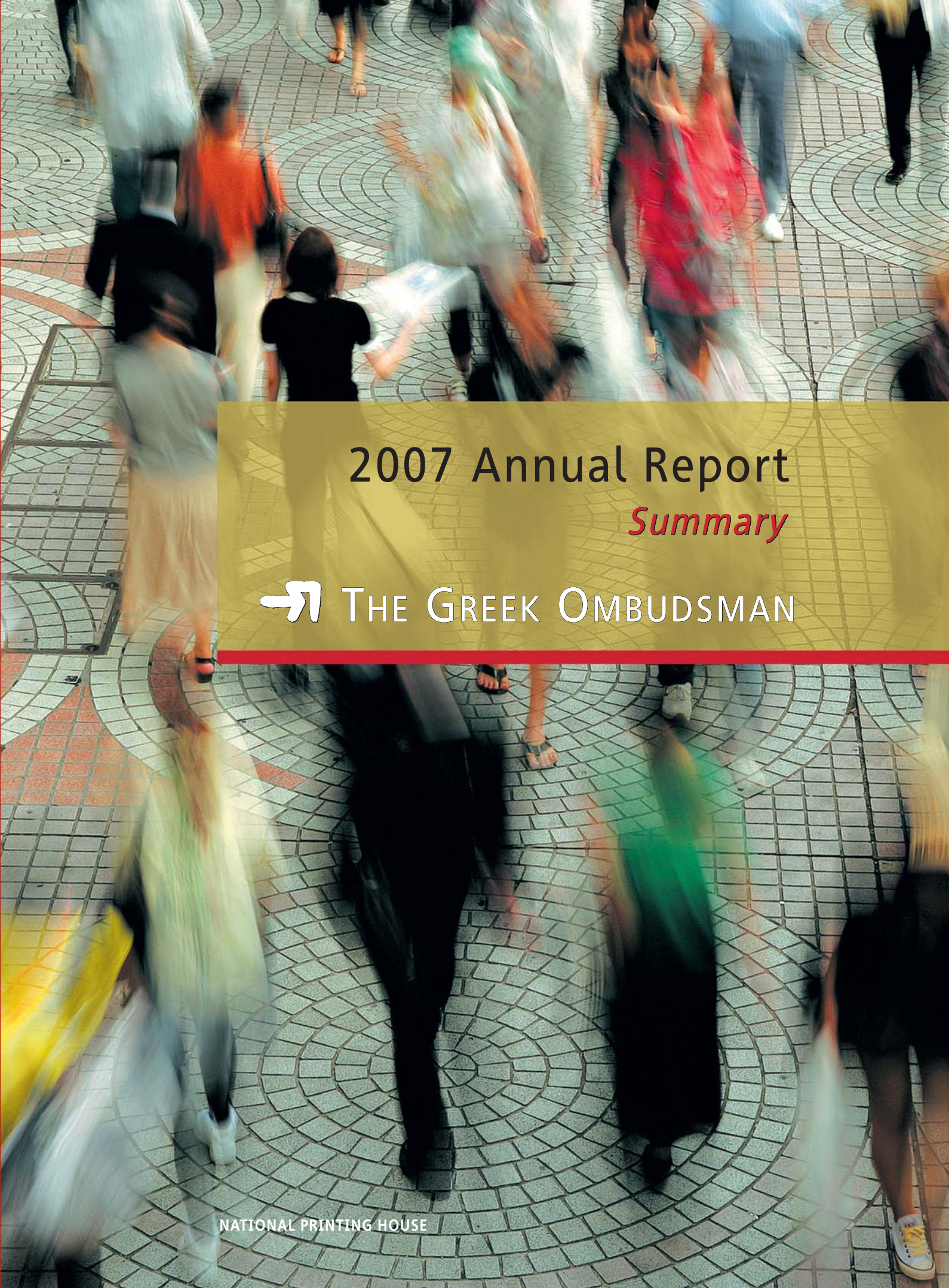

2007 Annual Report

Summary

THE GREEK OMBUDSMAN

NATIONAL PRINTING HOUSE

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This is a summarized presentation
of the *2007 Annual Report*
of the Greek Ombudsman.

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PREFACE

THE GOAL AND MAIN PREOCCUPATION DURING THE FIRST TERM OF OFFICE OF THE GREEK OMBUDSMAN (1998–2003) was to make the newborn institution known and accessible to the wider public. It seems that this objective has been achieved as in 2002, just four years after it started operations, more than 11,000 citizens have filed a complaint with the Ombudsman. For its second term (2003–2007), the Ombudsman aimed at preserving what had been accomplished previously and attempted an open approach towards the public administration. This venture has been a difficult one and at first glance seemed like a contradiction of terms, as the Ombudsman should, on the one hand, continue to take the citizens' part before the public administration that had wronged them and, on the other, in a persistent and systematic way, the Ombudsman ought to approach public administration, understand the problems it comes across so as to assist in solving them. In practice, there is no contradiction in this: public administration is too in the citizens' service, just as the Ombudsman is.

So, there is no rivalry between the Ombudsman and public administration – they both have the constitutional obligation to serve society, each one from their own position. Consequently, the Ombudsman, as helper of public administration, has developed during its second term complex activity, the general lines of which I attempted to describe in the preface of the *2006 Annual Report*. This activity has been acknowledged by the competent body, the Conference of the Presidents of the Greek Parliament, which renewed my term of office. This selection has been a particular honour not only to the head of the Greek Ombudsman Office, but also to all the members of administrative and expert personnel.

In the third term of office which has just begun, the Ombudsman should consolidate the first term's acquis, namely defending the legal claims of citizens finding recourse to the Ombudsman, while at the same time keeping all channels open for communication and cooperation with the administration. Society and the public administration are, for that matter, the two main "interlocutors" of the Ombudsman.

However, there is a third interlocutor that has recently started to establish its own place in this dialogue: NGO's. The Ombudsman has already begun to develop a systematic cooperation with NGO's in order to approach population groups in the margins of society that, for a number of reasons (e.g. very old people, inmates in prisons, hospitals, etc.), do not have access to the Ombudsman services. This networking with NGO's combined with the new responsibilities assigned to the Ombudsman, since 2005, for equal treatment (regardless of disability, sex, age, beliefs, sexual orientation, etc.) create the preconditions for the effective action of the Ombudsman to the benefit of population groups that are subjected to grave discrimination in all fields of social life.

YORGOS V. KAMINIS
MARCH 2008

The Greek Ombudsman is a constitutionally established independent authority. It started operations on 1st October 1998 and it provides its services to all citizens free of charge.

Its organization, staffing, and operation are defined in Law 3094/2003 and by the Operating Regulations (Presidential Decree 273/1999), in the context laid out by the provisions of the Constitution following its revision in 2001. The complete texts of these laws can be found on the Greek Ombudsman's website: www.synigoros.gr

The mission of the Greek Ombudsman is to mediate between the public administration and private individuals, in order to protect the latter's rights, to ensure the former's compliance with the rule of law, and to combat maladministration. The Ombudsman also deals with the protection and promotion of the rights of children. In 2004, the new institution of Ombudsman of Health and Social Solidarity was included in the Office of the Greek Ombudsman. Also, as of the enactment of Law 3304/2005 with reference to "the application of the principle of equal treatment regardless of ethnic origin, religious or other convictions, disability, age or sexual orientation", the Ombudsman's role was extended to cover the promotion of equal treatment by public administration services. Finally, according to Law 3488/2006, the Ombudsman is responsible for monitoring the implementation of the principle of equal treatment of men and women as to their access to employment and occupation, vocational training and promotion, and in the terms and conditions of employment.

As mediator, the Ombudsman addresses recommendations and proposals to the public administration, but it does not impose sanctions on, or annul the illegal actions of the public administration.

Any Greek or foreign citizen living in Greece or abroad, and having dealings with the Greek public sector may have recourse to the Ombudsman. Specifically regarding infringements of the rights of children, the child directly concerned, a parent or relative, as well as third parties who are directly aware of an infringement of children's rights may have recourse to the Ombudsman. This also holds for legal entities or associations.

The Ombudsman intervenes in problems faced by citizens in their transactions with the public administration, such as insufficient provision of, or refusal to provide information; excessive delay in the processing of requests; the infringement of laws or the use of illegal procedures; unfair discrimination against citizens.

The Greek Ombudsman has competence in cases where citizens have differences with the services of:

- The public administration;
- Primary (communities, municipalities) and secondary (prefectures) level local government authorities;
- Other public law entities;
- Private law corporate entities; the enterprises and organizations which are controlled by the state or by public law entities.

Exceptionally, in cases of violation of children's rights and of the principle of equal treatment in employment, the Ombudsman has also jurisdiction over the acts of individuals and of natural and legal entities.

The Greek Ombudsman:

- Cannot intervene if more than six months have elapsed from the time the complainant initially learned of the public administration's illegal action or failure to act.
- Does not provide general information or legal advice.
- Does not have jurisdiction over disputes between private individuals.

Nor does the Greek Ombudsman have jurisdiction over:

- Cases related to the service status of civil servants (unless such cases are related to the unequal treatment of civil servants, falling within the scope of Law 3304/2005 and Law 3488/2005), to national defence, to foreign policy and international relations, to state security;
- Cases pending before the courts;
- Actions taken by the courts, the Legal Counsels of the State, independent authorities, or religious public law entities;
- Actions taken by ministers and deputy ministers regarding the administration of political life.

Filing complaints and the investigation process

The Ombudsman undertakes any matter which falls within its jurisdiction, following filing of a complaint in writing by any individual, legal entity, or association directly concerned by the matter. Complaints must be submitted in person, by mail or by fax. They must contain: full and accurate details of the complainant; a brief description of the problem; the complainant's demand; the public service involved or, in the case of a children's right infringement, the individual involved; the steps which have already been taken and their outcome; any supporting documentation or information which might help in the investigation of the matter.

Complaints are assigned to one of five Office Departments: Human Rights; Social Protection; Quality of Life; State – Citizen Relations; Children's Rights.

The complainant is kept informed in writing or by telephone at each stage of the process. The investigation is completed with the drafting of a document, which the Ombudsman addresses to the relevant authority. If, however, the nature of the case calls for it, the Ombudsman can instigate the institutional competences foreseen under Law 3094/2003 and proceed to an on-site investigation or refer the case to a prosecutorial/disciplinary examination. Finally, where necessary, the investigation is completed with the drafting of a findings paper, which is also copied to the competent minister.

The complainant is also informed in writing when the complaint cannot be investigated by the Ombudsman, either because the Ombudsman does not have jurisdiction over the matter or because the complaint does not relate to a specific legal entity, is groundless, or is exercised in an abusive fashion.

The Greek Ombudsman can:

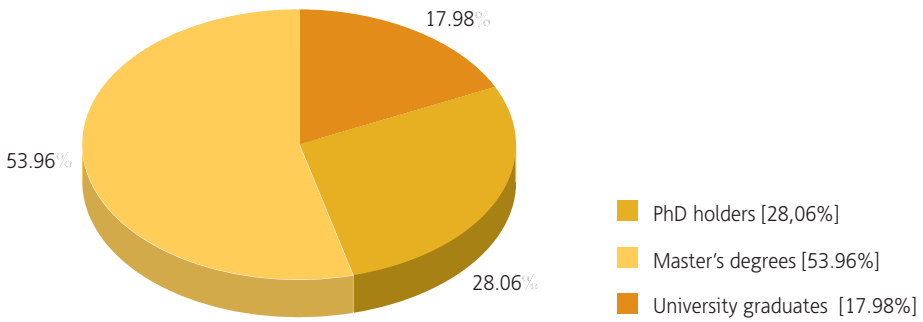
- Request from the public services any piece of information, document, or other element concerning the case; examine persons; carry out on-site investigations and call for expert opinions.
- Set a time limit within which the public services concerned should inform the Ombudsman, either on the steps taken to comply with its recommendations or of the reasons for which these recommendations cannot be applied.

If an official, employee, or member of the public administration refuses to cooperate with the Ombudsman in the course of an investigation, this may constitute, depending on the case, a breach of duty or a cause for replacement. If it can be deducted from the Ombudsman's reports that an administration official or civil servant obstructs for a second time within a three-year period an investigation, or refuses without any serious reason to cooperate in solving a problem, he/she may be punished with dismissal. Finally, if there are sufficient indications of criminal acts by an official, employee, or civil servant, the Ombudsman sends its report to the prosecutor in charge.

Organization and personnel

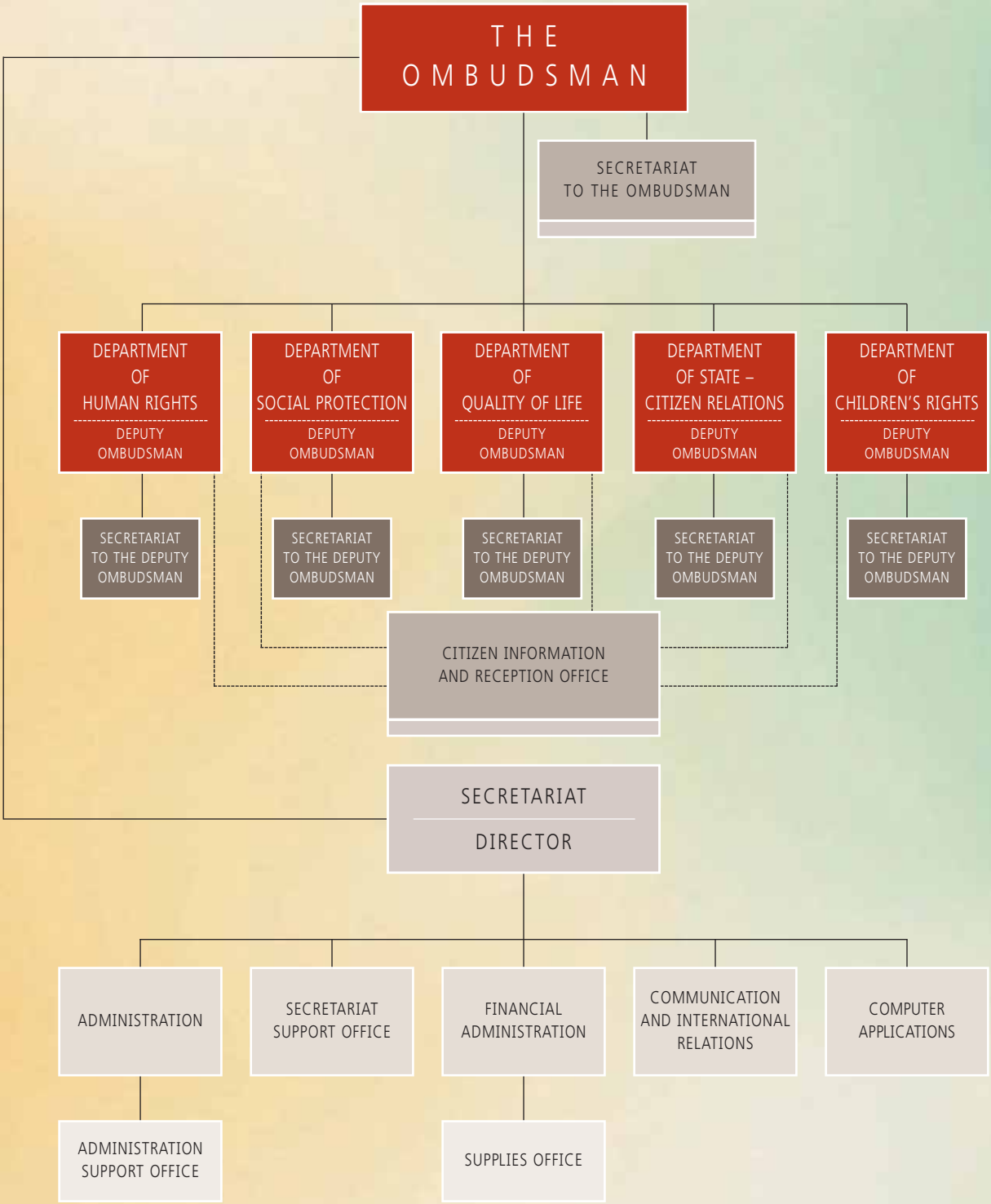
On 31st December 2007, the total of employees at the Office of the Greek Ombudsman, the Ombudsman himself and the five Deputy Ombudsmen included, was 189 people, 59 of whom were men and 130 women.

The expert personnel consists of 39 PhD holders (28.06%), 75 holders (53.96%) of Master's degrees and 25 graduates (17.98%) from domestic or foreign university institutions.



The expert and administrative personnel come from a wide range of backgrounds, as shown in their degrees:

	Number of people	Percentage		Number of people	Percentage
Law	79	(48.48%)	Geology	3	(1.84%)
Political science	12	(7.37%)	Oceanography	3	(1.84%)
Language and literature	11	(6.75%)	Chemistry	3	(1.84%)
Economics	11	(6.75%)	Civil engineering	2	(1.23%)
Sociology	9	(5.52%)	Education	2	(1.23%)
Archaeology	7	(4.29%)	Administration	1	(0.61%)
Information technology	6	(3.68%)	Statistics and insurance	1	(0.61%)
Journalism	4	(2.45%)	Medicine	1	(0.61%)
Urban planning, architecture	4	(2.45%)	Topography	1	(0.61%)
Psychology	3	(1.84%)			


THE OMBUDSMAN
SECRETARIAT TO THE OMBUDSMAN
DEPARTMENT OF HUMAN RIGHTS
DEPUTY OMBUDSMAN
DEPARTMENT OF SOCIAL PROTECTION
DEPUTY OMBUDSMAN
DEPARTMENT OF QUALITY OF LIFE
DEPUTY OMBUDSMAN
DEPARTMENT OF STATE – CITIZEN RELATIONS
DEPUTY OMBUDSMAN
DEPARTMENT OF CHILDREN'S RIGHTS
DEPUTY OMBUDSMAN
SECRETARIAT TO THE DEPUTY OMBUDSMAN
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SECRETARIAT TO THE DEPUTY OMBUDSMAN
CITIZEN INFORMATION AND RECEPTION OFFICE
SECRETARIAT
DIRECTOR
ADMINISTRATION
SECRETARIAT SUPPORT OFFICE
FINANCIAL ADMINISTRATION
COMMUNICATION AND INTERNATIONAL RELATIONS
COMPUTER APPLICATIONS
ADMINISTRATION SUPPORT OFFICE
SUPPLIES OFFICE

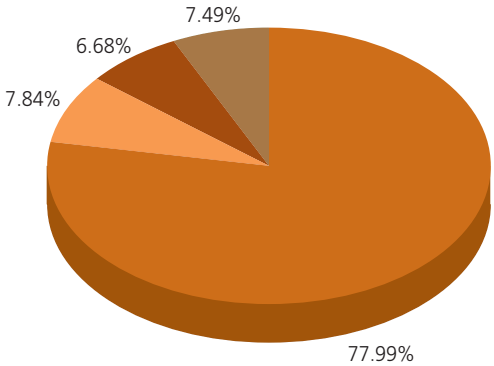
Increase of the total number of new complaints – Decrease of complaints not falling within the Ombudsman's mandate. In 2007, the Ombudsman received 10,611 new complaints filed by citizens, accounting to a 15.82% increase in the complaints filed compared to 2006. At the same time, the number of cases closed and archived as not falling within the Ombudsman's mandate decreased by 4.48% since the previous year. So, the percentage of new complaints not falling within the Ombudsman's mandate accounts for 27.5% (2,916 complaints) of the total number of complaints and it is the lowest one for the last eight years. This seems to indicate that citizens are now better informed on the role and competences of the Ombudsman.

The public administration improved its response to the Ombudsman's mediatory work. This was the third consecutive year that saw an improvement in the Ombudsman's effective action. More specifically, the number of cases in which the public administration did not respond to the mediatory proposals by the Ombudsman has fallen; it accounts for 7.84% of the total of founded complaints filed in 2007.

Main agencies of maladministration: In 2007, instances of maladministration were found especially in the Directorate of Aliens and Immigration of the Region of Attiki (Attica – 13.82%), municipalities (16.94%), main social security organizations (10.52%), prefectures (8.53%) and the (formerly) Ministry of Public Order (5.62%), as well as the Ministry of Economy and Finance (4.42%). It should, however, be considered a positive development the significant decrease of maladministration percentages in municipalities in comparison to that of the previous year (20.66%).

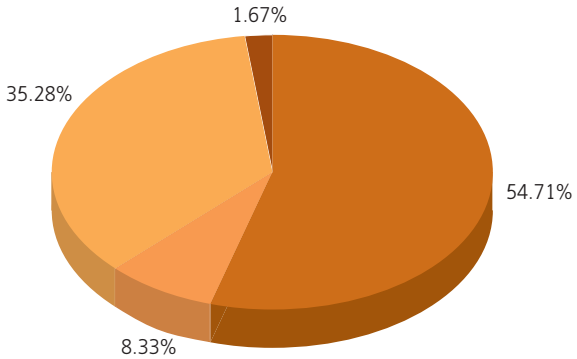
Main forms of maladministration were: not observing time limits set by the law for processing citizens' matters (often due to the absolute inertia of the public service involved in each case); the infringement of law provisions or regulatory acts; the insufficient information provided to citizens on their rights and obligations; the poor cooperation and coordination between public services.

GENERAL CATEGORIES OF OUTCOME OF THE CASES INVESTIGATED*



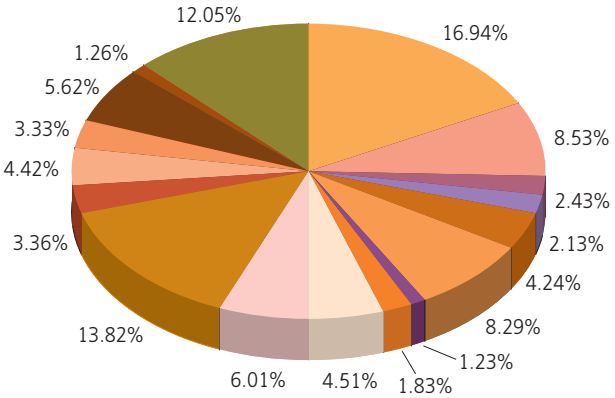
- Resolution of maladministration problem following mediation by the Ombudsman [77.99%]
- Non-resolution of maladministration problem [7.84%] (non acceptance of the Ombudsman's proposals)
- Impossibility of resolution [6.68%] (legislative gap, organizational malfunctions)
- Resolution without mediation by the Ombudsman [7.49%]

PLACE OF RESIDENCE OF COMPLAINANTS



- Attiki [54.71%]
- Thessaloniki [8.33%]
- Rest of Greece [35.28%]
- Abroad [1.67%]

DISTRIBUTION OF MALADMINISTRATION CASES BY AGENCY



- Communities – Municipalities (primary level local government authorities) [16.94%]
- Prefectures (secondary level local government authorities) [8.53%]
- DEH [2.43%]
- EYDAP [2.13%]
- Other private law legal entities and public utility corporations (within the Ombudsman's mandate) [4.24%]
- Other supervised services [8.29%]
- Health care agencies [1.23%]
- Supplementary insurance, health, and welfare agencies [1.83%]
- IKA [4.51%]
- Other social security organizations (OGA, TAE, TEVE, NAT, etc.) [6.01%]
- Directorate of Aliens and Immigration of the Region of Attiki [13.82%]
- Regions [3.36%]
- Ministry of Economy and Finance [4.42%]
- Ministry of Education and Religious Affairs [3.33%]
- Ministry of Public Order [5.62%]
- Ministry for the Environment, Public Administration, and Decentralization [1.26%]
- Other ministries [12.05%]

* Complaints within the Ombudsman's mandate which concern violations of children's rights by private individuals are not included in the mentioned categories.

The Ombudsman's annual report, although it is not an exhaustive presentation of the hindrances in effectively protecting human rights in Greece, it is nevertheless a reliable index for the level of protection and respect human rights enjoy, especially in fields such as: the protection of personal freedom and security; freedom of conscience; religious, professional and academic freedom; the right to education; the protection of racial and ethnic minorities; equal treatment; the status of aliens; political asylum; and others.

NEW COMPLAINTS, 2007	**2,465**
PERCENTAGE ON THE TOTAL OF NEW COMPLAINTS	23.23%
NEW COMPLAINTS WITHIN THE OMBUDSMAN'S MANDATE	2,120

COMPLAINTS WITHIN THE OMBUDSMAN'S MANDATE PROCESSED IN 2007	1,680
MALADMINISTRATION PROBLEM CORROBORATED	1,072
Problem resolved (favourable outcome)	935
Non-resolution of maladministration problem (Ombudsman's recommendations were not accepted)	81
Impossibility of resolution (e.g. gap in legislation, organizational malfunctions)	56
MALADMINISTRATION PROBLEM NOT CORROBORATED	507
INVESTIGATION DISCONTINUED	101

ANDREAS TAKIS
Deputy Ombudsman

This year's report confirms what has been already noted in the 2006 report, namely the contradiction of trends in regard to the cooperation of public administration with the Ombudsman, but also the protection of human rights themselves. On the one had, cooperativeness of administrative authorities in human rights issues is still improving, the Ministry of Justice being the sole exception. On the other hand, however, the recognition of the Ombudsman's institutional role has not brought by – as since only recently it was the case – visible favourable outcome in satisfying *well-founded citizen claims.*

This contradiction reflects a structural reservation of the administration mechanisms towards human rights themselves and their legal binding character, which is first of all due to the inherent trend of these rights to question well-established within the state pockets of uncontrolled action. This is an indication that, despite the smooth operation of our constitutional regime during the last 30 years, applying and consolidating human rights, and the fundamental freedoms themselves established by the Constitution, in the everyday life of the political system and the continuous contact between citizens and the administration remains still superficial to a large extent.

Police control

There is a continuous flow of complaints on violations of personal freedom within the framework of police action. In cases of arrests, administrative investigations that usually take place afterwards in general fail to adequately justify police actions; that is, to found these actions on a specific suspicion of an illegal act committed, as dictated by the law. In some cases the obligation itself to provide an appropriate justification is questioned. In one case, moreover, the investigation was completed without the complainant testifying.

Favourable outcome

In some cases either a new investigation was carried out, after the Ombudsman noted the formal deficiencies of the administrative investigation, or the investigation was from the beginning assigned to a police official serving in a directorate other than the one in which the investigated event took place.

It should be noted that the European Court of Human Rights integrated in its decisions of 24 May 2007 and 6 December 2007 verbatim chapters from a special report of the Ombudsman on the disciplinary/administrative investigation of complaints against police officers, documenting its constant stance that the ineffectiveness of internal police investigations constitutes anew violation of those rights that have already been violated by the actions complained against, especially if the possibility of racial bias has been neglected or medical reports have not been taken into account.

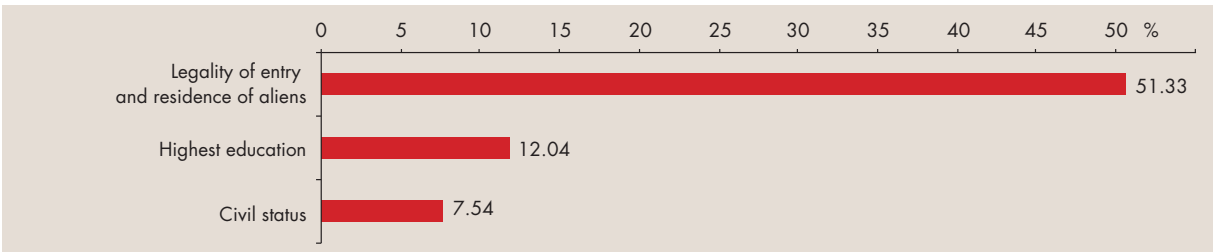
Similar problems have been noted in the way the Port Police deals with complaints against its officers, especially in regard to the treatment of aliens entering the country by sea and being arrested or detained under the port authorities. As confirming what has been reported is usually extremely difficult, this allows for rejecting all complaints as vague or on formal technicalities. However, even if confirming what has been reported is possible, the disciplinary investigation is seriously deficient.

Indicative case

The leadership of the Port Police and the Ministry of Mercantile Marine refused, despite the suggestions by the Ombudsman, to address, as a minimum manifestation of disapproval of similar attitudes and a commitment to prevent such conduct in the future, a letter of apology to a Turkish national – asylum applicant in the past – who had evidently been humiliated and brutally abused with a police baton by members of the Port Police.

The incidents of arrests and detainment due to erroneous entries in the wanted by

MAIN SUBJECTS OF THE COMPLAINTS HANDLED BY THE DEPARTMENT



the police electronic data bases have increased. The Ombudsman suggested, among others, that prosecution documents with missing data should not be taken into account and the possible questioning of their validity should be examined independently and along the data held by the police. In case of doubt, the police should free the arrested individual so that he/she can have recourse to the competent court for the final settlement of their case within a reasonable period of time. The co-competent ministries acknowledged the issue and will examine the Ombudsman's proposals.

The Ombudsman in any case, when completing the investigation of each one of the cases of illegal arrest due to erroneous electronic entry, informs the complainants of their right to compensation by the state.

Correctional process

Detainees' transfer

The administration does not respond satisfactorily to its obligation to provide full, well-founded and individual justification in complaints related to detainees' transfers. This reached its highest point when the Ministry of Justice illegally refused to provide the Ombudsman with information on the transfer of specific detainees who filed complaints with the Ombudsman. The cooperation between the Ombudsman and the Ministry of Justice have deteriorated even further due, on the one hand, to the unwillingness of the ministry to respond to the Ombudsman's proposals and, on the other, to its persistent refusal to acknowledge the competence of the Ombudsman in visiting correctional facilities and carrying out on-site investigations.

Detention conditions

On the occasion of a complaint by a detainee in the Korydallos prison awaiting trial, the Ombudsman noted that according to the Penitentiary Code the detainee:

- Has the right to medical care similar to that of the rest of the population.
- Should undergo the prescribed treatment or special diet in case of a specific health problem.
- Should be transferred to the appropriate hospital if this is deemed necessary.

