operator (DEDDIE) under a private contract for indefinite time work, applied for the

paid cumulative parental leave. His request, however, was granted not in the form of cumulative leave but in reduced daily working hours, with the justification that he was still in his probationary work period. The Ombudsman considered that, in principle, it was positive that the Company had a regulatory framework providing for the possibility of granting parental leave, whether cumulative or as reduced time, to both, male and female employees. He underlined, though, that the provision for non-granting alternative cumulative leave to parents running their probationary employment period is in conflict with the principle of equal treatment, because employees having the same family status are excluded from the cumulative parental leave on the sole criterion of their employment status. The inclusion of the personnel working under indefinite time work contracts and at the stage of running their probationary employment period as "temporary" staff, is not founded on the real employment relationship with the organization and, consequently, is considered as inappropriate.

Consequently, the Ombudsman asked the organization (DEDDIE) to provide for the possibility of individualized and justified assessment of the employees running their probationary period, as far as the granting of cumulative parental leave is concerned, possibly with an extension of the probation for as long as the cumulative leave lasts. Although DEDDIE did not accept the Ombudsman's proposal, they transferred the employee, for his convenience, to the residence area of his family for a period of three months (case No. 225386).



Social status, as a ground of discrimination, is a novel concept in the Greek national legislation. As it is a particularly broad term, it does not allow for an exhaustive or precise listing of all the social sub-categories it includes and their corresponding specific protected characteristics. Therefore, in order to determine the groups of persons that fall under this category, it is necessary to use both, a particular interpretative and practical implementation approach.

The explanatory report of Law 4443/2016 attempts to establish the boundaries of this concept, in the context of social stigmatization of a person, due to his/her distinctiveness as a member of a specific social subset. Indicatively, ex-addicts, ex-convicts, sex workers, or homeless people, may fall under this category. It is noteworthy, though, that, in accordance with said explanatory report, a specific social sub-category may also be defined as "[...] a group of persons having a common characteristic, often inherent, permanent and fundamental to the identity, conscience or exercise of human rights of its members". In this context, unfavorable treatment on grounds of social status may also be exercised on groups having common specific characteristics of race, color, national or ethnic origin, etc., such as the Roma, who are, otherwise, already expressly protected as a result of their racial origin. In any case, they belong to a specific social sub-category, against which stereotypical perceptions prevail and are reproduced, thus exacerbating social exclusion and the difficulty in enjoying equal rights of the persons that constitute it.

Consequently, discriminations on grounds of social status could run through almost the entire spectrum of all other grounds of discrimination. This combined approach is advantageous and extremely useful in establishing the link between rights and equality, as well as the influence that social status exerts, on both defining the level of protection of citizens' rights and achieving true equality.

Although the cases of discrimination on grounds of social status pertain, in accordance with Law 4443/2016, exclusively to the field of occupation and employment, the Ombudsman, in addition to the cases of discrimination in this field, analyses and often records cases where the identified discrimination, on the basis of a protected characteristic, including that of social status, appears to exert influence on fields other that occupation and employ-

ment. In this context, the Ombudsman seeks to point out the importance of horizontal extension of the protected fields (education, social protection, goods and services) for all grounds of discrimination and not only for discriminations on grounds of national or racial origin.

#### Impediments to occupation on grounds of social status

The matters of discrimination in the workplace on grounds of social status mainly pertain to procedural obstacles in the exercise of rights, and particularly to: a) the possibility of a homeless employee to submit a complaint to the competent Labor Inspectorate (case No. 231161), b) the refusal to include in the unemployment records of OAED persons who are victims of domestic violence, asylum seekers, or homeless persons who cannot declare a permanent address (cases Nos 226437, 233156, 236785). The Ombudsman has intervened in these matters by putting forward concrete proposals for the immediate lifting of the procedural restrictions in question, since in practice they constitute indirect discrimination on grounds of the social status of the applicants. The response of the administration is expected.

The Ombudsman also examines a complaint concerning the refusal of a request of conversion of a fixed-term contract to indefinite time work contract on grounds of the previous criminal conviction of the applicant. Pursuant to the provisions of Law 2207/1994 (article 4 paragraph 6): "Impediments to appointment to public services, NPDD, municipalities and communities, on grounds of previous criminal activity, do not apply to persons who have served the sentence or the security measures imposed on them or who have been dismissed on condition, provided that they are assigned jobs of auxiliary or unskilled staff with a fixed or indefinite term work contract or hourly wage". The case is pending (case No. 232650).

### The social status of the Roma as a ground of discrimination

The various forms of social exclusion of the Roma living in our country have been the object of the Ombudsman's investigation repeatedly. In addition to the impact social exclusion has on the Roma themselves, the extreme social conditions they encounter often directly affect the rights and the possessions of non-Roma citizens. In this context, apart from the tensions that are often manifested and disturb social cohesion, there are also discriminations enacted by the administration against persons who do not possess the spe-

cific racial characteristics, but rather they are the result of their relationship with this group of population, of the social conditions they live under, or the stereotypes that accompany it.

### Refusal by the Ambulance Service to receive a non-Roma patient from his residence near a Roma settlement

An indicative case having the above characteristics is a complaint submitted to the Ombudsman concerning the refusal of the National Emergency Aid Centre (EKAV) to take a patient from his residence and transport him for hospital care because his home was in a neighborhood adjacent to a Roma settlement. The patient was not Roma but was a victim of discrimination due to the fact that his house was neighboring to a Roma settlement, that is, of his presumed association (in fact, the neighboring)<sup>1</sup> with this group of the population.

In this case, the ambulance crew refused to pick up a patient from his residence in Zefiri, Attica. Instead, they asked his relatives to transfer him to the local police station in order for the ambulance to take him from there. The reason provided for this unusual request to transfer the patient to the police station was the "special conditions in the area". The EKAV claimed, on the one hand, that, during the call, no objection was expressed by the relative of the patient as for his transfer to the police station and, on the other hand, that the transfer was requested because the patient's home address was within the wider vicinity of a nearby Roma settlement and the crew did not feel safe to pick him up from that area.

The Ombudsman carried out an on site-investigation in the area of the patient's home and found that there was no Roma settlement in the entire length of the road where the patient's house was. However, the Ombudsman was informed by the police station in the area and by other relevant media reports, that it was a common practice for patients to be received by ambulances in front of the police station.

