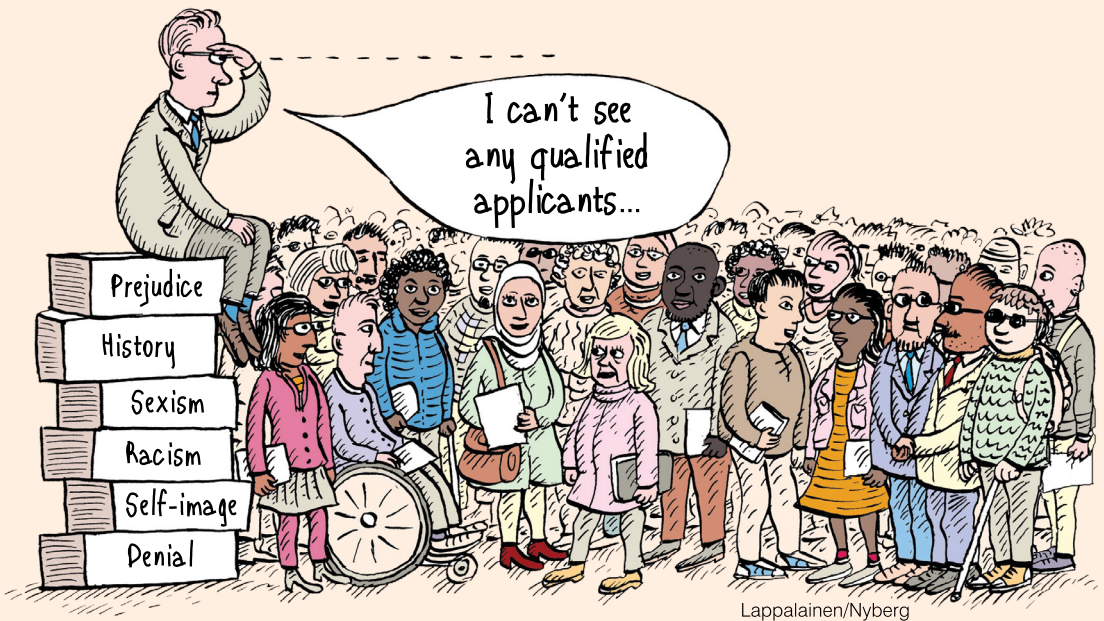


EQUAL TREATMENT

SPECIAL REPORT 2018





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

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Dimitra Mytilineou

Copy Editing

Vaso Bachourou

Supervision of Edition

Alexandra Chaini

Illustration

Lappalainen/Nyberg

English Translation

ELIT Language Services

Cover Page – Art Direction

KAMPYLI SA, 60 Antigonis Str., Kolonos, Athens, GR-104 42, Tel. (+30) 210 5156810-20-30

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

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The Greek Ombudsman

17 Halkokondyli Str., Athens, GR-104 32, Tel. No: (+30) 213 1306 600

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I Preface

The impact of the extended economic recession and fiscal adjustment process on the State, on the effectiveness of the administrative mechanism, on the quality of the services provided and on the level of social cohesion and justice, were particularly pronounced. The State has been obliged to reduce granting of benefits to a minimum, while at the same time it has been forced to limit its controlling role. It is only natural that this brought about an excessive suppression of rights, the dramatic reduction of the social, welfare state, the state's extremely limited ability to intervene with targeted policies and positive measures in order to ensure equal participation for all in social actions, employment, education, and generated wealth.

In this adverse environment, the constant flow of mixed populations, refugees and migrants, continues to test the readiness of the state mechanisms. The bewilderment exemplified in the management of the mass refugee inflow of previous years has ceded its place to diffidence in promoting substantial policies for their social inclusion and the decisive management of manifestations of bigotry and intolerance, not to mention the intensities that fuel them. There were and still are many challenges.

The resilience of Greek society, as of any society for that matter, with respect to the management of such phenomenal challenges have reached a breaking point. The risk of society's disorientation, a society in an obvious state of confusion, the risk of manipulation of public opinion, the fuelling of discrimination between "us" and "them", the strengthening of hate speech, xenophobia, and racism is all too real.

The Greek Ombudsman's Special Report 2018 on Equal Treatment, the second following the radical internal reorganisation and restructuring of its forces, in order for the National Body to correspond to its increased responsibilities and requirements as the national body for the prevention and promotion of equal treatment, states its key pillars of action as being: Its intermediary interventions, its powers of scrutiny, its legislative proposals, its institutional recommendations, its informative and training initiatives. Firmly committed to boosting our effectiveness, we claim new tools and new opportunities, as these arise from the emergence of the best practices of equal treatment bodies of other European countries and are expressed in standards and principles by the Council of Europe and the European Union.

The National Body's Special Report also charts the level of respect of the principle of equal treatment in Greece, as well as the harmonisation of the national legislative framework with its imperatives. The emergence of persistent outbreaks of illicit discriminations in the workplace, in education, in the family, at all areas of social action, brings mentalities and practices to the surface that cause awkwardness and highlights institutional voids that trouble us.

The fight for the advocacy and monitoring of the implementation of the equal treatment principle is not simply a fight for compliance with legality, for the solidification of the rule of law, or for the respect of fundamental rights. It is a fight against stereotypes, both those that have penetrated into the collective, social consciousness – and/or unconsciousness – as well as those that are deeply rooted in each and every one of us, defining us as human beings and guiding our action and conduct. It is a multi-faceted, multi-layered and complex fight. In order to ensure equal opportunities for one and all with respect to the development of one's personality, the cultivation and use of talents and skills, social involvement, the access to services, the enjoyment of goods, the improvement in the quality of life. On equal terms and with equal rights. In this fight, the Greek Ombudsman, as a national body for equal treatment, will continue to play the role of a stable, yet decisive, strategic institutional protagonist. Aiming at a society in which everyone's rights are respected. A fairer and more humane society.

Andreas I. Pottakis

The Greek Ombudsman

April 2019

Introduction

This Special Report provides a comprehensive presentation of the Greek Ombudsman's activity, as the national body of promoting equal treatment, within the framework of Law 3896/2010 and 4443/2016, in the year 2018. The number of reports that were submitted in 2018 exhibited an 18% increase compared to 2017. This fact, in conjunction with the percentage of cases whose investigation drew to a close in 2018 with a successful outcome, confirms the intensive rate by which these cases were examined, but also the quality and effectiveness of the work that was conducted by the 11 experts that man this field of activity, with the support of the National Body's administrative personnel.

More than half of the 899 reports submitted in 2018 concern discrimination between men and women, especially in the workplace. These are followed by discrimination on grounds of disability, family status, national origin, racial origin, religious beliefs, social status as well as discrimination on grounds of sexual orientation, gender identity or gender characteristics.

All the reports that were submitted in that year cover the full spectrum of discrimination grounds protected by national law. Despite the low, but representative percentage that is observed in certain grounds of discrimination, the overall picture provides a clear indication regarding the manner and type of discriminations that manifest in Greece, but also the trust that complainants place in the Ombudsman with respect to equal treatment issues. Nevertheless, the National Body must remain alert in order for this trust to be solidified, and for the number of people who are aware of the Ombudsman's services and file a complaint to be expanded.

Discrimination between men and women continues to be the main reason that action is sought by the National Body. The substantial number of reports relating to the dismissal of pregnant women in the private sector or detrimental changes after their return from maternity leave, demonstrates that despite enhanced legislative protection, the relevant prohibition has not been fully comprehended; even more so the perception that undermines the harmonisation of professional and family life and its benefits in employment, the family and society, have not been eliminated. Correspondingly, the absence of a minimum single maternity benefit to all working mothers regardless of their employment status in the public or the private sector presents motherhood or parenthood as a qualifying figure depending on the employment status and the employment sector and in some cases the new

working mother is actually deprived of this benefit (e.g. employees in fixed-term employment contracts in the public sector). On the other side of the coin, discrimination against men is frequently associated with adversities in the equal granting of child-raising leave and the perception that child raising is strictly and exclusively the mother's role.

With respect to discrimination on grounds of disability or chronic disease, the submission of discrimination cases concerning the private sector is extremely encouraging. These cases are forwarded to the Ombudsman by the Labour Inspectorate (SEPE) as part of a labour dispute or are submitted directly to the National Body. This is greatly due to the pursuit of collaborations and regular meetings held by the National Body's officials at the local inspectorates throughout Greece aimed at the exchange of views and the grasping of the anti-discrimination law. It remains that this collaboration must be strengthened, and all services and bodies must demonstrate vigilance in order to promptly understand that the treatment of an employee or an employee with a disability or chronic disease may conceal discrimination, which needs to be investigated, thus the referral of the case to the National Body.

Cases of discrimination on the grounds of age constitute a constant subject matter of the Ombudsman's investigation, who is gradually increasing the successful outcome and effective management rates. The specific characteristic that is presented in age-related discrimination is associated with the fact that the Ombudsman's intervention results frequently go beyond the individual case to the actual cause of the discrimination, namely the regulatory provision (e.g. the notice), but also to the perception that fuels and expresses it. Therefore, the Ombudsman's interventions in these cases, even if they are instigated by an individual complaint, have a broad impact, both on the extent of the persons concerned and for the prevention of repetition in the future.

With respect to cases of discrimination on grounds of national or racial origin, social status, religious or other beliefs, sexual orientation, gender identity or gender characteristics, a clear inconsistency is ascertained between the submitted complaints and the discrimination that is suffered by individuals with these characteristics in the real social field. This fact is due to the general difficulty that the victims of these discriminations face in their search for support. Being fully aware of this need and in its attempt to overcome the communication and information barrier, the Ombudsman aims at networking with civil society organisations that engage in the protection of these persons' rights, but also at undertaking targeted actions on a regional level.

Complaints concerning the violation of the equal treatment principle that are submitted to the Ombudsman indicate the type and manner by which discriminations manifest in Greece and do not constitute an exhaustive list of their extent and in-

tensity. The immediate and effective resolution of individual complaints, the emergence of legal issues that arise during the adoption of the law, the undertaking of targeted actions for the effective fight against discrimination and its causes, and the improvement of the legislative framework in harmonisation with the principle of equal treatment constitute the National Body's constant challenge and strategic goal.

In view of the above, the Ombudsman chose to change the presentation method of the Equal Treatment Special Report in order to facilitate familiarisation and better understanding of the means of protection and their effectiveness, initially for the victims of discrimination. In this context, the chapter on "Equal treatment in practice" presents cases, in a comprehensive manner, that were submitted to the Ombudsman, as well as their final outcome following the National Body's intervention. The chapter on "Issues on the implementation and interpretation of legislative provisions through the prism of the equal treatment principle" presents the significant legal issues that were reviewed during the investigation of the complaints. The chapter on "Actions for promoting the implementation of the principle of equal treatment" is comprised of the actions that were undertaken for the purpose of further promoting the principle of equal treatment and the management of equal treatment issues with more targeted interventions in areas requiring specific focus. To this end, the chapter on "Legislative and organisational proposals 2018" includes a list of proposals submitted by the Ombudsman as the national body for promoting the principle of equal treatment and the proposals of previous years that were accepted in 2018.

Kalliopi Lykovardi

The Deputy Ombudsman for Equal Treatment

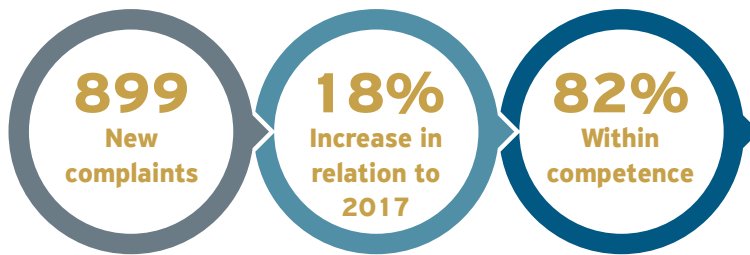
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THE YEAR IN NUMBERS

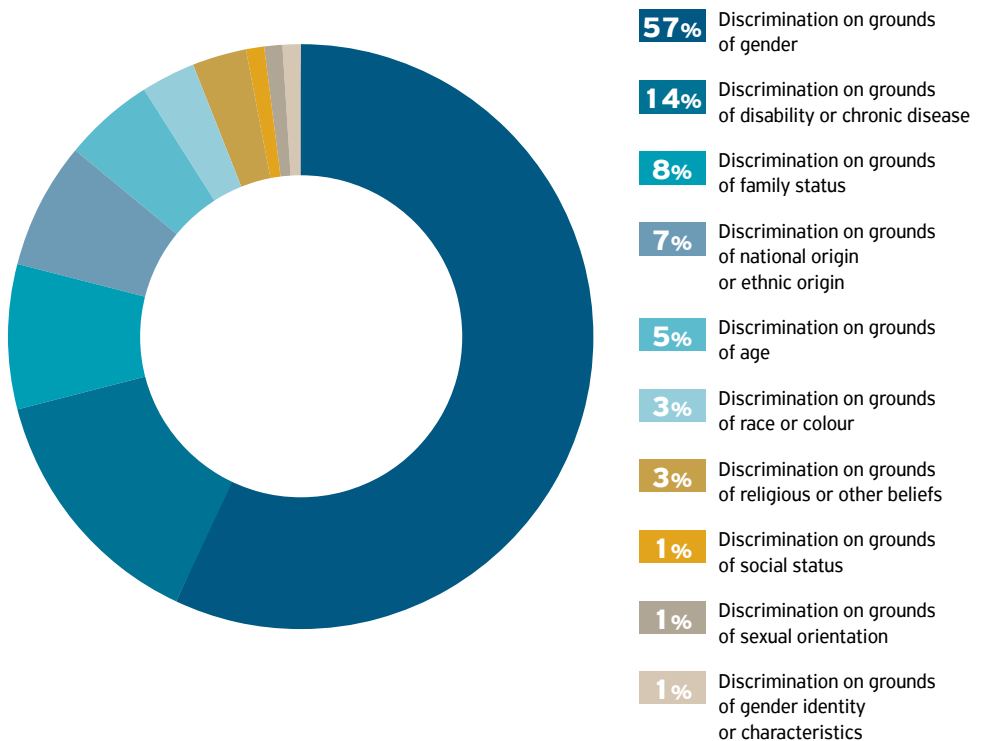


| The year in numbers

Statistically speaking, significant work has been accomplished by the national body in 2018 with respect to equal treatment pursuant to the provisions of Law 3896/2010 and Law 4443/2016.