In this specific case, the administration of the Korydallos prison informed the Ombudsman that the detainee, apart from the medication, would follow a specific diet and that it had already been arranged for him to be transferred to the hospital.

Regular detainee leave of absence from prison

On the occasion of complaints on the refusal to grant leave of absence from prison to inmates, the Ombudsman noted that every inmate should be able to enjoy the benefits of the flexible serving of prison sentence,

without the mark of the seriousness of his/her action for ever or the elimination of any benefits from good behaviour during his/her sentence. Since the Penitentiary Code does not provide for refusal to grant a leave of absence when the applicant has not been disciplinary punished, has demonstrated good behaviour, and his family and friends provide guarantee and give detailed information, the rejection of an application for a leave of absence, according to the Ombudsman, should not be allowed to be based on the remaining sentence to be served, as this is not explicitly provided for in the law and proves lack of any *gain* from this leave.

Freedom of religion

As for respecting religious beliefs, a typical example is religious holidays. The Ombudsman investigated the rejection of the application of a candidate for a professional permit (insurance counselor) to present himself before the competent committee any other day apart from Saturday, due to his religion. The Ministry of Development accepted the argument put forth by the Ombudsman that in this specific part of the selection process it is not necessary to examine all candidates on the same day, and the claim of the complainant was accepted.

Favourable outcome

The Ministry of Education and Religious Affairs had a favourable response to the Ombudsman's suggestion to make corrections to a text book, following protests by a religious community about the way in which their teachings were depicted therein. In the re-edition of this textbook in 2007, the description of the dogma in question makes reference to publications of the religious community itself; moreover, the numeration of the differences from Orthodox Christianity is clearly distinct from the description of the dogma and all disdainful characterizations have been eliminated. It should be noted that the corrections were made through the strict adherence to the transparent process of control by the Pedagogical Institute and in cooperation with the authors of the textbook.

There is a continuous inflow of complaints on the birth registry entry of the names of newborn babies according to the baptism ceremony and without the prior, distinctive and established by the law process of name giving requiring the con-

sensus of both parents. The Ombudsman notes that the Ministry of the Interior, Public Administration, and Decentralization should issue a circular to clarify explicitly the name giving procedure.

Finally, the unjustified delay by the Ministry of Education and Religious Affairs to process the applications for the establishment of temples for other religions puts Greece in the risk to be convicted again by the European Court of Human Rights.

Education

Access to tertiary education

The Ministry of Education and Religious Affairs refused to grant to the interested parties, who had sat for the university entry examination, copies of their written exam, contrary to the relevant decision by the Hellenic Data Protection Authority, on the pretext that the administration has requested that this decision is revoked. The Ombudsman noted that the administration should comply immediately with the decision by the Hellenic Data Protection Authority, which also dictates that the examination papers should be kept until the claim is satisfied.

In regard to the special process provided for (Law 3404/2005) as to the access of aliens who have graduated from high school to higher education, the Ombudsman called the ministry to set the period of school attendance that is deemed adequate for the equal and satisfactory participation in the university entry examination; also, the Ombudsman suggested that alien students who have fulfilled this attendance should participate in the special procedure that has as entry criterion the pass mark in the national entry examination, while those who have entered the Greek school system recently should participate on the basis of their apolytyrion marks.

Members of research faculty personnel

Apart from the usual issues arising during the selection process for members of research faculty personnel (insufficient justification, refusal to grant documents), the Ombudsman investigated the undue delays in issuing the relevant appointment acts. According to the Ministry of Education and Religious Affairs this was due to the fact that in order to send the dean's act of appointment to be published in the Government Gazette, the necessary fund for this appointment should have been secured from the State General Accounting Office beforehand. The Ombudsman noted that, since there is no "lack of legitimacy in election or appointment acts for a member of research faculty personnel by the Ministry of Education and Religious Affairs", the dean should proceed to the publication of the appointment in the Government Gazette. Finally, the issue was dealt with the new Law 3549/2007 which explicitly provides for

"written allocation of fund" as a precondition for appointment.

Right to employment – Access to the labour market

Academic recognition of education degrees from abroad

The Ombudsman notes that although the Cross-Disciplinary Organization for the Recognition of Academic and Information Technology Diplomas (DOATAP) has made significant progress in the operation of its services, it is still not possible for the agency to meet the deadlines set by the provisions of its statutory regulation. This is due to shortage of specialized and administrative personnel, as well as the belated response of foreign authorities and education institutions in verifying the legal preconditions for this recognition.

The DOATAP decided on the terms and conditions that should be fulfilled by doctorates of Sport Science awarded by universities of Bulgaria and Romania in order to be recognized as equal to those awarded by Greek universities. On the contrary, the agency's administration board insists that, despite the Ombudsman's differentiated opinion, it should not take into consideration together education degrees of undergraduate and postgraduate (Master's) studies in case these have been obtained under a different learning method (attendance and distance learning respectively).

Professional rights

The Ombudsman found that the Greek state has not applied Directive 2006/100/EC which allows the recognition of professional rights to holders of university degrees from Bulgaria and Romania, provided that the necessary preconditions are met. The Ombudsman noted that not issuing the relevant presidential decrees does not constitute a legal justification since:

- There is a system of recognition of medical studies degrees awarded by older EU member states.
- No provision amendment is necessary; the existing annexes should only be expanded.

This came to an end with the issuance of presidential decrees on the recognition of the right to medical practice, dentist practice and chemist practice.

There seems to be no progress in granting professional rights to: holders of university, technical university and vocation training school degrees of, among others, the Fine Art and Art Sciences Department of the University of Ioannina; graduates of the School of Applied Mathematical and Physical Sciences of the National Technical University of Athens; technical engineers; dental technicians graduates of vocational training schools; the old graduates of the specialization "Culinary Art" from the Schools of Tourism.

European citizens' freedom of residence

Favourable outcome

The Municipality of Zografou and the Payment and Control Agency for Guidance and Guarantee Community Aids (OPEKEPE) accepted the view presented by the Ombudsman that the special award of credits to registered members of the municipality in the personnel selection process carried out by municipalities constitutes discriminatory practice against European citizens; the relevant lists were redrafted and European citizens who had filled a complaint with the Ombudsman were finally employed.

Civil and municipal status

Registration on municipal rolls

The Department of Human Rights drafted a special report on change of municipality and the issuance of a permanent resident certificate.

Local government authorities continue to ask for a court decision in order to proceed to corrections on registrar certificates and municipal roll entries. It is emphasized that local government authorities refuse to correct the date – not the year – of birth of their citizens, even when there is a relevant court decision. The Ombudsman hopes that the exceptional correction of data on registrar certificates approved by the Ministry of the Interior, Public Administration, and Decentralization in specific cases marks a change of attitude on behalf of the ministry and local government as well.

Passports and identity cards

Greek consulates were not ready to respond to fully applying the early expiry date of the old passports, causing thus many problems to Greeks living aboard. The Ombudsman proposed a number of organizational arrangements (such as secondment of personnel, extended working hours for consulates, more often diplomatic pouch dispatches) and called the co-competent ministries to examine the possibility to temporarily extend the period of validity to those passports bearing an expiry date that was not yet due. The ministries opted for a series of organizational arrangements and according to their reports the issue has been resolved to a large extent.

As to the transliteration of names using the Latin alphabet that does not abide with the Hellenic Organization for Standardization (ELOT) standards, the Ombudsman notes that, on the one hand, applications are not filled in by hand and, on the other, it is not possible to check the way in which each name has been transliterated since this is not included in the application, but is added later on in the electronic data base. It should be noted that in case of erroneous transliteration and passport re-issuance, citizens are exempt from fees for the re-issuance as is the police officer who is responsible for this mistake. Competent agencies are simply acknowledging the inherent issues in the general process of submitting supporting documents to this effect.

Military status

It is still true that recruiting offices, although they are remarkably willing to cooperate with the Ombudsman, are systematically limiting the regulatory range of legislation on military service obligation by adopting interpretations or practices that make it difficult for interested parties to make the best possible use of relevant provisions.

As to the status of permanent resident abroad, the Ombudsman notes that consulates, when investigating which is the country of main and permanent residence of interested parties on the basis of supporting documents, apply extremely incon-

sistent interpretations of the legislation resulting to abolishing in essence legal certainty and military status equality.

Favourable outcome

- The General Staff of the Ministry of Defence accepted to rephrase the text in a certificate verifying that an interested party has no obligation to serve in the army, in such a way so as not to reveal, even indirectly, the reason for exemption.
- It was also acknowledged that there is a problem in organization regarding the delay in automatically registering, in the electronic file at the exit points, the lifting of restriction to leave the country; efforts are being made for a solution to the problem.

Immigration

Numerous proposals by the Ombudsman were adopted and included in Law 3536/2007 on immigration policy issues. Indicatively, these include arrangements on:

- Residence of aliens who do not hold a passport, but not on their fault.
- The possibility to submit an application for residence permit renewal after the deadline has expired (within one month after the expiry date).
- The possibility to grant a residence permit of indefinite duration.
- The possibility of the state to appeal to reasons of public order so as to recall a residence permit.

The Ombudsman considers that:
Representatives of immigrants should have been included in the National Committee for the Social Inclusion of Immigrants, as their presence would constitute a proof of respect and substantial interest for immigrants as individuals and bearers of rights.

Despite institutional framework improvements, the process of applications for residence permits is still demonstrating serious problems due to deficiencies of municipalities and Regions and the non materialization of the aliens' electronic registry. Consequently, issuing permits takes too long, beyond any reasonable time limit, and hence immigrants are not able to travel abroad or to their countries of origin.

The Ombudsman proposes:
The right to enter the country should be granted, following traveling abroad, provided there is a certificate that the residence permit application has been submitted already –a right that today is only granted during festive holidays.

Prerequisites for a residence permit

The Ombudsman notes that:

- In order to renew a residence permit for depended employment, the precondition to present the employment contract excludes immigrants who are not employed at the time of the permit renewal. Also, that too many insurance stamps are required for the nature of employment relations developed by immigrants in our country.
- In order to issue or renew a residence permit so as to exercise an independent economic activity there is a precondition of 60,000€ for the initial permit and there should be proof that this amount has been paid towards the approved activity in case of renewal. This precondition is exceptionally burdensome for immigrants.
- In order to issue or renew a permit for family reunification, the amount of "adequate income" required is particularly high.

Finally, serious problems in renewing residence permits result from the fact that aliens are not allowed to be employed in any other economic activity apart from that provided for in their permit, as well as from the lack of any provision for possible change of the activity in which the interested party is involved.

Legalization of residence of aliens having strong bonds with Greece

The provisions of Law 3536/2007 limited the number of those who could be applying for a residence permit for extraordinary reasons, a process that allows also for an assessment of the bond the applicant has with Greece. The precondition of an entry visa, even if this has expired, excludes from this arrangement all aliens who have developed a strong bond with the country (such as second generation immigrants without a visa or residence permit).

The Ombudsman has repeatedly noted the need to set a uniform, standard, operational and effective process for granting residence permits, with basic condition the strong bond of an alien with Greece.

Especially as to second generation immigrants who are not legal residents of Greece, the Ombudsman considers necessary that their residence legalization be facilitated (for instance, it has been suggested that long term school attendance should bring on legalization of residence) and that they be granted with a long term residence permit.

Visas

In order to issue a short-stay visa (Schengen visas) there is no dedicated entry declaration form, that is, there is no process of official invitation with guarantee deposit. As a consequence, more often than not applications submitted by aliens originating from countries considered to be generating immigrant population are rejected with no particular justification.

As for national visas for residence/permanent residence, there are serious problems in processing applications submitted on earlier dates and entry applications for family reunification.

Treatment of aliens

Law 3536/2007 introduces the framework for appealing to reasons of public order so that to revoke a residence permit of an alien. On this issue, EU Directives and national and European legislation set as a condition, on the one hand, the assessment of the risk for public order and, on the other, the bond that the interested party has with the host country. However, the administration considers any kind of public-order risk sufficient for a legal residence permit to be revoked, regardless of the bond the interested party has with Greece.

The Ombudsman notes that:

- In the cases of unattainable judicial deportations, the lack of provision for the maximum detainment period, as well as the time limits in which competent authorities act in order to interrupt detainment, raise questions as to the sufficient protection of the interested parties' personal freedom.
- There has been no arrangement yet for those aliens who have been included in a residence legalization programme, but against whom there is a judicial deportation order for illegal entry, residence and employment.
- The life-long character of the judicial deportation order in case of illegal entry, residence and employment, as well as petty offences committed by citizens from new EU member-states (such as Bulgaria, Romania), hinders the free movement of EU citizens.

ON-SITE INVESTIGATION

In March 2007, an on-site investigation was carried out at the Subdivision of Court Transfers in Diavata, during which the Ombudsman noted:

- The competent police authorities did not accept asylum claims by some of the detainees.
- The detainment conditions do not guarantee the protection of health and the respect of dignity of neither aliens detained there, nor police officers employed at the premises.

The Ombudsman remarks that:

The construction of a small number of special detainment premises in border areas does not alter significantly the general picture of unacceptable detainment conditions. The Ombudsman proposes that special detainment premises should be built in the country, with the appropriate infrastructure and an operation regulation based on the Correctional Code.

The Department of Human Rights drafted a special report on the protection of persons claiming political asylum in Greece and publicized findings papers on the rights of refugees.

Protection to political refugees and asylum seekers

Complaints have been filed with the Ombudsman on delays in receiving asylum claims on behalf of the competent authorities, "refoulement", i.e. refusal of entry, at the borders, and inadequate interpreting services and information provided to the claimants, mostly at the entry points. Complaints have been investigated also on police officers exercising violence against aliens while they submitted their asylum claim.

Also, the Ombudsman has noted that:

- The decisions to interrupt the examination of an application are not being revoked and hence the Ombudsman mediated anew so that interruption decisions are revoked and applications are examined in essence.
- Cases of applicants who have asked to return to their previous status of asylum seeker when they found out that they were not eligible to the transitory provisions of Law 3386/2005 for their legalization are still decided upon on a case-by-case basis.

Favourable outcome

- Following the Ombudsman's mediation, the father of three children and spouse of a Greek national was granted a residence permit on extraordinary reasons; the complainant had waived his asylum application in the belief that he would be issued a residence permit by virtue of his strong ties with the country.
- Following the mediation of, among others, the Ombudsman, passengers on a ship flying a third country flag were allowed to disembark and then to file their asylum claims.

Finally, the initiative of the General Secretariat of Public Order (formerly Ministry of Public Order) to issue an information leaflet in six languages on the asylum procedure, so that interested parties receive pertinent information, is appraised by the Ombudsman as being positive.

As to the examination process of asylum claims, all issues arise from: not adopting the most appropriate process (fast track or standard); the inadequate number of interpreters; the interview process; the generalized and standardized justification in decisions; as well as the delay in claim examination at first and mainly at second instance.

Finally, it is a common phenomenon that: deportation decisions are issued before the asylum claim has been filed; temporary detainment carries on after the claim has been filed and until this is examined at first instance; the three-month period of detainment is exhausted even in cases of unattainable deportation, mainly in border areas.

ON-SITE INVESTIGATIONS

Ombudsman teams carried out on-site

investigations and visits in Evros (police directorates of Aleksandroupoli and Orestiada, border control departments of Ferres, Soufli, Aliens' Detainment Centre – Orestiada) on the islands of Samos and Lesvos, as well as the Police Subdirectorate of Aliens in Athens.

Residence of aliens of Greek ethnic origin

The Ombudsman has noted that in certain cases persons whose Greek ethnic origin has been repeatedly recognized have their applications, either for initial issuance or for renewal of the special identity card of national of Greek ethnic origin, rejected. These rejections are issued after special committees give their opinion and it seems these are based on the inability of interested parties to prove that they speak Vlach, in particular, or Greek. The Ombudsman noted that rejection decisions need to include solid and adequate justification. It was also noted that the principle of legal certainty and that of safeguarding citizens' trust should be respected when the interested party resides for a long period of time in Greece, under the good-will conviction that they are considered to be of Greek ethnic origin.

Regarding the option provided on the basis of Law 3536/2007 to persons of Greek ethnic origin from Albania to legalize their residence and fall under the residence status of aliens of other than Greek ethnic origin, the Ombudsman supported that a fixed special procedure should be adopted for the transition from alien of Greek ethnic origin to that of other ethnic origin, as is the case of persons of Greek ethnic origin from the former USSR.

As for the residence status of aliens of Greek ethnic origin who have had recourse to the court because their applications for the special alien of Greek ethnic origin identity card have been rejected and are under temporary judicial protection, the Ombudsman supported that the interested persons should be provided with some certificate of temporary legal residence until the final decision is issued, as has already been adopted for aliens of other than Greek ethnic origin.

Finally, as for the residence permits of aliens of Greek ethnic origin who do not fall under the category of those coming from Albania or the former USSR, the Ombudsman considers necessary a joint ministerial decision determining the preconditions and the process for entry, residence and employment of aliens of Greek ethnic origin.

SPECIAL THEMATIC GROUP I

Greek citizenship: The inconsistent treatment of "descent" and the second generation challenge

Greek law on citizenship is attached to the obsolete pre-war standard of the *jus sanguinis* (right of blood), according to which descent constituted the basic way of acquiring citizenship, and contrary to the principle of *jus soli* (right of the territory), according to which the place one is born and resides is what links citizen with citizenship.

According to Greek law, citizenship is attributed, in general, through:

- Naturalization: citizenship is acquired through a Minister of the Interior, Public Administration, and Decentralization decision.
- Determination or identification of Greek citizenship: anyone who proves their descent from another Greek citizen acquires the Greek citizenship through a declaratory act by the competent Secretary General of the Region, either following their

birth or following submission of relevant claim.

- A particular naturalization process for aliens of Greek ethnic origin from the former USSR: citizenship is acquired through a decision by the Secretary General of the Region provided the Greek descent of the applicant is ascertained.

Naturalization

The main problems faced during the naturalization process and, in general, the acquisition of citizenship are:

- The connection between the attribution of citizenship and national security.
- The limited importance attributed to personal and social criteria, such as applicants' integration to the country's social life.
- The unjustified and therefore completely beyond any control rejection of naturalization applications.
- The explicit exception of citizenship cases from any set deadlines for administrative cases completion.

The Ombudsman believes that the citizenship law should be reformed so as to attribute the right to Greek citizenship to all aliens who maintain long, stable and strong bonds with the country. Spouses and parents of Greek citizens should be included in this category. However, first should be included those aliens who were born and reached the age of majority in Greece, as well as the children of aliens who have reached the age of majority in Greece and their parents hold permits of long or indefinite residence.

According to the Ombudsman, among others it is necessary to:

- Avoid policies that exclude aliens from citizenship on the basis of their country of origin or other non transparent criteria.
- Justify and control all rejection decisions and set transparent criteria according to the inclusion and the bonds with the Greek society those interested maintain.
- Set deadlines for every stage of application examination, as well as for the total duration of application handling.
- Reduce the fee stamps and not requiring repeatedly for the same certificates.
- Issue, by the General Secretariat of Public Order (formerly Ministry of Public Order), residence permits for stateless persons or aliens of Greek ethnic origin, especially for Armenians residing in Greece and persons of Greek ethnic origin from Turkey and Albania that entered the country before 1990, so that they are eligible to naturalization.

Particular issues concerning the naturalization of aliens of Greek ethnic origin

The major issue that aliens of Greek ethnic origin had to deal with in 2007 was the political choice to attribute Greek citizenship to aliens of Greek ethnic origin from Albania. The main problem as to the relevant process was that the administration did not keep a priority order in examining the application files.

The Ombudsman proposes:

- To keep a priority order in examining pending applications.
- To ensure that interested parties receive as much information as possible on the progress of their application.
- To staff with appropriate and adequate number of personnel all relevant departments.

As for the naturalization of aliens of Greek ethnic origin from other countries the Ombudsman proposes that:

- A joint ministerial decision should be is-

sued to determine the preconditions, time limit and process for granting entry, residence and employment permit to aliens of Greek ethnic origin.

- Naturalization applications by aliens of Greek ethnic origin should not be accompanied by an alien of Greek ethnic origin residence permit in order to be submitted.

Determination/identification of citizenship

As to the citizenship determination/identification process (article 25 of the Greek Citizenship Code), a worrying fact is the lack of any provision for the preconditions and the supporting documents required in order to submit a determination/identification application, as well as for the examination process of this application, which in essence favours administrative arbitrary actions.

Hence, the Ombudsman considers necessary to:

- Describe in detail the process and conditions for submitting a citizenship determination/identification application and a relevant guidelines book should be published by the Ministry of the Interior, Public Administration, and Decentralization.
- Dissociate all cases from holding a residence permit for Greece.
- Set deadlines for completion of the relevant process, staff all competent services and offer training to personnel.
- Apply *jus soli*, as provided by the law, in the cases of stateless persons, such as Armenians of Greece and those aliens of Greek ethnic origin from Albania and Turkey who entered the country before 1990.
- Revoke all circulars and orders of questionable legal grounds regarding persons with special linguistic or cultural characteristics.
- Confer citizenship to children of persons who have been declared legally missing, presumably dead, provided they were born before their parents were declared legally missing, and to conclude the process of citizenship recovery for stateless Muslims residents of Thraki (Thrace), Greece.
- Confer citizenship when there are no municipal or other enrollments, but other documents that sufficiently prove citizenship.
- Not to deprive citizenship of persons who were holders for long, due to administration error.
- The administration should abide with the repeatedly issued decisions by the Council of State, as well as the opinions by the Legal Counsels of the State.

Aliens of Greek ethnic origin from the former USSR

From the beginning of the 1990s to 2000, attributing citizenship to aliens of Greek ethnic origin coming from the former USSR has been applying the determination/identification process provided for by the Treaties of Lausanne and Ankara. In 2000, a particular process was adopted for naturalization, that is, for attributing citizenship (Law 2790/2000). In 2006, however, under this particular naturalization process, other applications were also included by

aliens of Greek ethnic origin who had applied under the citizenship determination provisions in force prior to 2000.

The problematic points identified by the Ombudsman in this particular naturalization process have namely to do with:

- The issuance of contradicting decisions on Greek descent and the national conscience of members of the same family (such as brothers).
- The particularly long period that it takes for the process to be completed (authentication of submitted foreign documents).
- The preconditions for submitting an application to be included in the particular naturalization process (article 15 of the Greek Citizenship Code) by persons who already reside in Greece and entered the country after May 2001.

The Ombudsman considers that measures should be taken so that:

- Contradicting judgments are avoided as to the Greek descent of persons belonging to the same family, even more when they have grown up in the same family environment.
- Authenticity of documents should be investigated only when there is indication of forgery.
- Decisions should be issued on the basis of submitted documents and their assessment as it is provided for, in case authenticating documents takes long or is not possible at all.
- Persons who claim their Greek descent and are holders of a residence permit should be eligible to apply for the particular naturalization process as, this is described in article 15 of the Greek Citizenship Code.
- Persons who reside in Greece and are parents or children of persons who have acquired the Greek citizenship on the basis of determination/identification provisions should at least be able to submit application, as is provided for in article 15 of the Greek Citizenship Code.
- It should be rendered possible to change the legal basis for citizenship acquisition.

SPECIAL THEMATIC GROUP II

Legal aid

The Ombudsman is not present in the court, nor does the Office provide legal consultation to citizens. However, ever since the beginning of its operation, it accepts a large number of requests for legal aid or for recommendation of a competent lawyer. The usual procedure is that the Ombudsman refers these requests to local lawyers' bars, noting, nevertheless, serious malfunctions in the institution of legal aid offered to citizens who cannot afford legal representation.

The main malfunction in the legal aid system is the fact that lawyers appointed by the court are extremely often resigning on "serious grounds". What is of importance at this point is this excuse being accepted by judicial authorities, especially when taking into account that, more often than not, "serious grounds" is usually workload or family and personal emergencies.

The Ombudsman took the initiative to contact the Athens Lawyers' Bar and the Directorate of Lawyers at the Ministry of Justice in order to put underway a deliberation that would lead to trustworthy services to citizens in need of legal aid, but this has not brought yet the originally anticipated results.

As the state demonstrates inaction to this effect, the Ombudsman proposes:

- To define in stricter terms what constitutes serious grounds, either in the form of legislation or by adopting a Lawyers' Code of Good Practice.

- To transfer to those lawyers refusing an appointment a quasi-"burden of proof" for their allegation.
- To examine the possibility not to include in the lawyers to be appointed list those who are much probable not to be able to fulfill their duties of legal aid due to workload.
- That competent ministers should take the initiative and introduce such an increase in lawyer fees so that these correspond in essence to the content of the legal services provided.
- To set more discipline sanctions for unjustified refusal to take over a case or for abandoning the counsel of the defence role.
- That the Ministry of Justice, that holds in its budget a special credit entry to this effect, expedites the process of issuing payment orders to appointed lawyers.

It should be noted that setting informal groups of lawyers in local lawyers' bars to offer voluntary consulting or legal representation services in specific population groups (e.g. aliens, minors), regardless of whether this constitutes a solution to the problem or not, it does constitute an independent intervention on behalf of civil society with the aim of strategic litigation in conflicts, especially in regard to vulnerable groups and victims of discrimination. This institution cannot be replaced by legal aid, as public care and volunteer initiatives in legal protection are not interchangeable. Therefore, what is needed is, on one hand, the rationalization of the institution of legal aid by the lawyers' bars and, on the other, the encouragement and funding of conflict strategic litigation and relevant legal aid by civil society and groups of lawyers.

The Ombudsman provides information to citizens and the public administration through the new sub-website dedicated to issues related to immigrants, refugees, and aliens of Greek ethnic origin at http://www.synigoros.gr/allodapoi/

The Department of Social Protection examines complaints related to the protection of citizens' social rights and, more specifically, cases linked to the areas of social policy, health, social security and welfare. This Department includes also the Ombudsman of Health and Social Solidarity, established by Law 3293/2004, and is offering its services to all citizens/users of public health services. The Department of Social Protection focuses its mediatory and supervisory efforts on the protection of the rights of vulnerable social groups, such as the elderly, people with disabilities, the physically and mentally ill, the Roma, refugees, aliens, etc.

NEW COMPLAINTS, 2007	2,172
PERCENTAGE ON THE TOTAL OF NEW COMPLAINTS	20.47%
NEW COMPLAINTS WITHIN THE OMBUDSMAN'S MANDATE	1,745

COMPLAINTS WITHIN THE OMBUDSMAN'S MANDATE PROCESSED IN 2007	1,182
MALADMINISTRATION PROBLEM CORROBORATED	563
Problem resolved (favourable outcome)	503
Non-resolution of maladministration problem (Ombudsman's recommendations were not accepted)	37
Impossibility of resolution (e.g. gap in legislation, organizational malfunctions)	23
MALADMINISTRATION PROBLEM NOT CORROBORATED	498
INVESTIGATION DISCONTINUED	121

PATRINA PAPARRIGOPOULOU
Deputy Ombudsman

The Department of Social Protection elaborated special reports on issues, such as unemployment benefits, hazardous medical waste management and involuntary hospitalization of mental patients.

The Ombudsman, through its annual reports and special reports during the last years, has dealt with: the access to employment for people with disabilities, families with many children, and National Resistance members; benefits for families with many children; the operation of health committees at prefectures; the access of aliens of Greek ethnic origin and political refugees in welfare services; as well as maternity benefits. In this year's report, the Department of Social Protection focuses on:

- The inadequacy of welfare institutions;
- Issues of access to medical care for financially disadvantaged citizens;
- The exercise of the right to health protection;
- The social insurance organizations Merchant Marine Retirement Fund (NAT) and Supplementary Insurance Fund for Retail Employees (TEAYEK), which demonstrate long delays in payments and other important problems in their cooperation with the Ombudsman.

Welfare issues

Access to complimentary medical care

The free of charge access to medical care and treatment for persons without social security and the financially disadvantaged constitutes a necessary precondition so that citizens can enjoy their right to health and the state can materialize its constitutional obligation towards them. To this effect, the Ombudsman of Health and Social Solidarity takes care so that the pertinent legislation is dully applied and citizens fulfilling the legal criteria are not deprived from this right of theirs.

Indicative case

A 32 year old female citizen who had been unemployed for long, with no social security and without any personal income or assets, applied for a health booklet for uninsured. The Prefecture of Athens rejected her application on the grounds that "the family annual income exceeds the tax allowance,

there is no financial weakness due to the real estate owned". However, on the basis of the file's data and the relevant legislation, the Ombudsman found out that the complainant fulfilled the criteria set by the relevant ministerial decision, since parent assets are not included therein.

The Ombudsman noted that the application referred exclusively to free of charge medical care. Hence, this rejection deprives the complainant of her right to complimentary medical care and makes her health dependent to family financing, which contradicts to the obligation the state bears to protect the health and respect the value of human beings. The administration has not yet responded to the Ombudsman's findings paper; the Ombudsman considers that the suggestions included therein have not been accepted.

Accommodation centres for persons with history of serious medical conditions

The Ombudsman was called upon to mediate so that persons with history of serious medical conditions are hosted and offered social care services.

Indicative case

The relative of a patient with grave health problems, who is also homeless and unemployed, asked for the mediation of the Ombudsman so that the patient is hospitalized. The 3rd Health Institution of Chronic

Diseases of Western Athens, following the mediation of the Ombudsman, and despite the initial rejection of the patient's application, accepted him by derogation on humanitarian reasons.