The Authority pointed out that the refusal to receive a patient from his residence constitutes an unjustified deviation from the safe, usual way of picking up patients, a practice that is not founded in any law, circular, decision or other administrative document. It also underlined that the consent of the patient himself or of his relatives does not justify automatically this deviation or guarantee the required patient's safe transfer to a medical fa-

cility. Without underestimating the importance of taking measures for the security of the ambulance service employees, the Ombudsman considered that any divergence made by the staff from the typical procedure of fulfilling their duties cannot be considered as justified by simply invoking a vague, abstract - and in the end unfounded - fear pertaining to the staff's safety or a vague sensation of their legal interests in jeopardy. Moreover, the automatic correlation made by the ambulance service between the alleged proximity to the settlement and the activation of feelings of insecurity, as well as the demand to pick up the patient at the police station, without demonstrating any concrete risks resulting in the case under consideration, reproduces stereotypes that perpetuate discriminations against the Roma, on the ground of racial origin. The aforementioned correlation constitutes a breach to Law 4443/2016, which prohibits discrimination in the fields of social protection, social security and healthcare, on the basis of any provision, criterion or practice that could put persons with the protected characteristics in a disadvantageous position compared to other persons. The same also applies to persons that may be found in a disadvantageous position due to their relationship -including being a neighbor- with persons having protected characteristics, as in this case, of race, color, national or ethnic origin.

In the end, the ambulance service claimed that the refusal of the ambulance crew to pick up the patient from his residence was an isolated incident and that receiving patients at the police station does not constitute a common practice of the service. The common practice, in such an instance, according to the ambulance service, whereby the ambulance staff feels insecure in picking up a patient, is to inform the Center in order to ask for a police escort. The refusal to receive the patient was due, according to the ambulance service, to the crew's assessment that, in order to reach the patient's house, they would have to go through the settlement. Furthermore, the ambulance service claimed that, if they had been informed, during the phone call from the patient's residence of the difficulty in transferring the patient to the police station, they would have asked for a police escort to facilitate the pick up from the patient's house. In the end, the service apologized for the inconvenience caused to the claimant, assuring that they "make any possible effort to ensure compliance with the principles of equality and equal treatment of every citizen, irrespective of race, color, national or ethnic origin" (case No. 225426).

### Extreme poverty, social exclusion and Social Solidarity Income

Extreme poverty and social exclusion, which often accompanies it, are situations that definitely, if not entirely, impede equal participation in economic and social life. Income support projects for vulnerable social groups aim, in principle, to compensate for this impediment. However, even during the implementation of such measures, certain criteria or practices may create barriers or even unfair exclusions. The Ombudsman received complaints from citizens who, although they fall under the category of citizens who live in conditions of extreme poverty and need income supplementary support, which can be provided to them through the "Social Solidarity Income" project (KEA), they are in fact excluded from being allowed to receive it because they are unable to fulfill the prerequisite of their prior enrollment in Second Chance Schools (SCS).

Specifically, article 6 of the critical Joint Ministerial Decision (JMD)<sup>2</sup> stipulates that if the beneficiaries of the income support project and the other adult members of the household have not completed their compulsory education and are not older than forty-five (45) years of age, "they are obliged to register for second chance schools in their Municipality or branches there to", while, under article 8 of the same JMD, the non-registration in second chance schools constitutes a reason for the suspension of the support already provided.

This regulation appears, in principle, to have been designed to help combat social exclusion due to illiteracy and to include or re-introduce the beneficiaries of the project into the labor market. However, in practice, it excluded groups of persons with specific characteristics of race, color, national or ethnic origin, genealogical descent, or social status, such as the majority of the Roma, for whom there are statistical data of high rate school dropout and illiteracy, a fact that essentially constitutes an indirect discrimination.

The main reasons of why a large number of beneficiaries are not able to register in second chance schools (SCS) are the following: a) Pursuant to the legislation in force, only adults having graduated from the primary degree education are entitled to register in these schools. The Roma citizens who addressed the Authority, such as the majority of those leaving in makeshift camps, not only have not completed primary education, but they are illiterate (or at least functionally illiterate). b) Moreover, even if some of them

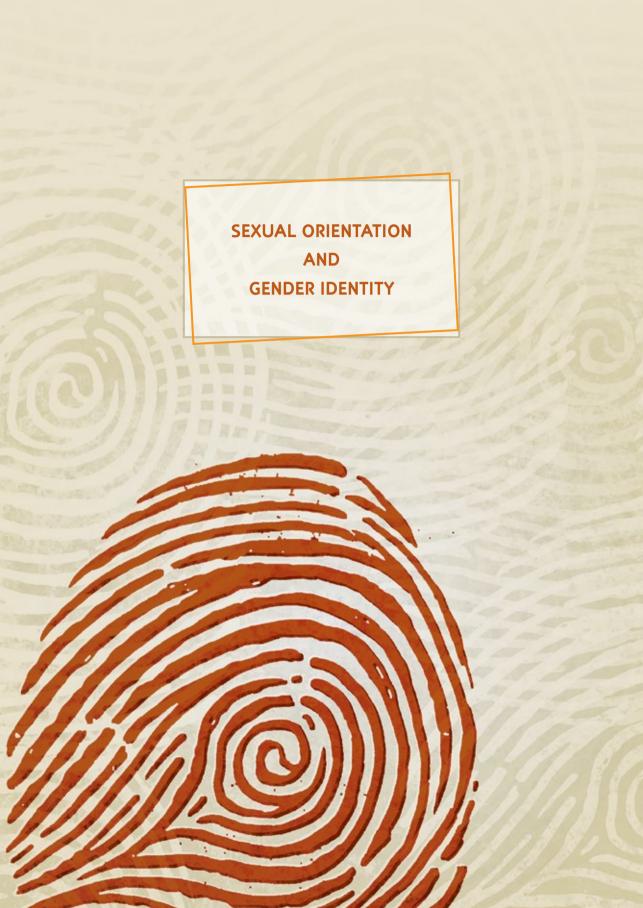
have graduated from elementary school, the offered places in the existing SCS are not sufficient to allow immediate enrollment of all the interested persons. Therefore, this provision ultimately imposes an obligation that is objectively impossible to fulfill.

The Ombudsman pointed out these matters to the Ministries of Labor and Education, underlining also that the KEA project is a measure to promote the enjoyment of economic and social fundamental rights of people experiencing extreme poverty. Of course, the Authority recognizes that these rights could be subject to restrictions for the fulfillment of a concrete public purpose; However, these restrictions must be appropriate and necessary to the achievement of that aim and they must not disproportionately burden the beneficiaries.