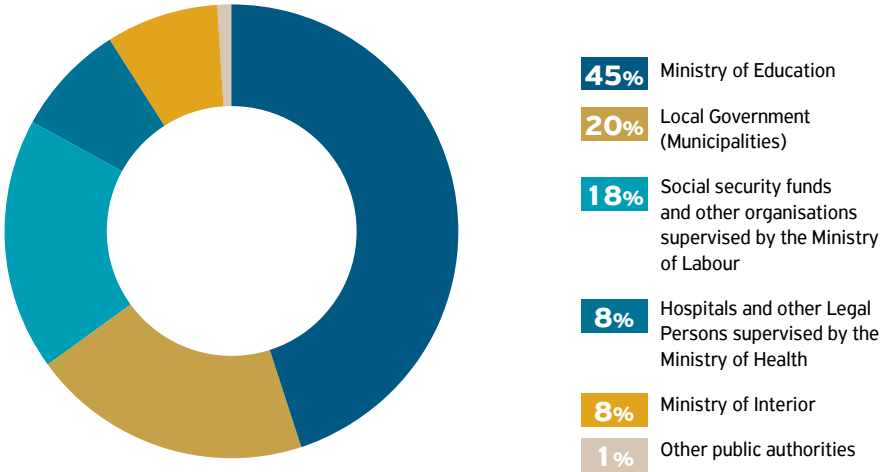


Distribution of the new complaints per discrimination



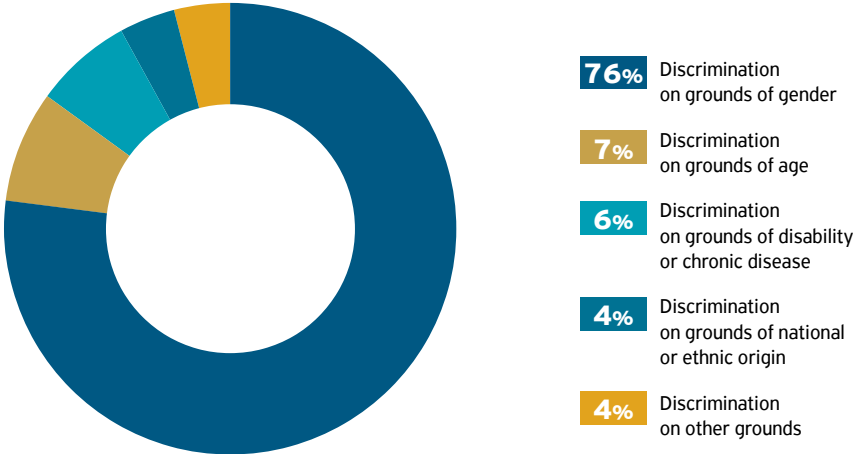
70% Against Public Services

Distribution of the new complaints per authority



30% Against the private sector

Distribution of the complaints against the private sector per discrimination



Cases closed within 2018



Completed cases¹

Within competence



Well-founded

Successfully resolved²



1. 392 lodged in 2018 and 249 lodged in previous years.

2. Of the well-founded cases.

EQUAL TREATMENT IN PRACTICE



I Equal treatment in practice

This chapter outlines cases of persons who have fallen victim to unequal treatment based on one or more of the protected characteristics of Law 3896/2010 and 4443/2016. At the same time, it demonstrates the manner in which the Ombudsman helps these individuals vis-a-vis services of the public and the private sector. It briefly describes the obstacles or problems that they have faced in their day-to-day lives, especially in the field of employment and occupation, but also in general transactions with public or private services, due to their gender, disability or chronic disease, age, sexual orientation, etc.

Besides the uniqueness of each experience, most of the stories consistently convey the message that discrimination systematically occurs in a number of activities, including occupation and employment. At the same time, they show how these obstacles can be overcome. The cases have been presented in this manner in order to demonstrate the indicative actions that are available to discrimination victims in a real and comprehensible manner, and to highlight the role played by the Ombudsman as the national body for combating discrimination and promoting the implementation of the principle of equal treatment.

OCCUPATION AND EMPLOYMENT – PRIVATE SECTOR

Discrimination between men and women

The employee lodged an appeal with the Labour Inspectorate and her complaint was forwarded to the Ombudsman. A labour dispute took place in the presence of the Ombudsman from which it arose that the employer infringed the law with respect to the pregnant employee's rights; therefore, further to the Ombudsman's recommendation, he was fined by the competent Labour Inspectorate (case 245883).

A gymnast was working at a sports centre. She fell pregnant and received the respective leave. While she was on six-month leave from the Greek Manpower Employment Organization (OAED), she discovered that her employer had amended her employment contract and her 28 hour a week employment had been reduced to 12 hours. When her maternity leave ended, her employer asked her to sign paperwork stating that she wished to leave her employment. She was also given the option of being "loaned" to another employer.

A pregnant woman who was employed as a hairstylist was dismissed during her pregnancy without receiving the statutory compensation and without being informed of a significant reason.

The employer initially claimed that a dependent employment contract was not in place with the employee, but it was agreed that the employee and her partner would run the hair salon. He then argued that he was unaware of the legal procedure for dismissing a pregnant employee. During the tripartite meeting before the competent Labour Inspectorate, the employer revoked the dismissal; however, the employee did not accept the revocation because she considered it to be pretentious. She also stated that she would return to her employment only if she is paid the accrued salaries she is owed.

In his Report, the Ombudsman reached the conclusion that the termination of the pregnant employee's employment contract is invalid and recommended that the competent Labour Inspectorate impose administrative penalties (case 240827).

An employee who was employed by an enterprise since 2016 gave birth in March 2017 and received the anticipated leave. Even before her 6-month maternity protection leave was over, the employee fell pregnant again and informed the enterprise about her second pregnancy. At the end of the 6-month maternity leave, the employee needed to take sick leave, due to health problems, but her employer refused to sign the related paperwork.

During the tripartite meeting before the competent Labour Inspectorate, it was ascertained that the employer had sent the employee an extrajudicial statement informing her that it considers her absence to be a voluntary withdrawal. The employee counter-replied with an extrajudicial statement that at no time had she voluntarily withdrawn from her employment. The employer declared that the enterprise no longer maintains any branches and that it is expected to enter a special liquidation status. Therefore it is no longer able to employ the employee.

The Ombudsman requested that the employer exhaust the employee's employment time frame and if this employment is objectively infeasible, to terminate the employment contract for a significant reason, so that the employee is able to receive the statutory dismissal compensation and unemployment benefit from the Greek Manpower Employment Organisation (OAED). Moreover, it ascertained that the employee did not voluntarily withdraw at any time, and it recommended that administrative penalties be imposed on the enterprise (case 240514).

Representatives from both companies attended the labour dispute meeting that was held at the Labour Inspectorate. The first company invited the employee to return to her employment, while the second company alleged that it was in no way connected to the first company. Following the meeting, the employee returned to her employment, but she was again not accepted.

The Ombudsman questioned the two companies in order to ascertain whether the business had been transferred and pointed out that under such circumstances all rights and obligations are transferred to the successor company, thus the obligation of protecting the rights of working mothers. Neither of the two companies responded. The Ombudsman concluded that a business transfer had taken place and, as a result, the successor company was obligated to employ the employee. For this reason, the Ombudsman recommended a fine (case 235449).

An office employee was employed by a commercial company for thirteen years. As soon as she returned to her employment following maternity leave, the enterprise demanded that she resign with the justification that the company was inactive. However, the employee discovered that another company, under a different name, but with the same scope of work, was operating at the same premises and that her co-workers were providing their services to the new company.

Sexual Harassment

A young employee at a small business complained to the Labour Inspectorate that ten days after being hired, her employer made an obscene gesture towards her. The following day, she declared that she could not continue working there after the incident and the employer terminated the employment contract.

During the meeting before the Labour Inspectorate, the employer admitted to the obscene gesture, but claimed that his intention was not to sexually harass the employee, but to encourage her. The Ombudsman arrived at the conclusion that the employer had clearly sexually harassed the employee and recommended that the Labour Inspectorate impose a fine, which it did (case 248315).

Discrimination on grounds of national-ethnic origin

From the information that was provided during the inquiry of this case, it could not be proven with certainty that the company explained to the foreign employee that the document he had signed, after being called to a meeting, was his dismissal. In addition, although there was an employee at the company who spoke the employee's native language, his services were not used during the meeting in question in order to explain the content of the document that was signed. The Ombudsman made a strict recommendation to the company (case 241344).

A foreign resident of Iranian origin was hired by a multinational company under the corporate social responsibility programme, in order to be smoothly integrated into society through employment. After serving in various positions at the company, he was called to a meeting with the company's responsible officers a few months after being hired and, after signing a document, was informed of his dismissal. The employee stated to the Labour Inspectorate that the termination contract was in Greek and he neither reads nor understands Greek, a fact that was known to the company during his recruitment.

Discrimination on grounds of disability or chronic disease

An employee suffering from multiple sclerosis was dismissed from a company. The company alleged that the employee was not performing her duties satisfactorily, and this was the reason for her dismissal.

The Ombudsman asked the company to submit all the evidence supporting that the employee was dismissed due to the poor performance of her duties and not on the grounds of her chronic disease. Following a review of all the evidence that was submitted by both parties, the Ombudsman concluded on the recommendation of a fine because it was ascertained that, given the employee's disease, the company did not take the necessary measures to facilitate the employee during the performance of her duties (case 243114).

The company argued that it was not satisfied with the employee's performance and that it had accordingly informed him of this. In addition, it was able to prove that it employs individuals with much more serious diseases than that of the employee and that the disability or chronic disease of these employees has not hindered their collaboration (case 246863).

A company hired an employee as a travelling sales representative. Upon completion of his training, the employer asked him for a copy of his degree in order to update the company's records. The employee provided his degree from which it arose that he had entered higher education under a special point system for persons suffering from certain disabilities or chronic diseases. After being asked, he revealed that he suffers from juvenile diabetes. From that point, the work environment became particularly unpleasant resulting in the employee's dismissal after about two months. The employee believed that he was dismissed because of his disease.

The employer claimed that he was never informed of the employee's illness and that his dismissal was due to the poor performance of his duties and neglect of his personal hygiene. However, it arose, from the witness statements that were presented before the Ombudsman, that the employee had informed the employer that he would be undergoing HIV testing. Moreover, from the facts of the case, it did not arise that the employee was performing his duties poorly. On the contrary, his hours had been increased approximately one month prior to his dismissal. The Ombudsman concluded that the employee's dismissal was illegal, and the employer compensated him (case 238363).

A restaurant delivery driver notified his employer that he would be late for work because he would be undergoing HIV testing. The employer dismissed him the following day. The employee, who in the meantime discovered that he was HIV positive, filed a complaint against his employer requesting the annulment of the employment's contract termination and claimed both accrued salaries and compensation.

Discrimination on grounds of age

The Ombudsman ascertained that the employer was unaware of the anti-discrimination law for access to employment and provided the latter with the relevant recommendation and extensive information (case 241504). In addition, it addressed the company that published the ad and collaborated with it for the purpose of informing and raising public awareness (see p. 73-74).

An unemployed individual seeking employment in a coffee shop, called an employer that had posted an ad on a job search website. Upon being asked by the employer about her age, to which she replied above 35 years of age, he hung up the phone.

A mechanical engineer was seeking employment in a large petroleum company, but was excluded because he was over 35 years of age.

During the inquiry into this case, indications arose that the company's objectives (future use of newly-recruited personnel in key positions and assurance that they remain in these positions for a reasonable period of time prior to retirement) could also be met by persons who were older than the age stated in the respective notices. Therefore, the Ombudsman sent a strong recommendation to the company in relation to the setting of specific age limits in the upcoming notices (case 239377).

Discrimination on grounds of family status

A married man and father of one child sought employment as a Museum Educator, but the prerequisite in the museum's proclamation was for candidates not to have family obligations.

Other than its written intervention, the Ombudsman sought a meeting with the president of the museum. It arose from the meeting that the president was unaware that the proclamation in question infringed the law and promised to operate pursuant to the anti-discrimination law in the future (case 233368).

Multiple discrimination

The Ombudsman addressed the orphanage's Board of Directors pointing out that the contentious characteristics as recruitment prerequisites are not justified by the nature and special requirements of the specific position's duties and requested that the procedure be repeated. The service cancelled the call and issued a new one having eliminated the gender and age criteria (case 235196).

A 45-year-old male psychologist in search of employment came across an employment notice by an orphanage which was seeking a psychologist; however, candidates had to be women under the age of 40.

OCCUPATION AND EMPLOYMENT – PUBLIC SECTOR

Discrimination between men and women

A bus driver employed by Athens Road Transport S.A. (OSY) requested paid parental leave for a period of nine months following his wife's passing, immediately after the birth of his second child. The company only accepted to grant child care leave of three months equivalent to reduced working hours.

The Ombudsman asked OSY to consider the possibility of granting cumulative child care leave and additional paid leave for a period of six months, similar to the special maternity protection benefit. The proposal was made on the grounds of the special circumstances under which the mother passed away and the father's objectively increased responsibility of caring for two under-aged children. The company granted additional paid leave for a period of six months to the employee after acknowledging the special humanitarian reasons (case 228943).

The Ombudsman made a request to the Ministry of Health to clarify to the country's hospitals that this prerequisite is not included in the law and is unfair. The ministry issued a circular clarifying that the other parent's occupation outside the home does not constitute a prerequisite for resident doctors to receive unpaid parental leave (case 223220) (see p. 41).

A resident doctor requested unpaid parental leave to raise her child, but the hospital refused this request pointing out that a prerequisite for this leave is for the other parent to be employed outside the home.

A father employed as a civil servant requested child adoption leave since his wife, who is self-employed, was not entitled to this leave. The service refused the request since the leave is only intended for women.

The Ombudsman addressed the Ministry of Administrative Reconstruction stating that the non-provision of leave to fathers constitutes gender discrimination. The ministry responded positively and the respective legislative regulation that will grant leave to fathers adopting children is imminent (case 240353).³

3. For analysis of the legal issue see the Chapter "Issues on the application and interpretation of legislative provisions through the prism of the equal treatment principle".

Sexual Harassment

The Ombudsman requested information about the actions taken by the service in this case, because based in the employer's welfare principle, it should have investigated the matter. The supervising authority informed the Ombudsman that an administrative inquiry was conducted, the alleged harasser accepted that the incident had taken place and a disciplinary penalty was imposed (case 246450).

A civil servant complained to her superior and to the Ombudsman that a colleague fondled her in front of another colleague.

Discrimination on grounds of national origin

A French citizen and Ministry of Labour employee lodged an application for the position of department supervisor. His application was not accepted with the justification that this is a position of responsibility, whose duties involve the exercise of public power, and the position cannot be assumed by a citizen of another EU Member State.

Taking the duties of this position into consideration, the Ombudsman argued that they do not involve the exercise of public power and can therefore be performed by EU citizens (case 228627). The service remains firm in its decision.⁴

Discrimination on grounds of disability or chronic disease

An unemployed woman, who was registered in the registers of the Greek Manpower Employment Organisation (OAED), was chosen for the community service programme which was co-funded by the Partnership Agreement (ESPA). When she requested to be transferred closer to her place of residence for health reasons, not only was her request rejected, but she was excluded from the programme altogether, because it was deemed, based on the certificate that she provided, that she was not mentally sound, thus unsuitable to perform her duties.

