

THE GREEK OMBUDSMAN'S FIRST YEAR AS A SPECIALISED BODY FOR THE PROMOTION OF THE PRINCIPLE OF EQUAL TREATMENT

A. Law 3304/2005 and the new competences of the Greek Ombudsman's Office (GO)

B. Law 3304/2005 and the new jurisdictions of the Ombudsman

The passing of Law 3304/2005 on the *"Implementation of the principle of equal treatment regardless of race or national origin, religion or other beliefs, disability, age or sexual orientation"* constitutes a landmark for the promotion of the principle of equality and the protection of human rights in our country. At the same time, this piece of legislation strengthens the role of the Greek Ombudsman's Office with new competences, which are expected to contribute to the more effective pursuit of its institutional mandate.

Through this law, the two following Directives are incorporated into national legal order: a) Directive 2000/43EC *concerning "the implementation of the principle of the equal treatment between persons irrespective of racial or ethnic origin"* in the areas of occupation and employment, participation in unions and professional organizations, as well as in education, in social allowances and in access to the allocation and provision of goods and services which are provided to the public and b) Directive 2000/78EC *"for the combating of discrimination due to religion or beliefs, disability, age or sexual orientation"* exclusively in the area of occupation and employment.

These provisions of the above-mentioned law aim at combating both the phenomena of direct and indirect discrimination (article 3, paragraph 7). In addition, they provide special, self-contained protection against harassment (article 2, paragraph 2) and against an instruction to discriminate (article 2, paragraph 3). However, in addition to a specialization on these important concepts, these provisions organize, in essence, a complex institutional apparatus for the protection of the offended party, which far surpasses the traditional model of imposing sanctions in individual cases. Thus, although new broader administrative and penal sanctions (articles 16 and 17) are provided for, albeit in a vague manner, emphasis has shifted to: mediating action on the part of special public agencies in the promotion of equal treatment; to the mobilizing of civil society, both at the level sensitizing the public as well of representing the offended parties; to forecasting strategic actions and institutionalized social dialogue; in addition to recommending affirmative action.

These new types of action, which are already provided for in the respective Directives, seem to correspond to the particularities of *"vulnerable"* groups which are the main recipients of the protection provided. Thus the Directives address the structural nature of the practices of unequal treatment and the need for broader social coordination in combating the phenomenon of discrimination. However, the wording of the above-mentioned statute, incorporating the two EU Directives adds little to the pre-existing Greek regulatory framework as it reflects the usual practice of the Greek legislator to adopt EU Directives without the necessary additions for them to be truly effective. Thus the burden of defining and interpreting these institutional innovations is transferred to the authorities that are responsible for their application.

In addition,, at least from a practical point of view, the innovative provision of article 14 appears to be the most crucial of all. Therein, the redistribution of the burden of proof regarding the documentation of illegitimate discrimination between claimant-

offended party and the defendant is attempted, through the limitation of the burden of the former to prove the claim against the latter simply prima facie. Sufficient access to data is likely to constitute the cornerstone of the proper application of the law and, more specifically, of the most effective implementation of the redistribution of the burden of proof.

As is also evident from his annual reports to date, the Greek Ombudsman's Office (GO) itself has already expended a portion of its actions in the examination of complaints from citizens concerning unequal treatment by institutions of the state. With these new legislative provisions, the GO nevertheless took on, over and above its self-evident competences on the protection of citizens from maladministration, which assumed the form of illegitimate discrimination, the role of the official agent for the promotion of the principle of equal treatment in the public sphere. With precisely this very specific mission in mind, by virtue of article 20, paragraph 2 of the new law the GO is not exempted anymore from the investigation of complaints related to the service status of civil servants, when these concern cases of discriminatory treatment.¹ However, in addition to strengthening and broadening the competences of the GO by allowing him to mediate in individual cases after a complaint, the new provisions codify a series of further institutional possibilities for action. Thus, in order to promote equal treatment, the GO may broaden and escalate the investigation and his mediation to a wider or higher level. He may draw up the related report and actively participate in the coordination and the sensitization of the state authorities and civil society. Particularly within the framework of his enlarged scope of action, the Ombudsman expects to build upon his cooperation with the new Committee for Equal Treatment of the Ministry of Justice (article 21) in addition to the Labor Review Board (article 29, paragraph 3), institutions which, although not stricto sensu independent authorities, have taken on the role of agencies for the promotion of equal treatment in the private sector.