In the relevant intervention, the Ombudsman proposed:

- a) the complete elimination of the provision of the aforementioned JMD concerning the registration in SCS as a prerequisite for inclusion in the KEA project;
- b) the provision of an additional incentive to those who have not completed compulsory education to register in second chance schools;
- c) the co-operation of the competent ministries, so that SCS have adequate seats to accommodate the needs of all applicants;
- d) the co-operation of the competent ministries, so that SCS offer preparatory courses to students entering secondary education;
- e) the supply of adequate information on enrollment and attendance of these courses. In the case of groups with large numbers of illiterate persons, the Agencies should act proactively in offering such information.

The response of the Administration is expected (indicatively, cases Nos 235300, 235302, 235303, 235304, 235305).



#### Sexual orientation

The Ombudsman, as a body responsible for the promotion of the principle of equal treatment, firmly underlines that sexual orientation, apart from being a social fact, is an element of the individual's personality and is separately protected by the national and international legislation, which is binding for the country, as well by the constitution, in the context of the provisions pertaining to the individual's free development of his/her personality (article 5 paragraph 1 C) and to respect for human dignity (article 2 C).

Discriminations on grounds of sexual orientation pertain to a steadily limited number of topic categories, concerning especially the fields of occupation and employment. Obviously, the small number of such complaints cannot be considered as evidence of absence of discriminations. On the contrary, it indicates the hesitation of the victims to reveal delicate data of their private life, as well as the fear that the work environment would worsen following their complaint to the competent institutional authorities. As far as these complaints are concerned, in conjunction with complaints pertaining to other delicate aspects of private and social life (e.g. discriminations on grounds of religious beliefs), the Ombudsman seeks to intervene in full consultation with the complainants, while simultaneously ensuring the maximum possible discretion and confidentiality during the interventions and the communications that take place as part of the examination of such complaints.

### Civil partnership agreement: A legally recognized form of partnership for same-sex and heterosexual couples

In the context of the civil partnership agreement under Law 4356/2015, the rights recognized to cohabiting partners are the same as those of married couples (except in regards to the recognition of the right to child adoption). However, regardless of this legal recognition of equal rights for persons who opt to perform marriage or form a civil partnership agreement, in practice, there is a delay in the full equalization of rights deriving from these two forms of partnership. This problem largely relates to the institutional and social superiority that marriage still enjoys compared to the civil partnership agreement, regardless of whether it involves heterosexual or same-sex

couples. This differentiation is often noticed in cases of discriminations on grounds of family status (see Chapter "Family Status").

Specifically though, the cases investigated by the Ombudsman pertaining to the signing of a civil partnership agreement by same-sex couples, often conceal indirect discrimination on grounds of sexual orientation. This finding constitutes the end result of the discrimination on grounds of family status even more onerous, taking into consideration that, while the marriage or the civil partnership agreement is a choice for heterosexual couples, for same-sex couples the later constitutes the only recognized form of partnership.

#### Gender identity and sex characteristics

The notion of gender identity refers to a set of characteristics, behaviors and interests through which a person becomes socially integrated. The gender identity of each person does not always coincide with the gender to which he/she was assigned at birth. Instead it is primarily based on the individual's self-conception of gender in combination with social factors prevailing in a given society. The process through which a person is re-assigned in relation to his/her gender is called "gender reassignment" and the persons who are under or have completed the process are called "transgender or trans persons".

The term "sex characteristics" refers to intersex persons, who at birth have primary sex characteristics that do not correspond to the chromosomes, genes, hormones and/or anatomy by which the classification of persons as male or female occurs. Due to the inadequate understanding and the prevalent stereotypes, intersex persons are stigmatized and face serious violations of their fundamental rights, such as their right to health and physical integrity. The performance of "corrective" surgeries to intersex children, aiming to change the appearance of the outer genital organs, so that they can be classified as male or female, for no other medical reason, is unfortunately a common practice.

#### The legal recognition of gender identity: The institutional recognition of a social fact

The new law regulating the legal recognition of gender identity (Law 4491/2017) sets forth the legal procedure that transgender persons must follow in order to change their identity card and other identification documents. The basic innovation of this law is the provision according to which it



is not required to certify that the transgender person has undergone medical intervention, examination or any treatment relating to their physical or mental health, in order to undergo gender reassignment.

Although the Ombudsman considers the abolishment of the medical prerequisites as a significant step, he deems necessary to underline that the law in question does not fully comply with the European and international requirements. In particular, it does not comply with the recommendations for the establishment by the State of quick, transparent and easily accessible procedures for changing the identity card and other identification documents of the transgender persons on the basis of the principle of self-determination.<sup>1</sup> At the consultation phase of this bill, the Ombudsman forwarded to the Minister of Justice his specific observations.<sup>2</sup> In particular, the Authority stressed the need to reassess the provision according to which minors would be excluded from the possibility to correct their assigned at birth gender, a possibility available to them even in the previous legislation. Furthermore, the Authority underlined that the State is obliged to adopt measures in order to ensure respect for the identity and the gender characteristics of the underage transgender persons, while the legal recognition of their gender identity is a decisive step for the prevention of them been targeted.

The Ombudsman's recommendations concerning the importance of safe-guarding the minors' right to gender reassignment has been partially accepted. In particular, the disputed provision which required full legal capacity of the individual as a prerequisite for gender reassignment has been amended, so as to include minors between fifteen (15) and seventeen (17) years of age, on the basis of the explicit consent of their parents/guardians as well as the approval of the relevant multidisciplinary committee, which consists of: a) a child psychiatrist, b) a psychiatrist, c) an endocrinologist, d) a pediatric surgeon, e) a psychologist, f) a social worker and g) a pediatrician, with expertise in this field.

It is certain that, even after the enactment of this law, the prejudices and stereotypes that impede the full enjoyment of the rights of transgender persons will remain active. This fact, in conjunction with the problems of administrative nature that may arise during the implementation of the law, dictate alertness from the authorities entrusted to protect human rights, such as the Ombudsman, anticipating, simultaneously, a steady institutional

<sup>1.</sup> See http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21736&lang=en.

<sup>2.</sup> See https://www.synigoros.gr/resources/20170925-epistoli-pros-ypourgo-tautotita-fylou.pdf.

co-operation with the directly involved ministries and their departments, towards an efficient management of the issue thereof.

### Acceptance of gender identity as a key factor for the psychosocial development of the individual

Contrary to the cases of discrimination on grounds of sexual orientation, cases of discrimination on grounds of gender identity systematically constitute a subject matter of the complaints investigated by the Ombudsman, within the framework of the Ombudsman's competency as an equality body.