The Ombudsman pointed out that the complainant's exclusion from the employment actions was legally unfounded, since it was based on a medical assessment which was not conducted by a competent body, after an examination that was conducted in person and in correlation with the position's specific duties. Following up on the Ombudsman's recommendations, the Administration reinstated the unemployed woman into the programme and accepted her transfer request at the same time (case 238191).

4. See *ibid*

Discrimination on grounds of age

An Aerostructure Operator had worked for six years with the Hellenic Aerospace Industry through a contractor. When he applied to work directly with the company, his application was rejected because he was over 45 years of age. The candidate lodged an appeal to the Supreme Council for Civil Personnel Selection (ASEP) with the explanation that the age limit is justified by the nature of the specific business activities and the context in which these are performed.

The Ombudsman addressed the enterprise and pointed out that the candidate had already worked for the company in the past despite being over the age of 45, which is clear evidence that the age factor does not hinder him from effectively performing his duties. The enterprise remained firm in its opinions and did not accept the Ombudsman's recommendations (case 246828).

The Ombudsman pointed out to the Ministry of Education that many of the substitute and hourly-paid teachers may have worked for many years in the field of education offering their services without problems but have yet to accumulate the minimum pensionable service that is required. By setting an age limit, they are deprived of the ability to acquire pension rights when their participation is suddenly excluded from the procedure simply due to their age and not because they lack standard or essential qualifications. The ministry's response is pending (case 243576).⁵

For many consecutive years, a 68-year-old social worker participated in the relevant calls for candidate temporary substitute and hourly-paid teachers. In 2018, the social worker realised that it was not possible to participate in the procedure because the candidates' maximum age limit was set at 67 years of age.

5. See *ibid*

SOCIAL BENEFITS

Gender

The Ombudsman argued that legislation does not foresee this additional prerequisite and in any event the revocation of the allowance should have been made within a reasonable period of time. In addition, it was pointed out that the benefit was granted to the employee without any prior fraudulent or bad faith action or tort on her part. OAED reviewed the case and decided not to request the debt (case 242692).

A teacher working as a substitute teacher since 2009 signed a new contract in September 2015, but because she was already at an advanced stage of pregnancy, she immediately received pregnancy leave and then maternity leave. For the period that she received a maternity grant, the employee requested and received an additional maternity allowance amounting to approximately € 1,600 from the Greek Manpower Employment Organisation (OAED). In 2018, OAED requested that she return this amount with the justification that she had stopped working on the same day that she undertook her duties, whereas the respective Regulation requires at least ten days of employment.

Racial origin / Social status

Roma people living in a camp in the Attica region could not submit an application for the Social Solidarity Income because they were not students of an evening or second chance school, since the relevant legislation provides for school attendance as a prerequisite if compulsory education has not been completed.

With a document addressed to the competent department of the Ministry of Labour, the Ombudsman requested the re-examination of the JMD provision, as it is considered indirect discrimination on the grounds of racial origin. Specifically, the Ombudsman pointed out that the respective provision excludes beneficiaries of Roma origin that live in extremely poor conditions, since, as it arises from official data, a large number of Roma people have not completed compulsory education and are not able to attend second chance schools. With a newer JMD, the application could be submitted, and it was foreseen that following the respective personal notification, the competent authorities could invite the beneficiaries that have not completed compulsory education to enrol in a second chance school (cases 235300, 235302, 235305 and 235442).

Social status

An unemployed individual, who was also homeless, submitted an application to be registered as unemployed, but OAED did not accept it because there was no residential address. However, without the unemployed individual's registration in the register, he was unable to receive an unemployment card, have access to OAED benefits or participate in employment programmes.

The Ombudsman addressed the OAED Administration and asked for a solution to be found, so that homeless people in a vulnerable position do not lose their unemployment protection right. It proposed the acceptance of other supporting documentation, such as statutory declarations and certificates from accommodation centres during registration. Further to a decision taken by OAED, as far as their registration in the Unemployed Registers is concerned, interested parties are now able to either submit a certificate from the social services division of the local municipality stating that they live on the street or a certificate from an accommodation centre that they are temporarily accommodated at its facilities (case 233281).

EDUCATION

Discrimination on grounds of racial origin

It was ascertained that Roma pupils at Drosero, Xanthi, encounter problems with their attendance at the settlement's primary schools due to the unsuitable building infrastructures (e.g. prefabricated buildings, lack of heating, etc.).

The Ombudsman addressed the Directorate of Primary Education and the Municipality of Xanthi pointing out that the steadily increasing number of pupils and the condition of the spaces which house the Drosero primary schools as well as the fact that the 8th Middle School is currently housed in a building that belongs to OAED, support the necessity of the immediate design and construction of a new building complex. The realisation of this project will make attendance more appealing, it will facilitate teaching and it will ensure that everyone has a right to education regardless of whether they are Roma or non-Roma pupils. The Municipality of Xanthi has informed the Ombudsman of the actions it has taken up to now with respect to the Authority's notes (case 233478).

Discrimination on grounds of national-ethnic origin

The Ombudsman revived the issue that is frequently encountered by refugees and concerns their inability to provide supporting documentation from their countries of origin, pointing out at the same time that the law is obligated to facilitate them. The Ombudsman addressed the mutually competent ministries (Education and Rural Development) requesting that they take measures to recognise the interested party's standard qualification, so that they and other international protection beneficiaries in a similar position can gain access to education and professional training. The above services responded that they would review the issue. The Ombudsman will continue its interventions, in order to ensure the implementation of a uniform practice for the certification of studies of refugees seeking to be integrated into the educational procedure (case 247854).

A recognised refugee wanted to attend a vocational school in order to work as a butcher. A prerequisite for his enrolment was that he provide his high school graduation diploma, which he was unable to bring from his country, resulting in the school's refusal to enrol him.

GOODS AND SERVICES

Discrimination on grounds of racial origin

The Ombudsman recommended that she address the competent judicial authority once again and provided her with a detailed description of the steps she needs to take for her registration to be made in the municipal rolls and the issuance of a police identity card and other public documents (case 249002).

An unmarried mother of three who lives in a Roma camp applied for a welfare allowance. In order to provide this allowance, the competent service requested a police identity card, Tax Registration Number (AFM), and a Social Security Number (AMKA). The unmarried mother was unable to provide any of these because she was not registered in the municipal rolls, nor did a birth registration certificate exist. She addressed the social worker in her municipality of residence, who advised her to request free legal assistance for the preparation of a birth registration certificate. Nevertheless, the competent court ruled that there was insufficient information and requested a DNA test from her mother in order to recognise the consanguinity. This, however, was not feasible since her mother had passed away years ago and her bones could not be located. Therefore, the complainant remains at an impasse since 2014.

Discrimination on grounds of national-ethnic origin

A Palestinian couple were travelling from Heraklion airport to Israel. During the security check prior to their departure, the company's security/passenger control personnel separated them from the other travellers and demanded that they remove all their clothing so that they could undergo a physical examination. When they protested, the airport's security manager pointed out to them that if they did not consent to the physical examination, they would not board their scheduled flight. In addition, he confiscated their mobile phones, deleted the respective conversations and scenes that the couple had recorded as well as their personal photos. They demanded that the man wear slippers during the flight and they kept the woman's jacket and searched her bag and carry-on luggage without her being present. Finally, they followed them everywhere, even in the toilets, until they boarded the plane.

During its inquiry, the Ombudsman ascertained that due to the plane that was scheduled to carry out the flight to Israel sustaining mechanical failure, the flight was carried out by an Israel-based company, thus its operation within the EU falls under a special cooperation regime. Therefore, all the operational procedures relating to the route's execution, including the physical examination, and the luggage check, are exclusively governed by the law of the country in which the company belongs, namely Israel. Given that the Ombudsman does not have any jurisdiction over foreign authorities or foreign private enterprises, it recommended that the complainants address the respective service in Israel (case 244759).

ISSUES ON THE IMPLEMENTATION AND INTERPRETATION OF LEGISLATIVE PROVISIONS THROUGH THE PRISM OF THE EQUAL TREATMENT PRINCIPLE



Issues on the implementation and interpretation of legislative provisions through the prism of the equal treatment principle

The Greek Ombudsman, as the national body for promoting equal treatment, is called on to interpret and implement the provisions of Laws 3896/2010 and 4443/2016, making reference to circumstances that arise from the investigation into cases concerned with the infringement of the principle of equal treatment in the national legislative framework. This competence requires, in addition to focusing on the facts of each case, the Authority's vigilance on identifying provisions, criteria and practices that have been applied both in the private and public sector and that bear or may result in a form of direct or indirect discrimination on persons that bear the special protected characteristics set out by law. Therefore, other than the investigation into the individual infringements with results and consequences for the parties involved in the respective case, the Ombudsman also aims to raise legal issues of general interest, which emerge during the implementation and interpretation of the legislative provisions, in the context of actions that relate to the prevention and the broad dissemination of this information. All too frequently, the interpretive approach that is adopted by the Administration or private employers on various issues that entail the exercise of rights by persons with protected characteristics (gender, age, disability, sexual orientation or gender identity, religious beliefs, national or ethnic origin, etc.) is contrary to the spirit of the principle of equal treatment and results in the persons with such characteristics or capacities being placed in an inferior position. In such cases, the Ombudsman focuses its efforts on guiding services or private institutions in order for the actions or practices that they adopted not to diverge from the requirements for equal treatment.

Presented in this module are issues concerning the interpretation and implementation of legislative provisions in harmonisation with the principle of equal treatment, as these are expressed in the Ombudsman's recommendations and constitute the Authority's positions. The selection and presentation of the specific issues mainly focus on the broader legal issue and the interest that this raises, rather than

on the respective facts of a specific case or case category. In this respect, the aim is to reflect the Ombudsman's positions on legal issues concerning the interpretation and implementation of the anti-discrimination institutional framework.

EQUAL TREATMENT BETWEEN MEN AND WOMEN IN THE WORKPLACE

Limitations in exercising rights related to maternity and parental leave

Under no circumstances are the Administration's explanatory documents or circulars permitted to alter the letter and spirit of legislative provisions with the addition of unlawful, supplementary limitations for the exercise of rights.

However, in practice, derogations from this rule are ascertained, with an impact on maternity protection and parental leave granting issues. Indicative cases are those that concern the special maternity protection benefit by the Greek Manpower Employment Organisation (OAED) and the unpaid parental leave to resident doctors that follow.

The case of the special maternity protection benefit by the Greek Manpower Employment Organisation (OAED)

The prerequisites for granting special maternity protection benefit to insured mothers are restricted to the provisions of Article 142 of Law 3655/2008. Nevertheless, the Greek Manpower Employment Organisation (OAED) excluded beneficiaries from receiving this benefit with the justification that they are not entitled to this benefit if they have an active freelance business or run a trading business.⁶

The Ombudsman argued that when the insured party fulfils the statutory prerequisites to be granted the special maternity protection benefit and she submits her application in due time, the Administration is required to accept the application. The introduction of additional, individual restrictive clauses regarding the implementation of a legislative provision which do not conform with the letter and spirit of the law and are sent in the form of an internal memo ten years after the

6. See OAED document no. 46334/10.07.2018.

enforcement of the provision, is unacceptable. Such practices not only encroach legal certainty and violate the principle of equality before the law, but also directly affect the constitutional protection that is reserved for the family and motherhood. The issue was resolved. The Administration of the Greek Manpower Employment Organisation (OAED) accepted to grant the special benefit on condition that the insured party did not run her freelance business or trading business during the provision of the benefit, a fact that would be verified with on-site inspections to the workplace (case 248411).

The case of granting unpaid parental leave to resident doctors

A case with a similar additional restriction was encountered during the granting of unpaid parental leave to resident doctors. An additional prerequisite for being granted the specific leave, which is not foreseen in the respective legislative provision (art. 50 Law. 4075/2012), introduced the requirement that the other parent be employed outside the home environment. The additional prerequisite was stated in an explanatory document sent by the Ministry of Health. The Ombudsman requested the immediate removal of this additional restriction since it does not have any legal basis. The ministry responded positively through a document sent to all the country's hospitals in which it clarified that the other parent's employment outside the home environment is not a prerequisite for resident doctors to receive unpaid parental leave (case 223220).

Equal exercise of the parental right by working fathers

Equality between men and women in the workplace presupposes the elimination of gender role distribution.

Besides the traditional burden of stereotypical perceptions that are reserved for the working mother, particularly with respect to the upbringing of children, these stereotypes reveal weaknesses during the exercise of child care rights by working fathers. In this respect, discrimination not only affects men on a practical level, but also on a legislative provision level.

Indicatively, the provision of article 52, paragraph 4 of Law 3528/2007, reserves the fully-paid three-month child adoption leave, which is granted within the first six months of the adoption being finalised, only for the working mother and not for the working father. This differentiation between working mothers and fathers constitutes direct gender discrimination since it contravenes the provisions of Law 3896/2010. It primarily undermines the principle of harmonisation of private and professional life, which is a necessary prerequisite for the actual realisation of

the principle of equality between men and women. Recognising the legislative void, the Ministry of Administrative Reconstruction promised to amend the provision in question, making it neutral with respect to gender, in order for adoption leave to be extended to working fathers who adopt children (case 240353).

Equal pension treatment regardless of gender

Regulations that introduce different pension prerequisites for men and women are considered consistently incompatible with the principle of gender equality, pursuant to the provisions of high-ranking force (article 4 paragraph 2 and article 116 of the Constitution, article 141 of the EU Treaty on equal pay between men and women) and based on a number of court rulings.⁷ The Ombudsman has consistently supported this view.

The issue was recently re-presented to the Ministry of Labour given that according to existing legislation for the establishment of the right for pension by parents with children that are unable to work is more favourable for insured mothers, whereas fathers have the additional prerequisite of being widowed. The Ombudsman proposed the assumption of a legislative initiative so that the favourable prerequisites that continue to exist for the establishment of the right to an aged pension by EFKA-insured parents with children unable to work, become neutral in terms of gender. The regulation of the Civil and Military Pensions Code for civil servants was proposed as a model for such an intervention (case 222400).⁸

Maternity protection for self-employed professionals

Under Law 4097/2012 national law was harmonised through Directive 2010/41/EU on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity. Article 6 provides for the granting of maternity allowance to female self-employed workers enabling interruptions in their occupational activity owing to pregnancy or motherhood.

Pursuant to the delegated law, Ministerial Decision F.10060/15858/606 (Official Government Gazette 2665, issue B/2014) was published, according to which

7. See indicatively Hellenic Council of State (CoS) rulings 2435/1997 and 3088/2007 and in particular European Court of Justice (ECJ) judgement 559/07 dated 26 March 2009.

8. See <https://www.synigoros.gr/?i=equality.el.imfylosocialp.522118>.

a maternity allowance was recognised for ETAA-insured females, provided they exclusively exercise a self-employed profession, thereby excluding female lawyers who are employed as in-house lawyers. This exclusion, however, constituted a limitation that was applied to insured female lawyers, who had received health benefits in the past because they were entitled to them, regardless of whether they exclusively engaged in a self-employed profession or not. The Ombudsman concluded that this practice violates article 14, paragraph 2 of Directive 2010/41/EU and a response from EFKA is pending (case 240509).