C. Complaints which have been investigated by the Ombudsman

Since Law 3304/2005 came into effect, complaints from citizens have reached the Ombudsman protesting against unfair discrimination affecting them negatively that resulted from actions taken by the administration in violation of the new provisions concerning equal treatment. The first of these cases, which were investigated under the prism of the new provisions, came to a total of 26 (twenty-six), 9 (nine) of which are still under investigation. Of the remaining cases, 4 (four) had a positive outcome, 7 (seven) were judged not to fall under the provisions of Law 3304/2005, 3 (three) were set aside as groundless and 3 (three) as not falling under the jurisdiction of the GO. These cases are summarized immediately below and are categorized on the basis of the motive for discrimination and the relevant field of protection.

I. *Discrimination due to racial or ethnic origin.*

Field:

1. *Employment*

¹ More specifically, with the new provision, the final section of article 2 of the law 3094/2003 is modified as follows: "*Issues concerning the service record of personnel in the public service do not fall within its (that is the Ombudsman's) jurisdiction with the exception of the cases in which the Ombudsman acts as an agent for the promotion of the principle of equal treatment regardless of race or national origin, religion or other beliefs, age, disability or sexual orientation.*"

- a. A naturalized Greek woman (of Ukrainian origin), a trainee lawyer, requested that article 2, paragraph 1, section b of the Lawyers' Code not be applied in her case (Presidential Decree 3026/1954), "*A foreigner cannot be appointed as a lawyer until five years after obtaining Greek citizenship through naturalization.*" The woman in question had not yet completed her 18 month professional preparatory training period, after which she may apply to take the bar examinations, the successful completion of which would officially entitle her to practice law. The GO conceded that the provisions in question do indeed place naturalized foreigners in an inferior position relative to other Greek citizens with regard to national origin and thus raises issues concerning the implementation of the provisions of Law 3304/2005. Already having informed the local Lawyer's Union, the GO recommended that upon completion of her period of articling, the individual in question apply once again (case 12420/2004).
- b. A citizen protested that the official call for candidate experts at the Institute of Immigration Policy included the requirement of "*excellent knowledge of the Greek language*" noting that this specific requirement would lead to a discriminatory treatment of candidates of non-Greek origin. This complaint was filed due to the lack of lawful interest on the part of the complainant since he was not the 'directly interested' party affected. However, informal recommendations were made to the director of the Institute to take measures to ensure that the danger be averted that the above requirement listed in the Competition might lead to indirect discrimination due to national origin against the candidates who are not of Greek origin (case 3457/2005).

2. *Provision of Services – Access to Public Goods*

- a. Naturalized Greeks, from countries of the former Soviet Union, faced the refusal of the Ministry of Transportation to transfer the drivers' licenses, which had been issued in their countries of origin. The Ministry quoted a regulatory decision, according to which this possibility is extended only to those who acquired their Greek citizenship from birth (that is through an official act of citizenship recognition) and not to those who acquired their citizenship by naturalization (whether Greek ex-patriots or foreigners).

The GO initially deemed that the provision in question comes into direct conflict with article 4, paragraph 1 of the Constitution (the principle of equality). With regard to the agreement of the provision in question with the provisions of Law 3304/2005, it was decided that the specific provision introduces unfavorable discrimination due to national origin against the naturalized Greek citizen, whether of Greek ethnic origin - or not, with regard to the preconditions under which these people are allowed to drive. However, the discrimination in question falls within the field of the application of Law 3304/2005. To be more specific, the amateur use of a vehicle is indeed included in legal goods, the equal enjoyment of which the application of the principle of equal treatment assumes. However, access to disputed goods is not freely available to everyone in the sense of article 3, paragraph 1 section (h) of Directive 2000/43/EC and of article 4 paragraph 1 section (h) of Law 3304/2005, since it depends substantially on the previous acquisition in each separate case of the driver's license provided for in the law. The granting of such licenses

does not constitute a provision of services but is directly connected with the unilaterally exercised regulatory jurisdiction of the public agencies acting in favor of the public interest. It should be noted that the Ministry of Transportation responded in part to the observations of the Ombudsman and amended the contentious provision (cases 5672/2005 and 6297/2005).