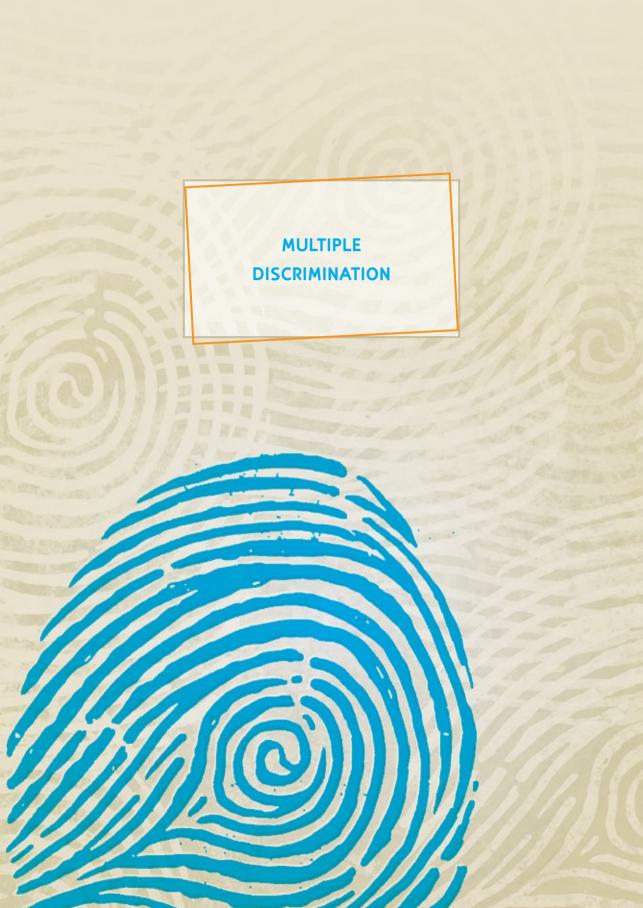
This fact is largely related to the networking and the constant co-operation that the Ombudsman has developed with organizations that are active in the field of transgender persons' rights protection, as well as to the fact that the victims themselves do not hesitate to complain to the authorities they trust. In 2017, the Ombudsman investigated complaints of discrimination on grounds of gender identity or sex characteristics, in the fields of occupation, access to goods and services and provision of healthcare in public hospitals. Cases of discrimination related to the aforementioned grounds in the area of primary and secondary education were of particular interest, due to the public debate that has been triggered by the provisions of the law on the legal recognition of gender identity.

An indicative case is that of minor transgender students, 14 and 15 years old, who asked together with their parents for the intervention of the Ombudsman, in order to make their school accept their gender identity. Their main request was to be called by the teachers with the name they have chosen, as well as to be treated with respect and acceptance, equally to their other classmates.

During the meetings held with the concerned teachers' associations, the Ombudsman highlighted both the institutional framework for the protection of transgender persons and the medical, social and psychological dimensions of the matter, while stressed the importance which the timely recognition and acceptance of the transgender adolescents has for their future psychosocial development. The Ombudsman suggested the acceptance of the following, as being the first steps of active support for these transgender students: a) the use of the name of their choice by their classmates and teachers, b) the choice of wearing dress of their preference, complying, however, with the same decency rules which apply to the other students, and c) the use of the WC facilities where they would feel safe and which correspond to their gender identity.

The participating teachers clearly expressed their interest and their intention to support the students and had a positive outlook towards the Ombudsman's proposals. However, the absence of a clear guiding framework for the teaching community and the need for supply of relevant instructions by the Ministry of Education, aiming at the efficient protection of transgender students in the field of education, were identified (cases Nos 231564 and 233918).





Law 4443/2016 introduces the concept of multiple discrimination, that is, the unfair treatment, exclusion, or restriction of a person bearing more than one of the protected characteristics. The particularity of the notion of multiple discrimination, and the importance of its recognition thereof, for the effective protection against discriminations, has already been highlighted in both, theory and in practice. It is therefore necessary, for both the interpretation and the implementation of the legislation against discriminations, to investigate whether there are more than one grounds of discrimination leading, or contributing to the more unfavorable treatment of a person or group of persons, bearing specific protected characteristics.

As case law judgments demonstrate, discrimination may be based on more than one protected characteristics. Hitherto, however, the interpretation approach in regards to the Court of Justice of the European Union (CJEU) case-law, seems to be quite narrow, as it requires the prior identification of discriminatory treatment on the basis of each of the protected characteristics, taken in isolation, as a prerequisite for establishing multiple discrimination as a whole. Consequently, if no discrimination has been found to exist separately on the basis of each of the characteristics, no multiple discrimination can be determined as resulting from the combination of more than one characteristic.<sup>1</sup>

In any event the incorporation of this new concept, which undoubtedly has a basis on the real social field, is not accompanied by specific protection provisions, and it does not generate special regulations aiming at facilitating the necessary comparison to persons who are in a similar situation. However, the Ombudsman considers that it is important to record such cases and to highlight the particular features they present, as this will enable a more thorough examination and further deepening of the investigation in regards to the means and the ways in which discriminatory acts could be effectively addressed.

In this context, it is a challenge for the Ombudsman, as a body promoting the principle of equal treatment, to identify either the coexistence of more than one grounds of discrimination or the existence of grounds that, taken in isolation, may not be able to establish discrimination, but, in combination, they



may demonstrate the worsening of the unfavorable situation encountered by the concerned persons finally leading to discrimination. Moreover, a wider approach on the issue of multiple discrimination has already been judicially initiated, focusing on the particularity the concept presents and on the need of special confrontment.<sup>2</sup>

# Multiple discrimination in cases of discrimination on grounds of gender

Cases of discrimination on grounds of gender constitute a field where the concurrence of additional protected grounds of discrimination can often lead to multiple discrimination. Grounds of discrimination which often concur with gender, exacerbating thus the unfavorable treatment of a person, are, particularly as far as women are concerned: age, family status, and national origin, which pertain to both, the persons concerned and their spouses/partners.

A characteristic case of multiple discrimination on grounds of gender and citizenship combined, is the refusal to grant the child allowance to a Greek mother, due to the spouse's foreign citizenship, as the granting conditions, according to the legislation in force, are based on the citizenship status of the husband. As a result, the mothers are excluded from being granted child allowance when their husbands are third-country citizens and have not completed the required by law period of residence in the country (cases Nos 229576, 229976).