EQUAL TREATMENT IRRESPECTIVE OF RACIAL, NATIONAL OR ETHNIC ORIGIN

Equal access of EU nationals as employees in positions of authority in the Greek Public sector

National regulations that exclude other EU nationals from being promoted to positions of authority in the public administration are permitted for specific reasons; only if they are positions that involve direct or indirect participation in the exercise of official authority conferred by public law and duties designed to safeguard the general interests of the State. Adversely, positions that do not involve such powers do not fall under the definition of exercise of public authority powers, since employment in the public sector⁹ and the assumption of a position of authority do not automatically prove the actual exercise of such authority. In view of the above, the Ombudsman requested that the Ministry of Labour provide the duties of the head of the department, from which the EU national was excluded, pursuant to Presidential Decree 303/2001.¹⁰

Following the ministry's response, the Ombudsman ascertained confusion between the responsibilities and competences of the public servant hierarchy and the specific requirements for assuming positions of authority in the context of other EU nationals exercising public authority. The Authority pointed out that according to the meaning of article 45, paragraph 4 of the Treaty on the Functioning of the European Union (TFEU), the exercise of public authority is mainly concerned with specific fields of responsibilities (e.g. the exercise of authorities carried out by

9. See ECJ ruling dated 2 July 1996 for case C-290/94 (ground 2), and ECJ ruling dated 30 September 2003 for case C-405/01 (grounds 39 and 40).

10. See Equal treatment Special Report 2017, p. 50-51.

the police; duties associated with safeguarding internal security; the issuance of decisions that have a binding force without the participation of another institution; and the imposition of sanctions).¹¹ On the contrary, the public servant hierarchy constitutes a vertical organisational structure that is based on rules of law and requires the exercise of specific competences at each stage. Therefore, the occupation of a position of authority in the public servant pyramid, even if this position has increased decision-making authorities and responsibilities, does not constitute the automatic exercise of public authority under the EU definition of the term.

The horizontal exclusion of other EU nationals from positions of authority, based on one subordinate organisational criterion, is not consistent with the definition of ‘public administration’ that the Court of Justice of the European Union has adopted in its judgements, which is done based on functional criteria, namely after examining the nature of the duties of the position in question.

Based on the above, the Ombudsman concluded that this case did not provide evidence that the duties of the head of the department in the Directorate in question involved the exercise of public authority, therefore the EU national’s exclusion from exercising these duties was not legally enforced (case 228627).

Tax treatment of a Greek citizen’s foreign family members

Current tax law does not expressly provide for the granting of a tax exemption to first-time home buyers who are third country nationals, but specifically for long-term residents of Greece.¹² On this basis, a relevant application by a Greek citizen’s foreign spouse was rejected.

Nevertheless, the provisions concerning the rights and obligations of long-term residents (PD 150/2006) have already been abolished and replaced by the new Code of Immigration and Social Integration (Law 4251/2014). The new Code provides for the issuance of a permanent residence permit to a Greek citizen’s family member with a ten-year renewal period. At the same time, the status of Greek citizen’s foreign family members living in Greece with a residence permit is becoming similar to that of European citizens living in Greece. In this case, the Ombudsman

11. Even if the service has such competences, it must exercise them regularly and they should not constitute a restricted part of its activities (see judgement C-270/2013 of 10 September 2014 “Iraklis Haralambidis v Greece”, reasoning 56-58).

12. Article 1 paragraph 3 Law. 1078/1980, as amended and in force with article 321 Law 4072/2012.

argued that the provisions of the Code are enforceable as more recent and more specific. Therefore, since the treatment of third country nationals that are a Greek citizen's family members is equal to that of European citizens, the respective tax exemption that is applicable for EU citizens should also apply to third country nationals that are a Greek citizen's family members (case 242206).

Indirect discrimination concerning the terms for discontinuing benefits to third country nationals

A typical case of indirect discrimination that contravenes the principle of equal treatment (article 2 paragraph 1 Law 4443/2016), is the adverse position in which individuals find themselves due to their national or ethnic origin during the implementation of a neutral criterion or practice in the context of exercising a right or the granting of a benefit. In this case, the neutral criterion concerned the provision of Article 22 of Legislative Decree 2961/1954, pursuant to which the granting of unemployment benefits to unemployed individuals that were registered in the registers of the Greek Manpower Employment Organisation (OAED) were suspended when they were not available for employment.

The organisation's administration, which interpreted the provision in a strict and inflexible manner, would suspend unemployment benefit payment even in the event that unemployed individuals travelled abroad for a few days.

In general, prohibition from exiting the country is an onerous measure. Similarly, the prohibition from exiting the country while unemployed is particularly onerous for all unemployed individuals. Taking into account that this provision of the law aimed at ensuring the unemployed individual's availability, this legitimate pursuit could be controlled through alternative methods (e.g. following the unemployed individual's prior notification) and the unemployment benefit could be discontinued only in case of refusal. Nevertheless, the above neutral criterion ended up placing unemployed third country nationals in an adverse position compared to Greek citizens and nationals of EU Member States. Despite the fact that it was highly possible that foreign unemployed individuals would visit their homelands, the foreign travels of third country nationals was the only thing that could be checked by OAED, since the passport shows the date of entry and exit from the country and the time spent abroad. Although the Ombudsman had in the past pointed out that this practice introduces indirect discrimination against unemployed third party nationals, the problem was not resolved.¹³

13. See Ombudsman's summary 2015 at: https://www.synigoros.gr/?i=state-citizen-relations.el.diagrafi_oaed.281598.

In 2018, the Ombudsman reverted with a new investigation and requested specific data from the Greek Manpower Employment Organisation (OAED). This data revealed that the majority of unemployed individuals who were removed from the registers of the Greek Manpower Employment Organisation (OAED) due to travelling abroad were third country nationals.¹⁴ With this data in hand, it recommended the immediate change of the existing practice and the implementation of other appropriate methods to ascertain the availability of unemployed persons. The administration of the Greek Manpower Employment Organisation (OAED) responded to this recommendation and made a decision based on which travelling abroad for unemployed persons, whether receiving benefits or not, shall constitute grounds for benefit suspension only when their absence exceeds a total of 20 days per calendar year (case 238563).

EQUAL TREATMENT IRRESPECTIVE OF RELIGIOUS OR OTHER BELIEFS

Registration act of civil wedding or civil partnership agreement and declaration of religion

The conduct of a civil wedding or the conclusion of a civil partnership agreement does not require the intending spouses or the contracting parties, respectively, to participate in any religious ceremony which requires them to reveal their religious beliefs. However, the Ombudsman ascertained that the country's municipalities are requesting a declaration of religion prior to conducting a civil wedding, so that it can later be included in the marriage certificate that it issues (case 245531). This results from the fact that "religion and dogma" are included in the marriage certificate particulars (case a, article 31 Law 344/1976, as amended by the provision of paragraph 9 of article 4 Law 4144/2013). The same applies for the civil partnership agreement's registration act, which also explicitly makes reference to the contracting parties' religion (article 31A Law 344/1976, as added by paragraph 10 of article 4 Law 4144/2013).¹⁵

14. Between 2016 and 2017, more than 19,000 nationals were removed due to travelling abroad, of whom more than 16,000 were third country nationals.

15. The above are also provided for in Circular no. 9 (ref. no, 131360/12503/08.05.2013) of the Ministry for the Interior, which was issued for the implementation of the provisions of Law 4144/2013, which amended provisions of the law on the registration of acts of civil status (Law 344/1976).

The Ombudsman expressed the opinion that the indication of religion on registration acts is completely optional and is initially omitted, unless religion is a prerequisite for exercising a statutory right.

Therefore, the requirement of declaring the religion of the intended spouses (civil wedding) or the contracting parties (civil partnership agreement) constitutes discrimination on the grounds of religious or other beliefs, because: a) it constitutes an irrelevant and disproportionate measure, which makes the exercise of a right in the context of a non-religious process dependant on the mandatory disclosure of religious belief; b) the continuation of such a practice is not consistent with the required religious neutrality of a civil procedure that does not have a religious character and c) it is not harmonised with similar case law of European and national judicial institutions.¹⁶

Free distribution of religious material and proselytism

Simple distribution of religious material does not constitute an act of religious proselytism. Therefore, rejection of an application for a mobile stand for the purpose of displaying and freely distributing religious material is not legal.

The Ombudsman expressed the above-mentioned view, addressing a municipality, after the rejection of an application for a religious material stand that was lodged by the local Jehovah's Witnesses Church. Pursuant to case law, the free distribution of religious material has been interpreted as a specific expression of an individual's constitutionally vested right of religious freedom (article 13 of the Constitution) and does not constitute an act of proselytism. For proselytism to be considered a crime, illicit means need to have been used in order to achieve the intended purpose.¹⁷ Based on case law, the European Court of Human Rights (ECtHR) has clarified the meanings of arbitrary proselytism, the freedom to change

16. The requirement for the mandatory declaration or indication of one's religion on public documents violates article 19 of the Constitution and article 9 of the European Convention on Human Rights (ECHR), as ruled under case law decision no. 2281/2001 by the Council of State (CoS). Also, according to article 4 paragraph 1 of Law 2472/1997, indicating personal data in a file is only lawful if this data is related to and serves the purpose of maintaining the file (see decision no. 134/2001 by the Hellenic Data Protection Authority (HDPa)).

17. Relevant provisions of article 4 of Emergency Law 1363 dated 15 August / 3 September 1939 (OGG A 305). See also ruling no. 98/2004 by the First Instance Council of Amalida, ruling no. 749/1986 by the Appeals Court of Larissa, ruling no. 183/1994 by the First Instance Council of Larissa.

religion or belief and freedom, either alone or in community with others and in public or private, to manifest their religion deeming that in the scope of article 9 of the ECHR, the means used to convince someone to convert their religion or their belief is what ultimately determines whether an act of proselytism has taken place or not.¹⁸ The competent municipality's response is pending (case 247838).

EQUAL TREATMENT IRRESPECTIVE OF DISABILITY OR CHRONIC DISEASE

Employment changes¹⁹ of employees with disability or chronic disease

Health-related data constitute sensitive personal data and are protected from unlawful or illicit collection and processing.²⁰ Health-related data, and especially data that is associated with a disability or chronic disease, cannot be used as a criterion for the exclusion or restriction of an individual during the exercise of their labour rights.

Therefore, the requirement of public servants, who are candidates for secondment or transfer, to provide a certificate of employment changes from their employing organisation which will show the total number of sick leaves taken over the last five years constitutes a criterion that may result in indirect discrimination on the grounds of disability or chronic disease if the arising health issue excludes or influences the employment changes of employees with disability or chronic disease.

18. See relevant ECtHR judgements (judgement 3/1992/348/421, case of "Kokkinakis v Greece" official translation by the Ministry of Foreign Affairs, p. 1-73, and Hippocrates Mylonas, [ECtHR – case of "Kokkinakis v Greece"], translation-observations, YPERASPISI, 1994, p. 158-194-"Case of Larissis and others v Greece of 24 February 1998"). See also no. 93/1998 "ANAF. EIS PL. KAV." YPERASPISI, 1999, p. 450-452 and G. Ktistakis *Religious Freedom and European Convention of Human Rights*, Athens, Ant. N. Sakkoulas Publications, 2004, p. 114 et seq.

19. E.g. secondments, transfers.

20. Regulation (EU) 2016/679 of 27 April 2016 which entered into force on 25.05.2018.

Inquiring into this issue further, the Ombudsman ascertained that the aforementioned practice was rather generalised, without adequately justifying the purpose for the collection and processing of the specific data and the need for this practice. It arose from the investigation that the aim was for the host organisations to correctly calculate the paid sick leave to which the secondment or transfer candidates were entitled (according to article 54 paragraph 1 Law 3528/2007). It is obvious that it would be unacceptable for this data to be used as a criterion for the selection of secondment or transfer candidates in conjunction with their formal qualifications and essential skills. However, even if the organisations' update on the total sick leave that the candidates have taken in the last five years does not automatically justify the intention for exclusion or limitation of equal participation in the relevant selection process, it also fails to serve the purpose of the provision in question since it follows or should follow final selection. The Ministry of Administrative Reconstruction eventually acknowledged the inappropriateness of this data and issued a circular²¹ informing all the public services that the sick leave included in the personal file of the secondment-transfer candidate does not constitute an assessment criterion and should not be taken into consideration during decision-making (case 231826).

Reasonable accommodation for employees with a disability or chronic disease

The employer's refusal to provide reasonable accommodation for employees that suffer from a disability or chronic disease is considered a discrimination. The employer's vague claim that it has exhausted all the appropriate measures, so that employees with a disability or chronic disease are facilitated in order for them to carry out their duties, is insufficient.

The employer is required to prove that it carried out all the appropriate actions and took the specific measures after becoming aware of the employee's disability or disease in order to facilitate the exercise of their professional duties and the maintenance of their employment, provided of course that the taking of such measures is not disproportionately burdensome for the employer.

Based on the above, the Ombudsman recommended that the Labour Inspectorate impose administrative sanctions to a company that dismissed an employee with

21. "Guidelines to the employing and host organisation for implementation of the 2nd Cycle of the Unified Movement System for 2018".

an indefinite contract of dependant employment after ten years of employment, deeming that the termination of the contract contravenes the provisions of Law 4443/2016. The company claimed that the employee who was employed as a cashier and had been afflicted with the chronic disease two years after her recruitment, a fact that the company was aware of, made systematic cash transaction errors.²² It also argued that it exhausted all limits for retaining the employee in this position, and for a long period at that. Yet, the company failed to provide the Ombudsman with evidence that it provided significant reasonable accommodation in order to facilitate the employee, or that it asked the occupational medicine physician for the respective suggestions. It is indicative that the employee was not provided the option of not standing while performing her duties at the cash register, nor did the employer attempt to transfer her to another position in order to compensate for the drawbacks of her chronic disease. Lastly, the company did not take into account her age and her family status, which in combination with her disease, made it extremely difficult to find new employment (case 243114).

Positive measures in favour of employees with a disability or chronic disease

The establishment and implementation of positive measures in favour of employees with a disability or chronic disease specifies the special care and protection that the state ought to reserve for persons with a disability or an incurable physical or mental disease, both in the context of article 21, paragraphs 2, 3 and 6 of the Constitution and in the context of the obligations that derive from the Convention on the Rights of Persons with Disabilities that was ratified by Law 4074/2012. In order to achieve substantive equality, positive measures have to be adopted to compensate for the disadvantages or barriers faced by these people in a number of their vital day-to-day activities.