- b. An Albanian national protested discriminatory treatment against him. On the one hand, the police at a Police Station in the countryside made demeaning comments about his person during the reported incident, and he was not referred to by name as was the case with the other Greeks involved. Rather he was characterized as an 'Albanian shepherd'. On the other hand, there was a lack of response from the same police station regarding a call about a serious incident of a fight between private individuals in which the Albanian national mentioned above was involved. The GO is investigating whether the above actions or derelictions of duty by the Administration fall into the field of "*provision of services to the public*" in the sense of article 4, paragraph 1, section (h) of Law 3304/2005 (case 12460/2005).

3. *Provision of Services – Housing*

- a. A Greek citizen, of Roma origin, protested about the imposition of overly large fines by the City Planning Directorate of the Prefecture of Argolida. These fines were imposed on the grounds that an arbitrary makeshift dwelling had been erected and they resulted in the demolition of the makeshift shack. This shack had been situated temporarily on a lot owned by the complainant for the housing needs of himself and his family. His intention was to demolish this construction once and for all following the completion of the construction of a dwelling on the above-mentioned lot. It should be noted that the lot in question had been purchased by the roma citizen with the utilization of a mortgage obtained within the framework of a program for the settlement of the Roma people.

The GO addressed the Prefecture of Argolida and the Municipality of New Tirintha. The forcing of the above mentioned Roma into the demolition of his makeshift dwelling and the mistaken imposition of fines (actions which may conceal discriminatory treatment) were pointed out to the Prefecture. In addition, a question was posed to the municipality of New Tirintha concerning the cancellation of plans to open up the road, in the region where the above-mentioned dwelling was located. This cancellation seemed to be connected with the fact that many Roma citizens purchased lots in the area. In a written response, the Prefecture admitted a partial violation of the law in the imposition of fines, without however providing satisfactory explanations on all the issues, which were raised by the GO and more specifically, on the issue related to the legality of the maintenance of a makeshift dwelling on the lot owned by the Roma which had been incorporated into the settlement program. On the other hand, the Municipality of New Tiryntha has not responded satisfactorily to the issue raised by the GO, concerning the delay of the competent municipal authorities to take action in order to open up a road in the region in accordance with the relevant decision of the Municipal Council. It must be noted that the municipality of New Tirintha had accepted the concession of the adjacent owners with the intention to open up the road. As a result, the recent retraction of its own concession may result in the arousal of suspicions of bias. Intending to make a general intervention on the issue due to the complexity of the problem raised, the GO has put

forward his/her opinions to the Prefecture of Argolida, to the Ministry of Internal Affairs and Public Administration and Decentralization and to the Ministry of the Environment, Land Planning and Public Works. The GO has requested that the issues in question be clarified and that the local practices of all the services involved be harmonized with the settlement program securing in this way the possibility of temporary legal settlement on the privately owned real estate until the completion of construction (case 12372/2005).