# Multiple discrimination on grounds of family status and disability

The Ombudsman also identified the occurrence of multiple discrimination against an employee of the company Fixed Transit Public Transport (STASY). The concerned employee had requested a transfer to work in an area closer to his house so as to be able to transport his four-year-old child to and from the kindergarten. The request was made when he was working on a reduced work schedule due to parental leave. Given that the employee himself had a disability percentage of 60% while he exclusively exercised custody of his underage child, the Ombudsman considered this to be a case of multiple dis-



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<sup>2.</sup> See Opinions of the competent Advocate General on the above-mentioned case David L. Parris C-443/15, paragraphs 153-156.

crimination against the employee, on grounds of both family status and disability, pursuant to Law 3896/2010 and Law 4443/2016. The employee's request was finally approved, following the intervention of the Ombudsman and a meeting held before the Labor Inspectorate (case No. 234180).

# Widespread multiple discrimination ascertained in the private sector

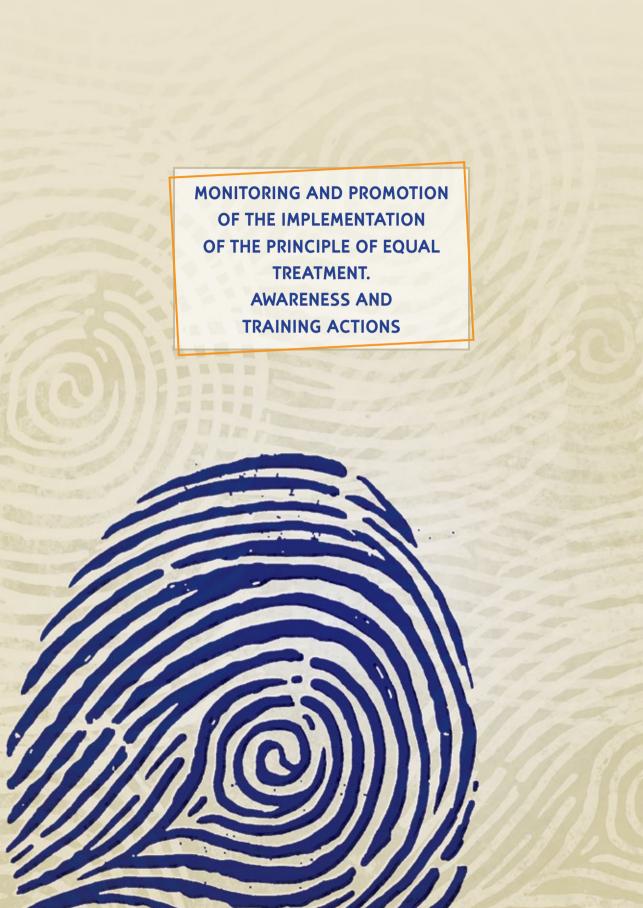
Multiple discriminations, often appearing as a rather self-evident fact, are commonly identified in job advertisements in the private sector, pertaining to a wide range of professional activities. Job advertisements are, therefore, an area where a number of unlawful working requirements maybe easily found.

The Ombudsman has received complaints of multiple discriminations in advertisements published in specific newspapers or other publications. An indicative example is the complaint submitted to the Ombudsman regarding the simultaneous existence of discrimination on grounds of gender, age and citizenship in a local newspaper advertisement for a job post of a secretary to work at a local association. The possibility of being recruited to this post was only reserved to women under 35 years old, who additionally had to be Greek citizens. In his intervention with the association the Ombudsman pointed out that the advertisement in question introduced multiple discrimination, since the restrictions set for the perspective applicants did not seem to be justified by the job duties. Thus it was prohibited, especially in view of the fact that it was not clear that only persons having the specific characteristics included in the advertisement could perform the professional requirements of the job. The Ombudsman requested the immediate withdrawal of the advertisement. The association responded immediately and withdrew the advertisement in question (case No. 221584).3

Nevertheless, irrespective of the positive outcome of this particular case, or some other similar cases, the Ombudsman is preparing a comprehensive information campaign, concerning the prohibition of discriminations in the area of accessing employment and occupation, especially as they pertain to job advertisements, in order to combat discriminations and to prevent the preservation and the spreading of the prejudices which these adds reflect.







The competence of promoting the principle of equal treatment allows for a wide range of initiatives and actions that can be undertaken. The scope of this option is largely related to the human and other resources available to the competent national equality body. Apart from activities related to the supply of information and the raising of awareness of agencies, services and the general public, regarding the value of equal treatment and the protection provided to victims of discrimination in the existing legislation, promotion actions often include targeted interventions made by the Ombudsman, in order to eliminate stereotypes and prejudices, even in cases where there is no specific victim who has appealed to the Authority. In the current chapter, there is a presentation of specific activities launched in the year 2017 by the Greek Ombudsman as the competent national equality body.

#### Targeted promotional and awareness activities

The targeted interventions made by the Ombudsman in the context of promotion and awareness raising regarding the compliance with the principle of equal treatment, involve primarily: a) interventions on current issues for which there is prior knowledge for the facts of the case due to previous examination of relevant complaints by the Authority, b) separate interventions to update and put additional pressure for the resolution of issues that have been dealt with in the past by the Authority but have not been resolved, and c) ad hoc initiatives prompted by issues of current affairs or publicity, for which there are definite indications of violation of the anti-discrimination legislation, or which involve intolerance related to the protection afforded by the applicable legislation. The aim of these interventions is to familiarize public services and private agencies and individuals with the existing legislation, as well as to combat stereotypes and prejudices that lead to discriminations.

# Refusal to provide housing services to applicants of international protection

Following media reports, which stated that certain hotel owners, citing a relevant decision of the Association of Lesvos Hotel Owners, refused to contract with the competent bodies in order to provide temporary accommo-



dation to persons applying for international protection and to newly arrived migrants who live in the Reception and Identification Center in Moria, Lesvos, the Ombudsman proceeded with an immediate investigation of this matter, in January 2017.

The Ombudsman, in his letter to the Association of Lesvos Hotel Owners –which has also been forwarded to the Chamber of Lesvos and to the Hellenic Chamber of Hotels– pointed out that this action constitutes violation of the principle of equal treatment, on the grounds of race, colour, national or ethnic origin, exhibited in the course of distribution of goods or supply of services to the public and therefore, it entails criminal sanctions (article 11 paragraph 1 Law 4443/2016).