Placements and transfers of educators with a disability or chronic disease

In the case of primary and secondary education teachers or the spouses of teachers that suffer from specific illnesses, pursuant to articles 13 paragraph 1c and 14 paragraph 11 of Presidential Decree 50/1996, their transfer or placement

22. In fact, the employee's evaluations had comments about cash transaction errors, but also a number of positive reviews about her general work conduct.

or exemption from the supernumerary characterisation by order of priority is permitted.

The extent of this protection raises concern, especially with respect to the exclusion of teachers that suffer from serious illnesses that are not listed in the restricted catalogue of the above Presidential Decree. In this particular case, it is important to search for an objective manner to assess all the illnesses that cause employees similar difficulties and to include these diseases into the protective framework of PD 50/1996. Pursuant to this reasoning, the Ombudsman requested the abolition of the restrictive illness catalogue and the establishment of objective criteria in view of the difficulties that are faced by the interested parties in conjunction with the percentage of disability that has been recognised for each party. In this context, an indicative catalogue with respect to the method of implementation of this specific measure could be useful during the implementation of the measure. The ministry informed the Authority that an investigation into the number of patients that are included in this provision has been proposed by the Central Board of Health (KESY)²³ since 2016. However, there has not been any legislative initiative to date.

The Ombudsman believes that the relevant regulation is associated with the legislator's freedom to determine the extent and form of protection that he chooses to provide to vulnerable social groups, in implementation of higher-ranking provisions.²⁴ However, the ordinary legislator is bound by the principle of equality (article 4 paragraph 1 of the Constitution), which determines that all Greeks are equal before the law and vice versa. Thus, he is bound to legislate in a general and impersonal manner, to not introduce exceptions and to not discriminate when he is to regulate similar, on the main points, things, relationships, situations, and categories of people, unless this differentiation is imposed on the grounds of general social or public interest.²⁵

The diseases that are listed in the disputed provision of PD 50/1996 or other relevant provisions (thalassaemia, which requires blood transfusions, leukaemia, haemophilia, chronic renal failure on haemodialysis, AIDS, multiple sclerosis, sickle cell and micro sickle cell anaemia), may support, even with ordinary experience, the need for specific measures (e.g. restriction of transfers of the afflicted teachers/spouses in harmonisation with the aforementioned rules of higher-ranking force). With respect to the principle of equality, if an organisation that is made up

23. KESY decision no. 4/24-06-2016.

24. See inter alia K. Chrysogonos – S Vlachopoulos, *Personal and social rights*, Athens, Nomiki Bibliothiki Publications, 2017, p. 74 et seq.

25. See indicatively Council of State (CoS) rulings 895/2004 and 987/2014.

of persons with specialised medical knowledge, such as the KESY in this case, considers a range of specifically stated diseases to be equally serious and in need of protection as those in PD 50/1996, it arises that maintaining the existing regime as is, leads to the continuation of disproportionate treatment of similar cases. In the Ombudsman's view, the same can be said with respect to any other disease, which according to the decision of a competent health body, entails the need for support by another person (cases 228442, 238170, 240705).

Special parental leave for specific diseases and guardians of disabled persons

Public servants (and municipal employees) who suffer from or have a spouse or child that suffers from a disease that requires regular blood transfusions or periodic hospitalisation or have children that suffer from severe mental disorders, or Down syndrome, or pervasive developmental disorder (autism) are entitled to special paid 22-day leave per year.²⁶ This leave is extended to employees who care for an individual, other than a child, on condition that they have been appointed legal guardians and they have been assigned the guardianship of that person, in other words they have assumed parental obligations.²⁷

At the same time, the provision of article 51 of Law 4075/2012 (as amended and in force), provides for the granting of special paid parental leave of 10 working days to employees that have children who suffer from severe mental disorders or Down syndrome or autism, provided the children are under the age of eighteen (18).

The above regulations constitute positive measures that derive from the State's constitutional obligation to provide special care and to take measures aimed at protecting persons with a disability or incurable physical or mental disease (article 21, paragraphs 2 and 3 of the Constitution). In particular, they aim to protect the afflicted person by facilitating the caregiver, in other words the protected characteristic in this case is the disability or the disease of the person who is related to the employee. However, the Ombudsman encountered issues with the implementation of these regulations.

26. Article 50 paragraph 2 and 3 of Law 3528/2007 (Ratification of the Code of Status of Public Civil Administrative Servants and Servants of Legal Entities of Public Law), as is force, and article 57, paragraphs 2 and 3 of Law 3584/2007 (Ratification the Code of Status for Municipal and Community Employees), as in force.

27. See inter alia documents under ref. nos. DIDAD/F.53a/2011/27499/23-12-2014 and DIDAD/F.53b/513/16351/05-08-2016(ΔΙΔΑΔ/Φ.53a/2011/27499/23-12-2014 and ΔΙΔΑΔ/Φ.53β/513/16351/05-08-2016) of the Ministry of Administrative Reconstruction, Directorate of Human Resource Management.

Especially with respect to the benefit provided to guardians of disabled persons, it is mandatory for the appointment of guardianship to be stated in the operative part of the court ruling.²⁸ It was ascertained, however, that in practice this requirement causes difficulties to beneficiaries since the appointment of guardianship is usually not specifically stated in the operative part of the court rulings, but is construed in the reasoning.

In this case, the Ombudsman deemed that if the appointment of guardianship can be concluded from the reasoning of the court ruling, then the guardian's right to special leave cannot legally be disputed.

The Ombudsman's position raised a query which the Ministry of Administrative Reconstruction addressed to the Legal Council of the State that issued opinion no. 77/2018, which fully supports the Ombudsman's view. Pursuant to the above opinion, which was accepted by the competent minister: *"[...] under full guardianship, the guardianship is fully or partially performed by the legal guardian only when this is explicitly appointed by the court or it is clearly construed from the reasoning of the court ruling, as a conclusion of the relevant legal thought"* (case 225192).

With respect to the provision of the 10-day special leave under Law 4075/2012 to parents of children with specific conditions, the Ombudsman ascertained that many services do not grant the additional leave with the justification that the right of these employees is satisfied with the granting of the 22-day special leave (article 50 paragraph 2 and 3 of Law 3528/2007 and article 57, paragraph 2 and 3 of Law 3584/2007). The Ombudsman expressed his opinion stating that, since the above laws explicitly provide for other special provisions relating to special leave of working parents for family reasons, the use of the employee's 22-day leave does not exclude the use of the 10-day special leave.²⁹ The Ministry of Administrative Reconstruction addressed the respective query to the Legal Council of the State (cases 246306 and 251482).

28. *Ibid.*

29. In fact, the Ombudsman invoked the circular no. F.351.5/43/67822/D1/05.05.2014 by the Ministry of Education and Religious Affairs (Online publication no (ADA): ΒΙΦΓ9-4ΘΑ), which refers to the leave of permanent teaching staff, which fall under the provisions of Law 3528/2007. According to this circular, the 10-day leave under Law 4075/2012 is granted in addition to and after exhaustion of the 22-day leave under Law 3528/2007.

Measures in favour of special categories of military personnel

With respect to the provision of article 71 paragraph 47 of Law 3883/2010, which provides for advantageous administrative measures to be taken for specific categories of military personnel who face specific and acute social problems, a ministerial decision³⁰, which defines the respective facilitations and the categories that are entitled to these, remains in force. In fact an internal provision of the Hellenic Navy General Staff clarifies that in order for an applicant to be entitled to these benefits, they must be carers of a disabled spouse or child.³¹

On the other hand, the provision of article 25 of Law 4407/2016, which amended pre-existing regulations for ordinary and extraordinary transfers or other benefits to Armed Forces personnel, provided for categories of military personnel that mandatorily serve in their place of preference, as reported, based on criteria that are associated with their social or family status. Among others are those who have legally assumed the guardianship of a person with a disability, without the person with a disability necessarily being a spouse or child. The purpose of this provision is, according to the explanatory proposal report, to ensure that the service of personnel categories that have assumed increased moral and legal obligations due to their specific family circumstances, is fulfilled in their place of preference.³²

The Ombudsman highlighted the essential differentiation between the disputed provision of Law 4407/2016 and the Ministerial Decision of 2011 insofar as the criterion of caring for disabled persons was concerned, pointing out that although the above provisions regulate different service performance issues, they are essentially linked in terms of the Armed Forces personnel's inclusion in the social criteria which would permit them to make use of the anticipated benefits. Pointing out that Law 4443/2016 also prohibits discrimination by association, with respect to individuals that are closely related to persons bearing a protected characteristic (e.g. disability or chronic disease), the Ombudsman requested that this protection also be extended to persons that have legally assumed the guardianship of persons with a disability, other than spouses or children; in other words, he requested the update of the Ministerial Decision of 2011, so that this category can be classified as specially protected (case 236197).

30. Ministry of National Defence decision no. F. 400/32/82424/S.343/03 June 2011, particularly art. 2

31. F.440.4/197/S.29846/28 Nov 11/GEN/BE-VI/EQUALITY OFFICE.

32. See Explanatory proposal report to the draft bill "Regulation of issues pertaining to the Ministry of National Defence" on the Hellenic Parliament website: <https://www.hellenicparliament.gr/UserFiles/2f026f42-950c-4efc-b950-340c4fb76a24/r-theamin-eis-neo-sunolo.pdf>.

■ EQUAL TREATMENT IRRESPECTIVE OF AGE

Farmers' exclusion from State aid due to exceeding the age limit

The State Aids Regulation (KKOE)³³ clearly excludes farmers over the age of 70 from the right to financial aid due to damage caused by unforeseeable or exceptional occurrences. State aid is broken down into two categories: Aid for reconstitution of plant stock and aid for loss of production (article 5).

However, the European Commission's approval for financial aid to Greece explicitly states that this age limit does not apply for financial aid for loss of production.³⁴ The Ombudsman pointed out the above differentiation to the Hellenic Agricultural Insurance Organisation (ELGA), highlighting that an illicit age limit has been introduced to the KKOE in relation to the financial aid for loss of production and requested its removal. At the same time, the Ombudsman pointed out that he had not found a provision under national or union law that defines the age limit of a professional or active farmer, taking into consideration that a series of actions that concern agricultural financial aid that are accompanied by the assumption of long-term obligations, do not set a maximum age limit.

ELGA promised to review the issue with respect to the payment of the financial aid for loss of the production regardless of the eligible person's age by the next amendment of the KKOE's JMD or in the relevant decisions for adoption of the new programmes. In fact, ministerial decision no. 295/177547 (OGG B, 5984/31.12.2018), which concerns the adoption of measures in favour of producers whose holdings sustained damages due to the natural disasters in the January-December 2017 period, abolished the maximum age limit of 70 years for the compensation of losses to plant production.

In the meantime, however, the Ombudsman incidentally detected a similar exclusion whereby producers were unable to participate in the actions of the "Rural

33. Joint Ministerial Decision (JMD) under no. 619/146296/OGG B, 4562/30.12.2016.

34. JMD no. 619/146296/2016 ("State Aids Regulation"), at point 7, under "*having regard to*", refers to the European Commission document C(2016) 6442 final/O3-10-2016 that relates to the approval of state aid to Greece. In this document, the following is stated verbatim in the section on the Identification of beneficiaries 2.7 (11): "*Eligible for aid may be natural persons who: • Are not older than 70 years of age. This limitation does not apply to aids [sic] granted for the loss of production. ("Eligible for aid may be natural persons who: Are not older than 70 years of age. This limitation does not apply to aids granted for the loss of production")*".

Development Programme of Greece 2014-2020” (RDP)³⁵ due to being over the maximum age limit of 61 years and brought this to the attention of the Ministry of Rural Development without delay. The ministry justified this age limit as being necessary and argued that due to retirement, candidates who exceed this limit may not fulfil the five-year obligations that would be required of them if they were included in the programme.

Nevertheless, the maximum age limit is not consistent with the horizontal principles that govern the measures/actions of RDP 2014-2020, as approved by the European authorities, which ensure equality between men and women and the aversion of any discriminations on the grounds of gender, racial or ethnic origin, religion or beliefs, disability, age or sexual orientation (case 232490 and 243638).

Maximum age limit for the recruitment of substitute or hourly-paid teachers

For the first time during the 2018-2019 school year, the call for substitute or hourly-paid teachers³⁶ set the age of 67 years as the cut off age for participation. The legal basis for setting this age limit was the reasoning of judgment no. 1959/2017 by the Council of State (CoS).

The Ombudsman expressed the opinion that the invocation of this CoS judgment was wrongfully used as legal basis for setting the maximum age limit in the recruitment of substitute and hourly-paid teachers. The reason for this is that this was an ad hoc ruling regarding the oversight of a primary education teacher’s recruitment as a substitute teacher, in light, however, of work experience points which she lost due to the oversight and would have ultimately favoured a permanent placement in the future. Yet, a significant point in this case is that during the specific period in question (2006-2007) permanent appointments amounted to 40% and these were selected from the unified table of substitute and hourly-paid teachers. The

35. Commission Implementing decision no C (2015) 9170 final/11-12-2015 for approval of the Rural Development Programme of Greece for support from the European Agricultural Fund for Rural Development and especially for inclusion in the action “*Implementation of investments contributing to the competitiveness of the holding*”, in order for natural persons to be deemed eligible for support, they must be at least 18 years of age and not be pensioners on the application submission date (point 8.2.4.3.1.6.)

36. Refers to the call under ref. no. 56263/E1/O5.04.2018. The same issue arose in the call for temporary substitute and hourly-paid Special Education Teachers and Teaching Assistants (ref. no. 56267/E4/O5.04.2018).

court ruled that since the applicant was 67 years old and the infringement was associated with her expectation for permanent appointment, she could no longer be offered a permanent appointment given that permanent teachers are automatically dismissed from the service at the end of the teaching year during which they reach 67 years of age. Nevertheless, the CoS had issued rulings in 2015 which deemed that the provisions regarding permanent appointments at a percentage of the table of substitute and hourly-paid teachers contravene the constitutional principles of equality and meritocracy and are therefore invalid.³⁷ As a result, the recruitment of substitute and hourly-paid teachers is now disassociated from permanent appointments.

Additionally, the Ombudsman pointed out that these employees' rights to a pension must also be taken into consideration.

Although a large number of substitute and hourly-paid teachers have worked freely for a number of consecutive years in the educational sector, they have yet to round up the required, minimum pensionable service, thus they are deprived the ability to establish entitlement to a pension when they are suddenly excluded from participating in the respective procedure due to their age and not because of a lack of formal qualifications or essential skills.

The ministry's response is pending (case 243576).

EQUAL TREATMENT IRRESPECTIVE OF FAMILY OR SOCIAL STATUS

Couples working together as a measure for the protection of family life

When the State establishes positive measures in favour of a specific social group that have been deemed as requiring greater protection, the Ombudsman intervenes to ensure the appropriate adoption of these measures in order to prevent discriminations.

37. See CoS rulings 527/2015, 2947/2015 and 4092/2015.

The secondment of employees for the purpose of working together abroad under specific provisions constitutes a positive measure, according to the meaning of article 7 of Law 4443/2016, which aims at protecting the spouses' family and professional lives. These advantageous provisions function as compensation for the drawback of one of the two spouses moving abroad for work.