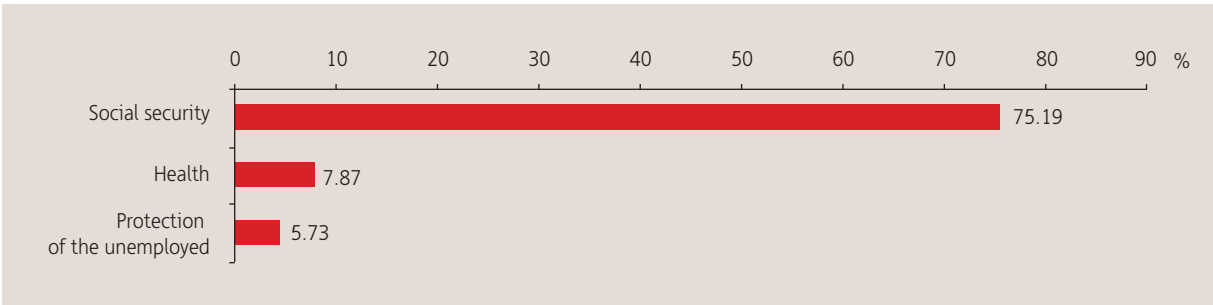
The Ombudsman notes that:

Often, the hospitalization of such cases, by derogation of regulations, in medical institutions brings additional burden to their work affecting other patients and cannot in any case constitute an acceptable solution.

The Ombudsman proposes that:

All necessary measures should be taken so that accommodation and medical and social structures be created, to cater for persons with history of serious medical conditions.

MAIN SUBJECTS OF THE COMPLAINTS HANDLED BY THE DEPARTMENT



Lack of structures for autistic adults

Under the programme for mental health reform, the Child Psychiatric Hospital of Attiki is transformed from an asylum to a network of community structures offering community care to children with mental disorders. During this time, the hospital transferred its in-patients to community structures for children and adolescents. However, this has not covered adequately the needs of in-patients who have reached the age of maturity and, particularly, autistic adults.

On the occasion of a complaint filed by the mother of an in-patient, the Ombudsman discussed with the administration of the Child Psychiatric Hospital of Attiki the claim of the interested party for her son to be included in an adolescents' hostel, as well as the organizational gaps identified at placing autistic adults in community hostels or boarding houses following their stay in hospitals. The mediation by the Ombudsman had as a result, by derogation, the relocation of the claimant's son and two more adult in-patients in the "Aggelia" Adolescents' Hostel of Anatoliki Attiki.

The Ombudsman notes that the by derogation satisfaction of the claim is not a definite solution, because it is not permitted to allow adolescents under the same roof with adults. Special community structures for adults should be constructed and special programmes to cover their medical and social needs should be created the soonest possible.

Health issues

Mental health

The process of involuntary hospitalization set by Law 2071/1992 aims at protecting the rights of mental patients. In practice, however, the provisions of this law are being often violated. An indicative case is the involuntary hospitalization at the Psychiatric

Hospital of Attiki of an individual who filed a complaint with the Ombudsman regarding his admittance, stay and medical treatment therein. After investigating the complaint and carrying out an on-site investigation onto the complainant's file, doubts were raised whether the set procedure had been followed in imposing involuntary commital, as well as imposing constraining measures onto the specific patient.

Favourable outcome

The Ombudsman carried out with success its mediatory role in the case of the 13th Tax Office of Athens, that did not issue a tax registry number and did not proceed to change of personal information (such as change of address) when realizing that the applicants had used the postal address of a boarding house where they lived under the "Psyhargos" programme of de-insti-

tutionalization for mental patients; the excuse used by the tax office was that, as mental patients, the applicants need to be placed under judicial interdiction and are not entitled to legal acts. The Ombudsman notes that this view is not in harmony with the Civil Code provisions on judicial interdiction and it contradicts to the legal framework governing mental health reform, the successful outcome of which depends on the possibility for individuals with mental problems to be integrated into the social and professional network of society.

AIDS patients and HIV-positive individuals

Citizens who are either HIV-infected or AIDS patients filed complaints with the Ombudsman on issues, such as: postponement of scheduled interventional medical act or refusal to medical care; breach of medical confidentiality; HIV blood tests without prior notification and patient's consent; the communication of positive HIV test results without the appropriate psychological or other support; dismissal due to HIV infection although the employee was asymptomatic and could perform their duties.

For the effective exercise of patients' rights, the Ombudsman proposed among others:

- The continuous training of health professionals on the transmission and protection against the HIV virus.
- The compulsory information of health professionals for the legal obligations stemming from pertinent legislation on medical confidentiality and their obligation to inform seropositive patients for the way third parties (sexual partners) can be protected.
- The information of seropositive and AIDS patients on protection measures that both they and their sexual partners should take.
- The provision of a special system for the referral of seropositive or AIDS patients to hospitals for special medical tests under the responsibility and the supervision of their consultant physicians.

Also, the Ombudsman proposed that:

In the military, HIV-positive and AIDS patients, when asymptomatic or in any case able to perform their duties, should be placed in appropriate posts.

Access to medical files

The Ombudsman has dealt also in the past with the refusal by the health services of insurance organizations and the services of the National Health System to give access

to citizens to their medical files. Problems in accessing their medical files are faced not only by the patients themselves, but mostly by third parties, legally authorized to this purpose by the patients. Another usual practice is refusing to provide copies or information from the medical file that cannot be reproduced inside the hospital.

Indicative case

The "Thriasio" Hospital refused to give to the sister of a patient a copy of the magnetic resonance imaging (MRI) from the medical file that was formed during his hospitalization. In this case it was questioned whether a third party should have access to the medical file, despite the relevant authorization by letter of procuration by the brother and the fact that it was not technically possible to make a copy of the MRI. The Ombudsman provided information for the right of access to the medical file through an authorized person and suggested that the original MRI should be given to the interested party and she should make provisions for copying it.

The Ombudsman notes that public hospitals (by reason of their lack in means and technical infrastructure) are not able to fulfill their legal obligation to provide copies of medical tests.

The Ombudsman proposes:

That it should be made possible for interested parties to have access to the original medical document to make copies outside the issuing hospital and this should be added to the relevant article of the Code of Administrative Procedure.

Sickness insurance

The degree to which the individual and social right to health is being materialized depends on the number and the different categories of eligibility status, as well as on the type and extent of medical care insurance benefits.

Exclusion from sickness insurance

The Health Care Organization for Civil Servants (OPAD) refused to insure the child of the spouse of a public sector employee that could not be insured indirectly, either through the mother or father, and as a result the child remained uninsured. On this issue, the Ombudsman proposed that the OPAD Regulation should be amended to cover all insured children of public servants' families and especially spouses' children, as is the case of other social security organizations (Social Security Organization – IKA, Social Security Organization for the Self-Employed – OAEE), on the basis of the principle of equality in benefits and treatment in the social security system. The OPAD postponed any possible amendment of its regulation as to benefits for future action.

The extend of sickness insurance

- Several complaints bring to the surface issues of inappropriate application of the law on out-patient care expenses. The IKA has rejected an insured's claim for the purchase of special low vision glasses for his daughter with the justification that "these are not included in the visual aids list of the IKA Regulation". The Ombudsman purported that the legislator's aim is to grant to people insured the necessary aids and artificial substitutes for their health issues; these aids include glasses and contact lenses without any specific mention to type of, or use for them. The competent Directorate of Health Services of the

IKA decided that presently it should not reconsider this claim.

- Social security organizations often do not pay expenses for medical acts not included in the price list. Indicatively two cases are mentioned in which the Ombudsman mediated: a) An Agricultural Insurance Fund (OGA) insurance holder paid to the "Elena" Hospital the cost of biopsy tests although, as an insured member of the organization, she did not have to, and b) A citizen insured at the OPAD was obliged to pay for medical tests carried out at the "Aretaieio" Hospital, which although are not included in the state price list and are not included in the relevant presidential decree, have been assigned a price by the hospital's financial department. In both cases, the Ombudsman purported that, according to the pertinent legal framework, social security organizations should cover relevant expenses; however, the administration did not adopt this opinion.

However, following mediation by the Ombudsman, the Ministry of Health and Social Solidarity forwarded to the Ministry of Employment and Social Protection a draft presidential decree to be signed by both parties on the review of pricing and inclusion in the price list of medical acts; this presidential decree is expected to be issued.

- The Ombudsman is not competent to carry out directly inspection in private clinics. In the case of a citizen insured with the IKA, who was hospitalized in a private clinic holding a cooperation contract with the IKA and approximately six months later the clinic claimed that the insured would cover a large amount towards the additional hospitalization cost, the Ombudsman asked the IKA to cover this additional amount and then to charge the clinic for breaching their contract. The IKA did not cover the cost, but in a document-circular it sent to all hospitals and its regional branches, as well as in all private clinics on contract with the organization, the IKA acknowledges that in many cases clinics charge additional costs to insurance holders as an upgrade in hospital accommodation.

In addition, the IKA adopted a stricter procedure according to which the patient and the inspecting doctor should sign a form in two copies, one of which is to be returned to the health unit in charge for abiding with the terms in the contract with the clinic and it is to be kept for one year.

Validation of health booklet of alien

The Directorate for Public Hygiene of the Prefecture of Thessaloniki refused to renew the personal health booklet of a female alien so that she would be able to be

employed at a premises of sanitary interest, on the grounds that the certification that she had submitted all supporting documents for residence permit was not recent and, as a consequence, it was probable that the administration had already rejected the application in question. The Ombudsman purported that these certifications cease to be valid the moment the state decides upon the claim for residence permit. As a result, the competent authority has the obligation to validate the personal health booklet of the claimant.

Favourable outcome

A more comprehensive arrangement of this issue was reached due to the Ombudsman's mediation. Following the suggestion by the Ombudsman, the Ministry of Health and Social Solidarity sent to the prefectural health and public hygiene directorates a document according to which the personal health booklets of aliens are valid for five years provided they are accompanied by a renewed residence permit, employment permit, or some other document, such as a certificate of legal residence in Greece.

Health services

Repeated misplacement of file

The Ombudsman examined an omission by the administration to answer the application of a citizen for temporary interruption of a private clinic operation, originally submitted in 2001 and then anew in 2005 due to misplacement of the file by the Athens Prefecture Directorate of Public Health. The Ombudsman found out that this delay is due exclusively to the neglect of the service involved and to inappropriate management, as the file with the application and supporting documents had been misplaced for a second time. The Ombudsman asked for a disciplinary investigation of the case so that the responsible parties are identified and the citizen's claim is immediately answered. The Athens Prefecture, six years after the application was first submitted, replied to the applicant and commenced a disciplinary investigation of the case.

SPECIAL THEMATIC GROUPS

The majority of public services and administration officials do not face the Ombudsman with the initial cautiousness or reticence noticed during its first years of operation. A catalyst role in this has been played by the opinion formed that collaborating with the Ombudsman brings solutions to wide ranged systemic issues public administration is faced with. However, there are still pockets with important problems, either in their structure or in their cooperation with the Ombudsman, such as the NAT and the TEAYEK. The problems of these insurance organizations are so grave that the Ombudsman had to visit them, as well as the supervising ministries. It was found that both the NAT and the TEAYEK face complicated issues regarding legislation, infrastructure and personnel that do not allow us to be optimistic, for the time being, that their operation will be improved and they will offer better services to citizens insured in them.

SPECIAL THEMATIC GROUP I

NAT

Cooperation with the Ombudsman

Ombudsman officials face everyday cooperation issues with the NAT, although in 2005 a meeting took place between the NAT and the Ombudsman's Office and an exhaustive mention was made in that year's annual report. More than 30 complaints by citizens

ΕΛΛΗΝΙΚΗ ΔΗΜΟΚΡΑΤΙΑ
ΥΠΟΥΡΓΕΙΟ ΕΜΠΟΡΙΚΗΣ ΝΑΥΤΙΛΙΑΣ
ΔΙΕΥΘΥΝΣΗ ΝΑΥΤΙΚΗΣ ΕΡΓΑΣΙΑΣ

ΠΙΝΑΚΑΣ ΘΑΛΑΣΣΙΑΣ ΥΠΗΡΕΣΙΑΣ ΝΑΥΤΙΚΟΥ
ΤΟ ΠΑΡΟΝ ΕΚΔΙΔΕΤΑΙ ΩΣ ΕΝΗΜΕΡΩΤΙΚΟ

ΠΕΙΡΑΙΑΣ : 27/12/2005
Αρ. Πρωτοκόλλου : 51498
Σελίδα : 1 από 2

Συνταξιούχος

ΑΜΗΝΑ	ΦΥΛΛΑΔΙΟ	ΕΠΩΝΥΜΟ	ΟΝΟΜΑ	ΟΝΟΜΑ ΠΑΤΡΟΣ	ΟΝΟΜΑ ΜΗΤΡΟΣ	ΔΗΜΟΣ / ΚΟΙΝΟΤΗΤΑ	ΝΟΜΟΣ	ΕΤΟΣ ΓΕΝΝ.	ΗΜ. ΑΠΟΓΡ.
285849	Θ12010					ΔΑΦΝΗΣ	ΙΚΑΡΙ		03/02/1966

ΑΝΙ - ΔΙΠΛΩΜΑΤΑ
1. 02-09-1982 04923 ΜΑΓΕΙΡΟΥ Γ ΤΑΞΕΩΣ

	ΣΤΟΙΧΕΙΑ ΝΑΥΤΟΛΟΓΙΟΥ			ΣΤΟΙΧΕΙΑ ΠΛΟΙΟΥ									ΔΙΑΣΤΗΜΑ ΥΠΗΡΕΣΙΑΣ			ΚΩ	ΚΩ
Α/Α	ΑΡ.	ΛΙΜΑΝΙ	ΕΤ	ΕΙΔ	ΚΩΔ.	ΟΝΟΜΑ	Κ.Ο.Χ	Κ.Κ.Χ	D.W.	ΙΠΠΟΔ.	ΕΙΔΙΚΟΤΗΤΑ		ΑΠΟ	ΕΩΣ	ΔΙΑΡ.Κ	ΑΠ	ΕΞ
1	A229		1966	31	1954	ΑΤΛΑΝΤ ΠΡΙΝΣΕ	38600				ΒΟΗ ΜΑΓ ΑΝ ΠΤ	608	03-02-1966	13-05-1966	03 11		
2	A471		1967	30	5684	ΑΔΑΜΑΝΤΙΑ	13255	8113	20514		ΒΟΗΘ ΘΑΛΑΜΗΠΟΛ	564	10-02-1967	12-07-1967	05 03		
3	T 77		1967	31	808	ΤΡΙΑΔΑ	7259	4362	10954		ΜΑΓΕΙΡΟΣ	606	02-02-1968	27-03-1968	01 26		
4	10	ΑΜΒΕΡΣΑ	1968	00	A	ΣΑΝΤΑ ΝΤΑΚΟΜ	1595	805		1400	ΘΑΛΑΜΗΠΟΛΟΣ	561	01-05-1968	02-09-1968	04 02	1	
5	46	ΑΜΒΕΡΣΑ	1968	00	87052	ΑΓΙΑΚΩΒΟ	1595	805	2990	1350	ΜΑΓΕΙΡΟΣ	606	03-09-1968	24-10-1968	01 22	2	
6	0019	ΡΟΤΤΕΡΔΑΜ	1969	31	10327	ΡΙΟΝΤΟΡΟ	7790	4513		4400	ΜΑΓΕΙΡΟΣ	606	01-03-1969	11-10-1969	07 11	1	
7	0099	ΡΟΤΤΕΡΔΑΜ	1969	31	10327	ΡΙΟΝΤΟΡΟ	7790	4513		4400	ΜΑΓΕΙΡΟΣ	606	13-10-1969	26-02-1970	04 14	2	
8	0099	ΡΟΤΤΕΡΔΑΜ	1969	31	10327	ΡΙΟΝΤΟΡΟ	7790	4513		4400	ΘΑΛΑΜΗΠΟΛΟΣ	561	17-06-1970	18-11-1970	05 02	1	
9	0035	ΣΚΑΡΑΜΑΓΚΑΣ	1970	31	10327	ΡΙΟΝΤΟΡΟ	7790	4513	11685	4400	ΘΑΛΑΜΗΠΟΛΟΣ	561	19-11-1970	15-02-1971	02 27	3	
10	0035	ΣΚΑΡΑΜΑΓΚΑΣ	1970	31	10327	ΡΙΟΝΤΟΡΟ	7790	4513	11685	4400	ΜΑΓΕΙΡΟΣ	606	16-02-1971	12-08-1971	05 27	5	
11	0068	ΑΜΒΕΡΣΑ	1971	31	10327	ΡΙΟΝΤΟΡΟ	7790	4513	11685	4400	ΜΑΓΕΙΡΟΣ	606	10-11-1971	17-03-1972	04 08	2	
12	0016	ΓΕΝΟΥΑ	1972	31	11607	ΚΑΠΤΑΙΝ ΓΕΡΟΝΤ	8493	5257	12739	3150	ΜΑΓΕΙΡΟΣ	606	22-05-1972	26-11-1972	06 05	1	
13	0038	ΜΠΟΥΕΝΟΣ ΑΙΡ.	1972	31	11607	ΚΑΠΤΑΙΝ ΓΕΡΟΝΤ	8493	5257			ΜΑΓΕΙΡΟΣ	606	27-11-1972	27-12-1972	01 01	2	
14	Γ218		1973	31	13235	ΧΡΥΣΟΒΑΛΑΝΤΟΥ	8950		12850		ΜΑΓΕΙΡΟΣ	606	08-09-1973	13-04-1974	07 06		
15	M073		1975	31	05827	ΛΕΩΝ	7468	4112	10180		ΜΑΓΕΙΡΟΣ	606	03-06-1975	15-01-1976	07 13		
16	0133	ΡΟΤΤΕΡΔΑΜ	1976	31	16105	ΓΙΑΝΝΗΣ ΞΥΛΑΣ	9256	6087		5500	ΜΑΓΕΙΡΟΣ	606	20-07-1976	10-01-1977	05 21	0	
17	M073		1977	31	05827	ΛΕΩΝ	7468	4112	10180		ΜΑΓΕΙΡΟΣ	606	21-09-1977	13-02-1978	04 23		
18	0048	ΡΟΤΤΕΡΔΑΜ	1978	31	16105	ΓΙΑΝΝΗΣ ΞΥΛΑΣ	9256	6087		5500	ΜΑΓΕΙΡΟΣ	606	15-05-1978	11-12-1978	06 27	1	
19	0018	ΒΑΡΚΕΛΩΝΗ	1978	31	16105	ΓΙΑΝΝΗΣ ΞΥΛΑΣ	9256	6087		5500	ΜΑΓΕΙΡΟΣ	606	12-12-1978	14-02-1979	02 03	2	
20	0010	ΝΤΟΡΜΠΑΝ	1979	31	16805	ΜΑΡΙΑ Ξ	11362	6488		7500	ΜΑΓΕΙΡΟΣ	606	08-06-1979	29-10-1979	04 22	1	
21	0036	ΒΕΝΕΤΙΑ	1979	31	16805	ΜΑΡΙΑ Ξ	11362	6488		7500	ΜΑΓΕΙΡΟΣ	606	30-10-1979	11-12-1979	01 12	2	
22	0036	ΒΕΝΕΤΙΑ	1979	31	16805	ΜΑΡΙΑ Ξ	11362	6488		7500	ΜΑΓΕΙΡΟΣ	606	13-02-1980	30-07-1980	05 18	1	
23	0063	ΑΜΒΟΥΡΓΟΝ	1980	31	16805	ΜΑΡΙΑ Ξ	11362	6488		7500	ΜΑΓΕΙΡΟΣ	606	01-08-1980	27-11-1980	03 27	5	
24	0047	ΑΛΕΞΑΝΔΡΕΙΑ	1980	31	18383	ΜΑΡΑΜΠΟΥ	8845	6020		5730	ΜΑΓΕΙΡΟΣ	606	08-05-1981	03-12-1981	06 26	2	
25	0502	Ν.Α.Τ.	1981	31	19350	ΠΡΟΜΗΘΕΥΣ	9218	5889		8480	ΜΑΓΕΙΡΟΣ	606	19-05-1982	23-07-1982	02 05	Π	

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filed in 2005 are still open cases for the Ombudsman in 2007; to some of them, the NAT has not even responded to the Ombudsman's correspondence. From a most recent written communication (dispatch of lists of citizens' cases in November 2006 and February 2007) regarding this issue the Ombudsman found out, on the one hand, that the NAT had not informed the Ombudsman's Office not even on cases with favourable outcome and, on the other, that it took two whole years to clarify or solve cases of insurance holders, which, all things considered, should not have taken more than one day.

Indicative case

A citizen filed a complaint with the Ombudsman in 1995 mentioning that from 11 January 1974 to 30 July 1975 he had been insured by the NAT. At retirement, he was informed that the insurance fund could not find any details for his maritime service for the aforementioned period and, as a result, the Social Security Organization–Unified Insurance Fund for Employees (IKA–ETAM) issued a reduced pension for him. After he had sent out many letters, in 2007 it was found that he had not been registered in the NAT registers because he had never been issued a seaman's book in his name. It took, that is, more than two years to find out a piece of information which could have been confirmed at the application submission, so that the interested party could have proceeded to all necessary steps (*ex ante* issuance of seaman's book and registration of the insurance holder) in order to recognize towards pension the time he had been employed but travelled on his passport only.

WORKING MEETING

In the working meeting that took place in October 2007 with officers of the Ministry of Mercantile Marine and of the NAT, it was found that:

- The supervision exercised by the Directorate for Insurance Organizations' Support of the Ministry of Mercantile Marine on the NAT is not analogous to that exercised by the General Secretariat of Social Security (GGKA) on the social security organizations that fall under the Ministry of Employment and Social Protection.
- The Ministry of Mercantile Marine is not being represented by a government commissioner when the administrative board of the NAT meets.
- Court decisions are not executed because the Commissioner of the Court of Audit asked not to execute decisions at first instance before appeals have been filed and decided upon. This allegation is being investigated by the Ombudsman so as to confirm that relevant acts by the Court of Audit Commissioner do exist.
- The long delay in the payment of the lump-sum benefit to pensioners is due to the fact that there was no head of the NAT competent department for one year and a half and to serious cash flow issues.

In order to improve the cooperation with the Ombudsman, it has been agreed for the NAT to assign to specific members of its staff the task of regular and direct contact with the Ombudsman so as to promote the pending cases and solve the issues that are bound to come up in the future.

Undue delay for payment of the lump-sum benefit

The payment of the lump-sum benefit by the Welfare Fund for Seamen of Mercantile Marine (TPKPEN) and the Welfare Fund for Mercantile Marine Officers (TPAEN) takes one or up to two years, despite the joint ministerial decision issued in 2005 by the Ministry of Mercantile Marine, following a consultation with the NAT, according to which the estimated time limit for this payment is 60 days.

Indicative cases

- A citizen filed a complaint with the TPKPEN on 9 October 2006 and received information on 23 July 2007 that the process for the case in question was to be finalized "in the near future and provided that the competent member of staff handles the applications dated October 2006".

- A citizen applied to the TPKPEN for the lump-sum benefit on 2 May 2005. The fund responded to the Ombudsman that "the case will be finalized approximately on October 2007", that is, two years and a half later.

The Ombudsman noted that:

The joint ministerial decision on special deadlines for processing requests provides that, following the allocation of the relevant credit, the lump-sum benefit should be paid by the TPAEN within 60 days. However, it is this exact phrasing of the provision that contradicts its own purpose: since there is no specific date as a starting point to count towards the deadline, citizens are not able to claim financial compensation from the state for exceeding the time limits provided for in the joint ministerial decision; also, since it is not known when credits are allocated so as to apply when appropriate.

Inaccurate application of pertinent legislation

Inaccurate application of the pertinent legislation is noted in the cases of two pensioners for whom the NAT suspended the payment of their pensions and then it subtracted half of the amount instead of one quarter of it. Suspension of payment was deemed necessary because it was found that there were social security contributions due from shipping companies which were the employers of the claimants.

The Ombudsman noted that:

- According to jurisprudence by the Council of State, the unfavourable to the insurance holder repercussions from amounts due are set only in case the amounts due by pensioners stem from social security contributions by the holder themselves or their employer. Consequently, in neither of the above cases is the application of this provision on pension payment suspension legal.
- In case there is an amount due stemming from other social security relations, according to the restriction orders for the collection of public revenue, only one quarter of monthly wages or pension is confiscated, or of any other regular social security subsidy.
- In the framework of good administration, the less burdensome measure should be preferred and implemented in the citizen's favour.

It should be noted that in one case of these two, almost three years passed until the citizen was finally justified, while in the other one, the citizen deceased before the amending decision was issued by the fund since it took almost ten years.

The case of radiotelegraph operators

Due to the abolition of the branch of radiotelegraph operators, a ministerial decision was issued in 1988 defining measures for the training of unemployed radiotelegraph operators, for the subsidy of companies that would employ them and their under specific conditions retirement by the NAT. According to the NAT this ministerial decision needed to be ratified by a law and the administrative board approved in 1999 the draft of a legal provision identical to the decision in question. However, this was never signed by the minister in charge and the relevant provision remained ineffective.

The Ombudsman investigated the complaint by a citizen who transferred his claim for pension in 2004 from the NAT to the IKA because he was informed by the fund that this ministerial decision is not valid as the relevant legislation has not been issued; by doing so the complainant waived his rights to the NAT. The Ombudsman intervened noting that the expected legal arrangement was long due and that this constitutes violation of the principle of citizen's protection, brings damage to his interests and gravely violates his rights. Even so, the NAT did not adopt the Ombudsman's proposal suggesting that the complainant should receive information on what he should do so as to be eligible to receive pension by the NAT.

SPECIAL THEMATIC GROUP II

TEAYEK

Issues in granting requested benefit

From October 1998 to October 2007 the Ombudsman has investigated 200 complaints by citizens who, in their majority, complain for long delays in payment of benefit applied for.

It is indicatively mentioned that:

- In November and December 2006 the TEAYEK processed applications which had been submitted until 31 July 2005.
- For a pension application submitted in TEAYEK on 31 October 2005, the service proceeded to the first action in September 2007.
- A citizen applied for a certificate for the total time of insured employment on 2

May 2006 and received information in an oral communication, on 29 January 2007, that her pension would be delayed by 25 months.

Very typical is the stance taken by the fund in the case of an insurance holder at the Unified Insurance Fund for Bank Employees (ETAT), whose attribution of pension is delayed because the TEAYEK has not sent to the ETAT information of his insured employment duration for over a year now, despite the documents sent by the Ministry of Employment and Social Protection, and the GGKA, noting that the cases asking the ETAT for the time of consecutive insurance should be examined as a priority[1]. Neither did the intervention by the Ombudsman have any favourable outcome.

Cooperation with the Ombudsman

The cooperation between the TEAYEK and the Ombudsman is not satisfactory. The fund has repeatedly expressed the view that promoting and solving cases for which the Ombudsman intervenes constitutes discriminatory treatment of other citizens. Even when the notion of providing a service to citizens within the specified legal time limits has lost its meaning, the TEAYEK claims that promoting the Ombudsman cases violates the principle of good administration and contradicts to the principle of equal treatment.

The Ombudsman considers that:

- When public services exceed the deadlines set by the law in responding to citizens' claims this constitutes an illegal act of the administration.
- Applying the principle of equal treatment presupposes that the administration acts in accordance with the law, otherwise appealing to equality makes no sense.
- Applying the principle of equality presupposes similar circumstances, while a citizen filing a complaint with the Ombudsman is not in the same legal position as a citizen who does not make use of the right to appeal to the Ombudsman.
- The neglect on behalf of the TEAYEK to provide the Ombudsman with answers on the subject matter of the cases in question constitutes hindrance in the Ombudsman's institutional role and refusal to cooperate.

It is further noted that:

The Ombudsman, when investigating the case of a citizen, identifies more comprehensive malfunctions of the state and proposes measures to cover all users of public services, contributing in this way in combating maladministration and in upgrading services addressed to the citizens.

WORKING MEETING

In a working meeting with the TEAYEK administration, the Ombudsman discussed the cooperation framework with the fund and the reasons for the excessive delays in issuing pension attribution decisions and certificates of insured employment duration. It was noted that the fund suffers from structural problems such as:

- The relatively insufficient staff compared with the continuously increasing number of applications.
- The incomplete and not rational entry of data on employers' contributions, which facilitates contribution evasion.

[1] Because employees at credit institutions who retire with lower age limits do not receive any other retirement benefit until they are entitled to pension by the ETAT.

The Ombudsman provides information to citizens and the public administration through the new sub-website dedicated to issues related to health at http://www.synigoros.gr/ygeia/index.htm

- The very bad condition of the paper archive.
- The almost inexistent computerized systems.

In order to deal with the most efficient way the huge delays, and for the most rapid, efficient, and trustworthy application of computerized systems at the TEAYEK, the Ombudsman considers necessary the immediate and systematic filing, either by employing specialized personnel or by assigning this project to a specialized contractor.

Cooperation between the TEAYEK and the GGKA

Investigating relevant complaints and carrying out meetings with the TEAYEK, as well as with the GGKA, brought to the fore the different views and the communication gap between the fund and the GGKA, resulting to a continuous aggravation of existing problems. It is for this reason that the Ombudsman believes that the GGKA should intensify efforts to cooperate with the TEAYEK.

According to the Ombudsman, the Computer Directorate of the GGKA supervises the TEAYEK in an exemplary way. The people responsible took initiatives and more than once visited the insurance fund in order to handle problems in setting up, operating, and expanding the computerized system.

Conclusions

- As legislation is far too complicated (in regard to social security, administration, the utilization of assets owned by social security organizations), and both the NAT and the TEAYEK need to adapt to modern ways of administration, a more active, informative and effective supervision is needed by which the supervisory agent, besides the legality audits or the reviews of expediency, will also offer legal and technical support services to the social security organization within its modernization project.
- Redefining rights and obligations for government commissioners would contribute in the dynamic cooperation between the GGKA and social security organizations.
- Dividing supervision tasks between the GGKA and the Ministry of Mercantile Marine, justified or not – the Ombudsman has reservations on this issue –, seems to have lead to a more "relaxed" supervision of the NAT on behalf of the ministry and to the erroneous impression that the fund is not subjected to the insurance legislation and the obligations stemming from that, as other social security organizations are.