The Ombudsman, being aware of the particular circumstances that have been created in the island, underlined the generally positive response and the contribution made by private and public bodies and the local community of Lesvos in assisting the newly arrived aliens in the island. The Ombudsman also pointed out the problems that have emerged due to the large number of migrants living under unsuitable conditions in the Reception and Identification Center of Moria. In addition, the Ombudsman highlighted that these problems were exacerbated by the extremely adverse weather conditions prevailing in the area at the time, coupled with the lack of care from the part of the co-competent bodies handling migration matters to take, timely, the necessary measures for the protection of the migrants. Moreover, already since the beginning of the refugee crisis, the Ombudsman has repeatedly pointed out these problems and has called the competent bodies to look for solutions for the improvement of the reception conditions of applicants seeking international protection, on the basis of international, European and national legislation.1

Following this intervention, the Ombudsman was informed that there was collaboration between local hotel owners and the competent state authorities of the Ministry of Migration Policy, as well as, of the United Nations High Commissioner for Refugees, in order to provide hotel accommodation to asylum seekers and migrants who are members of vulnerable groups.



1. See Annual Report 2015, pg. 34 ff. (http://www.synigoros.gr/resources/docs/ee2015-04-prosfigiko.pdf), Special Report 2017, "Migration Flows and Refugees Protection – Administrative Challenges and Human Rights" (https://www.synigoros.gr/?i=human-rights.el.files.434102), etc.

## Reactions against school training activities on the subject of gender identities

The Municipal Council of Korinthos has issued a resolution in which it declared its opposition to teaching subjects in high schools that relate to gender identity during the schools' information and awareness raising thematic week. Simultaneously, under the auspices of the Municipality, a conference was organized by agencies opposing this teaching.

The Ombudsman stressed to the municipal authorities that, inter alia, the subject of gender identities, which is covered during the schools' information and awareness thematic week, is an issue that does not fall within the competence of the local authorities, but rather to the ministry that is responsible for education, as it is related to the educational process. The Authority made clear that, in the context of the freedom of expression, which is constitutionally protected, every citizen has the right to hold and express, freely, any opinion or judgment regarding this issue (article 14 par 1 C). Nevertheless, the individual or collective bodies of the Administration, the municipal authorities and the government officials, including those elected to their posts, are obliged to act in a non-discriminatory way and in accordance to mandatory rules and principles, when performing their duties. For this reason, they should avoid any actions, declarations or conducts, which are against -or might reasonably be perceived as being against- the principle of equal treatment and that of respect of the rights of individual persons or groups of persons that have specific characteristics, in terms of their sexual orientation, gender identity, or gender characteristics.

In this case, the Ombudsman emphasized the reference in the Municipal Council Decision pertaining to the school educational modules: "Biological and social gender", "Eliminating gender stereotypes", "Homophobia and Transphobia in society and in school". This reference indicated that these subjects denote "moral degradation" and that they stand in strong contrast "to the Greek-Christian values and principles". Moreover, the invitation of the Municipality for the particular event also includes the characterization of "perverse entities". The Ombudsman emphasized that the use of expressions that can be easily perceived as negative-phobic, or denigrating and fueling stereotypes and prejudices against persons who bear protected characteristics, undermine the principle of equal treatment and the impartial operation of the Administration, while they also conflict with the obligation of the Administration to abide by the principle of due respect to human dignity and to the free development of personality (article 2 and article 5 paragraph 1 C).



In view of the above reasons, the Ombudsman reminded the Municipal Authorities of the criminal sanctions provided in the law (article1 paragraph 1 Law 927/1979, as in force) that may result in the case of incitement, provocation, stimulation or encouragement to acts/activities that may generate discrimination, hatred or violence, against a person or a group of persons on the basis of their sexual orientation or their gender identity, in such a way that it endangers public order, or poses a threat for the life, the freedom or the physical integrity of the aforementioned persons. Finally, the Authority asked the municipality to actually contribute in the fight against this type of rhetoric that fuels intolerance against ideas and actions, irrespective of any distinctive characteristics (ethnic-racial identity, religion, physical disabilities, age, sexual orientation or gender identity) a citizen may have. In order to complete the dissemination of information and the awareness of the municipality on the issue at stake, the Ombudsman sent to the Mayor and to the President of the Municipal Council information material regarding the manner of conduct that should be adopted by civil servants towards persons with protected characteristics.<sup>2</sup>

#### Racist attacks in the island of Leros

The Ombudsman, prompted by the attacks that took place against asylum seekers in Leros, in the period May 2-4, communicated with the police authorities in the islands of Leros and Kos, requesting to be promptly informed about their actions pertaining to the effective investigation of the incidents. It was underlined that this investigation should include searching for any possible racist motive, in order to prevent any further spreading or repetition of such racist attacks or practices, and to safeguard the protection of the victims and that of the primary witnesses in the case.

The Security Department of Kos informed the Ombudsman that, during the aforementioned time period, three formal complaints regarding attacks to aliens were submitted to the Police Station of Leros. Immediate action was undertaken by the police force following the submission of these complaints, and as a result, one case has already been resolved and eight nationals were arrested, while the investigations in the other cases are continued. The Security Department of Kos also provided the information that the preliminary investigation and the data collected by the Police Station of Leros did not provide evidence for any racist or homophobic behavior on behalf of the offenders.



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Nevertheless, two days after the incident, some of the victims returned and submitted supplementary testimonies declaring that they had received insults by the offenders regarding their ethnic origin. This fact prompted a new intervention by the Ombudsman towards the Security Department of Kos, whereby the following information was requested:

- a) if the new evidence submitted had been examined;
- b) if there had been any investigation, after the supplementary testimonies made by the victims, of possible racist motive;
- c) if prosecution case files for the attacks had been forwarded to the judicial authorities;
- d) if the police authorities had undertaken measures for the protection of the victims and of the primary witnesses of the attacks, as provided for in the existing legislation;
- e) if the victims of the attacks continued to reside in Leros and
- f) if they had been offered protection as members belonging to a vulnerable group.

The response from the Security Department of Kos is pending, as well as, the reply from the Reception and Identification Center of Leros and the Regional Asylum Office of Leros, on matters that fall within their competence.

### Racist attacks in Aspropyrgos

The Ombudsman has received information through media reports, that, in the area of Goritsa in Aspropyrgos (region of Attica) during the last year and a half, a large number of violent attacks and other criminal actions, indicating racist motive against aliens, have occurred (a total of 14 incidents). The attacks have allegedly taken place at the workplaces of the migrants (agricultural workers), at their homes, but also at other public places; they were unprovoked and were executed by small or large group of people, probably local residents, who acted in a coordinated manner.

Addressing the competent police authorities (Western Attica Police Security Subdivision, Department of Internal Affairs and the Aspropyrgos Police Station), the Ministry For Migration Policy and the Labor Inspectorate (SEPE), the Ombudsman has requested the following:

a) As regards the police authorities, i. an effective investigation into the potential racist motives, ii. initiatives for the prevention of further spread-



- ing or repetition of the attacks, iii. an audit on whether the official actions undertaken by the police officers were adequate or not;
- b) As regards the Ministry, an updating on the residence status of the victims and the primary witnesses; and
- c) As regards SEPE, the type of actions assumed by the Labor Inspectorate in order to safeguard the working environment of the workers in this area.