However, the Ombudsman encountered cases in which, although the positive co-working measure was explicitly provided for by a specific provision of the law (article 48 Law 4440/2016) and in derogation of general provisions for time-saving reasons, the collaborating Ministries (Interior and Defence) refused to take the appropriate actions, passing the responsibility back and forth from one ministry to the other with respect to drafting the necessary administrative act (JMD).

The Ombudsman asked for a solution to be found taking into account the principle of good administration and the protection of civil rights. He emphasised the need for the adoption of good administrative practices which serve the spirit and letter of the law and pointed out that the delay in the adoption of this positive measure brings about adverse consequences, both for the employees and their families. In order to preserve family unity, the only alternative option is work discontinuation with unpaid leave, which affects their right to employment and is detrimental to their finances since they are deprived of their salaries. The Administration referred this issue to the Legal Council of the State (cases 229746, 230514).

Prior criminal conviction as an appointment impediment

Pursuant to the Civil Servants' Code of Conduct, a prior criminal conviction for any of the reasons listed in the relevant provision (article 8 Law 3528/2007) constitutes an appointment impediment. Article 99 et seq. of the Penal Code (PC) provides for the conditional suspension of a sentence for a specific period of time. If the suspension in question is not revoked, it is considered that the suspended crime had never been imposed (article 102). Moreover, article 104 of the PC states that the deprivation of rights and incapacities that are related to the penalty are suspended and cleared together with the primary penalty.

The above PC provisions have been interpreted according to case law within the meaning that they establish the automatic, legal removal of both the sentence serving obligation and the actual conviction, which when legally removed has no effect against the convicted individual, or the imposed crime, or related crimes, or other consequences that arrive at this conviction by existing law.³⁸ The same re-

38. See CoS rulings 79/1973, 3424/1976, 923/1978, 3506/1982, 3075/1984,

sult is brought about by the time lapse of the suspended sentence. Therefore, if the sentence suspension time for the crime that impedes the appointment to a public service position lapses, the impediment ceases to exist,³⁹ since the obligation for serving the sentence and the consequence of the conviction are lifted.

Moreover, it is noted that the impediments for appointment in the Public Service that are due to prior criminal activity are not applicable: “[...] to persons who have served the sentence or the security measures imposed on them or who have been dismissed on condition, provided that they are assigned jobs of auxiliary or unskilled staff with a fixed or indefinite term work contract or hourly wage” (article 4 paragraph 6 Law 2207/1994).⁴⁰

However, the Ombudsman found that a public service rejected the application of an employee, who was employed as support staff, for the conversion of his fixed-term employment contract into one of indefinite duration (with respect to the provisions of PD 164/2004), based on the assumption that, because he had received a sentence suspension for a past criminal conviction, he was not deprived his personal freedom and therefore he did not meet the social integration facilitation criteria according to article 4, paragraph 6 of Law 2207/1994.

In the light of the above provisions and case law, the Ombudsman argued that in this case there was no appointment impediment because when a sentence suspension is imposed on a criminally convicted individual and they comply with the terms of the suspension, the sentence and its consequences are lifted.

It is therefore unacceptable for the convicted individual, whose sentence has been suspended, to be placed in an inferior position to that of someone who has served a sentence, with respect to the implementation of the social integration and access to employment provisions; otherwise, it will not be possible to prevent social stigma and their marginalisation.

Besides, according to the general theory and case law, it is not necessary for a convicted person to actually serve a sentence for them to be disciplined and to

5534/1995, 1889/2001, 1055/2003 and Athens Administrative Court of Appeals ruling 174/2008.

39. See CoS rulings 5534/1995, 2117/2009, 3894/2012 and Athens Administrative Court of Appeals ruling 1133/2012.

40. As ruled on the basis of Legal Council of the State opinion no. 86/2016, these duties are not associated with the exercise of public authority and a conviction does not constitute an impediment.

prevent them from committing new punishable crimes, but it is sufficient to impose a sentence in order to achieve these goals.⁴¹ With respect to this issue, a query was finally submitted to the Legal Council for the State by the service, which with opinion no. 195/2018 interpreted the above provisions pursuant to the Ombudsman's proposals (case 232650).

EQUAL TREATMENT IRRESPECTIVE OF SEXUAL ORIENTATION AND GENDER IDENTITY

Equal participation of transgender people in the competition for entry to police academies

Sexual orientation and gender identity are clearly protected by national and international law, which prohibits the direct or indirect adverse treatment of an individual based on these characteristics in the field of employment and occupation. Under Law 4491/2017, the Greek State legally recognised gender identity, while the recently revised International Classification of Diseases issued by the World Health Organisation made no reference to "gender identity disorder" or "transsexualism" in the category of mental, behavioural or neurodevelopmental disorders. "Gender incongruence", however, has been classified as a sexual health condition.

Nevertheless, the 2018 call for the examination for entry to Police Academies by the Hellenic Police (ELAS) through the Ministry of Education's general examination system, included "gender identity disorder" as "psychosexual disorder" in the "mental conditions" category of the eligibility terms and conditions with respect to their health and physique. PD 11/2014, as in force, which decides on the physical aptitude of persons conscripted in the Armed Forces and of military personnel in general was used as the legal basis. According to the provisions of the PD, "gender identity disorder" is considered a "disease".

41. See K. Gardikas, *Criminology*, vol. C. Athens, N. Sakkoulas Publishers, 1955, p. 439 A Charalampakis, *Summary Criminal Law: Crime*, Athens, P N Sakkoulas, p. 349· G Daniil, "Specific sentence suspension issues through case law", in *Crime in Crisis*, Honorary Volume Nestoras Kourakis (<http://crime-in-crisis.com/>).

The Ombudsman pointed out that deviation from the general discrimination prohibition due to gender identity at work is only permitted when the different treatment is specifically justified, is imposed due to the nature or the context of exercising the specific professional activities, it constitutes an essential and definitive professional prerequisite, the objective is legitimate and the requirement is proportionate.

The Ombudsman asked ELAS [Hellenic Police] to revise this term of the call and to refrain from applying it in the examination in question; otherwise, it would request the specifically justified difference in treatment that is provided for in Law 4443/2016. Finally, it requested that the Hellenic National Defence General Staff (GEETHA) reviews the Presidential Decree's regulation on physical aptitude of conscripts in terms of "gender identity disorder" (case 245851).

ACTIONS FOR PROMOTING THE IMPLEMENTATION OF THE PRINCIPLE OF EQUAL TREATMENT



Actions for promoting the implementation of the principle of equal treatment

In the context of its specific competence of promoting the principle of equal treatment and the fight against discrimination and the prejudices that fuel them, the Greek Ombudsman aspires to systemise its interventions into fields that it believes are most important in effectively encountering discriminations. That said, its interventions focus on the direct connection between a symptom and the actual cause and the impacts that this has in the field of discrimination.

Moreover, given that the people's familiarisation with the respective provisions of the law and the understanding of the importance of equal treatment and equal opportunities for all – employers, employees and intermediaries – are particularly significant in preventing and suppressing discrimination, the Ombudsman aims to implement awareness actions in the field of occupation and employment.

Finally, the National Body participates in vocational and training programmes on equal treatment issues that are tailored to the Administration's officials, while its active participation and collaboration with European and international organisations ensures the strengthening of its role within and outside the country's borders.

INTERVENTIONS FOR TACKLING PHENOMENA OF RACIST VIOLENCE BY PRIVATE INDIVIDUALS

There is no doubt that discrimination is directly connected to racism and intolerance. Quite often racist attacks manifest in areas where there is a greater assembly or presence of aliens/foreigners, particularly workers. Aimed at monitoring racist phenomena in Greece and the responsiveness of the competent authorities in combating racist violence, the Ombudsman participates as an observer in the Racist Violence Recording Network and in regular meetings held by the National Council against Racism and Intolerance.

Racist violence, particularly against refugees and immigrants, has always been an issue that the Ombudsman focuses on.⁴²

Even if the perpetrators or alleged perpetrators of the racist attacks are private individuals, the frequent repetition of these attacks requires institutional alertness and immediate police action. Believing that the immediate investigation and prosecution of cases that carry a racist motive decisively contributes to the comprehension of legal certainty and the prompt and decisive discouragement of the dissemination of similar acts, the National Body closely monitors the investigations of relevant cases that were brought to its attention or which possibly dominated the headlines or public opinion. In this context, it intervenes by liaising with the competent police authorities for the immediate and thorough investigation of the complaints and provides the Hellenic Police (ELAS) Headquarters with its final findings; however, without becoming involved in the subsequent judicial investigations.

From the monitoring of the three cases that follow, it emerges that the police's response to the investigation of cases with a possible racist motive have not improved to a satisfactory level, with the greatest problem being identified in the delayed completion of investigations.

Racist attacks on the island of Leros

The Ombudsman's intervention to the Dodecanese police authorities for attacks that took place against foreign citizens on the island of Leros from 2 to 4 May 2017 was completed within 2018.⁴³ Following the investigation into this case, it was ascertained that three attacks had initially been reported, with the injured parties comprising of eighteen foreign citizens of whom all but one had submitted an application for international protection and three had already received refugee status. Police authorities solved one of these attacks calling eight national citizens, who were accused of these attacks, to give their account of the event without being arrested given that the deadline for the very act had lapsed. The police authorities formed and filed a case file to the Public Prosecutor of the Court of First Instance of Kos against the national citizens for the offences pertaining to the repeated, unprovoked grievous bodily harm, complicity and racist crime to-

42. See among other The Greek Ombudsman (2013), The phenomenon of racist violence in Greece and how it is combated, Special report (<https://www.synigoros.gr/?i=human-rights.el.diakritiki-metaxeirisi-astynomiki-prostasia.125089>).

43. See also *Equal treatment, Special Report 2017*, p. 120-121.

wards twelve foreigners. They also formed and filed another three case files to the aforementioned Public Prosecutor which concerned theft with one foreigner being a victim, and unprovoked bodily injury to five foreigners.

Racist attacks in Aspropyrgos

The Ombudsman continued its intervention with respect to the violent attacks and other punishable acts with a racist motive that have been taking place against foreigners in the Gorytsa region of Aspropyrgos, Attica, over the last two years.⁴⁴ Specifically, it reverted to the ELAS Headquarters requesting an update on whether there were any complaints made for similar, new incidents against foreigners in the above region as well as the relevant actions taken by police authorities for the investigation of the complaints. It also requested an update on information concerning the possible issuance of residence permits on humanitarian grounds, with respect to the provisions for the protection of victims and material witnesses of attacks, in order for this information to be used in its final findings and recommendations.

Racist attacks on the island of Mytilene

The National Body moved forward with a new intervention which examined the authorities' response to the prevention and suppression of organised violent attacks and other punishable acts against asylum seekers in Mytilene on 22/04/2018 and 23/04/2018. Specifically, it forwarded a document to all the involved central and regional police authorities pointing out that, despite the severity of the criminal offences, the alleged national citizens were not indicted or arrested after being caught in flagrante delicto. It also asked the police authorities for information with respect to their actions. Further to the Ombudsman's document and pursuant to the ELAS Press release on 06/11/2018, an extensive police investigation identified the involvement of twenty-six individuals in these punishable acts (as the perpetrators or instigators of offences of a minor or criminal nature: resistance, riot, public agitation, inflicted and attempted harmful bodily injury, attempted grievous bodily injury, distinguished incidence of damage, arson, illegal possession and use of weapons, firecrackers and fireworks) and the relevant case file was submitted to the Public Prosecutor of the Court of First Instance of Mytilene.

Lastly, the Ombudsman asked the Mayor of Lesbos to take prompt action to restore the affected social cohesion and peace in Lesbos, which resulted from the above extremely negative events, so that similar violent incidents are not repeated.

44. See also *Equal treatment, Special Report 2017*, p. 121-122.

INTERVENTIONS FOR TACKLING HUMAN TRAFFICKING

Land workers in Nea Manolada

The case of the land workers in Manolada and the judgement that was handed down⁴⁵ by the European Court of Human Rights (ECtHR) in 2017 was an issue of particular interest for the Ombudsman as the body for promoting equal treatment irrespective of national origin, especially with respect to the country's compliance with the decision. Other than this special monitoring, a complaint-application by 164 foreign land workers, which named the Central Agency of the Labour Inspectorate as the recipient, was submitted to the National Body in 2018 by NGO lawyers, regarding the inadequate housing and living conditions at Nea Manolada, Ilia (following the destruction of their camp due to fire on 07/06/2018) and the absence of the Labour Inspectorate's inspections for observance of the labour and social insurance law. The workers requested that the Labour Inspectorate conduct field inspections to identify violations of labour and insurance laws in agricultural crops in the region, and for all appropriate measures to be taken to remove the conditions for the development of trafficking phenomena for the purpose of labour exploitation.

The Ombudsman had, on many occasions since 2008, intervened regarding the Administration's inadequate inspection of the foreign land workers' working conditions in the region.⁴⁶ It should be noted that in its decision (which also invokes the Ombudsman's findings), the ECtHR condemned Greece and ruled that: *"There was a procedural violation of Article 4 § 2 [of the European Convention for the Protection of Human Rights and Fundamental Freedoms] because Greece failed to fulfil its positive obligations deriving from the provisions of this Article, namely, its obligation to prevent human trafficking, to protect the victims, to conduct an effective investigation, and to punish the perpetrators"*.⁴⁷

45. ECtHR Application No. 21884/15, "Chowdury and Others v Greece" decision dated 30.03.2017.

46. See Greek Ombudsman's document under ref. no. 1166/2008 dated 22.04.2008 (<https://www.synigoros.gr/resources/docs/eggrafo2.pdf>), Press Released dated 18.04.2013 (<https://www.synigoros.gr/resources/docs/deltio-typou-manol.pdf>) Press Released dated 24-4-2013 (<https://www.synigoros.gr/resources/dtoga.pdf>).

47. ECtHR Application No. 21884/15, "Chowdury and Others v Greece" decision dated 30.03.2017, reasoning 128, see also Greek Ombudsman's Press Release dated 31.03.2017 (<https://www.synigoros.gr/?i=kdet.el.news.422759>).

In view of the above, in 2018, the Ombudsman addressed all involved authorities (Labour Inspectorate, Decentralised Administration of Peloponnese, Western Greece and Ionian, Municipality of Andravida-Kyllini, Fire and Police Departments, Ministries of Migration Policy, Labour – Social Security – Social Solidarity, Rural Development – Food), in order to ascertain the country's response level to the obligation of preventing the phenomenon of human trafficking and protecting the victims of labour exploitation. It also requested that they take immediate action on grounds of competence.

To date, the results are unsatisfactory, particularly with respect to the Administration's readiness to adequately respond to its national obligations, given the aforementioned condemnation.