The Department of Quality of Life mediates in cases that concern acts or omissions of administration agents as regards the natural, residential, and cultural environment. It monitors the application of national and EU legislation; it takes awareness raising measures addressed to the state; it carries out checks and controls to the state mechanism aiming at the most effective protection of the environment according to the statutory principle of sustainable development. Major fields of action for the Department constitute those areas of environmental protection where the state demonstrates structural deficiencies (forests and forest expanses, natural habitats, cultural heritage areas, environmental impact licensing for business, urban planning issues, citizen access to environmental information).

HRYSI HATZI
Deputy Ombudsman

Lack of cohesion and effectiveness in administrative action; scattered legislation; deficient application of legislation on environment; inadequate supervision of private interventions on the environment; low priority ranking of quality of life and environment protection in relation to economic growth: all these constitute common conclusions in cases investigated by this Department. The Ombudsman aims at contributing in handling this harsh reality which has taken the size of environmental crisis. The Ombudsman's fixed position is that all relative decisions and activities, either private or state, should be materialized on the basis of environment protection and the principle of sustainability.

NEW COMPLAINTS, 2007	2,004
PERCENTAGE ON THE TOTAL OF NEW COMPLAINTS	18.89%
NEW COMPLAINTS WITHIN THE OMBUDSMAN'S MANDATE	1,362

COMPLAINTS WITHIN THE OMBUDSMAN'S MANDATE PROCESSED IN 2007	1,003
MALADMINISTRATION PROBLEM CORROBORATED	533
Problem resolved (favourable outcome)	450
Non-resolution of maladministration problem (Ombudsman's recommendations were not accepted)	41
Impossibility of resolution (e.g. gap in legislation, organizational malfunctions)	42
MALADMINISTRATION PROBLEM NOT CORROBORATED	326
INVESTIGATION DISCONTINUED	144

The Ombudsman aims at the coordination of all levels of administration so that public services develop a preventive and effective action for environmental sustainability. In order to make this aim come true, two intermediate objectives should be reached: the at least repressive action of the administration in cases legislation is violated and the coordinated action by co-competent services so as to eliminate unauthorized actions.

The Ombudsman notes that:

The Greek public administration tends to act by patches even when engaged in repression actions, while taking on, or expediting an action constitutes often the result of the Ombudsman's mediation.

In the case of pollution of the Strymonas mouth (Natura 2000 network) with unprocessed liquid waste, it took two years of consistent mediatory efforts by the Ombudsman for the Prefectural Government of Kavala to send the relevant sanitary report to the local prosecuting authority, and for the Municipality of Orfanos to submit to the Region a Preliminary Environmental Impact Assessment Study for the estab-

lishment and operation of an urban waste processing unit.

Favourable outcome

In regard to the illegal clay collection in Lake Lysimaheia, the administration has not only imposed urban planning fines, but in order to give a final solution to the issue the Ministry of Economy and Finance has put under way the process of delineating the lake's shore.

The administration insists on not demolishing illegal buildings. An indicative example is the illegal construction by the Municipality of Kerkini on the Kerkini Lake (protected area under the Natura 2000 network), which has not been demolished although the relevant disciplinary penalty has been imposed to the prefect of the municipality by the Region of Central Makedonia (Macedonia).

Favourable outcome

- The Region of Western Greece has already assured the necessary funds and has begun demolishing illegal constructions which are on the sea shore.
- The urban planning department of the Municipality of Larisa has already proceeded to demolishing illegal constructions situated within its area of responsibility along the old national road of Athens–Thessaloniki.

VISITS – WORKING MEETINGS

On-site meetings with the competent agencies organized by the Department of Quality of Life contribute in better understanding the problems and in materializing specific, necessary measures.

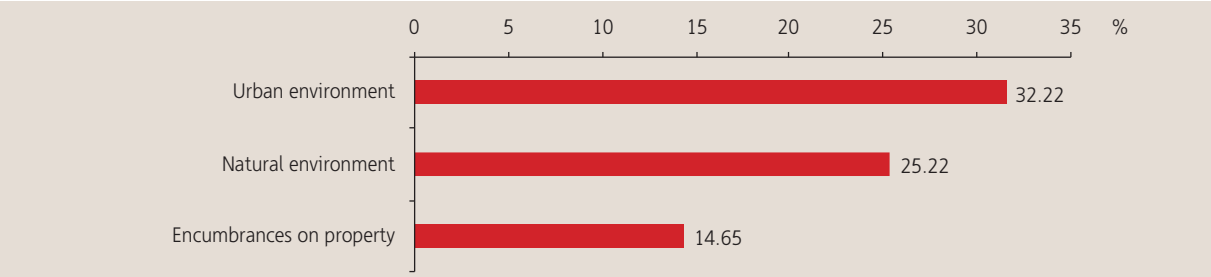
An indicative mention should be made to:

- The visit in Thraki and East Makedonia and the meeting with the representatives of local government and the Region on infrastructure and including in the city plan the Roma settlements.
- The wide participation meeting organized by the Ombudsman in Volos on the various environmental challenges faced in the Prefecture of Magnisia, such as air pollution, soil pollution by oil tanks, illegal interventions in forests, sea shore and beach. In this meeting all parties involved undertook the obligation to take specific measures.

Power plant operation

On the occasion of the excess of air pollution limit in the stations of the Kozani Prefecture, the Ombudsman had noted in its findings paper in 2005 the importance of consistently observing the procedure of issuing an environmental assessment approval before granting an operating licence so as to prevent pollution, as well as the need for large burning units to continuously adjust to best practices. In its findings paper the Ombudsman refers to the recent decision by the Commission of Social Rights of the Council of Europe which relates this issue to public health and emphasizes the responsibility of Greece for environmental infringements, regardless of the legal entity which is the pollutant in each case.

MAIN SUBJECTS OF THE COMPLAINTS HANDLED BY THE DEPARTMENT



Significant development

- The Minister for the Environment, Physical Planning, and Public Works imposed a fine of 1,000,000€ to the Public Power Corporation (DEH) for excessive air pollutants emission by the power plants in Ptolemaida, Kardia, Agios Dimitrios and Megalopoli.
- The Prefect of Kyklades (Cyclades), following the relevant findings paper by the Ombudsman in 2006, imposed a fine of 60,000€ to the DEH as persistent offender for continuous sea and air pollution due to the operation of the autonomous power plant on the island of Syros.

However, the Ombudsman notes that the punishing function of the state is effective when combined with systematic checks and controls for the observation of environmental terms.

Fields of action

Forest initiative

Following the fire in the national forest of Parnitha on 28 June, the Ombudsman issued a press release including its fixed findings:

- Inefficient protection of forests;
- Imposing need for competent services coordination;
- Non completion of forest maps;
- Inadequate personnel at the forest protection services;
- Imposing need for immediate measures for the protection and restitution of burnt areas.

On the occasion of citizens' and organizations' complaints, the Ombudsman has taken up a more comprehensive action for the restitution of forests and the environment in general in the areas affected by the fire, and aims at the cooperation of competent services in ministries, as well as NGO's which are active in similar fields of action. The mediation, on the basis of complaints from Ileia, Parnitha and other fire struck areas, is in progress.

Liens on property

A conference meeting took place in the Ombudsman's premises so that agencies involved could provide information to the Ombudsman on their views, suggestions by the Ombudsman and the other participants to be assessed, namely by the Ministry of Culture, and to identify pragmatic solutions. During this meeting, what was identified as a major factor for all problems faced was the shortage of funds, and as a major manifestation of maladministration the non application of judicial decisions; also, the need for continuous information and cooperation was stressed. The Ministry of Culture informed the Ombudsman that progress had been noted in the "expropriations working group" dealing with property liens under the ministry's competence. However, by the end of the year, the Ombudsman received information that the original schedule of the group was no longer observed so as to re-examine – which has been already the case many times – the

total of expropriations as to their necessity and/or feasibility, a rather backwards step. Nevertheless, the Ombudsman notes that the inability of the Archaeological Receipts Fund to finance recompense for expropriations constitutes a key element for pushing forward the pending expropriations by the Ministry of Culture.

National cadastre

On the occasion of many complaints bringing to the surface a number of problems in the operation of local and temporary land registries, the Ombudsman suggested that detailed guidelines should be given to those registries so that their employees would be able to provide correct information to citizens on all necessary procedures and the service would proceed to correcting errors in applications (obvious mistakes, such as geometrical deviations) without referring in all cases applicants to courts. This proposal has been accepted by the competent agency, Ktimatologio SA, and a circular has been sent to all land registries.

Mobile phone antennas

In relation to Law 3431/2006 the most important problems the Ombudsman identifies are:

- The delay in imposing sanctions for infringement of provisions;
- Neglecting to register the existing base stations;
- Questioning the competence for approving environmental terms for existing base stations;
- The poor definition of critical notions (e.g. node base stations);
- The approval and observance of environmental terms for mobile phone antennas on rooftops;
- The positioning of a large number of antennas on the same spot;
- The accumulative implications from other projects;
- Operation without a permit of base stations owned by the Hellenic Telecommunications Organization (OTE), and especially of the TETRA antennas which are considered more hazardous for public health as they transmit in very low frequency;
- The legal framework applied in environmental studies already submitted;
- Expert personnel understaffing in competent directorates at the Regions.

The Ombudsman organized a conference meeting with all competent agencies which lead to the conclusion that the aforementioned issues need to be further clarified; also, in order to find a solution to most of them it is necessary to involve other services too, namely the Hellenic Telecommunications and Post Committee.

In addition, the Ombudsman believes that it is necessary:

- To identify whether mobile phone base stations operate according to the new levels for radiation emission.
- To check whether such stations have been removed from schools, hospitals, retirement homes, etc.
- To check whether urban planning offices apply the provision for removal of an-

tennas operating illegally or of those not any more in operation.

Favourable outcome

The Greek Atomic Energy Commission refused to give to citizens a copy of the study for emission of electromagnetic radiation from an antenna, in contravention of the provisions of the Code of Administrative Procedure and Directive 2003/4/EC on environmental information. Following the intervention by the Ombudsman, the General Secretariat of Research and Technology of the Ministry of Development asked the committee to provide the relevant copy, which finally came to the hands of the complainants.

Protection of caves

The Ombudsman noted, within the framework of a conference organized by the Ministry of Culture, that simply including caves in the protected physical formations list without foreseeing specific protection measures does not ensure in essence their protection. In addition, applying the EU legislation ensures caves only through the limited protection of certain type of flora and fauna. Moreover, laws on archaeological sites do not assign to the Ministry of Culture caves for which there is evidence that have been linked to human activities, leaving thus unprotected important geological monuments (such as fossil forests, rock formations). The Ombudsman believes it is necessary for all competent agencies to cooperate more systematically on issues of protection and mild tourism use of caves, aiming at preventing harmful implications on the surrounding area.

Refuse collection by the municipal services

Issues arising during refuse collection and solid waste management in urban areas have mainly to do with the placing and the adequate number of litter bins for the mechanically assisted refuse collection, as well as the actual time schedule for refuse collection. Taking into consideration the freedom of action that local government authorities have on this issue, the Ombudsman notes that in any case it is necessary to carry out a study for the collection and transportation of solid urban waste.

Indicative case

Following two on-site investigations it was found that positioning of litterbins in the area of Plaka does not abide with the sanitary rules and regulations and the refuse collection schedule. The Ombudsman formulated suggestions for the positioning of bins and the refuse collection and recycling system so that the residents' health is not at risk and the area is not being degraded.

Communal spaces assigned to private use

Issues pertaining to the use of communal spaces refer mainly to the arrangement for sitting facilities on streets, sidewalks and plazas and the, albeit of questionable legality, determination of exclusive parking space for vehicles belonging to private or legal entities.

Favourable outcome

Following intervention by the Ombudsman, the Municipality of Athens:

- Abolished a decision by the municipality board which conferred four parking spaces on Favierou street to the Organization for School Buildings.
- Revoked its decision by which it was refusing to grant the special parking permit to a permanent resident on the grounds that she had not accepted without any reservation the terms and conditions of the parking system.

- As to the illegal advertising boards on Attiki Odos and on the Athens–Lamia national road, the Ombudsman asked the General Secretary of the Attiki Prefecture, on the one hand, to proceed to removing these and to impose the provided for fines and, on the other, to mediate so that municipalities take similar measures, within the areas of their competence, for illegal advertising boards that are visible from the aforementioned motorways.
- On the occasion of the installation of a circus on the onshore area of Moshato, within the limits of the Olympic Games facilities, the Ombudsman found that the area in question was not destined to such use and the circus did not hold an installation and operation licence by the Municipality of Moshato. The Ombudsman suggested that in the future it should be prevented for such activities to be installed and operate, especially without any control that the competent municipal authorities have issued the necessary licence.

Protection of archaeological sites and parallel economic activity

The Ombudsman noted that the Ministry of Culture has significantly delayed – the process had started back in 1990 – in establishing the protection zones and in defining the building and land use terms in the area surrounding the Justinianian Wall in Korinthos (Corinth). The Ombudsman encouraged the ministry to set immediately the protection zones for the wall so as to lift any ambiguity regarding the land use and activities allowed taking place within the premises. The competent services provided information that the re-delineation of the archaeological area and related zones has been scheduled.

Temporary connection of illegal buildings to public utility networks

Several complaints have been referring to the long delays – of months or even years – by competent services to carry through applications for temporary connection of illegal buildings to electricity and water supply networks. These illegal buildings have been constructed up until 30 September 2003 and are not located in forests, forest or forested areas, in streamlets, archaeological sites and other protected areas.

In the case of buildings not included in the town plan in the area of competence of the Lavrio Forestry Office and the DEH of Lavrio, the Ombudsman found that the main cause of malfunction was the omission of the municipality to ask from the forest authority, at the initial stage of application processing, to assess each stretch of land. Getting the forest authority involved at a later stage by the DEH, in order to approve its network traverse so that this does not pass through a forest area, results in suspension of power supply or no supply at all, if according to the forestry office the land in question is characterized as forest. Delays may also occur when, although the forestry office has approved the power supply of a specific building, the plan of the DEH includes the development of a network of a number of buildings for which the forestry office has no data or has not issued a decision yet.

The Ombudsman notes that, besides the fixed obligation of services to provide timely and justified answers to citizens on the course of their case and the actions citizens should take, it is necessary for the forestry office to systematically and efficiently cooperate with the DEH of Lavrio so as legislation pertaining to forests is not being circumvented in any way.

Wind farm in a protected area

The Ombudsman investigated a complaint regarding licensing for road works and the placement of a wind farm generating electricity in the Municipalities of Zaraka and Niata in the south of Mount Parnonas.

This investigation produced the following:

- The special ornithological and forest studies, which are required by both national and EU legislation, had not been prepared although the area has been characterized as forest and is included in the Natura 2000 network.
- The permitted – according to the approved relevant study – uses for the forest of Kremasti had not been taken into account.
- In the licensing of extended roadwork, the special physical planning study elaborated under the initiative of the Ministry for the Environment, Physical Planning, and Public Works for the Prefecture of Lakonia had not been taken into account; this study rejected all possibilities for wind farms in this specific area and in general in forest areas.

The Ombudsman suggested to the administration to review the case until the Dedicated Physical Planning Scheme for Renewable Energy Sources is in force. In any case, the special ornithological and forest study have to be drafted before further interventions take place. The Ombudsman also made a note that roadwork licensing has been forwarded, while the application for revocation of the initial approval of environmental terms for the wind farm is still pending at the Council of State.

Until today, only the Ministry for the Environment, Physical Planning, and Public Works has responded to the Ombudsman's suggestions and supplied clarifications on its own involvement in this case.

SPECIAL THEMATIC GROUP I

Land use in urban environment

Physical and urban planning legislation in Greece has three main landmarks:

- Legislative Decree of 1923 "on town planning", which was in force until the beginning of 1980s.
- Law 1337/1983, which adopted a system of three plans hierarchically related as for their priority and topic: the General Urban Plan (GPS), the Urban Planning Study and the Implementation Act.

- Law 2508/1997 on the sustainable development of cities, which provides two levels of urban planning: one including, on the one hand, the general regulatory scheme and, on the other, the (urban/ suburban) General Urban Plan and the territorial organization and open city residential development (not zoned land) plan. The second one includes the Urban Planning Study and the Implementation Act.

It is noted that the system defined by the aforementioned legislation exists along with other urban planning systems, which are applied alternatively according to the special attributes of each settlement or geographical area.

As for the land use, Greece does not have an integrated scheme for the total of its territory. This shortage works in favour of non transparent de-classification of certain stretches of land (forest or formerly forest areas) and affects the way construction is effectuated, for instance in outside settlement areas. Elaborating such a national scheme on land use should take priority in the next few years.

The situation today – General outline

A major view held by the Ombudsman is that determining land use through the GPS is binding. This means that since the relevant ministerial decision enters into force, only uses provided for in the plan are allowed. In the Urban Planning Study the arrangements of the GPS are being elaborated and specified, and these should not deviate from the terms and conditions set therein. Especially in cases where the GPS provisions are not clear as to land use, construction licensing is permitted for real estate the use of which does not contradict the one provided for by the GPS "unless this use is included in a GPS provision that need to be further specified" (Council of State 4047/1999) and areas for which the relevant GPS was approved up until 13 June 1997.

Indicative case

The Prefecture of Thessaloniki questioned the binding character of the GPS of the Municipality of Pylaia and allowed the operation of a pastry shop in an exclusively residential area. The Ombudsman underlined that the administration's view invalidates in essence the first phase of urban planning scheme which determines the urban organization and the development of an area through the provided land use. The Ombudsman also stressed that the pastry shop in this case, which is with sitting facility, is not provided for explicitly in the exclusively residential land use.

It is often the case that local government does not apply provisions and restrictions set by the GPS, or appears in contradiction perhaps because it disagrees with this particular planning, although it had the opportunity to express its objections at the stage of the GPS approval. As a result, the urban planning scheme is not complete as it is, but out of necessity to accommodate accomplished initiatives by private individuals, the GPS or the town plan is being modified.

Land use – Business activity zones

Car and motorcycle repair and service shops

Location and operation of all kinds of car and motorcycle repair and service shops was regulated by Presidential Decree 84/1984 in regard to the mainland part of the Prefecture of Attiki and the islands of Salamina and Aigina. This decree, which was abolished in 2001, has been questioned by the administration because there were also other decrees in force adopting different criteria of location.

The Council of State case law on the application of Presidential Decree 84/1984 emphasizes the protection of the environment and stresses the obligation of the state, when called upon to issue or renew a licence for a nuisance activity, to determine whether it is guaranteed that there is no further burden on the environment, as it is also stipulated in article 2 of the Constitution.

It is worth noting that Law 3325/2005 concerning the "establishment and operation of industries/small manufactures within the framework of sustainable development and other provisions" seems to respond to modern day needs and for the first time includes definitions of the terms in question. Nevertheless, the Ombudsman notes that this is not a final solution to the problem, as the solutions suggested by the legislation strongly favour development and, above all, legislation does not seem to take into account the protection of residence and that of the environment on equal terms.

Indicative cases

- A car body and paint shop was operating in Ampelakia, on the island of Salamina, although Presidential Decree 84/1984 explicitly forbids such operation in general residential areas. While investigating the case, it was found that the Prefectural Government of Peiraias (Piraeus) had issued a licence for this business activity without the necessary Environmental Impact Assessment Study. The Ombudsman stressed that, had the legal procedure been followed, that is, had the aforementioned study and all necessary supporting documents been submitted, it would have been noted that it is not allowed to establish a car body and paint shop in the area. Following the Ombudsman's intervention the shop was sealed.

- A professional workshop for iron cutting and trading was illegally operating in a general residential area on the island of Salamina. Following a complaint for noise pollution and solid waste disposal, the Prefectural Government of Peiraias carried out an on-site investigation and found out that the workshop did not hold the necessary licence and approvals. The competent department revoked the decision by which the workshop did not have the obligation of an establishment and operation licence and decided to disrupt the operation of the workshop and the power supply. However, the workshop continued to operate using the power supply of the adjacent building, the Ombudsman intervened anew and the Prefectural Government of Peiraias carried out a second on-site investigation. It was then found that the business had changed its professional activity, but this time too it was not equipped with the necessary legal licensing and approvals. Hence, the process of imposing administrative fines was initiated and finally the business was sealed.

The Ombudsman systematically comes across the inability of the administration to check whether the terms and conditions for a licence are indeed fulfilled and to impose sanctions to those violating the law.

Establishments subject to sanitary control

Municipalities are responsible for systematically breaking pertinent legislation on licensing for establishments subject to sanitary control.

Indicative cases

- In the area of Thiseio in Athens deficient administrative control and absence of coordination of the co-competent agencies have lead to an extensive concentration of establishments subject to sanitary control, pushing away residential use and finally deteriorating the nature of this, in many ways, protected area. It should be noted that the dedicated to the area of Thiseio presidential decree provides for the operation exclusively of traditional coffee shops and only in the general residential zones and in the centre of this area, as well as the operation, by derogation, of activities under the condition that they existed before the aforementioned presidential decree was issued and that the use applied was legal.
- It is also interesting to note the case of the area of Faros at Neo Psyhiko where in an exclusively residential area several coffee shops operate, as well as restaurants and bars that should have been removed by 2000 the latest.

In relation to the licensing of establishments subject to sanitary control, the Ombudsman notes that the overdue inclusion of new forms of commerce and professional activities (such as the so called internet cafés), the non determination of new terms and conditions of land use with the addition of new arrangements (such as the lack of provision for the establishment of kinder garden and private tuition schools in exclusively residential areas), as well as the persistence on provisions that correspond to business forms of the past are making difficult the effective operation of services and departments and result in a lack of legal certainty for citizens.

Indicatively it should be noted that the majority of food markets (the so called "super markets") is operating illegally since, on the basis of relevant provisions, in general residential areas shops are allowed to operate with the explicit exception of department stores and super markets, while in the exclusive residential areas no such business are mentioned.

Conclusions – Suggestions

The Ombudsman notes that the GPS constitutes the only tool for a sustainable development of towns and cities on the basis of land use. It is directly and immediately binding to the administration, as it is by virtue of its drafting binding.

The Ombudsman notes that it is a compelling need to codify the existent scattered legislation; in addition, competent authorities should proceed to updating the legal framework of their competences, to delineate and above all to coordinate among them their areas of competence. The Ombudsman believes that the required legal modernization should be carried out for each type of use separately, as this will facilitate solving specific problems and will contribute in the most efficient check and control by competent services.

The Ministry for the Environment, Physical Planning and Public Works should cooperate with the co-competent ministries so as to:

- Reformulate the framework of all relevant urban planning provisions for allocating land use, taking into consideration all modern enterprising and consumer conditions, as it is not wise to ignore them, while at the same time it should not be allowed that they be materialized by stealth.
- Take measures in advance for "collateral damages" caused by the allocation of land use within residential zones (parking arrangements and protection from noise or other source of pollution).

SPECIAL THEMATIC GROUP II

Administrative monitoring and control of environmental licensing and natural environment

Year 2007 marks the fifth year since the adoption of Law 3010/2002 which enacted a system for the *ex ante* environmental assessment of works and activities. This new institutional framework:

- Replaced the process of preliminary site approval with the preliminary environmental assessment so that the environmental dimension of a works or construction project is examined at an early stage as well.
- Expanded the application field of the institution of environmental licensing by making it a prerequisite for more projects or activities.
- Decentralized the competences with respect to environmental licensing by assigning competences to municipalities as well.
- Provided for adjustment of administrative fines.

As to the application of the new legislative framework, the timely issuance of the joint ministerial decision is a positive development according to the Ombudsman, as this modernizes and upgrades the classification of public and private works and activities, and sets basic criteria for this classification. At the same time, the Ombudsman notes that it still remains to determine the standards and content of both the Preliminary and principle Environmental Impact Assessment Study for each group and category of projects, as well as the necessary supporting documents that should be attached.

The Ombudsman is still noting an important delay and significant shortages in environment services. Assigning competences to local government authorities for some work categories, when neither the necessary know-how, personnel, or funding is guaranteed, may prove a source of risks and trouble.

The process of environmental licensing

Works and activities classification

The classification of a work project is a critical element in the assessment process, since this determines, on the one hand, which authority will provide licensing and, on the other hand, which are the desired environment protection grade and the elaboration degree in the relevant environmental studies. The Ombudsman has repeatedly noted that classifying a project in a lower rank and its possible exemption from environmental licensing due to its segmentation do not abide to the aims and objectives of sustainability.

Indicative cases

- In the case of the works for improving the already existing water supply network in Kerasia Malevros in the Municipality of Panaitolikos, the Ombudsman brought to light two issues:

- The project did not involve solely the replacement of the water supply network, but also the best use of water resources; hence it was necessary to carry out the necessary environmental licensing procedure, an obligation which is not a prerequisite for the replacement of the existing network.
- The project involved water resources management and hence it was necessary to investigate its feasibility as to the availability of water quantities (Directive 2000/ 60).

Following the intervention by the Ombudsman, the Directorate for the Environment of the Region proceeded to a higher ranking of the work, required a full Environmental Impact Assessment Study to be submitted and revoked the execution licensing for the work of water resources best use.

- The Ombudsman noted an erroneous classification in the case of a hotel construction on the coastal zone in the protected area of Lake Antinioti (Natura GR 2230001). Following the Ombudsman's intervention, the administration revoked the approval of environmental terms and required that the relevant procedure be carried out afresh.

- In the case of an airport operating on the surface of Lake Pamvotida in Ioannina, the administration did not apply the general classification for airports, nor did it ask for the necessary, due to the special protection regime in force for this lake (Natura 2000 network), management assessment study. The *a posteriori* issuance of a joint ministerial decision on the classification of projects and activities, in which airports on water surface are included, gave rise to more problems in applying the legislation. The Ombudsman objected as to the competence of the Region to approve the project, as approving the Environmental Impact Assessment Study of this specific project in the specific protected area should fall under the competences of the Ministry for the Environment, Physical Planning, and Public Works.

It is noted that the actions which aimed at legalizing the activities on the lake were initiated due to the Ombudsman's intervention.

Not following the environmental licensing stages

The strict adherence to the partial stages of the administrative procedure on submitting studies, opinions by co-competent agencies, etc. constitutes a basic precondition in meaningful and effective control by the state. Formal and substantial omissions in this procedure may render relative acts void by court decisions and, therefore, may cause long delays in the project materialization.

Indicative cases

- The Prefectural Government of Voiotia approved the environmental terms report for the construction of a sheep pen inside an archaeological site without asking, as it should, the opinion of competent archaeological ephorates. Following the Ombudsman's intervention, the Directorate for the Environment revoked this approval.

- During the licensing legality audit for a wastewater treatment unit in Rafina, the following problems were established:
  - The environmental terms approval was not formally legal because it did not beat the signature of the Minister of Mercantile Marine, a necessary precondition as for this project, intervention to the sea and coastal environment is required.
  - By the prefect's decision, the final receiver of treated wastewater would not be determined before the preliminary site approval and the approval of the environmental terms were issued.

- The exact location where solid by-products will be disposed when the unit will operate was not determined in the approved environmental terms study.

The Ombudsman interrupted the investigation of this case as an application for revocation was submitted at the Council of State against the approval of the environmental terms. It should be noted, however, that Greece's recent conviction by the European Court of Justice on omissions in fulfilling obligations in waste water treatment units (case C-440/2006), makes mention of the facilities in Rafina and in Lefkimmi.

Environmental Impact Assessment Study documentation

The Ombudsman insists on the documentation of the Environmental Impact Assessment Studies, on examining and assessing alternative solutions, and on the thoroughness of the relevant justification.

In relation to the documentation the Ombudsman notes that:

- Often, the data of the report analysis on the existing state of the environment in the area in question each time are incomplete or even contradicting.
- The co-competent services do not cooperate in determining critical zones. Indicatively: placing of wind farms in the Prefectures of Lakonia and of Florina; non exact delineation of the centre of the national forest of Prespes and of the natural habitat of Agios Ioannis Porto on the island of Tinos.
- The services are not aware of the pertinent legislation, and their information of each one's actions and decisions is sparse. Indicatively: the licensing for the construction of a new port in Molos, Marmara, on the island of Paros, without taking into consideration that this was one of the 51 special protection new zones suggested for inclusion in the Natura 2000 network.
- The precondition of comparative assessment of alternative options is not adequately adhered to so as to find the most appropriate solution for the environment regarding the location and the construction of the project. Nonetheless, in the case of renewable sources power generating plants the legal framework provides, among others, the short description of all major options, with an indication of the basic reasons for selecting the suggested solution.

Modification of approved environmental terms and conditions

In order to proceed to update, expansion, improvement or modification of an existing project or activity, the competent service has to decide whether it is required for a new Preliminary and/or a principle Environmental Impact Assessment Study to be submitted. Equally important is to assess the environmental impact of unlisted works. The Ombudsman notes that there are challenges in observing legal procedures in both cases.

Indicative cases

- The Directorate for the Environment and Urban Planning of Western Makedonia issued a decision amending the environmental terms and conditions of the Prespes Wind Farm, without taking into account the important changes that have undergone both the technical specifications of the project, as well as the ground on which the intervention is to take place.
- In the case of the wind farm in Lakonia, the administration proceeded to approving the environmental terms of the unlisted works, despite the existing application for revocation at the Council of State against the approval of environmental terms of the project as a whole.

Monitoring of the environmental terms and conditions

As for monitoring environmental terms, the administration is called upon to demonstrate a dynamic approach and carry out systematically the necessary checks and controls. For an effective environmental licensing and monitoring, it is necessary to have complete terms and conditions, clear and easy to monitor. In any other case, important problems are likely to arise.