The Labor Inspectorate (SEPE) informed the Authority that it had no knowledge of any complaints pertaining to these attacks, which, after all, do not fall within its competence, as they constitute criminal offenses. The Hellenic Police Headquarters has made known that its services have dealt with seven cases of attacks which exhibit racist motives against persons of Pakistani origin, whereas, for the rest of the cases, there has been no notification to the police authorities. The case files for the seven attacks have been prepared and submitted to the Public Prosecutor of the First Instance Court of Athens, while in one of these cases some of the offenders have been identified. Furthermore, the Ombudsman was informed, that there has been no involvement of police officers from Western Attica Police Directorate in any disciplinary or criminal investigation conducted by the Division of Internal Affairs, regarding the aforementioned incidents. Finally, there has been an update/re-modification of the special operational policing plan for Western Attica, in order to meet the specific needs of the area.

# Awareness raising activities for public agencies, administrative services and civil society organizations

Twelve years after the entry into force of the first law against discriminations, there is still lack of knowledge in the general public regarding the protection provided for by law. Aiming at informing the citizens and raising the level of their awareness in regard to these matters, while supporting the work of civil society organizations that are active in the field of protecting individuals and groups with protected characteristics, the Ombudsman, with the support of





the Embassy of the Netherlands, has issued two information brochures<sup>3</sup> regarding the protection offered to victims under Laws 3896/2010 and 4443/2016:

- a) The Greek Ombudsman Against Discriminations, in three languages (Greek, English and Arabic), and
- b) The Greek Ombudsman Against Discriminations at Work in the Private Sector.

## Networking with the civil society

The Ombudsman, seeking to further strengthen its networking with civil society organizations and, in particular, to regain contact with representatives of immigrant and refugee communities, organized a day's workshop in Athens (28 November), on the issue of "Overcoming the obstacles to integration". Particularly, the focus was on the actions and the initiatives related to areas where obstacles to equal treatment and social integration of immigrants and refugees are often found (education, work, health care, nationality).

## Monitoring racist activities in Greece

The Ombudsman maintains a close cooperation with civil society organizations and other competent bodies







MONITORING AND PROMOTION OF EQUAL TREATMENT

<sup>3.</sup> See https://www.synigoros.gr/?i=equality.el. nea.496596.

in order to exchange know-how and experience in the field of protecting the rights of vulnerable population groups. In this context, the Ombudsman participates as an observer in the Racist Violence Recording Network organized by the United Nations High Commissioner for Refugees and the National Commission for Human Rights. At the same time, the Ombudsman participates as a non-voting member in the regular meetings of the National Council against Racism and Intolerance, coordinated by the General Secretariat of Transparency and Human Rights of the Ministry of Justice.

#### Educational and awareness raising activities in schools

In the context of familiarizing students with the existing legal framework for equal treatment, the Ombudsman has visited various schools in order to inform and raise awareness of students and teachers on issues related to the combat against discriminations and to the promotion of the principle of equal treatment.

#### Participation in the Anti-Racist Festival of Athens

The Ombudsman participated for yet another year, through the distribution of information material and the input of his staff, in the 20th Athens Anti-Racist Festival, on June 30 and July 1-2, at Goudi.

### Training for public administration officials

Aiming at providing training and raising awareness of public officials in mat-

ters of equal treatment, the Ombudsman, with the support of the Embassy of the Netherlands, implemented the following actions:

Publication of the Equal Treatment Guide, entitled Respect makes a difference, in printed and online version. This handbook, which is an updated version of a previous relevant guide issued in 2014, is addressed to agencies and services of the public administration. It aims to fill the gaps in the information provided to the public sector regarding the specific characteristics of persons





- enjoying special protection, so as to have a common base of understanding about the Administration's due diligence and display of respect in practice, in order to avoid discriminations and accompanying prejudices.<sup>4</sup>
- Training seminars in Athens (30 October) and in Thessaloniki (21 November) for police personnel working at the Anti-Racist Violence Departments. The training was conducted by Ombudsman officials and a representative of the migrant community.
- Training sessions in Athens (1 November) and Thessaloniki (20 November) for labor inspectors (SEPE), focused on the Ombudsman's new competences and aiming at strengthening the institutional cooperation between SEPE and the Greek Ombudsman for the effective implementation of Law 4443/2016.

## Training activities at the National Centre for Public Administration and the Police

Similarly, the training of public servants on issues of rights and equal treatment continued at the National Centre for Public Administration, the Police Academy and the School of Further Education and Training of the Hellenic Police Force. On March 17<sup>th</sup>, the Ombudsman provided training to the police personnel on the topic of "How to treat vulnerable groups", as part of the project "Training of Hellenic Police Force personnel in matters of integrated management of external borders – Training of police personnel stationed at the Passport Control Services".

#### Targeted actions and workshops

Moreover, the Ombudsman has implemented numerous workshops with representatives from public bodies and authorities that are directly involved in matters related to the combat of discriminations. For example, the Ombudsman has paid a visit to the Labor Inspectorate (SEPE) offices in Ioannina, Preveza and Lesvos, as part of his campaign in various regions of Greece. Meetings were held at the Ombudsman's premises with officials from the Ministry of Education, Research and Religious Affairs, about issues related to the application of equal treatment legislation. Finally, a workshop was carried out, entitled: "Operational Programme of National Strategy for the Social Integration of the Roma and the Operation of a Legal Clinic in the Western Attica Regional Unit" (Elefsina, 3 April).

<sup>4.</sup> See https://www.synigoros.gr/resources/im\_odigos\_web\_o\_sevasmos\_kanei\_ti\_diafora\_gr.pdf.



#### Participation in Parliamentary Committee meetings

The Deputy Ombudsman for Equal Treatment, Ms Kalliopi Lykovardi, has represented the Authority in expressing the Ombudsman's viewpoints in several sessions of Parliamentary Committees, on matters relating to equal treatment and to the improvement of the wider legal framework that outlines it. In particular, the Deputy Ombudsman has participated:

- In the joint meeting of the Standing Committee on Social Affairs and of the Special Permanent Committee on Equality, Youth and Human Rights, to mark the International Roma Day (April 11<sup>th</sup>).
- In the meetings of the Standing Committee on Social Affairs regarding the bill introduced by the Ministry of Labor, Social Security and Social Solidarity on "Pension arrangements for the public sector and other social security provisions, strengthening of the protection of the workers, rights of persons with disabilities, and other provisions" (August 31<sup>st</sup>). In this law the Ombudsman was designated as the competent body for the promotion of the rights of Persons with Disabilities (PwD), as provided by article 33, paragraph 2 of the International Convention on the Rights of Persons with Disabilities.
- In the meetings of the Standing Committee on Public Administration, Public Order and Justice, regarding the bill introduced by the Ministry of Justice, Transparency and Human Rights on "Legal Recognition of Gender Identity National Mechanism for the Development, Monitoring and Evaluation of Action Plans for the Rights of the Child" (September 27<sup>th</sup>).