At present, the Labour Inspectorate, police authorities, the fire department and the Ilias Region have responded and have provided the Ombudsman with fragmentary information regarding the investigation into the fire, the residence status of only some foreign workers, and incomplete information about their living conditions.

INTERVENTIONS FOR THE ELIMINATION OF INDIRECT EXCLUSION IN TRANSACTIONS WITH REFUGEES AND FOREIGNERS

The impacts of the AADE's circular on the access of goods and services by third country nationals

With respect to circular POL 1 140/23.07.2018 by the Independent Authority for Public Revenue (AADE), local Tax Offices (DOY) are asked to audit the authenticity of the residence paperwork submitted by all third country nationals with whom they carry out transactions.

Addressing the AADE, the Ombudsman clarified that pursuant to existing law, the residence permits of third country nationals are divided into two basic categories: a) residence permits which are legally granted to migrants⁴⁸ and b) residence permits which are granted to beneficiaries of international protection.⁴⁹ The above

48. See Law 4251/2014, as amended and in force and the delegated regulatory acts.

49. See Law 4375/2016, as amended and in force.

permits are personalised administrative acts and, as with any other act by the Administration, the presumption of legality applies. As a result, with this practice the presumption of legality and the general operation of the organisations that issue these permits is unjustifiably disputed. Given that more than 500,000 third country nationals reside in Greece with a legal residence permit, one can appreciate the impacts in a wide field of critical activities, but also the excessive workload of the involved organisations.

Moreover, pursuant to existing law,⁵⁰ the Administration's obligation during its transaction with third country nationals is exhausted with the verification that the transacting third country national holds a legal residence permit. However, it arises from the contents of the circular in question that the audit of the legality of the third country nationals' residence permit is confused with the audit of the authenticity of the documents provided. Needless to say that the competent DOY departments, as well as the remaining public administration for that matter, are able to conduct an authenticity audit of the documents if there is any doubt about their authenticity. The general invocation with respect to third country nationals providing fraudulent details is done without individually qualifying and categorising the cases (e.g. large scale, residence permit categories, alleged issuing authority, criminal prosecution, etc.).

Therefore, the mandatory audit of the legalisation documents of all transacting third country nationals initially constitutes direct discrimination on grounds of national or ethnic origin,⁵¹ taking into consideration the serious impacts that this practice has on a number of the transacting parties' essential activities.

For the above reasons, the Ombudsman had requested the immediate review of the above circular and assurance that transactions between third country nationals and the competent financial services will not be impeded.

50. Article 26, para. 1 Law 4251/2014.

51. Pursuant to Law 4443/2016, Article 15 para. 1: "*Any person who, during the dealings of goods and services to the public, infringes the anti-discrimination law stated herein on grounds [...] national or ethnic origin [...] shall be punished with imprisonment of six (6) months to three (3) years and a fine of one thousand (1,000) to five thousand (5,000) Euros. The actions of this paragraph are prosecuted ex-officio*". Therefore, the implementation of the audits that are introduced with circular POL. 1140/23.07.2018 may entail criminal consequences.

EQUAL ACCESS TO OCCUPATION AND EMPLOYMENT IN THE PUBLIC SECTOR: THE PIVOTAL ROLE OF NOTICES

Notices constitute the source of a series of problems that present incompatibility with the provisions of law for equal treatment and the fight against discrimination.

The National Body primarily focuses on the provisions of the notices in order to familiarise the issuing bodies and organisations with the obligation to implement the principle of equal treatment pursuant to existing law, thereby ensuring harmonisation with the provisions of the law at a regulatory level and preventing any violations of individual rights.

Intervention to the Ministry of Foreign Affairs' vacancy notice for experts

The Ombudsman reviewed the Ministry of Foreign Affairs' notice for the recruitment of five experts, pursuant to which it excluded the participation of candidates: a) who were Greek citizens through naturalisation, but 3 years had not passed from acquiring the Greek citizenship; b) who were under 32 years of age; c) who suffer from serious cardiovascular or serious respiratory or renal or communicable diseases or serious diseases of the nervous system.

The Ombudsman pointed out to the Ministry that different treatment on the grounds of a protected characteristic is permitted on condition that the nature or context of the specific professional activities constitutes a material and decisive professional prerequisite and provided the objective is legitimate and the prerequisite is proportionate.

Any derogations from the principle of equality, which derive from specific provisions related to the qualifications or the Expert Branch's employee recruitment conditions, should be interpreted and applied in a manner that is compatible with the specific principle, otherwise they shall be considered abolished.

The criterion of the three-year waiting period after naturalisation for participation in this notice constitutes a regulation that is contrary to the prohibition of discrimination since the rule of equal treatment presupposes the exercise of a right or the enjoyment of a good under equal terms between Greek citizens.

With respect to the minimum age limit that is set out in the proclamation, the Ombudsman pointed out that any discriminations due to age must be specifically justified and it must arise that the age limit is objectively necessary for the achieve-

ment of the legitimate purpose being pursued, and that there is no other, less strict medium other than age for the achievement of this objective.

Lastly, in terms of the exclusion due to specific medical conditions, it argued that the decision on whether the candidates are healthy and fit to respond to the duties that they will undertake should be the subject of an ad hoc medical assessment pursuant to the procedure that is provided for by the Employee Code. Indeed, in this case it is important for the law on the protection of sensitive personal data from the collection and processing of the candidates' health data to be complied with, to the extent that such data is not absolutely necessary for assessment of their suitability.

For all the above reasons, it requested the immediate review of the notice's terms, so that they are compatible with the law on equal treatment. The Ministry responded that in the context of amending its organisation's provisions, which is currently in progress, the above points will be taken into consideration.

Intervention to the vacancy notice for judicial officers in the Armed Forces

Based on the provision of article 14, paragraph 3 of the Code of Judicial Corps of the Greek Armed Forces (KDSSE, Law 2304/1995), an alien of non-Greek ethnic origin, who has acquired Greek citizenship through naturalisation, cannot be appointed as a judicial officer. In 2009, the Ombudsman had pointed out to the Ministry of National Defence that this provision gives rise to unfair discrimination given that it places aliens of non-Greek ethnic origin at a disadvantage compared to citizens born in Greece or naturalised expatriates on the grounds of ethnic origin, without this different treatment being objectively justified by a legitimate purpose by way of an appropriate and necessary measure. It had asked the Administration to abstain from implementing this provision of the law, even without the prior legislative repeal, treating it as invalid due to the fact that it contravenes European law. Indeed, the Ministry changed its stance and from 2010 it has removed the national origin prerequisite from its notices; however, without amending the contested provisions.

Although the problem seemed to have been resolved, in 2018 a notice was issued for the recruitment of officers in the Armed Forces, which saw the reappearance of the term concerning the appointment of these positions to Greek nationals.

The Ombudsman addressed the Ministry without delay, stressing that the reinstatement of this prerequisite is in direct conflict with the constitution (no. 4 of the Constitution) and the principle of equal treatment, as established by national and European Union law and must be immediately removed, even if it is the result of a mistaken replication of the relevant KDSSE wording.

In addition, the Authority highlighted that, since it is a prerequisite that not only concerned military justice, but also all the employment positions in the Armed Forces, it had already been placed under judicial review. In fact, pursuant to Council of State decision no. 3317/2014, the issue concerning job access to the Armed Forces was finally resolved and it was ruled that the national origin prerequisite was unconstitutional and therefore its provisions are unenforceable.⁵²

Although the issue of national origin as a prerequisite for access to the Armed Forces had been resolved by the national courts, it appeared that the Ministry was not ready to embrace this issue. It deemed it necessary to submit a question to the Legal Council of the State (LCS). With opinion no. 127/2018, whose acceptance was pending until the drafting of this report, the LCS fully adopted the Ombudsman's views in relation to the national origin prerequisite. With respect to the same competition, the LCS deemed the maximum age limit, which was set at 35 years of age, to be fair, although the Ombudsman had also regarded that the age limitation was not specifically justified by the nature of the duties of the specific positions, in view of the provisions of article 4 of Law 4443/2016, an issue the National Body intends on reverting to. However, the contested proclamation of 2018 was conducted and closed with the appointment of successful candidates and the implementation of the Greek origin prerequisite.

EQUAL ACCESS TO OCCUPATION AND EMPLOYMENT IN THE PRIVATE SECTOR: THE ROLE OF CLASSIFIED ADS FOR EMPLOYMENT

The search for employees through classified ads with terms that contravene the provisions and the purpose of the law for equal treatment during their access to employment constitutes a generalised practice which is considered obvious. This fact is due to the public's lack of information and awareness on equal treatment issues in conjunction with the existence of fixed stereotypical perceptions, which are largely reproduced by a large number of classified ads, primarily classified ads for employment that are published electronically or in printed format.

52. It is worth noting that with the new organisation of the Evelpidon Military Academy (Presidential Decree 50, Official Government Gazette 92a/30.05.2018, Article 63), which replaces the prior (Royal Decree 312/1968, Article 70) repealed the prerequisite "*Greek born*" for entry to the academy, thus Greek citizenship shall suffice.

Occasioned by a specific complaint, which concerned a classified ad for employment which had set a maximum age limit, the Ombudsman reviewed the classified ad that had been published both on the online and in the printed versions of a highly-recognised, widely-circulating medium for classifieds with a high traffic volume in the period from 23-25 May 2018. A multitude of classified ads were detected that include discriminations on grounds of gender (only men or only women), age (a maximum and/or minimum age limit is set) and national origin (only Greek citizens or only foreign citizens) Classified ads comprising of multiple discriminations (“young lady up to 27 years of age”, “Greek citizen aged 25-35 years”, “foreign women up to 45 years of age”, etc.) were also detected. These limitations concern all specialisations and concern job positions, whose nature in no way exempt from the protection against discrimination, because they do not correspond to characteristics of material importance in relation to the ability to perform the specific professional activity.

Considering the significant role of the companies that publish the classified ads, via which the information is immediately dispersed, and the primary supervision of their contents, the Ombudsman addressed the above company in order to find out if it was possible to implement a good practice in relation to compliance with the principle of equal treatment in this sector.

The results of this initiative were particularly encouraging given that it led to the collaboration between the Ombudsman and the company aimed at implementing a system which would inform those placing the classified ads about the prohibition of discriminations.

This system will commence in early 2019 and will be used by the National Body as a pilot in the context of a campaign directed towards all the widely-circulated media for classified ads.

PROMOTION OF THE EQUAL TREATMENT PRINCIPLE IN THE CONTEXT OF SOCIAL CORPORATE RESPONSIBILITY

A major company published a classified ad which gave the ability to “mothers to work according to their family’s schedule and needs”. Nevertheless, an unemployed mother who responded to the classified ad lodged a complaint with the Ombudsman because it did not adapt to the characteristics and needs of working mothers, despite stating this in the classified.

Following the National Body’s intervention, the company responded by referring to initiatives that it undertakes to empower working women, and mothers in particular. Moreover, it referred to the criteria that were used to select the candidates for the programme in question, while it acknowledged the incorrect manner by which unsuccessful candidates were notified (standard response message addressed to the male gender). Lastly, it explained the nature of the programme’s flexible working hours that is offered to mothers, who staff the company’s call centre.

The Ombudsman pointed out to the company the significance of the positive measures that are taken by private sector companies, as part of their corporate social responsibility, to compensate for the difficulties that are faced by working mothers during access to, or maintenance of their employment. However, in this case, it arose that insufficient information was provided in relation to the classified ad to unemployed mothers who responded to it; the specific details of the programme were not made clear in the classified ad or during the interview; and unsuccessful candidates were provided with a standard response. Thus, the company’s special attention to the needs of candidate working mothers and the specialisation and implementation of the programme’s objectives were inadequately verified.

The Ombudsman pointed out that the assumption of initiatives must be associated with strategic focusing and must be accompanied by specific planning, coordination and assessment of the effectiveness of the respective measure.

Besides, these initiatives are encouraged and monitored with specific legislative provisions for the fight against discrimination, which explicitly refer to the employers’ requirement to care, update and provide information.

AWARENESS RAISING ACTIVITIES FOR PUBLIC AGENCIES, ADMINISTRATIVE SERVICES AND CIVIL SOCIETY ORGANISATIONS

The Ombudsman maintains close cooperation with civil society organisations and other competent bodies in order to exchange know-how and experience in the field of protecting the rights of vulnerable population groups. In this context, it actively participates in educational programmes, workshops and events that are organised at the initiative of the Ombudsman or the bodies that engage in these issues.

Training actions

The Ombudsman's training actions continued in 2018 and addressed the Administration's officials by providing training on issues of rights and equal treatment to the National School of Public Administration and the Hellenic Police Academies.

Cooperation with SEPE

The Ombudsman has implemented numerous workshops with representatives from public bodies and authorities that are directly involved in matters related to the fight against discrimination. In 2018, particular emphasis was placed on strengthening the cooperation between the Ombudsman and the Labour Inspectorate (SEPE). To this end, the Deputy Ombudsman for Equal Treatment and the Ombudsman's officials visited the Labour Inspectorate offices at Chania-Rethymno, Heraklion-Lasithi, Larissa (where a meeting was held and in which representatives of the local branches participated: Larissa, Trikala, Volos and Karditsa), Patras (where a meeting was held and representatives of the local branches participated: Patras, Messolonghi, Pyrgos, Ilias, Kefallinia,

Zakynthos and Corfu), Corinth and Tripolis. Meetings were also held at the Labour Inspectorate' Regional Directorate in Crete and the Regional Directorate of the Aegean.⁵³

On-site visits

On-site visits were conducted in various regions of the country further to complaints in relation to the living conditions of the Roma people, rights of disabled persons, etc. for the purpose of verifying the actual living conditions or the objective access difficulties faced by disabled persons.⁵⁴

Congresses and Workshops

The Ombudsman is a regular at congresses and workshops that are organised by competent bodies on issues relating to equal treatment and the fight against discrimination by public bodies. The Deputy Ombudsman for Equal Treatment and the National Body's officials frequently participate with recommendation or interventions, focusing on the Ombudsman's role as a national body for promoting equal treatment. Indicatively, the Ombudsman was represented that the following events:

- General Secretariat for Gender Equality's (GSGE) Round table on the topic: *The impacts of the economic crisis on the Greek family* (Athens, 18 January)

53. These visits were conducted as part of the Ombudsman's excursion to the country's regions.

54. Ibid

- General Secretariat for Human Rights workshop on the topic: *Combating human trafficking* (Athens, 2 March).
- GSGE workshop: *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). Entry into force in Greece: From theory to practice* (Athens, 10 October).
- GSGE workshop: Turn the page: Equal treatment to women that are imprisoned and released from prison, presentation entitled: *"Fighting discriminations against women in detention centres: The role of the Greek Ombudsman"* (Athens, 21 November).
- International conference of the National Centre for Social Research: The fight against multiple discrimination in Greece: Promotion of equality through active participation and policy making, presentation entitled: *"Institutional interventions to encounter multiple discrimination"* (Athens, 5 December).