The Ombudsman investigated cases of not adhering to environmental terms and conditions, and of deficient operation of facilities. These cases refer to basic infrastructure works, such as:

- Sewage treatment plants (e.g. urban waste treatment plant on the island of Kimolos, uncontrolled operation of the biological wastewater treatment in the Municipality of Artaki);
- Waste landfills (e.g. operation of waste landfill at Akrokefalos, Temploni, on the island of Kerkyra – Corfu);
- Power plants (the DEH station on the island of Syros, thermal power stations in the Prefecture of Kozani).

From the total of cases regarding private business, are indicatively mentioned the cases of: pollution of canal 66 in the Prefectures of Pella and Imathia with industrial waste; disposal of untreated dairy industry waste in a stream flowing into Kagia beach on the island of Lesvos; implications from the operation of industrial/small manufacture activities in the Prefecture of Rethymno in Kriti (Crete).

The Ombudsman notes:

- There are facilities operating for long periods of time without having renewed their environmental terms as is required. Also, there is no procedure for controls by the licensing authority so as to ensure the facilities' law abiding operation.
- The specialization of the content of the environmental terms and conditions is insufficient; as a result the work of controlling and monitoring apparatus is made even more difficult.
- It is not possible to systematically monitor approved environmental terms and the administration lacks the specialized know-how so as to carry through trustworthy control/assessment of environmental implications.

When the necessary control takes place and it is detected that the environmental terms and conditions are not being adhered to, the Ombudsman notes that:

- Law offenders tend not to abide immediately to the recommendations by the competent services.
- The administration manifests impressive inertia as to imposing the provided for sanctions.
- The fine imposed is usually disproportionately small to the offence identified.

Environmental terms and conditions adherence by business activities

In relation to the monitoring and control of environmental terms in the area of business activities, the Ombudsman notes that:

- The administration does not effectuate timely – or at the most critical phase of manufacturing – controls of waste disposal and, as a result, there exist manufacturing units operating without the provided for licence for disposing treated waste, approved environmental terms, and biological wastewater treatment facilities. Indicatively: disposal of untreated liquid waste and solid animal by-products by the municipal slaughterhouse of the Municipality of Aitoliko; environment pollution by agricultural products processing and standardization units in the

area of Havario in the Prefecture of Ilia; oil mill operation in the Community of Perdika in the Prefecture of Thesprotia.

- Abiding to the law is long overdue, even in cases where the Environmental Quality Control Prefectural Units have effectuated on-site investigations, have identified illegalities in the operation of businesses and have required administrative sanctions to be imposed and immediate adherence to the approved environmental terms and conditions.

Respective cases of illegal operation, even without approved environmental terms, are identified in the public sector too. Indicatively: the autonomous power plant of the DEH on the island of Syros operated for two years (2003–2005) without the approved environmental terms. What is more, for many years there was not any permit for solid and liquid waste disposal.

Approved environmental terms and conditions as a prerequisite for operation

The approval of the environmental terms constitutes a prerequisite for the issuance of administrative acts that are needed in the materialization of a project or activity.

The Ombudsman notes that the environmental licensing had been omitted in the projects of sewage transport and treatment in the Ano Mera settlement on the island of Tinos and in the project of expansion of the flood dyke in the Kalohori Lagoon in the Municipality of Ehedoros. Gross cases of illegality and state inexplicable delays are also the operation of the open canals for the untreated waste water disposal at the mouth of River Strymonas, which is included in the Natura 2000 network, and the operation of a trans-shipment waste station in Alimos, Attiki.

The Ombudsman notes that:
The omissions in environmental licensing result often in delays of projects or in void administrative acts. The practice of acquiring at a later stage the environmental licensing, which also means the *ex post* assessment of environmental impact, is neither legal nor in agreement with the statutory principles of sustainable development.

Conclusions – Proposals

The Ombudsman notes that:

- The legal framework provides for adequate monitoring and control mechanisms for adherence to the terms of environmental licensing, the operation of which is obligatory for central government and local government authorities, as well as for the pollutant themselves. However, what is not provided for by the law is the procedures for coordination and cross checking of data among audit services.

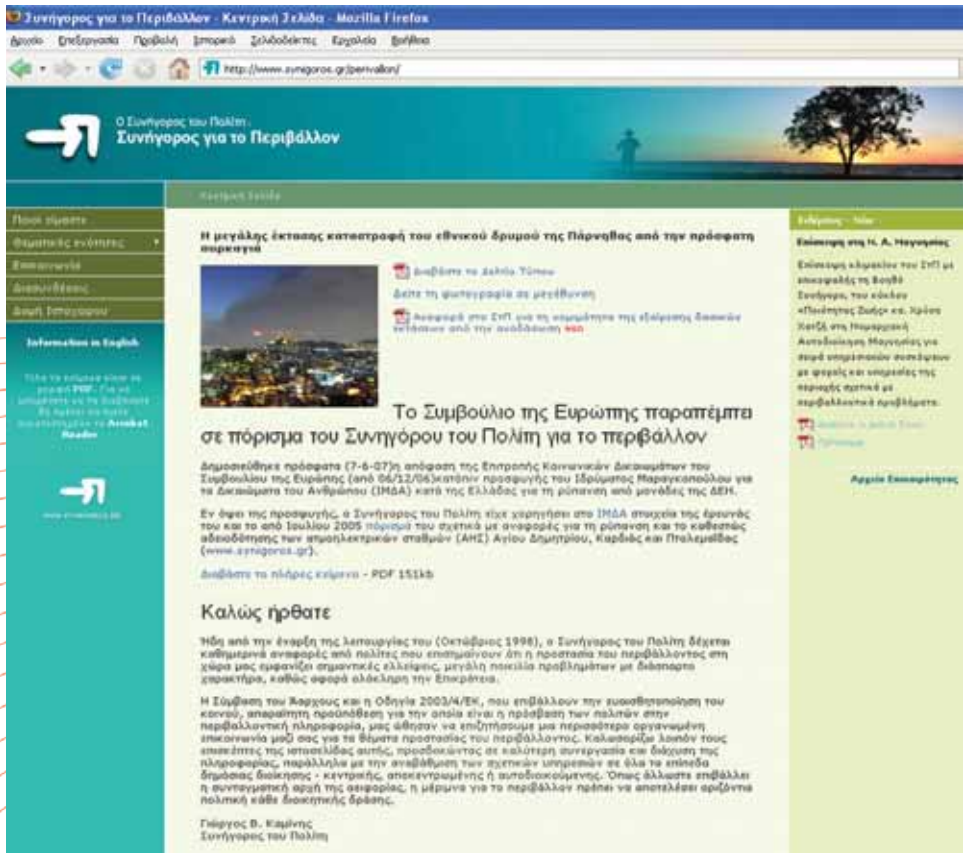
- The practice of the administration to omit or by-pass the prerequisites set by the law for environmental licensing does not facilitate in essence the expedite materialization of the project. In real terms, it is a compromising practice for the administration as it raises the possibilities of revoking administrative acts and hence causes postponements and delays to the project.

Inherent to the system seem to be phenomena, such as the deficient technical description of a project, the exemption by the administration from the obligation of environmental licensing or the *ex post* licensing, and the lack of alternative options from Environmental Impact Assessment Studies, despite the adoption of the principle on environmental liability "the pollutant pays" (Directive 2004/35/EC) and the provision that the Strategic Environmental Impact Assessment Study should have been approved beforehand (Directive 2001/42/EC) so as to materialize far reaching development plans.

The Ombudsman proposes:

- To issue the provided for joint ministerial decisions determining the standards and content of Preliminary and principle Environmental Impact Assessment Studies of all types pertaining to all classes of projects or activities.
- To reinforce audit services (personnel and infrastructure) and to set often and regular controls so as to deal in an efficient way with all offences.
- To record licensed and non licensed projects and activities, to compile a data base for the record and processing of data collected at environmental controls.
- To improve the fines' calculation and management method.

The Ombudsman provides information to citizens and the public administration through the new sub-website dedicated to issues related to the environment at http://www.synigoros.gr/perivallon/



A wide range of issues fall under the competences of the Department of State – Citizen Relations and this is the reason why the Department has a round and clear view of the way public administration works and the problems citizens face in their everyday contact with the Greek administration apparatus. This Department examines complaints on information and communication issues, quality of services provided and maladministration in local government authorities, public utility companies, transport, employment, industry, energy, taxation, custom houses, finance issues, trade and procurements, the educational system, agriculture and agricultural policy.

KALLIOPI SPANOU
Deputy Ombudsman

The cooperation of public services with the Ombudsman

The Department of State – Citizen Relations has elaborated a special report on active employment policies.

The systematic effort put forth by the Ombudsman to reinforce its cooperation with the administration agencies, the public services and those of the wider public sector, as well as the local government authorities has had as a result a gradual shift of the initial negative attitude manifested by some services. A typical example is the response of the Attiko Metro Operation Company SA (AMEL AE) to the Ombudsman's proposals.

The AMEL AE accepted its obligation to answer to citizen claims in a reasonable time. It also took a pledge to:

- Voluntarily joint the Public Transport Obligation to Passengers Chart.

NEW COMPLAINTS, 2007	**3,622**
PERCENTAGE ON THE TOTAL OF NEW COMPLAINTS	34.13%
NEW COMPLAINTS WITHIN THE OMBUDSMAN'S MANDATE	2,168

COMPLAINTS WITHIN THE OMBUDSMAN'S MANDATE PROCESSED IN 2007	1,730
MALADMINISTRATION PROBLEM CORROBORATED	911
Problem resolved (favourable outcome)	760
Non-resolution of maladministration problem (Ombudsman's recommendations were not accepted)	83
Impossibility of resolution (e.g. gap in legislation, organizational malfunctions)	68
MALADMINISTRATION PROBLEM NOT CORROBORATED	667
INVESTIGATION DISCONTINUED	152

- Upgrade its Passenger Communication and Information Department so as to provide timely and trustworthy responses to complaints.
- Intensify its efforts for information to passengers by issuing and disseminating new information material, placing special signals and announcement boards in the metro premises.
- Monitor the printing quality of ticket validators so as to eliminate bad printing which leads to inadvertent double validating and unfair sanctions.

- Investigate, in a pilot project at first, the possibility to carry bicycles in the train cars.

Favourable outcome

The AMEL AE has already placed floor signals delineating the area for ticket validation in all lines and decided upon the upgrade of the printing standards for ticket validators.

Indicative cases

Refusal by a local government authority to issue a certificate for real estate tax debt liability

The Department of State – Citizen Relations drafted findings papers on the employment of part-time personnel and the special municipal user charges.

A citizen filed a complaint when the Community of Ia, on the island of Santorini, refused to grant him a certificate that he is not liable to a real estate tax debt because in the past the community had a claim on his building plot. The Ombudsman noted that the certificate in question does not constitute a certificate of legal ownership and that it is obligatory for the community to issue this document. Then, the community issued the certificate in question, with a reference of reserving rights as to the ownership status of this property. The Ombudsman insisted on its position and invited the Legal Counsels of the State to issue an opinion; the Legal Counsels of the State adopted in full the Ombudsman's proposals. The Ministry of the Interior, Public Administration, and Decentralization notified all Regions of the country of this opinion and the Community of Ia proceeded to issue a new certificate of real estate tax liability without any mention to reservations.

Classification of private freight cars

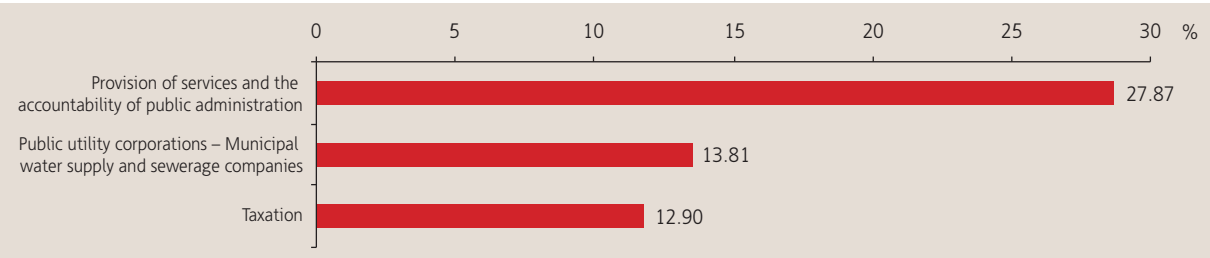
A company of collection, transportation and disposal of solid waste filed a complaint related to the refusal by the Ministry of Transport and Communications to classify private freight cars and being thus obliged to use public ones for its business activities.

The Ombudsman noted that the ministry in this way:

- Raises problems in the materialization of the National and Regional Planning of Solid Waste Management, an extremely critical project for environmental protection.
- Does not abide to the statutory provisions and respective legal precedents determining that the state should be very stringent in imposing restrictions to legally licensed businesses in exercising their activities in the most financially profitable and efficient way and that these restrictions should occur only in the ultimate and specifically described interest of the public.

The Ministry for the Environment, Physical Planning, and Public Works accepted the views of the Ombudsman and sent out to the Ministry of Transport and Communications relevant proposals to settle the matter. The response by the Ministry of Transport and Communications is still pending.

MAIN SUBJECTS OF THE COMPLAINTS HANDLED BY THE DEPARTMENT



SPECIAL THEMATIC GROUP I

Access to documents

The Ombudsman has dealt systematically with complaints by citizens who came across the refusal by the administration to allow them access to private or administrative documents[1]. The experience of the Ombudsman and its mediatory action demonstrate that exercising the right of access to documents is a complex and wider issue of legal conformity checks and more specifically of the violation of article 5 of Code of Administrative Procedure.

The "right of access to documents", as this has been formed in time, is at first a procedural right the satisfaction of which is a precondition for the effective exercise of some other right. Today, the access to documents constitutes the materialization of the constitutional right to information. The intervention on behalf of the Ombudsman is carried out under the framework this relation sets, in which the procedural right to access to documents meets (and is reinforced by) the "third generation rights" and by the dynamic relation between transparency and personal data protection.

Depending on their content, the complaints citizens filed indicatively refer to:

- Applications for copy of complaint by a third party against the applicant;
- Applications for access to documents included in the personal, official, or tax file of the applicant;
- Applications for copies of documents included in the file of cases regarding third parties;
- Applications for access to documents included in co-candidates files;
- Applications for access to findings of administrative investigations under oath.

The refusal by the public administration to satisfy the right of citizens on a case-by-case basis puts into question the sole existence of lawful interest on behalf of the applicant and to this direction it appeals to provisions that reject this right, makes recourse to tax confidentiality or appeals to personal data protection.

Article 5 of the Code of Administrative Procedure is critical as to the evolution of the right of access to documents because, on the one hand, it places this right in the same codified text and, on the other, it expands the preconditions of its exercise as, by now, the sole existence of reasonable interest is enough for someone to claim the right in question. In addition to the afore-

[1] In the wider case-law sense, administrative documents include not only the documents drafted by public services, but also public – such as notary deeds – and private documents to the extent that they have been entered into a registry, or have been used, or taken into account for the determination of an administration act, or the formulation of an opinion, or a decision of an administration body.

mentioned article, there is a series of provisions regulating the access to documents from various aspects, and this gives rise sometimes to issues of judgement and interpretation. Indicative mention is made to article 12 of Law 2472/1997 on the protection of personal data and Law 3448/2006 on further use of information originating from the public sector.

The opposing relation between the constitutional right to information and the appeal to the principle of transparency to state acts, on the one hand, and the right to personal data, on the other, runs through the provisions of legislation. Some reservations regarding the exercise of this right are included in the same article of the Code of Administrative Procedure, in which the ultimate right to protection of private and family life of third party is acknowledged, as well as the existence of special type of confidentiality (e.g. medical, tax, bank, military one), and the explicit legal exception. In this framework, public administration is called upon to make its own judgments regarding oppositely organized rights, in order to apply the relevant provisions.

In the view held by the Ombudsman, the fragmentation of provisions gives rise to another issue: the coordination and delineation of its own action in relation to the other agencies servicing the principle of transparency, such as the General Inspector of Public Administration, the Public Prosecutor, and last but not least the Hellenic Data Protection Authority.

The coordination of action between the Ombudsman and the Hellenic Data Protection Authority constitutes a compelling need. The Ombudsman takes initiative so as to prevent any decisions being issued including contradicting views by independent authorities and other agencies servicing the principle of transparency. It also aims at achieving an economy of means being activated to ensure access to documents.

Indicative cases

■ Documents kept at public services' archives

The Ministry of Development refused to grant to a citizen documents related to the operating licence of a power generation company and, more specifically, the reports of the management of the company and relevant applications, on the grounds that, on the one hand, the reports are not explicitly referred to in article 5 of the Code of Administrative Procedure, and hence they are not administrative documents, and, on the other hand, that the company's applications constitute private documents and fall under industrial confidentiality. The Ombudsman's intervention had a favourable outcome.

■ Expanding confidentiality provisions

A citizen asked for information on the amounts paid by the Child Care Centre of Lehaina (legal entity of public law), in Ileia, for medicines to pharmacists in the Municipality of Lehaina. The Directorate of the Health District of Western Greece refused to give him copies of these documents on the grounds of tax confidentiality for pharmacists.

The Ombudsman purported that:

The notion of tax confidentiality is in essence the obligation of tax authorities to prevent any act by which tax payers' data would be available to third parties. In this specific case, however, the information which is being asked for is kept by the spe-

cific legal entity and is included in its annual budget, and in this sense they constitute administrative documents; hence, access to these documents can be granted.

The Ombudsman's intervention had a favourable outcome.

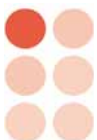
Personal data

An elected municipal officer asked the Community of Livadia to grant him copies of "financial predicative lists for water supply, sewage, landed properties, livestock and keeping for year 2002". The municipal council of Livadia rejected this claim on the grounds that these lists included data falling under tax confidentiality. The appeal against this specific decision was also rejected on the grounds that copies of predicative lists, on the one hand, include personal financial data falling under tax confidentiality and, on the other, constitute personal data.

The Ombudsman purported that:

- Tax confidentiality refers to tax return and information on it, and not to data that can be taken from public documents certifying income for local government authorities.
- A special decision is required to whether there is personal data requiring protection in the applied for documents. The possibility of danger of violating privacy and the right to information self-determination of individuals in the lists is not that significant to justify a retreat of the principle of transparency and that of visible action on behalf of the administration. To this effect, the applicant's claim should be satisfied and he should be given the copies he has applied for.

The Community of Livadia finally provided the applicant with the aforementioned documents.



SPECIAL THEMATIC GROUP II

Change of work contracts into open-end labour contracts and Presidential Decree 164/2004

In 2006 and 2007 a great number of complaints were filed with the Ombudsman in relation to issues raised at the process of changing work contracts into open-end labour contracts, according to Presidential Decree 164/2004. According to this decree:

- It is forbidden to enter into consecutive work contracts between the same public and wider public sector agencies and private individuals for a total period of time longer than 24 months.
- There is the possibility to change such consecutive work contracts into open-end labour contracts, under certain conditions.
- The Supreme Council for Public Sector Personnel Selection (ASEP) bears the sole responsibility in producing the final decision on whether these certain conditions apply in each case.

The acts of the ASEP issued according to these provisions constitute executable administrative acts that can be contested only by applying for revocation at an administrative court. Personnel whose work contracts are changed into open-end labour contracts are placed in vacant ordinary posts. In case such posts do not exist, new ones are created by a joint ministerial decision of: the Ministers of the Interior, Public Administration, and Decentralization; and of Finance and Economy; and, on a case-by-case basis, of the competent ministry.

Issues pertaining to including contract employees under the provisions of Presidential Decree 164/2004 constitute an explicit responsibility of the ASEP which, since it is an independent authority, does not fall

under the competence of the Ombudsman. The Ombudsman's intervention is focused either at the stage before the ASEP decision (e.g. the reports by the competent official council reaching the ASEP), or, principally, at the stage following the issuance of the relevant acts by the ASEP (e.g. delays in applying the ASEP decisions or creation of the ordinary posts).

Issues while applying the ASEP decisions

The Ombudsman has noted that when the ASEP issues a favourable decision, the administration agencies involved:

- Question the legality of the relevant decisions and refer them to the ASEP for re-examination and formulation of a new decision.
- Present undue delays in classifying the interested parties into ordinary posts, especially when there are no already vacant ones, but posts have to be established anew.
- Find out formal obstacles which prevent the appointment of previously contract holders whose case has been decided upon favourably.

The administration questioning the ASEP final decisions

Indicative case

The State General Accounting Office (GLK) rejected the establishment of a large number of ordinary posts destined for the ranking of former contract holders employed in institutions and educational units within the Aristotle University of Thessaloniki, although these had been favourably decided upon by the ASEP. Although the Ministry of the Interior, Public Administration, and Decentralization had noted in writing to the GLK that it is compulsory for the administration to apply the ASEP decisions and that the competences of the Ministers of the Interior, Public Administration, and Decentralization; and of Finance and Economy are restricted to establishing open-end posts under private law and not carrying out the legality audit of the ASEP decisions, the GLK in some cases asked the ASEP to re-examine its favourable decision. Indeed, the ASEP issued a new decision by which it insisted on its initial, favourable opinion. Establishing, however, these posts was delayed again. This time, the Ministry of Education and Religious Affairs questioned the correctness of the second ASEP decision as to certain ranks of contract holders and applied for revocation at the Administrative Court of Appeal.

The Ombudsman notes that:

This practice of referring to the ASEP files of contract holders so as to review already taken decisions of this independent authority regarding the conditions for inclusion under the provisions of article 11 of Presidential Decree 164/2004, not only does it bring additional work load to the ASEP, but it also undermines its own role and profile.

Delay in establishing permanent posts

Indicative case

According to the Municipal Slaughterhouse Company of the Municipality of Didymoteiho, a contract holder, for whom the ASEP had issued a favourable decision, had lost his right to an open-end ordinary post of private law because when this decision had been issued he was not employed at the company any more. The Ombudsman noted that the right to participate in this procedure is based on the employment relation between employee and employer, either at the time Presidential Decree 164/2004 entered into force or during the three months immediately after that date. Hence, the Ombudsman asked the municipal company to apply the ASEP decision.

Formal obstacles preventing appointment: the case of aliens

For an appointment in an ordinary post under a private law open-end labour contract it is necessary to fulfil either the general appointment requirements, provided for in the Civil Servants' Code governing the public sector and the legal entities of public law, or the requirements provided in the specialized provisions pertaining to each agency in particular. These requirements include Greek or EU member state citizenship; nevertheless, this does not affect special legislative provisions for the employment of aliens. The agency in which the contract holder is appointed bears the responsibility to investigate possible obstacles for this appointment.

Indicative case

The Municipal Conservatoire of Kozani refused to rank in a private law open-end post a music teacher, an Albanian citizen of Greek ethnic origin, despite a favourable decision by the ASEP, on the grounds that he was not a Greek citizen or a citizen of an

EU member state. The Ombudsman noted that relevant provisions offer the possibility to appoint in public sector ordinary posts aliens of Greek ethnic origin who are not holders of the Greek citizenship, nor of another EU member state, provided that their descent and conscience can be proved as Greek.

The administration not abiding by civil court decisions

The Ombudsman investigated cases in which various agencies refused to abide by civil court decisions dictating that, for a large group of contract holders, consecutive fixed-term contracts constitute in essence a single open-end labour contract. These cases involved agencies that:

- Executed (primary level local government authorities in their majority) final decisions of civil courts and ranked employees in private law posts for indefinite period; however, the Court of Audit did not authorize their paychecks.
- Hesitated (primary level local government authorities in their majority), due to the aforementioned practice of the Court of Audit, to execute court decisions.
- Demonstrated unwillingness to abide by court decisions, by detecting various formal obstacles preventing appointment of the contract holders.

The problem of parallel procedures

Presidential Decree 164/2004 established a special administrative procedure for deciding whether contract holders meet the preconditions for changing from fixed-term work contracts to open-end labour contracts. This raised questioning regarding the competence of civil courts to decide on the type of labour relation that relates employer to employee. On this issue the Court of Audit decided that civil courts acquire competence on this after the completion of administrative procedure and in case relevant decisions are questioned by the parties involved. In addition, the Court of Audit decided that civil court decisions on the characterization of work contracts as open-end labour contracts are valid when the relevant lawsuit has been lodged before the presidential decree in question entered into force.

Therefore, it is now clear that there are two discrete and parallel procedures to change fixed-term work contracts into open-end labour contracts: the one is a special administrative procedure provided for by Presidential Decree 164/2004 and the other is the characterization of contracts in court.

The Ombudsman notes that:

None of these two procedures does it provide adequate guarantees as for the application of their decisions. In the first case, the decisions of the ASEP are often questioned by agencies involved; in the second case, final decisions by civil courts are applied by the administration selectively, depending on the exact time the lawsuit had been lodged. As a consequence, in essence, the constitutionally established individual right to judicial protection is being invalidated.

Ranking of aliens of non Greek ethnic origin, non EU member state citizens

Indicative case

Musicians, aliens of non Greek ethnic origin, non EU member state citizens, who had for years been employed at the Municipality of Athens' Musical Groups and at the Cultural Organization of the Municipality of Athens, had had recourse to competent civil courts, before Presidential Decree 164/2004 enters into force, so as to change the characterization of their fixed-term work contracts into open-end labour contracts. The favourable for them final court decisions are not applied by the agencies involved on the grounds that the complainants' citizenship constitutes a formal obstacle preventing appointment. It should be noted that the court had incidentally decided that these aliens, regardless of their citizenship, can be employed at the aforementioned ordinary posts of the public sector (musical groups) because these posts are not related to the exercise of public power and according to provisions in force regarding EU citizens.

The Ombudsman stressed that the administration should abide with the final and enforceable decision, regardless of its legal soundness which is already under investigation by the Hellenic Supreme Court of Civil and Penal Law (Areios Pagos).

The Ombudsman notes that:
Haphazard regulations and treatment of a long standing problem, such as employees on work contracts, raise a series of important issues on delineating competences. It is in this way that the trustworthiness of critical political and administrative institutions is undermined, in these cases the constitutionally established independent authorities, as well as of justice, since the decisions of civil courts are not being executed. At the same time the rights of citizens are affected, namely that to judicial protection.

SPECIAL THEMATIC GROUP III

Applying customs legislation

The complaints filed with the Ombudsman on the application of customs legislation are relatively few in number. However, while investigating these, several important issues surfaced on the quality of the relevant legislation, as well as the services offered to citizens.

The Ombudsman identifies three basic groups of problems due mainly to:

- The lack of coordination and cooperation among involved agencies in cases when, apart from the competent customs, third services need to be involved.
- The lack of a uniform way to handle the customs clearance formalities, which allows local custom houses to follow contradicting practices.
- The expediency or not of provided for sanctions for customs offences.

Vagueness of legal status and contradicting interpretation of the Customs Code

The interpretation of customs provisions by the administration is often carried through on the basis of circulars; also, the interpretations given by co-competent ministries can be contradictory. A typical case is article 21 of Law 3193/2003 on the possibility to use heating oil in agriculture.

Indicative case

Former Financial Crime Squad (SDOE – now called Special Controls Service) imposed a fine for violation of Customs Code to own-

ers of "multi-use agricultural equipment" (jeep-type) because they used heating oil in their vehicles instead of diesel fuel. The citizens questioned the legality of the fine for car trafficking that was imposed on them, supporting the view that their vehicle, according to the registration document, is not a passenger car but a multi-use agricultural equipment, and as a consequence using heating oil was legal.

The Ombudsman, after studying the pertinent legislation, orders and relative circulars, found out that the Ministry of Finance and Economy does not allow the use of heating oil in agricultural vehicles with the sole exception those that are linked exclusively to agricultural production. The Ministry of Agricultural Development and Food, however, has characterized as multi-use agricultural equipment all these used for agricultural duties in general. The vagueness and contradicting interpretations stemming from circulars of the two ministries had resulted in imposing significant fines on farmers for fuel adulteration, that is, illicit trafficking.

The Ombudsman asked the Directorate of Excise Tax of the Ministry of Finance and Economy:

- To clarify in legislation the type of fuel multi-use agricultural equipment are allowed to use, or to explicitly define the types of vehicles that are allowed to use heating oil.
- To send out guidelines to competent services with the ultimate goal to achieve coordination among them and the trustworthy information of owners of multi-use agricultural equipment.

The Ministry of Finance and Economy, in reforming the Customs Code, provided for the possibility to use heating oil in vehicles circulating as multi-use agricultural equipment. This arrangement aims at equal treatment of these specific vehicles with other agricultural machinery as to the use of oil; it contributes in disengaging the administration and the courts from a large number of petty offences, on behalf of farmers, that bring disproportionately burdensome sanctions on individuals with not such an important benefit for the state. Finally, it determines in detail those entitled, as well as the fines imposed in case of non adherence to this arrangement.

Importing a private passenger car during change of permanent residence

The Ombudsman has noted that more often than not persons interested in the preconditions for importing personal items, especially private passenger cars, while changing permanent residence, do not receive correct and pertinent information. The main reason for this seems to be the particular complexity of the relevant legislation, as well as the discretion of the state to ask from interested parties any document considered necessary in proof of a permanent tie, personal or professional, with a country abroad so as to judge whether the change of permanent residence conditions are met.

In many cases investigated by the Ombudsman it was noted that, although no specific violation of the law on behalf of the state was observed, citizens are righteously complaining as they do not receive the appropriate guidance as regards the specific procedure (i.e. moving back to Greece), which anyway entails important and complex transactions with the Greek public administration.