### International activities - European networking

The Ombudsman is a founding and a particularly active member of the European Network of Equality Bodies (Equinet). Equinet is a network of horizontal connection and coordination of the competent, for the implementation of the EU Directives regarding equal treatment, bodies of EU member states and EU acceding countries. The Ombudsman is represented in the Equinet Executive Board by the Deputy Ombudsman for Equal Treatment, after her reelection in this position in October 2017. Moreover, a significant number of senior investigators of the Authority participate actively in the regular working groups meetings and the special thematic platforms of the network. The exchange of information and of best practices that occurs amongst the representatives of the Equinet member bodies involved in the network, contributes greatly to the dissemination of information pertaining to the



developments in Europe in the field of equal treatment and facilitates the adaptation of European practices and activities to the national needs and prospects.

The Ombudsman has also participated in various conferences and workshops organized by international and European bodies and organizations, which are active in equality issues. For example, the Deputy Ombudsman for Equal Treatment, Ms Kalliopi Lykovardi, participated with her interventions:

- In an international conference on the theme "Discriminations in Greece today", with a presentation focusing on the role of the national bodies, entitled: "Combating Discrimination: The Role and Challenges for the National Equality Bodies" (Thessaloniki, March 4<sup>th</sup>).
- In the annual conference held by the European Commission Against Racism and Intolerance (ECRI) of the Council of Europe, on the theme "Revision of ECRI General Policy Recommendation (GPR) No. 2 on: Specialised bodies to combat racism, xenophobia, anti-semitism and intolerance at national level", where the focus was on: "Remarks of the Greek Ombudsman on the preliminary revising draft of ECRI's General Policy Recommendation No. 2" (Strasbourg, 22-24 of May).

Finally, senior investigator Ms A. Papadopoulou participated in the 6th Workshop of the European Roma Information Office (ERIO), on: "Ending discrimination of Roma in employment: the role of Equality Bodies" (Brussels, September 29<sup>th</sup>).

### **Conferences – Meetings**

The Ombudsman, represented by the Deputy Ombudsman and other Authority officials, has participated by making presentations or interventions in various events, conferences and workshops that took place in Greece, regarding issues related to the equal treatment and the combating of discriminations, focusing especially on the role of the Ombudsman as an authority that promotes the principle of equal treatment. Inter alia:

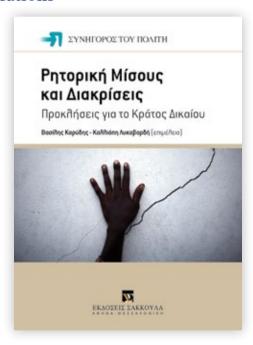
- Senior investigator Ms. A. Leventi made a presentation entitled "The Greek Ombudsman as a body monitoring the implementation of the principle of equal treatment in the workplace", during a workshop on "Psychosocial Risks in the Workplace", organized by the Institute on Social Dynamics and the Open University of the Municipality of Kifissia (Kifissia, June 9th).
- The Deputy Ombudsman Ms. Kalliopi Lykovardi made a presentation en-



- titled "Gender Identities and Discriminations: The Greek Ombudsman's Experience", during a conference on "Gender, Human Rights and the Media" (Thessaloniki, June 28th & 29<sup>th</sup>).
- Senior investigator Ms. Ch. Angeli gave a speech on "The Role of the Greek Ombudsman in Examining Complaints of Sexual Harassment in the Workplace", in an event organized by the Shelter for Abused Women of the Municipality of Chania, to mark the International Day for the Elimination of Violence against Women (Chania, November 23<sup>rd</sup>).

#### **Publications**

In December 2017, the Ombudsman published a volume entitled *Hate Speech and Discriminations – Challenges for the Rule of Law*, edited by the late Vassilis Karydis (former Deputy Ombudsman) and Ms. Kalliopi Lykovardi (Deputy Ombudsman). This volume contains edited presentations from a workshop organized by the independent Authority in 2016, on the above subject.



### **ABBREVIATIONS**

ADMIE		Independent Power	ELTA	Hellenic Post Office	
	AFM	Transmission Operator Tax Registration Number	ERIO	European Roma Information Office	
	AMKA	Social Insurance Number	EU	European Union	
	ASEP	Supreme Council for Civil Personnel Selection	EYATH	Thessaloniki Water Supply and Sewerage Company	
	BG	Bank of Greece	FEK	Government Gazette	
	С	Constitution	GEETHA	Hellenic National Defense	
CBA		Collective Bargaining Agreement	HE	General Staff Higher Education	
CJEU	Court of Justice of the European Union	IKA	Social Insurance Institute		
		JMD	Joint Ministerial Decision		
	CKPD	Convention on the Rights of Persons with Disabilities	KEA	Social Solidarity Income	
DEDDIE	DEDDIE	Hellenic Electricity	KEP	Citizens' Service Center	
	Distribution Network Operator S.A.	KEPA	Disability Certification Center		
	DEI	Public Power Corporation	KYPA	Foreign Citizen Health	
ECRI	European Commission against Racism and Intolerance		Insurance Card		
		NGO	Non-Governmental Organization		
	ECHR	European Convention on Human Rights	NPDD	Legal Person governed by Public Law	
	ECtHR	European Court of Human Rights	OAED	Greek Manpower Employment Organization	
	EKAV	National Emergency Aid Center	OASA	Athens Urban Area Transport Organization	
	EL	Emergency Law	OGA	Agricultural Insurance	
ELAS		Hellenic Police		Organization	

OSE	Hellenic Railways Organization	SLC	State Legal Council	
		SMC	Supreme Medical	
OSY	Athens Road Transport		Committee	
PD	Presidential Decree	STASY	Fixed Transit Public Transport	
PwD	Persons with Disabilities	TFEU	Treaty on the Functioning of	
SCS	Second Chance Schools		the European Union	
SEPE	Labor Inspectorate	UN	United Nations Organization	







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