PRESENTATION OF EQUAL TREATMENT ISSUES TO PARLIAMENTARY COMMITTEE MEETINGS

The Deputy Ombudsman for Equal Treatment and the Ombudsman's officials were invited to several Parliamentary Committee meetings to express the National Body's viewpoints on matters relating to equal treatment and the improvement of the wider legal framework. Specifically, the Deputy Ombudsman for Equal Treatment and the National Body's officials presented the viewpoints of the Ombudsman as the national body for promoting the principle of equal treatment:

- During the joint meeting of the Standing Committee on Public Administration, Public Order and Justice and the Special Permanent Committee on Equality, Youth and Human Rights, in relation to the Ministry of Justice draft bill *Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and its adaptation in Greek legislation* (13 March).
- At the Special Permanent Committee on Equality, Youth and Human Rights meeting on the topic: *Social exclusion of Roma* (2 May).
- At the Special Permanent Committee on Equality, Youth and Human Rights meeting on the topic: *Female Employment – Unemployment* (24 May).
- At the Special Permanent Committee on Equality, Youth and Human Rights meeting on the topic: *Immigrants – Second generation* (5 December).
- At the Subcommittee for people with disabilities meeting on the topic: *Special Education – School dropouts* (6 December).

EUROPEAN NETWORK - INTERNATIONAL ACTIVITIES

The Ombudsman is a founding and a particularly active member of the European Network of Equality Bodies (Equinet). Equinet is a network of horizontal connection and coordination of the competent, for the implementation of the EU Directives regarding equal treatment, bodies of EU member states and EU acceding countries. The National Body is represented in the Equinet Executive Board by Ms Kalliope Lykovardi, Deputy Ombudsman for Equal Treatment, after her re-election in this position in October 2017. Moreover, a significant number of senior investigators of the National Body actively participate in the network's regular working group meetings and the special thematic platforms. The exchange of information and of best practices that occurs amongst the representatives of the Equinet member bodies involved in the network, greatly contributes to the dissemination of information pertaining to the developments in Europe in the field of equal treatment and facilitates the adaptation of European practices and activities to the national needs and prospects.

Moreover, the Deputy Ombudsman and the National Body's officials participated in three seminars that were organised by Equinet:

- *Poverty and discrimination: Two sides of the same coin* (Dublin, 21-23 March)
- *Tackling discrimination and ensuring dismissal protection for carers in Europe: Strengthening links between equality bodies and labour inspectorates* (Brussels, 16-18 October)
- *Hate speech* (Rome, 19-21 November).

The Ombudsman also participated in various conferences, seminars and workshops organised by international and European bodies and organisations, which actively engage in equality issues. Indicatively:

- FRA Seminar *Human rights communicators* (Vienna, 23-24 January)
- European Commission workshop: *High level experts meeting on victim rights* (Brussels, 28-30 January)
- Joint Workshop between the Operational Platform on Roma Equality (OPRE) and the Platform on Social and Economic Rights (ESCR): *Travellers' accommodation and Roma housing rights* (Belfast, 15-16 May)
- Academy of European Law (ERA) Seminar: *Disability-related financial instruments in light of EU Law and the UNCRPD* (Trier, 1-2 October)

- European Network on Religion and Belief (ENORB) Seminar: *Women's rights, gender and religion* (Brussels, 3-5 October)
- ERIO workshop: *Ending discrimination of Roma in housing and health: The role of Equality Bodies* (Brussels, 13-14 November)
- 7th workshop of the CoE-FRA-ENNHRI-EQUINET Thematic Platform on Social and Economic Rights (Strasbourg, 28 November).

LEGISLATIVE AND ORGANISATIONAL PROPOSALS 2018



Legislative and organisational proposals 2018

This chapter sets out the organisational and legislative proposals which were submitted in 2018 by the Ombudsman, as the national body for promoting equal treatment, as well as previously-submitted proposals that were accepted in 2018. The aim is for the proposals to be recorded and categorised for each Ministry, and for the outcomes to be monitored annually and through each subsequent annual report.

The Ombudsman proposed:

Ministry of Interior

With respect to the requirement of declaring one's religion for the performance of a civil wedding or the conclusion of a civil partnership agreement

The removal of the field "Religion" from municipal documents that need to be filled in by parties wishing to perform a civil wedding or to conclude a civil partnership agreement and the optional entry of one's religion in the relevant registration acts (see "Registration act of civil wedding or civil partnership agreement and declaration of religion", p. 46-47).

The amendment to Ministerial Decision under no. F.400/32/82424/S.343 (Official Government Gazette B 1139/03.06.2011) with respect to extending special, administrative and other beneficial measures provided therein to officers of the Armed Forces that have undertaken the guardianship of disabled persons, other than spouses or children (see "Measures in favour of special categories of military personnel", p. 54).

Ministry of National Defence

With respect to taking favourable measures in support of specific military personnel categories

A review of the list of diseases of teachers or their spouses that permits the placement or transfer or exemption from the supernumerary characterisation by order of priority (see “Placements and transfers of educators with a disability or chronic disease”, p. 50-52).

Ministry of Education

With respect to the placements and transfers of teachers with a disability or chronic disease

Ministry of Education

With respect to the list of diseases that is taken into consideration during the priority appointment of substitute teachers

An investigation of the relevant list of diseases, following a recommendation by the Central Board of Health, in order to include other diseases - other than beta thalassaemia major, sickle cell and micro sickle cell anaemia and multiple sclerosis - which are equally severe and objectively justify the use of this positive measure.

The abolition of exclusion of students that have been transferred from the financial support programme of diligent students that belong to vulnerable social groups, classified as such by the National Scholarships Foundation (IKY) (JMD 54397/Z1/29.03.2017).

Ministry of Education

With respect to financial support of diligent students that belong to vulnerable social groups

Ministry of Labour (Greek Manpower Employment Organisation (OAED))

With respect to the special maternity protection benefit by OAED

The recall of the OAED document that excludes insured mothers from receiving this benefit on the ground that they run a freelance or trading business, because this is an additional prerequisite that is not provided by law (article 142 Law 3655/2008).

With document under ref.no, 68516/08.10.2018 OAED clarified that the capacity of a freelancer or trader does not justify the insured mother’s exclusion from this special benefit provided she does not exercise her activity while receiving the benefit (see “The case of the special maternity protection benefit by the Greek Manpower Employment Organisation (OAED)”, p. 40-41).

The change in the practice of removing unemployed individuals, who travel abroad for a few days, from the registers of the Greek Manpower Employment Organisation (OAED) because this introduces an indirect discrimination against third-country nationals, and the adoption of appropriate, alternative methods to ascertain the availability of unemployed persons.

According to Decision no. 792/20/20-03-2018 (Official Government Gazette 1236 B/04.04.2018) by the Board of Directors of the Greek Manpower Employment Organisation (OAED), unemployed persons who travel abroad shall have their benefits suspended only when their absence exceeds a total of 20 days per calendar year (see “Indirect discrimination concerning the terms for discontinuing benefits to third country nationals”, p. 45-46).

Ministry of Labour (Greek Manpower Employment Organisation (OAED))

With respect to the suspension of unemployment benefits in the event of the beneficiaries’ short absence abroad

Ministry of Administrative Reconstruction

With respect to the granting of child adoption leave

The extended implementation of the provision of article 52 paragraph 4 of Law 3528/2007, so that child adoption leave is not a right that concerns only the working mother, but also the father (see “Equal exercise of the parental right by working fathers”, p. 41-43).

The recall of the ministerial directive-circular (DIADP/F.B.3/14395/02.06.2009) which sets out the prerequisites for granting reduced working hours to parents of a child with a disability, because it introduced additional restrictions that are not provided for in the relevant legislative decree (e.g. the child should be incapable of caring for him/herself, not be a student, etc.). Otherwise, the specification of the prerequisites that must be met by beneficiaries in a new legislative regulation.

Ministry of Administrative Reconstruction

With respect to granting reduced working hours to parents of a child with a disability

Ministry of Administrative Reconstruction

With respect to supporting documents submitted by public servants who are candidates for secondment or transfer

The last 5-years' total number of sick leave days for employees, who are candidates for secondment or transfer, is not to be a criterion when deciding on their suitability.

The ministry issued a circular (no. DI-DAD/F.49K/228/oik.42818/16.11.2018) informing the departments that the sick leave of employees who are candidates for secondment or transfer should not be taken into consideration during their decision making (see "Employment changes of employees with disability or chronic disease", p. 48-49).

The amendment of article 6 of Presidential Decree 80/2015 in a manner that does not make the granting of the 9-month parental leave to Hellenic Coast Guard employees dependant on the way in which the maternity leave is granted to female coast guards or the spouses of male coast guards.

Ministry of Shipping and Island Policy

With respect to the 9-month parental leave to Hellenic Coast Guard employees

Ministry of Rural Development

With respect to the maximum age limit of 70 years by the State Aids Regulation (KKOE) as a prerequisite for financial aid due to damage caused by unforeseeable or exceptional occurrences

The amendment of the KKOE concerning the removal of the maximum age limit of 70 years, which is a condition that is laid down for financial aid for loss of production, since no such age limit exists in the EU approval of state aid to Greece.

Although a KKOE amendment was not made, Ministerial Decision no. 295/177547 (Official Government Gazette B 5984/31.12.2018), which concerns the adoption of measures in favour of producers whose holdings sustained damages due to the natural disasters in the January-December 2017 period, repealed the maximum age limit of 70 years of age for the compensation of losses to plant production. (see "Farmers' exclusion from State aid due to exceeding the age limit", p. 55-56).

ACCEPTANCE OF PROPOSALS MADE IN PREVIOUS YEARS

Ministry of Interior

An employee's right to receive normal leave after a long-term sick leave

The Ombudsman had proposed the amendment of the provision of article 2, Presidential Decree 27/1986, so that normal leave can be received by Hellenic Police (ELAS) personnel, even if they return to work after long-term sick leave and a period of six months has not passed since their return.

The contested section was repealed with article 3 of Presidential Decree 10/2018 (Official Government Gazette 21 A/08.02.2018) (see *Equal treatment, Special Report 2017, p. 67 et seq.*).

In the last decade, the Ombudsman has pointed out on several occasions that there is no official evidence to justify the reasoning for the maximum age limit that was set for the recruitment of NHS Consultants.

With article fourth of Law 4528/2018 (Official Government Gazette 50 A/16.03.2018), the occupation of a specialised NHS physician's position by Senior and Junior Consultants and Directors is no longer associated with the age of the interested parties (see <https://www.synigoros.gr/?i=equality.el.imageworkpublic.498611>).

Ministry of Health

Removal of maximum age limit for the recruitment of NHS Consultants

Ministry of Health

Removal of illicit limitation of unpaid parental leave by resident doctors

The Ombudsman had requested the removal of the restrictive prerequisite that had been included in a ministerial circular for the granting of parental leave under article 50 paragraph 2 of Law 4075/2012, according to which the other parent must be employed outside the home environment, since it did not have any legal basis.

By way of a new circular (March 2018) the ministry clarified that the other parent's employment outside the home environment is not a prerequisite for resident doctors to receive unpaid parental leave (see *"The case of granting unpaid parental leave to resident doctors"*, p. 41).

Ministry of Shipping and Island Policy

Elimination of family status discrimination in the granting of unemployment benefits to seafarers

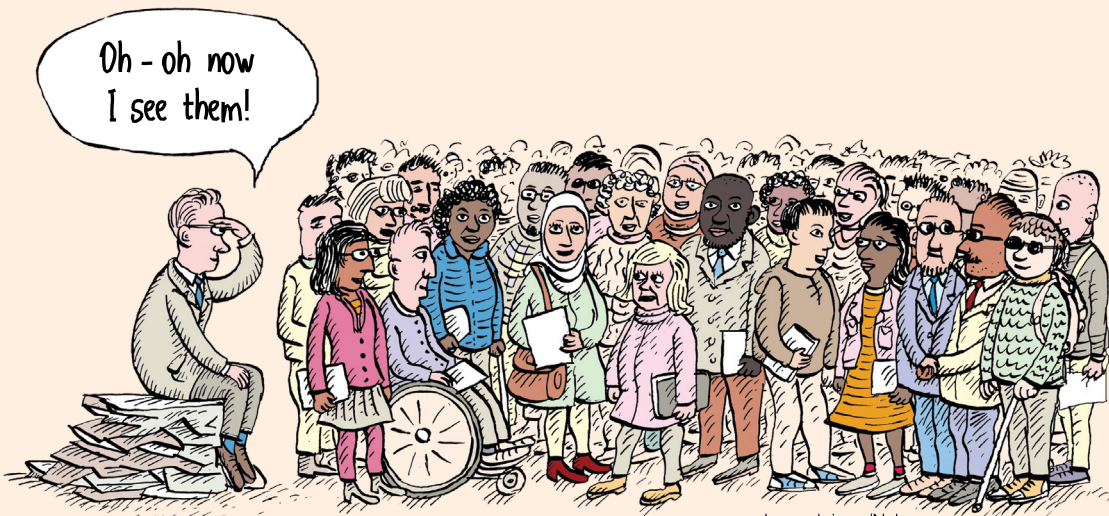
The Ombudsman had pointed out that non-granting of the increased unemployment benefit, which is intended for married seafarers with children, to a single mother, officer of the Merchant Marine, constitutes illicit discrimination due to family status (see *Equal treatment, Special Report 2017, p. 89*).

The provision of article 111 of Law 4504/2017 (Official Government Gazette A 184/29.11.2017) consolidates all the categories of unemployed seafarers receiving monthly unemployment benefit, including single parents.

Abbreviations

AADE	Independent Authority for Public Revenue
AFM	Tax Registration Number
AMKA	Social Security Number
ASEP	Supreme Council for Civil Personnel Selection
CoS	Council of State
DOY	Tax Office
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
EFKA	Single Social Security Entity
EKANA	National Record of Undesirable Foreigners
ELAS	Hellenic Police
ELGA	Hellenic Agricultural Insurance Organisation
ETAA	Unified Insurance Fund for the Independently Employed
EU	European Union
GEETHA	Hellenic National Defence General Staff
GSGE	General Secretariat for Gender Equality
HDPA	Hellenic Data Protection Authority
HNGS	Hellenic Navy General Staff
IKY	State Scholarship Foundation
JMD	Joint Ministerial Decision
KDSED	Code of Judicial Corps of the Greek Armed Forces
KESY	Central Board of Health
KKOE	State Aids Regulation
L.	Law

LCS	Legal Council of the State
NGO	Non-Profit Government Organisation
NHS	National Health System
OAED	Greek Manpower Employment Organisation
OGC	Official Government Gazette
OSY	Athens Road Transport S.A.
PC	Penal Code
PD	Presidential Decree
RDP	Rural Development Programme
SA	Société anonyme
SEPE	Labour Inspectorate
TFEU	Treaty on the Functioning of the European Union
UNCRPD	UN Convention on the Rights of Persons with Disabilities



Lappalainen/Nyberg