WORKING MEETING

Following an initiative by the Ombudsman, a meeting took place with the representatives of the involved Ministries of Foreign Affairs and of Economy and Finance with the aim to provide information to each other, exchange views and formulate specific proposals for the improvement of information and the simplification of procedure for those changing permanent residence. It was noted that the web pages of both ministries should be reformed and interlinked; furthermore, that easy to understand and detailed information leaflets should be issued and distributed to interested parties. The representatives of these ministries agreed to undertake the relevant initiatives in order to enhance the communication between them and hence the information provided to citizens.

The Ombudsman provides information to citizens and the public administration through the new sub-website dedicated to local government at http://www.synigoros.gr/dimotis/

Discrepancies in handling customs issues

A citizen filed a complaint with the Ombudsman on the problems faced at the Patra Customs Office and the Directorate of Transport and Communications in the Prefectural Government of Ahaia, to import and carry through the customs clearance of his car (an automotive caravan that has undergone alterations by a Dutch company) due to change of permanent residence. It was impossible to carry through the customs clearance because this vehicle, initially licenced for professional use and then altered to a passenger vehicle, fulfilled the pollution standards of a professional vehicle and not of a passenger one. It is noted that the Greek legislation provides only for the cases of new diesel-driven vehicles for which the Ministry of Transport and Communications has issued the relative approval on the type of vehicle.

In order to carry through the customs clearance of the vehicle, the Ombudsman suggested the inclusion of the type of this specific vehicle to one of the pertinent provisions so that this is made possible and the vehicle's owner is no longer liable to keeping fees at the Patra Customs Office. It was later found that another prefectural authority had already reached a solution for a similar issue by applying what is in force for another class of vehicle. In this way, after the intervention of the Ombudsman, the vehicle of the complainant was referred to the Technical Service Directorate of the aforementioned prefecture, where the certification of inclusion in an anti-pollutant technology EU Directive was issued.

On the occasion of this specific case, the Ombudsman notes that:

- Hesitating to take responsibility or initiative on behalf of public servants does not allow for the best possible use of the general principles of administrative law (such as the principle of equity, good administration, good faith, etc.) that would contribute in solving cases and better servicing citizens.
- The different treatment of citizens by services which operate on the same legal basis creates to citizens the impression, if not the conviction, that the state acts arbitrarily and hence citizens' trust diminishes.

Sanctions for violating customs legislation

Imposing excessively unfavourable sanctions on citizens for violating customs legislation is not pausing questions of legality in its strict sense, but it seems that it violates the constitutionally established principle of proportionality.

Indicative case

A citizen, who bought a private passenger car from a second hand car outlet in Agrinio in December 2002, was informed for the first time in December 2006 from the Special Controls Service of the Regional Directorate of Western Greece that this car had not fulfilled the customs clearance formalities. The service investigated the case and found that this car has been the product of illicit trafficking and for this reason the owner was called to hand it over for seizure at the Agrinio Customs Office in April 2007. In case the investigation that would take place following seizure would prove that the car owner had not been involved in illicit trafficking, the car would be returned.

The mediatory intervention of the Ombudsman was interrupted because the case was referred to the Agrinio prosecutor's office. Nevertheless, the Ombudsman notes that in such cases the implications of car seizure for the owner, who most of the time acts in good faith, are disproportionately burdensome.

Four years have passed since 2003 when the Department of Children's Rights, within the framework of the independent authority of the Greek Ombudsman, undertook the mission of the Children's Ombudsman. Its assignment is to protect and promote the rights of children, that is, of all individuals who have not reached the 18th year of age; its competence covers the whole field of children's rights in the public and the private sector. However, the institutional intervention of the Children's Ombudsman regards mainly the state's responsibilities for children, within the framework of the application of the Constitution, the United Nations' International Convention on the Rights of the Child and other Greek national laws.

NEW COMPLAINTS, 2007 concerning public administration	**378**
NEW COMPLAINTS WITHIN THE OMBUDSMAN'S MANDATE	330

COMPLAINTS WITHIN THE OMBUDSMAN'S MANDATE PROCESSED IN 2007	173
MALADMINISTRATION PROBLEM CORROBORATED	100
Problem resolved (favourable outcome)	68
Non-resolution of maladministration problem (Ombudsman's recommendations were not accepted)	7
Impossibility of resolution (e.g. gap in legislation, organizational malfunctions)	25
MALADMINISTRATION PROBLEM NOT CORROBORATED	53
INVESTIGATION DISCONTINUED	20

GIORGOS MOSHOS
Deputy Ombudsman

Public interventions and initiatives by the Children's Ombudsman

National Action Plan for the Rights of the Child

The Children's Ombudsman was invited by the Ministry of Health and Social Solidarity to participate in the public deliberation for the National Action Plan for the Rights of the Child. After meeting with government and other public sector agencies, the Children's Ombudsman publicized its views on this important issue: the National Action Plan Principles given to the public in May 2007 lack important elements, such as the documentation of the existing situation and the recorded needs in the area of child protection; the detailed description of scheduled actions; the provision of constant inter-ministerial cooperation; the dedication of resources; economic data; a time schedule and a business plan with the participation of agencies in materializing action, specialization and assessment of actions included in the plan.

The Children's Ombudsman proposed, among others:

- To set up a permanent National Coordination Committee on the Rights of the Child and a scientific committee to elaborate and monitor the application of this plan.
- To set up working groups for each subject area.
- To enrich the plan with actions covering the application field of the International Convention on the Rights of the Child (Law 2101/1992).
- To apply the plan at regional level.

The Children's Ombudsman considers necessary for the National Action Plan to include, among others, the following subject areas: care and child protection services, health, education, special education, justice, elimination of children's poverty,

NEW COMPLAINTS, 2007 concerning private individuals	60
COMPLAINTS PROCESSED	77
CORROBORATION OF VIOLATION OF CHILDREN'S RIGHTS	46
Handled, or resolved without mediation by the Ombudsman	4
Handled through Ombudsman's actions	40
Impossibility of resolution (e.g. gap in legislation, organizational malfunctions)	2
NON-CORROBORATION OF PROBLEM OF VIOLATION OF CHILDREN'S RIGHTS	12
INVESTIGATION DISCONTINUED	19

fight of child employment, mass media, protecting children from violence, special scientific research.

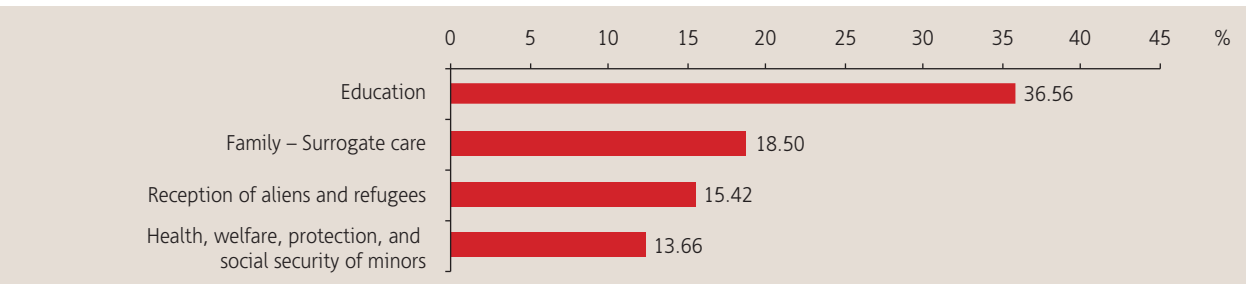
Materializing a National Action Plan for the Rights of the Child is an issue of utmost importance and the Children's Ombudsman expects that the government will take all necessary initiative for its promotion.

The International Convention on the Rights of the Child

The widest possible spread of the International Convention on the Rights of the Child constitutes an obligation of the Greek state and a major field of action for the Greek Children's Ombudsman. Educating on the rights of the child of the children themselves, as well as all professionals working with children is, according to the Children's Ombudsman, one of the major factors in educating young citizens and it will help in their socialization and in defending their rights in action.

Aiming at enhancing the existing tools for education on the rights of the child, the Children's Ombudsman elaborated and published a simplified summary of the International Convention on the Rights of the Child. This publication is sent to educators in elementary and secondary schools in the country along with suggestions for its use and parallel activities. Making the best possible use of the pilot project of disseminating this simplified version of the convention, the Children's Ombudsman aims at cooperating with the Ministry of Education and Religious Affairs so as education on the rights of the child is incorporated in an essential way in the curriculum.

MAIN SUBJECTS OF THE COMPLAINTS HANDLED BY THE DEPARTMENT



Communication with children

The Children's Ombudsman puts great emphasis in communicating directly with the children and listening to their views and opinions. To this effect, the Children's Ombudsman visits the places where children receive their education, live or spend much of their time, and talks with them on their rights and other topics of their interest. The Children's Ombudsman visited 16 child protection and hosting facilities, four correctional facilities, one special education institution and five settlements – Roma and refugees' – and met with 80 groups of minors in schools, institutions, youth centres, and at the Ombudsman's premises.

Children's participation, especially in school, has surfaced in these discussions as one of the major issues preoccupying them. Children often express their discontent that education is almost exclusively oriented towards performance at schools, marks and achievements, and as a result their need for personal communication and expression is pushed aside.

SPECIAL ACTION

In April, the Children's Ombudsman organized a deliberation day on "I express myself, I get heard, I participate". In total 34 girls and boys from 16 high schools of Attiki participated in this meeting. Their discussions, held in working groups and in the plenary, concluded in proposals on issues, such as: the need for their educators to be trained on the rights of the child; the need for regular slots in the weekly schedule dedicated to discussion and communication in the classroom; the need to support group activities; the review of the school performance assessment system; the need to school rules that would have been agreed up and obeyed so as to safeguard participation and respect among members of the school community; the need to make the best possible use of psychologists, social workers and other experts to the benefit of both educators and students; the support to the institution of student communities; the participation of students in the assessment of textbooks and educators.

The Children's Ombudsman will use these suggestions and views when elaborating its own proposals to the Ministry of Education and Religious Affairs.

Preventing and combating violence and abuse against children

In 2007, the Children's Ombudsman was repeatedly called upon to take a stance on

the issues of violence among children and abuse of minors when such incidents preoccupied public opinion. The Children's Ombudsman has expressed already the view that particular care is needed when dealing with such issues so as to avoid moral panic, given the fact that these incidents are usually presented in the media distorted; on the other had, a prevention strategy constitutes a compelling need, that would focus on enhancing the rights of the child instead of repression measures in case of an offence.

Critical aspects of such a strategy would be: raising awareness and appropriately supporting professionals; enhancing communication with minors and their participation in the places where they are educated and taken care of; the appropriate education and awareness of children and parents alike; the upgrading of decentralized psycho-social services so as to have a preventive capacity and offer support to families and children with social problems or in a crisis.

For violence phenomena among students, the Children's Ombudsman believes that all discussion and deliberation margins, as well as pedagogical means should be exhausted when treating such incidents, and suggests that students themselves should take part in conflict resolution and in formulating and safeguarding rules which would govern their schools.

In addition, the Children's Ombudsman notes that:

Educators are not adequately informed on the application of the new legislation on domestic violence (Law 3500/2006) and, more precisely, on their obligation to inform in their turn immediately the police for incidents of domestic violence of which they become aware.

The Children's Ombudsman believes that:

The Ministry of Education and Religious Affairs should notify all educators that legal support is granted should parents involved turn against them when educators charge them on an incident of abuse of a minor; also, that it is their obligation to activate other competent services, especially local psycho-social services, to handle such incidents and offer support to minors and their families.

The Children's Ombudsman has repeatedly noted that minors' prosecutors, who are charged among others with taking measures for the protection of minors when their guardianship is not appropriately exercised, do not have at their disposal social services so as to investigate and monitor efficiently and effectively cases of domestic violence or other forms of abuse.

Network for the Prevention and Combating of Corporal Punishment of Children

- The members of the network suggested that 30 April should be celebrated as International Day against Corporal Punishment in Greece too and published the "Ten Commandments Against Corporal Punishment of Children" that was hang at schools, institutions, hospitals and mass transportation.
- The Children's Ombudsman cooperated with educators, students, and parents of elementary students in organizing a campaign against corporal punishment to children. A leaflet was published with works by the students and disseminated in other schools as a best practice example.
- The Children's Ombudsman participated

in producing educational material by the Institute of Child Health. This material was used in seminars addressed to professionals organized by the Institute of Social Protection and Solidarity.

Favourable outcome

The Greek Parliament ratified the Optional Protocol to the International Convention on the Rights of the Child on issues of child trafficking, prostitution and pornography, and voted special provisions for the most efficient protection of children from these forms of violence. The Children's Ombudsman proposed measures that were finally adopted, such as the protection of minor witnesses and the provision to use audiovisual means for recording their testimonies and this material to be used in court so as to prevent their personal appearance.

What still remains to be achieved, however, is adopting far reaching measures of prevention (raising awareness and discussion at schools, support to vulnerable families, etc.), and the establishment of the appropriate infrastructure for the care and rehabilitation of minor victims, especially adolescents.

As for eliminating child employment and exploitation, the Children's Ombudsman participated in meetings with public agencies and NGO's that are active in the field of protecting the rights of the child, aiming at cooperation between institutions and support of social work in the street so that children in danger are identified and supported.

Child protection institutions

The Children's Ombudsman has visited almost all child care institutions in the country and notes that one of the major priorities of the government should be the adequate and appropriate personnel, the standards that should be set and met in public institutions for child care and in relevant non profit organizations. Similar is the Recommendation by the Minister Committee of the Council of Europe on children living in institutions: it explicitly mentions that quality standards should be set for these institutions, and, among others, adequate and appropriately trained personnel should be ensured.

Favourable outcome

In the 2006 findings paper on the "Conditions of operation of the 'Paidopoli' in Neapoli, Lasithi, Kriti" the Children's Ombudsman had noted that the issue of adequate and appropriate personnel in public child care institutions is a major problem that has not been dealt satisfactorily by the government. At that time, the "Paidopoli" child care institution offered shelter to 27 children with only four members of

personnel, without neither psychologist, nor social worker. Following the intervention by the Children's Ombudsman, seven more people were employed on fixed-term contracts.

Family centered institutions of alternative child care, that is foster care and adoption, are also not functioning in full. The government, despite the advertisement of its intention to reinforce foster care and expedite the public adoption procedure, has not taken any specific measures so far. A constant demand on behalf of the Children's Ombudsman is the improvement and specialization of decentralized social services that would contribute not only to the further development of foster care and adoption, but to the protection of children from domestic violence and neglect.

Children with disabilities and special educational needs

In December, on the occasion of the International Day of Disabled People, the Children's Ombudsman gave to publicity its findings on the rights of disabled children and children with special educational needs in our country, and voiced the appeal of the European Children's Ombudspersons to governments:

- To ratify the United Nation's Convention on Disabled Persons (2006).
- To take all necessary institutional measures.
- To allocate adequate funds for the efficient materialization of the rights of these children.

In relation to the rights of disabled children the Children's Ombudsman found that:

- Children with movement disability have restricted access to public spaces.
- In elementary and secondary education the Diagnostic Assessment and Support Centres do not have the capacity to fulfil to a satisfactory extent their mission because not all personnel vacancies have been covered.
- There are significant shortages in school assessment of students with special educational needs, such as children with minor mental retardation, immaturity, or developmental disorders.
- The institution of parallel educational support is not properly applied due to credit shortages, and the integration classes often take long to set up and operate regularly.

- Specialized equipment and aids for disabled children are not sufficiently provided (e.g. laptop computers for vision impaired children), and in many cases Special Education School Units do not have adequate number of personnel or appropriate facilities.
- Public accommodation and care units for disabled children face significant shortages in personnel, and for some cases of children there are only a few specialized units (such as for autistic children).
- Centres for day care, treatment, professional training, and creative activities for disabled minors and adults, which are governed by private law, do not fulfil set quality standards.
- Families with disabled children do not receive adequate financial support by the state. The situation is aggravated further in the case of alien children that are non EU citizens, as these children are not eligible for welfare or other benefits even if born in Greece.

Social integration of immigrants' children

A great number of children are born in Greece or immigrate to our country with their parents at a very young age, and then enrol and attend Greek school. When these children come into contact with public services they need to provide the birth certificates which, under the legislation now in force, can be issued only in their country of origin. As a result it is extremely difficult and time consuming to prove their identity to the Greek authorities.

The Ombudsman, assessing all data and comparing European countries' legislation, and holding the view that the administration should proceed to legislative arrangements for the inclusion of aliens born in Greece or having immigrated in the country when minors and then reached majority here, gave to publicity a findings paper on the enrollment of immigrant children at municipal rolls.

The Ombudsman proposes that:

- The Ministry of the Interior, Public Administration, and Decentralization should issue a circular to clarify that in case of minor immigrants birth registration is being accepted by all competent services, at least as far as children's rights –as these are governed by the relevant international convention– and their enjoyment is concerned.
- A special "municipal registry for aliens, permanent residents" should be set up and registering therein should equals registering at the municipal rolls, unless, naturally, rights stemming from the acquisition of Greek or other EU citizenship.
- The administration should proceed to legislative arrangements for the social inclusion of aliens who were born in Greece or immigrated when minors, reached majority in this country and attend Greek schools.

Until the end of this year, the Ministry of the Interior, Public Administration, and Decentralization had not responded to the Ombudsman's proposals.

Unaccompanied minors' care

Taking care of unaccompanied minors, that is, of children who entered the country without being accompanied by their legal guardian, is still a significant problem. The existing accommodation facilities are not enough and many children who do not claim asylum, even if very young, originating from countries to which return is impossible, are set free with an official note calling them to leave the country within 30 days.

In 2005 and 2006, the Ombudsman publicized a special report on the detainment and deportation of alien minors, and a findings paper on the treatment of unaccompanied minors in Pagani, Mytilini, respectively. The Ombudsman's suggestions include:

- Replacing detainment with protective keeping, and deportation with repatriation when this is possible and advisable to the minor's interest.
- Reinforcing measures for the children's care and protection by referring them to the appropriate agencies, and activating the institution of guardianship.

The Ombudsman met with representatives from the Ministries of Public Order, and Health and Social Solidarity; the outcome was limiting the detention time of minors and increasing the number of accommodation centers for those who apply for asylum.

The Children's Ombudsman believes that:
A legislative framework should be elaborated in cooperation with the United Nation's High Commissioner for Refugees and NGO's that would ensure care and protection to minors from dangers inherent to their free movement without accompanying guardian.

Integrating Roma children in the educational system

In 2007, the Ombudsman carried out visits in Roma settlements, met with representatives of the Roma communities' associations, with education departments, local government authorities, and representatives of the Education Programme for Roma Children that is being materialized by the University of Thessalia. Special emphasis was placed in the inclusion of Roma children in the educational system in various cities of Thraki and in the area of Aspropyrgos in Attiki.

The Children's Ombudsman brought to the Ministry of Education and Religious Affairs' notice that:

- Taking part in education is linked directly to the Roma living conditions. Especially for those living in settlements or unsafe houses, a multi level and constant support by the state is required to ensure motivation and create the conditions for Roma children attending school.
- The educational model that would be chosen to foster the integration of Roma children to the educational system should be examined in a case-by-case basis taking into consideration the particularities and needs of each community.
- Ghetto-schools attended only by Roma children should be avoided, as well as the dispersion of the children at schools far away from their place of residence as this may prove fatal for their regular attendance.
- Preparation classes should exist where necessary. It is equally important to safeguard health and personal hygiene for Roma children so that they become accepted by their fellow students.
- Educators with Roma among their students should receive training and special educational aids for their students' support.

- Prolonging compulsory education at kindergarten is a positive step for the appropriate preparation of Roma children; however, this should be accompanied by training and support to nursery personnel.
- The subsidy for enrolling Roma children at school should be paid in installments so as to act as motive for remaining at school and attending classes on a regular basis.

An issue that still remains unsolved is the school enrolment of older students for the first time. The Ministry of Education and Religious Affairs should provide for special reception classes for Roma children who enrol at school with a significant delay so that they are offered the possibility of intensive education with the objective of finishing elementary school without hindrances by their presence in classes with much younger children.

Children of women detainees

The Children's Ombudsman, on the occasion of a complaint on the possibility of children of women detainees at the Korydallos prison to attend a nearby day care centre, visited the prison and noted that both premises and living conditions there are absolutely unsuitable for children; also, there was no specialized personnel for infant and toddler treatment. The Ministry of Justice responded to a relevant intervention by the Ombudsman that women's prison is scheduled to be transferred to a new building in the area of Elaionas in Thiva (Thebes), where measures had been taken for the rational space organization to suit mothers with their children. The Children's Ombudsman visited these new premises and found out that indeed conditions had improved greatly; however, submitted its suggestions and observations on the premises and the need to provide specialized nurses and educators so that children receive the necessary care.

Since until the end of 2007 the scheduled transfer had not yet taken place, the Children's Ombudsman awaits for further intervention aiming at defending the rights of the children who live with their mothers in the correctional facility.

Promoting children's rights through their own artistic activities

In 2007, the Children's Ombudsman participated in many activities that shed light to the viewpoint, questions and thoughts of children on their rights, through their own artistic creations. In December, the Children's Ombudsman participated for the first time in the Olympia International Film Festival for Children and Young People, and contributed to the selection process of the newly set award for a film on children's rights.

Presentation of important cases

Support to student with learning difficulties and dysfunctional domestic environment

Educators at a high school in East Attiki brought to the Children's Ombudsman's attention during his visit there that a foreign student, refugee and orphan living with her older brothers and sisters, faced

multiple problems at school and at home due to the peculiar and harsh living conditions of hers. When the minor gave her consent to receive help, the Ombudsman contacted the competent social service of the Prefecture of East Attiki which was activated in cooperation with the school for the social support of the family and for providing consulting services to the minor.

Child abuse in the domestic environment

The parents' and guardians' association of a minority school in Thraki filed a complaint with the Children's Ombudsman aiming at the appropriate support to a minor student who demonstrated learning and behavioural problems. During investigation, the Ombudsman addressed the competent elementary education office and was notified that an educator of Muslim descent was placed at this school to the minor's help. At the same time, the Ombudsman received information that the problems manifested by this minor at school were linked to significant difficulties faced at home. As a result, the Ombudsman contacted the Social Welfare Directorate of the competent prefectural government so as to initiate a social investigation.

From this investigation, as well as from all other data at the service's disposal, it came to the surface that the minor had been suffering physical and emotional abuse by his parents. For a long time, the Social Welfare Directorate was trying to offer support to this family in the form of visits at home, consulting services to the parents, and financial aids. However, not only no progress was made, but the situation was aggravated. As a result, the social service, taking into consideration the relative opinion by child psychiatrist, referred to the competent prosecutor who issued an order for temporarily placing the minor at a child protection institution. However, the parents' association and members of the Muslim minority expressed their objections as there is no such institution in Thraki or in any other part of the country adjusted to the religious needs of Muslims.

The Ombudsman visited the area and discussed the issue with representatives of all agencies involved and asked for the intervention of the mufti in identifying a Muslim foster family, taking into consideration that placing the minor in a child protection institution was a rather problematic solution not only because of the aforementioned reactions, but also because there was not an appropriate institution in the Region. For these reasons, the prosecutor's order for removing the minor has not been executed to date. Moreover, the efforts by the mufti to find an appropriate foster family have not produced any candidates yet. The case is pending.

Student sexual harassment by educator

The parents of an elementary school student filed a complaint on their daughter's sexual harassment by her teacher. The complaint mentions that, although the school director and the Elementary Education Directorate were made aware, no administrative investigation under oath had been initiated. The Ombudsman, in a letter to the head of the competent elementary education office, emphasized that as the alleged act was very grave, it was necessary to investigate further the issue, either in the form of a preliminary investigation or in an administrative investigation under oath. In case no sufficient proof was found, a report should be drafted with the adequate justification as stipulated in the Civil Servants' Code. Following this communication, an initial investigation was carried out, but no disciplinary responsibilities were attributed to the educator, and the case was closed and archived.

The Ombudsman considered that the way this case had been handled at the state of the preliminary investigation was not satisfactory, and therefore:

- Asked the competent Regional Official Council for Elementary Education to investigate the case anew.
- Suggested to the student's parents to seek family support from a mental health and educational support service, given their wish to loge a complaint on the incidence, which they finally did.

According to information that reached the Ombudsman at a later stage, the administrative investigation under oath was concluded and the educator was referred to justice so as a disciplinary punishment would be imposed.

Enrollment of Roma children in elementary school

A member of a volunteers' group working with Roma children addressed the Children's Ombudsman so that seven Roma minors were enrolled in the elementary school. The parents of these children, with the help of the volunteers, had contacted schools in the Municipalities of Agios Ioannis Renti and of Moshato, within the area of their residence, as well as the respective elementary education offices, but they had received the same response, namely that the street on which they live is not included in their competence. As a result, school year already under way and these children had not yet been accepted by a school.

The Children's Ombudsman contacted the responsible services so as to clarify to which school these children had the right to enroll. However, the address at which these children live had not been included in the area of competence of any of the schools of the area. As a consequence, the Ombudsman sent a letter to the Elementary Education Directorate of Western Athens seeking a solution. This service contacted the respective directorate of Peiraias and informed the Ombudsman that the children could enroll at two of the elementary schools of the Municipality of Moshato that are located close to their residence; also that the areas of competence of this school region would be redefined so as to include this specific address.

Integration of child with developmental disorder in nursery school

A complaint was filed with the Children's Ombudsman on the interruption of attendance of a student with developmental disorder at a nursery school in Athens. The school had asked for this interruption on the grounds that it was not possible to handle practically the care this student demanded due to the child's disorder. The Ombudsman contacted at first the mental health and educational support centre that had been monitoring the developmental progress of the child and was informed that the psychological and social development of the child benefits from its participation in the school activities. Then, the Ombudsman contacted the competent school counselor for pre-school education and the head of the nursery school, and noted that it was necessary for the child to return to its school environment. As to practical issues, the Ombudsman suggested that a solution should be sought for through the cooperation with the parents. Due to the initially negative attitude of the parties involved, the Children's Ombudsman set up a meeting of the school counselor, a representative of the mental health and educational support centre, the nursery teacher, and the mother of the child. Following this, the student was accepted to attend nursery in the morning sessions, but not the full-day programme.

Complaints for content of toy shop advertisement

The Children's Ombudsman received a complaint by a large number of parents and guardians from a city in Sterea Ellada, through the Office for the Defence of the Rights of the Child of their municipality, on the broadcasting of audiovisual advertisements of a well-known chain of toy shops. The complainants considered that the time of broadcast and its frequency, on the one hand, and the content of the advertisement spots, on the other, transmit to minor receivers negative messages and attitudes on their relation with the family.

Following the Children's Ombudsman's intervention, the Council for Communication Control issued a decision for the interruption of these advertisements. Moreover, recommendations were addressed to the company and its advertisers to be extremely cautious in the future on the picture they give of children and of children as receivers-consumers of the advertisements they produce. As to the broadcasting times, the Ombudsman referred the complaint to the Greek National Council for Radio and Television.

The Children's Ombudsman provides information to children and professionals working with children at the new sub-website dedicated to the rights of the child and issues of child protection at http://www.synigoros.gr/0-18/

Law 3304/2005

Implementation of the principle of equal treatment regardless of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation[1].

Law 3488/2006

Implementation of the principle of equal treatment of men and women as to their access to employment and occupation, vocational training and promotion, and in the terms and conditions of employment.

The estimates, conclusions, as well as the problems that had been brought to the fore and had been recorded in the Greek Ombudsman's annual reports the previous two years of applying the new legislative framework for combating discriminatory treatment still remain valid today.

- The limited number of complaints on discriminatory treatment, especially in sensitive areas, such as sexual orientation, religious beliefs, or sexual harassment implies the reticence of individuals who have been discriminated against to expose their personal or social life and have recourse to institutions that have been assigned by the law the responsibility to combat discrimination.
- The problematic communication of victims of discriminatory treatment with institutional agents can be bridged through the activation of civil society.
- The Labour Inspectorate, in order to fulfil its new responsibilities, and to efficiently cooperate with the Ombudsman, should provide regular information to labour inspectors on new regulations and especially on the new process of proof.

Especially in regard to the application of Law 3488/2006 on gender equality, it should be noted that:

- There is a significant danger of misinterpreting the provision regarding the way in which sexual harassment can be proved. It has been demonstrated that without adequate proof the Ombudsman and the Labour Inspectorate are not able to mediate. On the other hand, complainants are often under the wrong impression that by simply an allegation it is enough to make use of the provision for the shift of burden of proof (from the complainant onto the defendant).
- There are critical points to be clarified on the way several of the provisions of the specific law can be activated.

Discrimination on grounds of ethnic origin

Employment

A citizen who had acquired Greek citizenship by naturalization applied for employment at the Non Commissioned Officers' School of the Hellenic Army as a member of the teaching staff with an hourly remuneration contract. She was disqualified on the basis that she was not a Greek citizen by birth, a necessary precondition according to the post advertisement. The Ombudsman noted that this precondition contradicts both the constitutional principle of Greek citizens' equality and the special provisions of Law 3304/2005. The Army General Staff responded that it will examine the issue under the light of the views presented by the Ombudsman and will proceed to all necessary amendments in the school's post advertisement for 2007–2008.

Education

Cypriot citizens and other citizens of Greek origin, holders of EU member state citizenship, who were candidates for admission in

[1] According to later legislation, the notion of harassment is no longer defined according to commonly accepted good behaviour and customary practices in the trade, but adheres to the definition provided for in Law 3488/2006.

Greek higher education institutions, filed complaints regarding their exemption by the Greek education authorities from the EU citizens of Greek origin list of candidates, and instead for their inclusion in the EU candidates list, for whom a specific quota is provided for. Following the systematic mediation by the Ombudsman, a ministerial decision was issued clarifying the criteria and the percentage quota for Greek graduates of foreign high schools or respective high schools operating abroad. The Ombudsman believes that the criteria set are showing to the right direction and are, in general terms, reasonable and functional.

Services – Accommodation

Recognized political refugees living legally in Greece filed a complaint on the refusal by tax offices to apply the property transfer tax exemption valid for first time real estate (i.e. primary residence) purchase. The Ministry of Economy and Finance evoked a relevant clause in a ministerial decision which stipulates that only Greek and EU citizens residing in Greece are entitled to this exemption, along with specific categories of individuals of Greek origin. However, the Ombudsman noted that this clause is not in harmony with the special obligation Greece bears towards recognized political refugees by virtue of the Geneva Convention that prevail over any other provision. The Ombudsman purported that the exemption from property transfer tax for first time real estate (i.e. primary residence) purchase, to the extent that it is applied also to non Greek citizens of Greek origin (namely to individuals of Greek ethnic origin from Turkey, North Epirus, Cyprus and the countries of the former USSR living in Greece), introduces an unacceptable discrimination not on grounds of citizenship, but on grounds of ethnic origin.

Out of a total of 80 new complaints filed with the Ombudsman:

- 13 had a favourable outcome (Ombudsman's proposals were accepted);
- 60 are pending;
- 2 have been archived (non acceptance of Ombudsman's proposals);
- 5 have been archived as unfounded.

Discrimination on grounds of racial origin

The issues pertaining to the Roma population group social exclusion and which the Ombudsman has been systematically dealing with in the last few years are presented further down.

The exemption of citizenship

From the investigation of relevant complaints, it results that the exemption of citizenship from the regulatory field of law on equal treatment, in many cases, creates the preconditions for extended discriminatory treatment of aliens on grounds of racial or ethnic origin.

The Panhellenic Network of Women Immigrants and the Union of African Women filed a complaint with the Ombudsman on the refusal by competent services to issue birth certificates for children who were born

in Greece and whose parents are foreign citizens. The services in question only issue birth registrations, which results to problems in enrolling children to pre-school and elementary school, and to a series of bureaucratic procedures until they attain the age of 18.

The Ombudsman found that not issuing birth certificates to children of foreign citizenship who were born in Greece does not constitute in principle an act of discrimination in the spirit of Law 3304/2005 as, according to legislation in force, only permanent residents who are Greek citizens are registered in the municipal and communal rolls. Besides, differentiation on grounds of citizenship falls in the exception foreseen in the relevant law. However, this formally legal differentiation gives rise to essential problems in the harmonious living of alien nationals in the country, both minors and adults. For a full coverage of the Ombudsman's relevant suggestions, see Department of Children's Rights section.

Discrimination on grounds of disability

A citizen with disability complained that, since there is no ramp or lift, there is lack of the appropriate infrastructure and he is thus deprived of access to his workplace. The question that surfaced during the investigation of this complaint is whether industrial buildings or warehouses are included in the list of premises that should undergo alterations so as to be accessible to people with disabilities.

The Ombudsman noted that:

- Article 21 of the Constitution defines as a right of people with disabilities the enjoyment of measures that ensure their professional inclusion and their participation in the country's social and economic life.
- Law 3304/2005 stipulates that it is employers' obligation to take all necessary to each case measures so that people with disabilities have access to a working post, without any hindrances and with freedom of movement.

The Ombudsman proposed:

To the Ministry for the Environment, Physical Planning, and Public Works; and to the Ministry of the Interior, Public Administration, and Decentralization that the list of premises with special building arrangements destined to people with disabilities be expanded and the necessary arrangements be incorporated into the Building Code's relevant provisions.

Discrimination on grounds of age

■ The Ministry of Foreign Affairs' Statute sets an age limit for personnel employment. For instance, the advertisements for permanent positions at the Special Legal Department and posts for Information Technology and Telecommunications, set an age limit of 35 for participation in the selection process. A respective age limit is applied for Administration, Accounting and Secretarial Personnel, while for the Diplomatic Corps this is increased to 37.

The Ombudsman noted that the lack of a specific justification for introducing age limits constitutes violation of the principle of equal treatment on the grounds of age, and claimed the harmonization of the provisions of the Ministry of Foreign Affairs' Statute with the provisions of the relevant EU Directives and Law 3304/2005.

The ministry purported that:

- According to a previous decision of the Athens Administrative Court of Appeal "the clauses of the Statute prevail against any other, even later general provision".
- Law 3304/2005 does not include any spe-

cial arrangements on how a justified discriminatory treatment is established by setting an age limit.

- The specific justification for the expertise fields in question was included in two documents addressed to the Ministry of the Interior, Public Administration, and Decentralization.

On the occasion of submitting for approval by the Parliament of the draft law: "Validation as Code of the Statute of the Ministry of Foreign Affairs", the Ombudsman addressed the competent ministries and asked them to take measures either to eliminate the single for all personnel branches of Ministry of Foreign Affairs age limit of 35, that was to be set by the new statute's clauses, or to include an explicit justification in the aforementioned clauses according to which setting a case specific age limit is reasonable and necessary, it is dictated by legitimate intent, and constitutes a substantive precondition due to the nature of duties to be executed. The proposal by the Ombudsman was not accepted.

■ Personnel at the Diplomatic Corps filed complaints with the Ombudsman regarding the clause in the Ministry Foreign Affairs' Statute according to which the compulsory retirement age for diplomatic employees is the age of 60, while for those at the rank of ambassador this is raised to 65. The Ombudsman noted that, according to the provisions of EU Directives, every state has the right to appeal to reasons of general social or pension policy in order to set age variations, and asked for the ministry's views on the reasons that impose a different retirement age for different diplomatic ranks. The ministry purported that the differentiation introduced is justified by the nature of professional duties to be carried out, which poses the need to promote faster to the rank of ambassador highly qualified individuals of younger age and to exclude individuals who have reached the age limit without having been promoted to these higher ranks.

The Ombudsman emphasized that a basic criterion on which to judge a measure as an indirect discrimination is whether this measure puts a group of employees in a disadvantageous position on the basis of a characteristic of this group and on which discriminatory treatment is found. In the case in question, the differentiated treatment does not involve the promotion or not of certain diplomatic employees, but the compulsory retirement of those who are not promoted.

The ministry has not officially accepted the views of the Ombudsman. However, the new statute, publicized in spring 2007, does not include a differentiation as to the retirement age limit between those employees who hold the ambassador rank and others.

The Ombudsman investigated also cases on:

- Application for enrollment in the Ksanthi Bar Association overruled because the applicant exceeded the set age limit.
- Age limit set in an advertisement for employment at various posts and specializations at the DEH.
- Age limit set in advertisements by the (formerly) Ministry of Public Order for special guards' posts and for the entry of general duties police captains in the Department of Vocational Training.
- Disqualification from grade C researcher's post at the Centre for Planning and Economic Research because the applicant had exceeded the set age limit.
- Refusal by the Ministry of Justice to employ a female citizen, under the protection status of Law 2643/1998 (families with many children), in a post of Guard Personnel of secondary education in the Kerkyra prison because the applicant exceeded the set age limit.

Discrimination on grounds of sex

Access to employment on equal terms

■ Applicants to advertisement for posts of special uniformed personnel at the municipal police filed complaints with the Ombudsman for the investigation of the possibility of indirect discrimination on grounds of sex in setting common performance standards for men and women in the sports tests (with a remarkable increase in the desirable performance for women), and the increase in the desirable body height for women only. The Ombudsman noted that in the field of indirect discrimination on grounds of sex other measures are also included, such as measures applicable regardless of sex but in essence affecting to a larger percentage women than men, and do not fulfill the objectiveness clause and the necessary correspondence of means to objective. The Ombudsman asked for:

- An investigation of whether this provision gives rise to unfavourable results for women compared to those for men.
- Explanation by the administration on the reasonable character of the sports performance standards set for each sport in connection with the special nature of the duties of the vacant posts, as a justification for setting the specific height and performance standards.

■ A candidate in a competition of the municipal police of Leros, resident of Leros, refused to travel to Rodos (Rhodes) in order to take part to height measurement and sports tests because she was pregnant. The Selection Committee of the Region informed her that she was to be excluded from the competition.

The Ombudsman noted that by virtue of case law:

- Deviating from constitutional and EU provisions on the equality of men and women is allowed when it concerns the protection of women in regard to pregnancy and motherhood.
- A postponement is granted to the candidate who cannot participate in sports tests due to pregnancy.

The Ombudsman's views had been accepted and the applicant shall take part in height measurement. As for the sports tests, she will take part after she has given birth and after puerperium.

Equal pay

An employee filed a complaint with the Ombudsman claiming that her employer pays, on his own initiative, a benefit for computer use to all men employees – who appear to carry out exactly the same duties as herself – but not to her. The employer claimed that this benefit is not granted to the complainant since she performs completely different duties than her colleagues who receive it. Two reconciliatory interventions took place in the premises of the Peiraias Social Inspectorate Department. As it was not possible to resolve the issue, an on-site investigation took place in order to verify the kind of duties carried out by the complainant. The investigation concluded that the computer work carried out by the complainant was exactly the same as that of her male colleagues, and the employer included her too to the benefit for computer use.

Equal employment terms and conditions

■ A teacher employed in the private sector filed a complaint with the Ombudsman claiming that the Western Thessaloniki Directorate for Secondary Education declined her reappointment at a director's post on the basis that she had been absent from work with a nine-month parental leave of absence;

the result of this was a decrease in her income. The Ombudsman noted that, in this case, the administration had committed an indirect discrimination on grounds of sex, which contradicts the relevant provisions for the protection of maternity. The Department for Private Education of the Ministry of Education and Religious Affairs shared the points made by the Ombudsman and granted the nine-month parental leave of absence on the full working hours remuneration; also, it appointed anew the complainant as director on the first day she returned to school – after the completion of the aforementioned nine-month leave of absence – until the end of school year 2006–2007.

■ In 2007 several complaints were filed by fathers, employed in the public sector. These complaints shed light to certain issues regarding the nine-month parental leave or the reduced shift to which fathers who are civil servants are also eligible, as stipulated by the new Civil Servants' Code. These issues are:

- Employment or not, or self employment of the mother of the family;
- Starting date for the exercise of this right;
- Calculating the period of this leave of absence or offseting this period in case a second child is born in the family.

It should be noted that the EU Directive 2002/73/EC, in accordance to which Law 3488/2006 was passed, is not binding for member states as to the recognition of this independent right to working fathers; it is restricted to providing protection to parents who use the absence of leave in question, without examining, concomitantly, in detail the terms and conditions for establishing such a right. However, some of the aforementioned issues that have arisen from the investigation of these complaints can be regarded as introducing indirect discrimination on grounds of sex.

The Ombudsman investigated other complaints on equality issues as regards the terms and conditions of employment, which posed the following issues:

- Non payment of the special allowance dedicated to educators seconded abroad to a female educator, because during pregnancy and maternity leave of absence she was not residing in the country where she had been appointed.
- Non payment of travel allowance during maternity leave and parental leave of absence to municipal employee.
- Non recognition of pregnancy leave of absence as employment time to an employee on a fixed-term contract.

Applying the measure of reasonable adjustment

The complaint of an employee was forwarded to the competent Social Inspectorate Department of Thiva and the Ombudsman's Office by the Ministry of Labour and Social Protection. The complainant claimed that she could not make use of the reduced shift for nurturing children that she was entitled to, as the company where she was employed was far away from her residence and she made use of a company car leased to transfer employees on scheduled times which were common for all. Hence, the only way for the complainant to make use of the reduced working hours, to which her employer agreed upon as he was obliged, was to use her own transfer means. Such an option, however, was impossible financially; consequently, she was looking for an alternative solution. The three parties, the employee, the head of the Thiva Social Inspectorate Department, and the Ombudsman communicated and decided to make the following suggestion to the employer: the time to which the employee was entitled to be absent from work every day – a right she was not able to make use of –

should be added up to counter for a whole working day on which she would be on leave of absence. The employer accepted this suggestion and undertook in writing the obligation to grant a day of leave of absence per week to the complainant.

Sexual harassment

A complaint was filed by an employee working under fixed-term contract at the 19th Ephorate of Antiquities of Komotini and has been victim of sexual harassment by one of her colleagues. The complainant had recourse to the Social Inspectorate Department of Komotini, as well as to the Ombudsman, claiming that the ephorate involved had not followed the provided by the law disciplinary procedure, despite the fact that the court had sentenced the culpable to custodial sentence. The ephorate reported to the Ombudsman that, following the complaint by the employee and the relative communication by the Ministry of Culture, a preliminary examination had initiated where no evidence of this instance of harassment was identified, as there were no witnesses to verify it apart from the opposing testifications of the two sides. However, exaggerated intimacy was noticed, through such jests and jocular remarks that are not considered as appropriate conduct at the workplace but calls for disciplinary measures. Thus, the penalty of rebuke was imposed to the culpable. The case is still pending.

Strategic action for Roma populations

The Ombudsman underlines once again the absence of the appropriate institutional and regulatory framework that would allow Roma populations to pursuit their participation in social life, and to the state to develop efficient action so as to free this particular population group from social restraints.

ON-SITE INVESTIGATIONS

Groups of Ombudsman investigators visited a number of settlements in the country (the Votanikos area in Athens, Patra, Kalamata, Aspropyrgos, Thraki). They recorded the particular local issues identified and they organized working meetings with competent agencies and services.

Roma settlement in Votanikos

While investigating a complaint related to the living conditions of Roma people in the area of Votanikos, the Ombudsman proceeded to a series of actions aimed to motivate and coordinate the competent authorities so as to ensure appropriate living conditions for this vulnerable population group,

and at the same time prevent their obligatory removal from this occupied land without the guarantees provided for by the Constitution and relevant legislation.

On the unexpected removal of Roma families from a property in the area of Votanikos (Agiou Polykarpou street), the Ombudsman noted the compelling need to find a long term and final solution for the housing issue of Roma people of this area. The Ombudsman further made it clear that attempts by private individuals to "buy off" the translocation of the Roma, with the connivance of municipal authorities, constitutes violation of duty of the municipality to take all necessary measures for the relocation of this population group. The Ombudsman stressed that all necessary measures should be taken in order to find a viable solution as to the designation of relocation areas for the Roma groups in Attiki, and asked for the intervention of the Minister of the Interior, Public Administration, and Decentralization.

Relocation – Violating third parties' rights

A private company filed a complaint for a property that had been occupied by Roma people in the Municipality of Aigaleo, asking for their removal. This case is a typical example of the repercussions of pushing Roma to move to another location without the responsible agencies having taken any measures beforehand to find an appropriate location for their relocation; it seems that Roma people occupied this private property after being removed from Votanikos. The Ombudsman suggested the company to address the competent public services with the request to expedite the identification of an appropriate place for the relocation of the Roma group. In addition, the Ombudsman noted that there are certain restrictions in executing a possible court decision for their removal from the specific property, until the competent authorities identify an appropriate place for their relocation. Finally, the Ombudsman informed the company of its entrenched right to claim compensation from the competent authorities due to the damage that it is incurred of the restriction to the free use of this property.

Protection of public health – Environmental implications

The Ombudsman investigated a complaint filed by a citizen of the Municipality of Tavros regarding the environmental and public health impact of burning tires and waste accumulation in the Roma settlement in the area of Votanikos. The Ombudsman, once again, noted the need to find an appropriate, municipal or other, property for the immediate relocation of the Roma people.

Also, the Ombudsman suggested that:

- Immediate measures be taken, such as the regular collection of garbage, placing litter bins in the proximity and chemical lavatories within the settlement, in order to protect the health of both the Roma settlers and of their neighbours.
- Special raising awareness groups should be formed, by the municipality and the Directorate of Health of the Athens Prefectural Government, to inform Roma people on public health protection and the harmful impact of burning cables.

Finally, the Ombudsman asked the Athens Prefectural Government, on the occasion of the decision by the Municipality of Tavros to close down the scrap metal businesses operating illegally within its administrative boundaries, to support this initiative. Also, the Ombudsman suggested to the Municipality of Athens to proceed to a legality audit of relative businesses operating within its own administrative boundaries.

Living conditions of Roma in the area of Aspropyrgos

Complaints have been filed with the Ombudsman on the living conditions of Roma populations in the wider area of Aspropyrgos by:

- Individuals whose pieces of land have been trespassed or suffer from the negative implications of neighbouring with Roma settlements;
- Roma people who complain about the conditions under which they live;
- Roma and non Roma associations who aim at improving the living conditions of people in the area, and also at the protection of the environment;
- Aspropyrgos' municipal authorities;
- NGOs;
- Human rights' international organizations.

The Ombudsman has carried out on-site investigations in the area and has publicized a relative findings paper that was asking for the public prosecutor's intervention. In addition, the Ombudsman participated in a council meeting of the Municipality of Aspropyrgos and has supported all positive action of the agencies involved regarding the improvement of the living conditions of those living in the area, the social peace among the various social groups, and the education of the Roma children. The Ombudsman suggested the adoption of temporary measures for the improvement of living conditions (such as garbage collection, water and electricity supply), and the materialization of transitional social inclusion programmes (such as vocational training, relocation incentives, etc.). The response of the administration is pending.

Relocation of Roma in the area of Kalamata

The Ombudsman dealt with issues of trespassing of private property by Roma and relocation of Roma in the area of Kalamata. The Ombudsman carried out an on-site investigation in the Industrial Area and the area of Agia Triada. As to the Roma relocation, the Ombudsman was informed on the materialization of the relocation project in the area Mpirmpita in the Municipality of Kalamata. Until the end of 2007 no such relocation had taken place in this specific area.

Access to public goods and services

A complaint was filed by a NGO regarding the decision by the Organization and the Council of Urban Transportation of Thessaloniki (OASTH and SASTH respectively), according to which a bus itinerary ceased to pass by the Roma settlement of Agia Sofia, and the terminal station was relocated outside the settlement. This bus line was the only mass transport service linking the settlement with the residential network of the city. Despite the repeated appeals by the NGO, the SASTH refused to change the new itinerary, invoking safety reasons in the interest of passengers and the OASTH personnel.

The Ombudsman stressed the statutory right of all people living in the area to mass transportation and the possible violation of the provisions of Law 3304/2005. Then, it was informed by the chairman of the SASTH that in a meeting of all agents involved, wherein neither Roma representatives nor the Ombudsman had been invited to participate, it had been decided to facilitate access for settlement residents to this bus terminal. The case is still being elaborated.

The Ombudsman provides information to citizens and the public administration through the new sub-website dedicated to equal treatment at http://www.synigoros.gr/diakriseis/index.htm

During an Ombudsman's on-site investigation in the same settlement, serious infrastructure shortages were noted resulting to hazardous pollution sources that endanger Roma residents. Following its intervention the sewage system underwent repair.

From the cases cited above, it becomes more than clear that there is a compelling need for social inclusion and support programmes addressed to Roma people.

The Ombudsman proposes:

The establishment of a new public service, in the form of a General Secretariat or other autonomous body, to undertake the planning of these projects and the coordination at national and regional level of agencies and involved in the respective materialization.

In addition, the Ombudsman stresses that:

- The permanent housing of Roma populations should be ensured and at the same time a legislative measure should be taken for ownership status change for them.
- A relative arrangement should be effectuated to include Roma settlements in water supply, power supply and sewage networks.
- Infrastructure should be created in settlements for travelling Roma populations.
- Education schemes for Roma minors should progress and in any available means.
- Health services, information on prevention, and general information on public health dangers should be incessantly available.
- Alternative breadwinning options should be indicated so that illegal and hazardous activities would be possible to be prevented.
- Competent authorities should avoid all measures of violent or compulsory removal if a specific place to relocate has not been indicated, with all necessary infrastructure ensuring dignified living conditions.

SPECIAL ACTION

Since 2006, the Ombudsman has activated a pilot communication network with NGOs and other civil society institutions for Roma protection and support. This initiative aims at the mediation by NGOs for the enhanced contact between Roma populations and the Ombudsman, the systematic exchange of information on institutional and other practical issues, and the flow of information on vital issues Roma people face in their everyday life; above all, the main objective is the coordination of action by all the network parties.

WORKING MEETING

The Ombudsman, within the framework of the Eunomia Programme, organized in cooperation with the Council of Europe a European meeting entitled "Lifting the Barriers of Social Participation: Roma Population Cases before the Ombudsman's Office".

Application of the new legislation – Proposals

Three years after the introduction of the new framework against discrimination, and since the promotion of the principle of equal treatment, the Ombudsman notes the following:

- The unwillingness of individuals who have been discriminated against, especially in sensitive personal fields, to publicize the offence they have suffered constitutes also an indication of the limited trust discrimination victims have to the institutional mechanisms designed for their protection. Dealing with this communication gap is thus considered a priority. The Ombudsman suggests undertaking institutional initiatives for invigorating civil society's active participation. To this purpose it is deemed necessary to fund specific and targeted activities of approaching or/and receiving, as well as social and legal support of victims of discriminatory treatment.
- The new process of proof stipulated in Law 3488/2006 clearly includes the Labour Inspectorate, that is hereby called upon to make the best possible use of the clause for shift of burden of proof. Hence, it is necessary to issue circulars, whereby to clarify the way in which the new competences of the Labour Inspectorate are activated, in carrying out on-site investigations in the private sector and in conciliatory interventions at its local departments especially on issues of indirect discrimination and harassment.

The Ombudsman, within its competences for the implementation of Law 3304/2005 and Law 3488/2006:

- Continued systematically cooperating and exchanging know-how with other institutions from Greece and abroad which are activated in promoting and implementing the principle of equal treatment.
- Participated in a series of training seminars aiming at providing information and raising awareness in eliminating discrimination in the workplace.

The Ombudsman participates also in:

- The European network Equinet, a network which brings together and coordinates designated equality bodies in applying EU Directives against discrimination in the EU member states and the accession countries.
- The National Working Group of the project "For Diversity. Against Discrimination", set up in 2005 as an initiative by the General Directorate for Employment, Social Affairs, and Equal Opportunities of the European Commission.

Transfer from another municipality and permanent residence certificate: guidelines

Ever since the beginning of its operation, a great number of complaints have been filed with the Ombudsman on the procedure for transfer to/from another municipality. Making the best possible use of its experience, the Ombudsman has elaborated a special report in which problems regarding municipality transfer seem to originate to the competence field of elected representatives of primary level local government authorities and are manifested all over the country. In some cases these issues give rise to questioning of the election results, since electoral lists are being compiled on the basis of municipal rolls. The practice of municipal and community authorities in examining applications for transfer from another municipality do not adhere to the legislation or the general principles of the legal operation of the administration. Such practices are, for instance, rejecting an application without justification, requiring supporting documents which are not mentioned in the pertinent legislation, appealing to excuses or avoiding examining an application until this is finally considered to have been rejected. The special report suggests a number of measures with the aim of eliminating instances of maladministration in this area and to ensure that citizens enjoy without any hindrances the rights that are related to their municipal status.

The Ombudsman's suggestions refer to: the terms and the procedure for transfer from another municipality; the proof of permanent residence and their alternatives; the judgment on permanent residence and the need to provide justification for rejections; the notion of permanent residence and real settlement according to the Civil Code; the need to a flexible interpretation of provisions for vulnerable social groups; deadlines set; re-examination of an application; and legal protection to which citizens are entitled.

Protection of asylum seekers in Greece

The Ombudsman, making the best possible use of its accumulated experience from examining a large number of complaints filed by aliens who enter the country seeking asylum, published and forwarded to the Minister of Public Order a special report on this thorny issue. The report had been drafted also on the occasion of the reform of the national legislation on refugees and asylum seekers so that EU Directives are incorporated, mainly on the reception conditions, family reunification, recognizing the refugee status and the asylum process.

This report distinguished between two categories of problems: the erroneous interpretation of the legislative framework and the inability or unwillingness of the Hellenic Police to implement relevant arrangements.

As to the issues stemming from erroneous interpretation, the Ombudsman notes that:

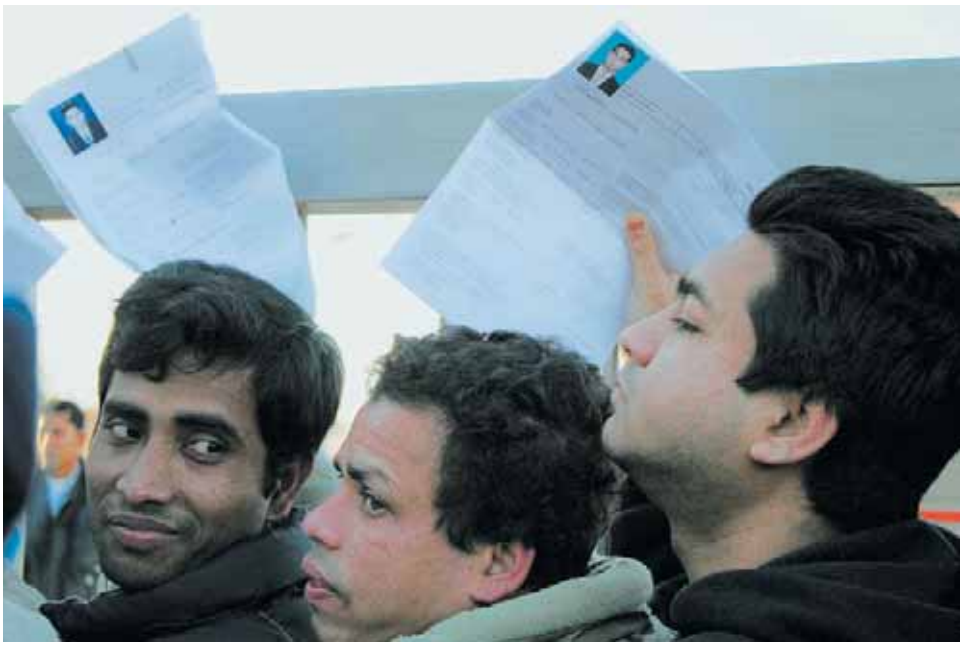
- The administration, using as a pretext the increase in the number of abusive claims for asylum, applies the measures of deportation and detainment without differentiation in cases of both economic immigrants who have entered the country illegally and to asylum seekers. It should be noted, however, that the Geneva Convention and the national legislation impose a different and more favourable treatment to recognized refugees and asylum seekers.
- The Hellenic Police does not apply the provisions for notification of administrative decisions or the special provisions regarding rejecting decisions of asylum claims. As a result the right to appeal and the judicial protection of asylum seekers are not ensured. Partial improvements noted in several domains do not bring any differentiation to the general picture which still remains a problematic one.
- The older practice by the Hellenic Police to refer asylum seekers to reception centres that do not ensure the necessary living conditions had as a result asylum seekers breaching

their obligation to remain in these centres which lead, in its turn, to the interruption of the claim's processing. The Hellenic Police seems to have abandoned this practice. However, there is still discordance between the opinion of the Ombudsman and that of the Hellenic Police on how to determine the place of residence for asylum seekers.

- The practice followed by the Hellenic Police to interrupt the processing of an asylum claim in case the asylum seeker in Greece moved to another EU member state while their claim was pending, and returned on the basis of the Dublin II EU Regulation 342/2003, contradicts to community law and caused the European Commission's reaction. Nevertheless, the problematic attitude of national authorities has been provoked also by the inherent shortages of the Dublin II Regulation.
- The refusal of competent authorities to allow access to asylum procedures to aliens in the transit zones in ports and airports, as well on foreign flag ships in a Greek port, contradicts the international maritime law and the refugee law, the international law on human rights protection, as well as the Greek Constitution. The same goes for the transit sites, for which a special expedite procedure for asylum claims is provided.

As for the *inability, as well as the unwillingness of the competent authorities to apply the provisions* regarding the procedure for granting the political refugee status, even when these provisions are clarified through circulars, it is still noted that: many of the problems that arise are caused from the absence of a strategic plan and coordination between competent services, especially in regard to the reception and/or restriction at the time of entry of asylum seekers. In addition, these problems are due to organizational malfunctions and shortages, such as the lack of adequate in number and appropriate in specialization personnel.

Despite some positive developments, the malfunctions that are constantly noted imply the low priority given to humanitarian issues when drafting measures for handling massive inflow of aliens seeking asylum.



Management of hazardous medical waste by public agencies

The starting point for this special report had been: relative complaints by citizens; the presentation of the topic in the mass media though charges for irregular management of hazardous medical waste in Greece; and the relative report by the Inspectors' Body of Health and Welfare Services. Under the framework of the ex officio investigations of the Ombudsman, on-site investigations were carried out in six public hospitals and at the Hospital Waste Incinerating Unit of the Association of Communities and Municipalities in the Attiki Region (ESDKNA). This investigation aimed at examining the way these agencies implement the joint ministerial decision that determines the terms and procedures for the management of medical waste.

The Ombudsman noted, among others, that:

- No internal regulation for the management of hazardous medical waste has been drafted to govern the medical units in the country.
- The country's hospitals employ various methods for collecting and receiving hazardous medical waste, and in many cases there is no dedicated site for this.

- There is an important shortage of hazardous liquid waste treatment units. At the same time, obsolete incinerating units not corresponding to any standards or even without licence operate inside the hospitals.
- Silver waste treatment produced at radiology laboratories of medical units is not environmentally controlled.
- The operation of the central incinerating unit at the ESDKNA may prove hazardous for the environment and public health.

The Ombudsman suggests, among others:

- Sanitary units should: expedite the drafting of internal regulations for the treatment of hazardous medical waste; train their personnel in the correct separation of types of waste; indentify the sites that can be used for hazardous medical waste temporary storage, when this is possible. Also, units without deep freeze rooms for the temporary storage of hazardous medical waste should acquire this equipment, until the waste is processed.
- The Ministry of Health and Social Solidarity should: seek the most acceptable technically, but at the same time financially solutions

for the collection/reception of hazardous medical waste; take stricter measures for the adherence to the law by hospitals; provide guidance for the construction of hazardous liquid waste treatment facilities (when there are not any); amend the legislative framework so as sanitary units are obliged to keep procedures governing also industries (submission and approval of studies for the processing and disposal of liquid waste, chemical tests, etc.).

- Financial and technical studies should be drafted at prefectural and regional level, examining also the possibility of constructing central hazardous medical waste treatment units in each prefecture, Region, or hospital.

As for the operation of the central incinerator of the ESDKNA, the Ombudsman suggests, among others:

- Measures should be taken for the correct treatment of liquid waste produced when the incinerator operates.
- Regular measurements of the pollutants produced in the flue gas. The relevant controls should take place in presence of the competent public audit mechanisms (Ministry for the Environment, Physical Planning, and Public Works; Ministry of Health and Social Solidarity; prefecture), either by the movable measurement unit provided by the state or, if this is not financially beneficial, with the help of certified movable laboratories.
- The appropriate mechanism or system should be set to check the percentage of halogenic organic residues in the hazardous medical waste, at a spot indicated by the competent authorities.
- The examination by the competent Ministries of: Health and Social Solidarity; and Environment, Physical Planning, and Public Works whether the central incinerator of the ESDKNA should be licensed for the processing of 30 tons per day, without prior increase, at least, of its storage/deep-freeze facilities.

Ombudsman's own-initiative investigation on the involuntary hospitalization of mental patients

The Ombudsman drafted this special report on the occasion of complaints filed by citizens, since its establishment, on the protection of the rights of mental patients, and more specifically the procedure of involuntary hospitalization. The decision of the Ombudsman to carry out an ex officio investigation on this issue offered the possibility for investigation, apart from the aforementioned complaints, into 89 randomly selected patients' files (179 involuntary committals) that had been admitted involuntarily in the Dromokaiteio Mental Hospital and in the Psychiatric Hospital of Athens during the last two years.

The investigations lead to the following findings:

- A large number of psychiatrists' opinions do not describe in clear and adequate way the mental situation of the individual examined, according to the prosecutor's order for evaluation.
- In 97% of the cases, patients were transferred to the hospitals mentioned above by the police and not by the National Emergency Ambulance Centre.
- It is not certain that patients had received adequate information "on their rights and especially of the right to legal redress", as dictated by the law.
- Even if in 94% of the cases there was a prosecutor's commitment order, in 84% of the cases a court decision was not to be found in the patient's file. Almost in half cases no subpoena to appear before the court was found and in the vast majority of cases the patient did not appear for trial.
- The ten days deadline which the Court of First Instance should sit, after the prosecutor issues the commitment order, is systematically being violated. The reasoning in court decision is based on the opinions by doctors resulting from examination at the time the patient was admitted, without taking into consideration a later assessment of their situation. In addition, in several cases, it takes more than a month for the decision to be issued after sitting of the court.
- No important correlation was statistically noted between the court decision and the duration of involuntary commitment, which means that in practice the basic aim of the legislation to control through the courts involuntary commitment of mental patients is invalidated.

The Ombudsman proposes, among others:

- The immediate and systematic cooperation and the coordination of competent services of the Ministry of Health and Social Solidarity and the Ministry of Justice, and especially among hospitals and prosecutors and other judicial authorities.
- The continuous information of psychiatrists on their obligation to offer complete justification in their opinions and the improvement of the relevant leaflets with guidelines and examples on filling-in forms.
- The establishment of specialized emergency units for grave cases of mental patients.
- The establishment of primary mental health care units so that families and patients do not resort to mental clinics.
- The assurance of treatment continuity in offering primary, secondary, and tertiary care and the establishment of support services for the families of mental patients.

Unemployment benefits, rights of the unemployed, and operation of the Manpower Employment Organization's services

The Ombudsman, making the best possible use of its conclusions after investigating approximately 350 complaints, drafted a special report where the problems related to insurance rights of the unemployed are being examined, as well as the administrative malfunctions of the Manpower Employment Organization (OAED).

The Ombudsman notes that:

Employment on the payroll seems to regress in front of unofficial forms of employment (fixed-term contracts, open-end labour contracts which do not last long, works contracts, part-time employment, seasonal employment, training programmes, etc.). In this way, the categories of employed people who do not have social protection against unemployment are gradually increasing in number. Rights are further being limited by the fact that legislation in all actions in the employment policy (e.g. the training actions) is being applied articulated around the notion of the unemployed, as this was formulated under the framework of the regular payment of benefit for unemployment.

The Ombudsman considers necessary:

- To amend in legislation the regular payment of benefit for unemployment so that protective provisions cover new forms of employment and mobility in the labour market.
- To clarify and redefine the notion of the unemployed so that it is not linked only to passive benefit policies, but to active policies for the return and integration of the unemployed to the labour market.

As for the administrative malfunctions of the OAED the Ombudsman indentified:

- Poor cooperation and coordination among public services;
- Insufficient information and awareness of the public;
- Inadequate application of regulations regarding interview, justification, revocation and administrative control of all administrative acts by the OAED;
- Violation of the principle of good administration.

According to the Ombudsman, it is necessary:

- That individuals insured receive all pertinent information on the procedure and on the distinction between enrollment in the unemployed registries and the submission of application for benefit.
- Answers should be granted in writing, should include adequate justification and should all be communicated, both approvals and rejections.
- An alternative control system should be devised that would provide for additional ways to submit the monthly application of unemployment benefit by post, the Citizen Service Centres, or via internet, on the condition that the status of unemployed has already been indentified at the fist stage of the procedure by the competent OAED office.

Materialization of active employment policies

From 1998 to 2006, the Ombudsman investigated 556 complaints on the active employment policies developed by the OAED. These cases refer namely to programmes for "Subsidy to new free lancers", "Subsidy to companies for the employment of unemployed", and "Acquiring professional experience programme – Stage".

These complaints bring to light problems on:

- The formulation of the programmes. Problems relate to the particularities of policies to reinforce employment, fluidity in everything concerning the legal framework and its application, managerial flexibility in determining number of participants in the partial programmes, and the complexity of regulatory framework.
- The materialization of active employment policies. Problems are related to the required preconditions and the audit of prerequisites for inclusion in these programmes and actions of active employment policies, as well as the non timely payment of subsidies.
- The poor service offered to citizens by the employment services, the attitude of the OAED personnel, and the application of Code of Administrative Procedure.

The Ombudsman proposes that:

- Administrative procedures should be simplified and frequent amendments should be avoided in regard to programmes for the promotion of employment.
- Complete and coherent information should be granted to interested parties (unemployed and businessmen) for inclusion in these programmes, and namely for the obligations and commitments one should enter to when participating in such a programme.
- Consulting services offered by the Centres for the Promotion of Employment should be upgraded and employment public services should improve their attitude towards increased managerial demands for materializing active employment policies.

In 2007, the Ombudsman submitted a series of legislative and organizational proposals for the improvement of operation of public administration. The Ombudsman proceeds in formulating such proposals with the belief that handling several of the topics investigated demand either the amendment of the existing legislative framework or the restructuring of the organization and operation of the competent services. The following have been selected from the total of proposals presented by the Ombudsman:

The Ombudsman proposed

Ministry of Employment and Social Protection

For the benefit based protection of unemployment, among others, that:

- Individuals offering their services as their main occupation to employees who are spouses or first- or second-degree relatives should be insured in the OAED unemployment branch.
- It should be possible to pay benefits for unemployment even in the case the employer refuses to grant in writing the contract termination. Also, the absence of written contract termination should be covered by the OAED report or by the report of labour difference which may have been filled in by the Labour Inspectorate.
- During pregnancy or puerperium the unemployment benefit should not be recalled.
- Consecutive insurance rules should be applied in the cases of insured people who have paid their social security contributions due to unemployment in more than one social security organizations.
- In order to register in the unemployed registers and receive unemployment benefit, aliens insured by the OAED should have fulfilled their social security obligations and meet the prerequisites for unemployment benefit, instead of being required to present the administrative residence permit for employment.
- The precondition of Greek or EU member state citizenship should be abolished in order to grant the unemployment benefit to long term unemployed.

Ministry of Justice

The Lawyers' Code should be reformed so as to explicitly provide that, in order to submit charges against a lawyer, one should have full access to the relevant disciplinary file.

Ministry of Education and Religious Affairs

Special arrangements should be established for the selection process of teaching personnel on contract for higher education institutions; these arrangements should be similar as to the transparency guarantees to those governing the selection process of members of research faculty personnel.

For attending school and special educational needs assessment:

- A ministerial decision should be immediately issued for the materialization of personal curricula for students with special educational needs attending general education schools.
- Educators in secondary education should receive training so as to be able to meet adequately the education and pedagogical needs of these students.
- It should be institutionally clarified that, when a special educational framework is not available, educators and the administration bear increased responsibility as to the inclusion of these students at school and their appropriate pedagogical and educational support.

Ministry of the Interior, Public Administration, and Decentralization

As for the debt certification procedure stemming from violations of the Road Traffic Code among others it is proposed that:

- The Ministry of Transport and Communications' data base should be used at the first stage of the procedure (drafting and sending by the competent local government authority of the first personal notice) so that the fine is collected.
- The first personal notice should be sent within three months from the date that the certification act of the offence is received by the local government authority.
- The period needed for a parking ticket to be invalidated should be drastically limited from 20 years which is now to three years, for instance.

On the entry, residence and social inclusion of aliens it is proposed, among others, that:

- Immigrant associations should participate in the Social Inclusion Committee of article 1, Law 3536/2007.
- In order to issue a residence permit on extraordinary grounds, it should be adequate to produce proof for this extraordinary reason that renders residence in Greece necessary for the applicant.
- Indefinite permanent residence permit should be granted to aliens, second generation immigrants after they come of age.
- The problem of submitting all necessary documents and applications for legalization after the deadline has passed due to administrative delays should be dealt and solved.
- In cases of unattainable deportation, aliens should be set free and not be detained anew, unless deportation has been made possible. In this case, it is proposed that the maximum period of detainment should not exceed 15 days.
- Administrative deportation should be *de jure* lifted in case of illegal entry, exit, residence and work in case this alien has applied for legalization of residence of illegally residing aliens.

A circular should be issued stipulating that, in the case of alien minors, birth registration should be accepted by all competent services as a document equal to a birth certificate; a special municipal registry for aliens, permanent residents, should be created and registering therein should equal registering to a municipal roll.

Ministry of the Interior – Ministry for the Environment, Physical Planning, and Public Works

Special criteria should be established for the determination of communal spaces in which it is not allowed to place advertisement boards.

Ministry of Transport and Communications

The possibility to apply a pilot programme for transportation of bicycles with the underground should be examined so as to identify in practice the positive and/or negative implications of this measure.

Ministry of Economy and Finance

Already submitted applications of recognized refugees for exemption from the property transfer tax for first time real estate (residence) purchase should be re-examined, as well as all applications to be submitted onwards, on the grounds of interpreting the tax legislation in force under the light of the provisions of the Geneva Convention and Law 3304/2005.

Ministry of Employment and Social Protection

The educational benefit stemming from participation in a vocational training programme should be characterized as extraordinary benefit which is not taxed.

Ministry of Culture – Ministry for the Environment Physical Planning, and Public Works

The competences of these two ministries should be clarified and delineated as much as possible in regard to construction special terms so as to safeguard harmonious cooperation and legal certainty.

Ministry for the Environment, Physical Planning, and Public Works

All necessary special regulations on the access of persons with disabilities to buildings should be incorporated to the Building Code so as to facilitate the participation of these persons in economic and social life.

On-site investigations

During complaint investigation, the Ombudsman is entitled to carry out on-site investigations in order to gain first hand view on each case. In 2007, approximately 40 on-site investigations were carried out (and almost 30 visits and meetings), including on-site investigations to hospitals, social security organizations, Roma settlements, aliens' detainment centres, nurseries, etc.

Own-initiative investigations

The Ombudsman has the right to carry out investigations on its own initiative (ex officio) on cases that fall under its competences, when the seriousness of the case in question dictates it. In 2007, the Ombudsman decided to carry out own-initiative investigations in police pens in Thessaloniki regarding the stay of "penal" detainees in police pens for long periods of time and the possible violation of their rights. Also, two own-initiative investigations were carried out for the management of hazardous medical waste by public agencies and the involuntary commitment of mental patients; the respective special reports were drafted and publicized.

Referral to disciplinary investigation

If in the course of an investigation there are sufficient evidence of the perpetration of a criminal act by a civil servant, employee, or member of the public administration, the Ombudsman has the right to refer the relevant reports to the competent public prosecutor. It should be noted that the cooperation between the Ombudsman and the Region services that supervise local government authorities, although of huge importance, does not produce always the desired result, mainly because it takes too long for the administration to respond.

In 2007, the Ombudsman asked from:

- *The Ministry of Health and Social Solidarity to investigate a citizen's complaint for illegal placement of pacemaker in a private clinic. The ministry referred this claim to the Inspectors' Body of Health and Welfare Services. The Ombudsman, estimating that the check carried out was deficient, asked for this case to be re-examined by the competent service of the ministry so that sanctions are imposed.*
- *The administration of the "Mamatseio" General Hospital of Kozani to initiate an administrative examination under oath for the possibility that there had been an erroneous assessment of the health condition of a patient when she was in hospital, for the bad cooperation between the hospital's clinics, and the lack of information to her relatives on the treatment applied.*
- *The Directorate of Sanitary Personnel of the IKA to initiate an administrative examination under oath for the deficient operation of the gynecological department at an IKA branch.*
- *The administration of the "Vostaneio" General Hospital of Mytilini to initiate an administrative examination under oath on a charge for erroneous diagnosis and inadequate hospitalization of a minor.*
- *The administration of the "Tzaneio" General Hospital of Peiraias to initiate an administrative examination under oath following charges for bad behaviour on behalf of the doctors to a patient who had undergone chemotherapy. According to the examination findings, the doctors' behaviour was the appropriate one and the reason for the charges had been the emotional situation of the patient.*
- *The Mayor of Lidoriki to initiate investigation for possible deficiencies in the carrying out of duties on behalf of municipal employees in a case of part of a land property trespassing during the widening works on the municipal road of Lidoriki. The deputy mayor defended the actions of the municipality, purporting that they had acted in good faith.*

The Region responded:

In a case of neglect to secure a municipal space from illegal backfill by a citizen. In this case, the Secretary General of the Region of Attiki imposed a disciplinary punishment (15-day lay off) to the Mayor of Markopoulo (Mesogaia, Attiki) for refusing to cooperate.

The Ombudsman's claims found no response by:

- *The Mayor of Peiraias. He did not initiate a disciplinary examination of the Directorate for Cleaning employees for a case related to the collection of construction material originating from private construction works, during established quiet hours and without a special permit by the police. In the same case, the Ombudsman asked the Police Directorate of Peiraias to carry out an examination for possible poor response of policemen to complaints for noise pollution at the time of collection. According to the result of this examination, the policemen were not responsible for such conduct.*
- *The Region of Attiki. It did not proceed to a disciplinary check concerning the refusal of the chairman and the members of the administration board of the legal entity of day nurseries in Peiraias to cooperate with the Ombudsman. The Ombudsman cooperated with the new administration of the legal entity and indeed omissions were found in the registration procedure. A findings paper was drafted which also was sent to the Region.*
- *The Region of Attiki. It replied with a two-year delay that the disciplinary examination of officials of the Municipality of Amarousio (the former mayor and deputy mayor) had not been carried out in full due to the fact that interested parties had not been reelected in the recent municipal election. The municipality had not responded in a case of operating an open-air property as parking facility in an exclusively residential area.*

Finally, in 2007 and with an almost two-year delay, the administration of the General Hospital of Karditsa notified the Ombudsman on the administrative examination under oath carried out in order to investigate, among others, the implications of the absence of the doctor on duty on the rapid deterioration of a patient's health condition.

Referral to the public prosecutor

If in the course of an investigation there are sufficient evidence of the perpetration of a criminal act by a civil servant, employee, or member of the public administration, the Ombudsman has the right to refer the relevant reports to the public prosecutor. In 2007, the Ombudsman referred three cases to the competent public prosecutor.

The Ombudsman referred:

- *To the Public Prosecutor of the Athens Court of First Instance the file of a case on illegal placing of advertisement boards by the Municipality of Amarousio because, among others, these sites had not been approved by the municipal board. The case was sent also to the Secretary General of the Region of Attiki as to its disciplinary examination.*
- *To the Public Prosecutor of Serres the file of a case on the examination of possible penal responsibilities of the Municipality of Kerkini for conceding to a private individual public property in a coastal area of the Lake Kerkini and the construction on this property of an illegal building.*
- *To the Public Prosecutor of Patra the file of a case on the refusal by the Municipality of Patra to undertake the administration of the former church cemetery.*

In Greece

Kerkyra, 3-4 December

We visited

- The island of Kerkyra so as to provide information to citizens and public servants on the mission of the Ombudsman and to receive complaints.
- The island of Lesvos, within the framework of a two-day working meeting organized by the Ombudsman in cooperation with the Ministry of Finance's Training School (SEYYO) and the Cyprus Academy of Public Administration on "Tax and Customs Administration at Citizens' Service – The Role of the Ombudsman in Solving Problems – Negotiation Techniques".

Athens, 16-17 April

We organized a conference

- On the 10th anniversary of the Ombudsman entitled "Ten Years from the Establishment of the Greek Ombudsman", with the participation of representatives of elected political parties who had participated in the Institutions and Transparency Committee of the Parliament, as well as eminent Greek legal experts and political scientists.

We organized one-day conferences

- In the premises of the Ombudsman and in cooperation with the United Nation's High Commissioner for Refugees on "Asylum in Greece and the Incorporation of EU Directives", with the participation of: representatives of the European Commission, university professors, the president and members of the Council of State, officials of the (formerly) Ministry of Public Order and the Hellenic Police, representatives of state services, NGOs, etc.
- At the University of Athens on "Policies for Reinforcing Employment and Social Security Coverage for the Unemployed". The two relevant special reports drafted by the Ombudsman were presented in this one-day conference, which was attended by representatives from: the Ministry of Employment and Social Protection, the OAED, the European Commission, the Economic and Social Committee, social partners, scientific organizations, etc.

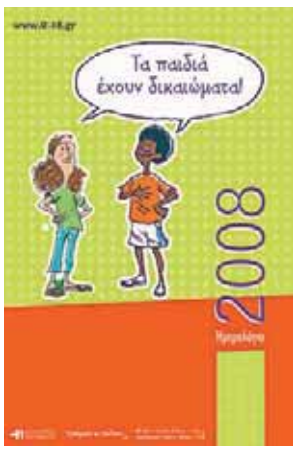
Athens, 22 November

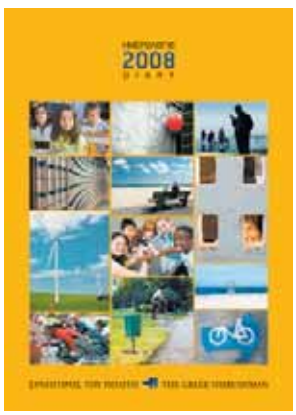
We established

- A network for mutual exchange of information on issues related to refugees and Roma, in cooperation with organizations, agents, and associations of the civil society, active in the field of rights' protection and social support to Roma population or to asylum seekers in Greece.

We participated in education and training activities

- Addressed to students of the department of Social Administration of the National School of Public Administration on issues related to the administration of health services and social security organizations, and other issues on social security, welfare, mental health, and unemployment protection.





- Addressed to officials of tax offices and customs in the Region of the Northern Aegean, that took place in Mytilini, in cooperation with the SEYYO on the role of the Ombudsman in tracking solutions to problems citizens face in regard to tax and customs authorities.
- Addressed to school students participating in environmental programmes aiming at raising awareness.

We also participated

- In a law symposium on "Independent Authorities in Contemporary Democracy" that took place in the Athens Concert Hall.

We published

- A simplified summary of the International Convention on the Rights of the Child.
- Informative leaflets on the Children's Ombudsman addressed to children and adolescents.

We also circulated

- To schools and institutions a series of calendars and posters with the rights of the child and information on the Children's Ombudsman.
- A 2008 Calendar which incorporates information on the Children's Ombudsman.

We published in electronic form

- A quarterly newsletter presenting in brief the work of the Ombudsman (findings papers, proposals, investigations, meetings, international relations, etc). The aim of this electronic publication is to establish contact with the whole range of its "interlocutors" and reach as many citizens as possible in a continuous, direct and interactive way.

www.synigoros.gr/newsletter.htm

Abroad

We visited

- Strasbourg, for the 6th Seminar of National Ombudsmen of EU Member States and Candidate Countries, organized by the French Ombudsman, on "Rethinking Good Administration in the European Union".
- Cyprus, for a one-day conference on "The Role of Police in Contemporary Democracy".
- Tuscany, under the framework of experience and know-how exchange between the Ombudsman institutions of Greece and Italy.
- Berlin, for the meeting of European Ombudsmen organized by the International Ombudsman Institute, the National European Institutions for the Promotion and Protection of Human Rights, as well as the Human Rights Commissioner of the Council of Europe.
- Berlin, Brussels, Strasbourg, and Barcelona, for a series of international meetings aiming to promoting the rights of the child under the framework of the presidency of the European Network of Ombudspeople for Children held (April 2006–September 2007) by Deputy Ombudsman Giorgos Moshos.
- Strasbourg and Istanbul, for the respective preparatory committee meetings for the Istanbul meeting and the 22nd Session of the Standing Conference of European Ministers of Education of the Council of Europe on "Building a More Humane and Inclusive Europe: Role of Education Policies".
- Florence, under the framework of the preparatory intercontinental meeting in view of the United Nations' 2nd Special Session of the General Assembly on Children.

We were visited by

- The head of the department for Citizen – State Relations from the Thailand Ombudsman's Office in an information visit on the Greek Ombudsman's organization and competences.

Berlin, 3–4 June

We organized

- A working meeting in cooperation with the embassy of the Netherlands on "Integrating Immigrants – Mediatory and Deliberation Mechanisms", with the participation of Greek and Dutch public administration agencies (central and local government), NGOs, immigrants' organizations, and officials from the Greek and the Dutch Ombudsman Offices.

We participated

- In a meeting organized by the European Committee against Racism and Intolerance in Strasbourg.
- In a conference on "The Role of the Ombudsman Institution as Guarantor for Citizen Rights and Freedoms in the Consolidation of the Democratic System", organized in Madrid by the Spanish Ombudsman on the occasion of its 25th anniversary.
- In a conference organized by the European Commission in Brussels on "50 Years of Gender Equality".
- In an international conference organized by the Council of Europe in Strasbourg on "Children's Access to International Justice".
- In a seminar on the trafficking of women and children entitled "Legal Safeguards against Human Trafficking" that took place in Yerevan.
- In a seminar on "Training of Judges and Legal Functionaries" that was organized by the Agency for International Legal Cooperation (ACOJURIS) in Kaliningrad.
- In a two-day conference on "Familiarization, Communication, Dialogue between the Association of Paraplegics of Montenegro and the Government of Montenegro, and the Greek Experience and Practice" organized by the International Orthodox Christian Charities.
- In the 1st International Conference of Ombudsmen of the Mediterranean in Rabat. The three-day conference produced the Rabat Declaration which defines the cooperation framework, the aims and objectives of the network, the chair and organizing committee.

Florence,
11–12 November

Eunomia programme

We organized

- The 10th Round Table (Athens, Zappeio Megaro) of European Ombudsmen, in cooperation with the Office of the Commissioner for Human Rights of the Council of Europe. All Council of Europe member states' Ombudsmen, as well as the heads of National Human Rights Institutions attended and participated in the meeting. The topic of this round table was the new role of the Office of the Commissioner for Human Rights and national Ombudsmen in the provisional procedure before the European Court for Human Rights in Strasbourg (14th Additional Protocol to the European Convention on Human Rights). According to the new amendments, national Ombudspersons have the responsibility to provide citizens with information on the admissibility of their cases to the European Court; also, thereafter, Ombudspersons have the right to express their views on important questions regarding violations of human rights which are under the judgement of the European Court for Human Rights.
- A European working meeting on "Lifting the Barriers of Social Participation: Roma Population Cases before the Ombudsman" in Nafplio. This meeting aimed at bringing to the fore issues related to social exclusion, such as municipal status, safe housing, and access

Athens, Zappeio Megaro, 12–13 April

to education that put strain on the relations between the Roma, the administration and the rest of the population in Greece, as well as in other European countries. In addition, another objective was to formulate suggestions and proposals for organizational changes and relative legislative amendments. European organizations' experts, Ombudspersons from central and South-Eastern Europe, representatives of public administration and local governments, as well as representatives from civil society, NGOs, and Roma self-organization agencies took part in this event.

- A seminar in Sofia on "Ombudsman Intervention: Between the Principles of Legality and Good Administration", in cooperation with the Bulgarian Ombudsman and with the participation of the European Ombudsman and the Ombudsmen from Albania, Austria, Belgium, Cyprus, Georgia, the Netherlands, Norway, Serbia, Sweden, FYROM and others. The aim of this seminar was to shed light and elaborate on the relation between principles of legality and good administration, with comparative examples taken from the participants' experience.
- A training seminar for the Ombudsman Office of Montenegro in handling complaints related to the protection of the environment. Training was articulated around the experience of the Greek Ombudsman and on issues of synchronization of national legislation with EU environmental legislation.

Nafplio, 7–8 December

Nafplio, 7–8 December

Sofia, 17–18 September

We visited

- Tbilisi, to meet with the Georgian Ombudsman Office following their visit in Greece last year. The Greek delegation held meetings with the Georgian Ombudsman's staff, representatives of religious minorities and members of the Greek community of the country. The Greek Ombudsman and the Georgian Ombudsman will cooperate in organizing an international conference to be held in Tbilisi during summer 2008 on "Minorities and the Ombudsman".
- Yerevan, to receive information by the country's Ombudsman Office on its evolution and establishment in the political and administrative system of Armenia. The Greek Ombudsman participated also in the international conference on "Importance of Cooperation between Constitutional Courts and Ombudsmen in the Field of Human Rights Protection". During a training seminar, the Greek delegation gave detailed presentations of the Greek Ombudsman Office, its structure, responsibilities, day-to-day operation, with examples of mediatory practices employed.

We were visited by

- A three-member delegation from the Armenian Ombudsman's Office, within the framework of networking with the countries of the region of Caucasus. Special emphasis was placed on immigration policy issues, citizenship, minority rights, as well as on the role of the institution before the judicial power.

Yerevan, 3–7 October

Athens, 11–13 June

Acronyms

Most of the acronyms used in the present edition are transcriptions of the Greek acronyms.

AMEL AE	Attiko Metro Operation Company SA (Attiko Metro Etaireia Leitourgias)
ASEP	Supreme Council for Public Sector Personnel Selection (Anotato Symvoulio Epilogis Prosopikou)
DEH	Public Power Corporation (Dimosia Epiheirisi Ilektrismou)
DOATAP	Cross-Disciplinary Organization for the Recognition of Academic and Information Technology Diplomas (Diepistimonikos Organismos Anagnorisis Titlon Akadimaikon kai Pliroforisis)
ELOT	Hellenic Organization for Standardization (Ellinikos Organismos Typopoiisis)
ESDKNA	Association of Communities and Municipalities in the Attiki Region (Eniaios Syndesmos Dimon kai Koinotiton Nomou Attikis)
ETAM	Unified Insurance Fund for Employees (Eniaio Tameio Asfalisis Misthoton)
ETAT	Unified Insurance Fund for Bank Employees (Eniaio Tameio Asfalisis Trapezoypallilon)
EU	European Union
EYDAP	Athens Water Supply and Sewerage Company (Etaireia Ydreusis Perioxis Proteuousis)
FYROM	Former Yugoslavian Republic of Macedonia
GGKA	General Secretariat of Social Security (Geniki Grammateia Koinonikon Asfaliseon)
GLK	State General Accounting Office (Geniko Logistirio tou Kratous)
GPS	General Urban Plan (Geniko Poleodomiko Shedio)
IKA	Social Security Organization (Idryma Koinonikon Asfaliseon)
MRI	Magnetic Resonance Imaging
NAT	Merchant Marine Retirement Fund (Naftiko Apomaxiko Tameio)
NGO	Non Governmental Organization
OAED	Manpower Employment Organization (Organismos Apasholisis Ergatikou Dynamikou)
OAEE	Social Security Organization for the Self-Employed (Organismos Asfalisis Eleftheron Epaggelmation)
OASTH	Organization of Urban Transportation of Thessaloniki (Organismos Astikon Sygkoinonion Thessalonikis)
OGA	Agricultural Insurance Fund (Organismos Georgikon Asfaliseon)
OPAD	Health Care Organization for Civil Servants (Organismos Perithalpsis Asfalismenon tou Dimosiou)
OPEKEPE	Payment and Control Agency for Guidance and Guarantee Community Aids (Organismos Pliromon Eleghou kai Koinotikon Enisxyseon Prosanatolismou kai Eggyiseon)
OTE	Hellenic Telecommunications Organization (Organismos Tilepikoinonion Ellados)
SASTH	Council of Urban Transportation of Thessaloniki (Symvoulio Astikon Sygkoinonion Thessalonikis)
SDOE	Financial Crime Squad (Soma Dioksis Oikonomikou Egklimatos)
SEYYO	Ministry of Finance Training School (Sholi Epimorfosis Ypallillon tou Ypourgeiou Oikonomikon)
TAE	Merchants' Insurance Fund (Tameio Asfalisis Emporon)
TEAYEK	Supplementary Insurance Fund for Retail Employees (Tameio Epikourikis Asfalisis Ypallilon Emporikon Katastimaton)
TEVE	Professionals and Craftsmen's Insurance Fund (Tameio Epaggelmation kai Viotehnon Elladas)
TPAEN	Welfare Fund for Mercantile Marine Officers (Tameio Pronoias Aksiomatikon Emporikou Naftikou)

TPKPEN	Welfare Fund for Seamen of Mercantile Marine (Tameio Pronoias Katoteron Pliromaton Emporikou Naftikou)
USSR	Union of Soviet Socialist Republics

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