- b. A local Roma Association submitted a complaint to the GO protesting the limited efforts, which had been made to find a solution to the housing problem of its members who live within the administrative boundaries of the Municipality of Larissa. In the process of searching for a solution to the above-mentioned problem, the Municipality of Larissa determined that the purchasing of lots within the boundaries of the Municipality is financially out of the reach of most people due to the high cost. For this reason, the relocation of the Roma to the Koulourion area, on the boundaries of the industrial area was proposed. However, the local Roma Association, through its official representative, refused the solution proposed stressing the possible adverse effects on the health of the Roma people, due to the location of the particular area, near the industrial zone. Following that, Roma citizens of the Municipality purchased land in the adjacent Municipality of Platykambos with the intention of creating a settlement, utilizing housing mortgages which had already been approved. After the reactions of the inhabitants of the region, in combination with the fact that the particular land – according to a plan of Presidential Decree – was characterized as agriculture land of high productivity, the abeyance of the issuing of building permits was decided upon for reasons of public interest (23/12/2004). Then, following oral commitments from the Mayor of the Municipality of Koilada that he would allow the relocation of Roma people on land within the boundaries of his Municipality, Roma residents purchased land in the Municipality of Koilada. Since however at that very time the “Plan for the Residential Development of the Open City” was proposed, a six month abeyance was issued on permits and construction work in the contested area, while once again the specific plots were characterized as agricultural land of high productivity in a decision put into effect in September of 2005. In March of 2006, when the abeyance comes to an end, the 18-month guarantee of the Greek state for some of the mortgages, which have already been granted to Roma people, will have expired. As a result of the above, many Roma that have successfully acquired mortgages will not be able to satisfy their housing needs (case 18637/2005).
- c. A citizen protested about the inordinate delay of the competent service in the Municipality of Ano Liosia to provide her with the Certification of Municipal Taxes for Real Estate Holdings for the real estate which she had inherited, so that she could use it in the drawing up of a deed of purchase. It must be noted that the purchaser was a Roma citizen. After the intervention of the GO, the local certification was granted to the complainant. However, the GO is paying further attention to the issue, given that in the past the

Office has received complaints of similar delays regarding the granting of such certifications by the same Municipality, particularly in cases in which those taking part in the purchases were members of the Roma community, a fact which creates suspicions of discrimination.

- d. A non-governmental organization which is active in the field of human rights protection, made a complaint with regard to the delay in the implementation of the “*program for the settlement of Gypsies*” of the Municipality of Patras, more specifically with regard to the Riganokambos area. The competence of the GO to investigate complaints submitted by agencies of civil society, is prescribed in article 13, paragraph 4 of Law 3304/2005). According to this article, a power of attorney on behalf of the offended party is required (a notarized or private document with an authentication of the signature). On the other hand, the relevant EU provision requires the approval of the offended party for the engagement of an association or organization in the judicial or administrative procedure, allowing in this regard, alternative and less formal forms of authentication of the consent of the complainant. Nonetheless, in this specific case, the organization in question failed to invoke any form of representation of the offended party. This omission of the non-governmental organization forced the Authority to refrain from the further investigation of this complaint (11906/2005).

4. Education

An Albanian national protested to the GO about the refusal to grant him a student allowance for housing in addition to a scholarship from the State Scholarship Institute, with the rationale that he did not hold Greek citizenship. During the investigation of this complaint, the GO ascertained that the specific legislation did not recognize the right to withhold the provision of these from foreign students of third countries, without however this discrimination, on the basis of the citizenship of the applicant falling under the protective field of Law 3304/2005).

More specifically, the implementation field of the principle of equal treatment regardless of race or national origin, includes the field of “*...education...*” (article 4, paragraph 1, section (g)). In this regard, the investigation of the request of the complainant is initially allowed under the prism of the above law. However, the implementation of the principle of prohibiting direct or indirect discrimination in the exercising of a right or the enjoyment of a legal good, recognizes differentiation in treatment based on citizenship as the only allowable deviation. More precisely, according to article 4, paragraph 2 of Law 3304/2005 “*The provisions of this chapter are not implemented in the cases in which different treatment is foreseen due to citizenship and do not touch upon the treatment which is connected with their legal status as citizens of third countries or individuals without citizenship.*” From a combination of the above, it can be concluded that the differentiation in treatment due to citizenship is acceptable according to the established legislative framework for the combating of discrimination due to race or ethnic origin (case 3393/2005).

II. **Discrimination due to Disability – Reasonable Adaptations and Special Measures**

Field:

Employment

- a. A woman with a 51% disability was hired by the “PAPAGEORGIU” hospital as a member of the ward staff. The administration of the hospital denied her request to be granted a certificate of disability and following the completion of her probationary period, she was fired with the rationale that she couldn’t fulfill her duties. Orally however, according to her claims, she was told that she was being fired because she is disabled. After this, the complainant applied for the same position which was posted again, and she was turned down on the basis that she had already been evaluated as an employee and that she was not able to respond adequately to the duties of this position. She filed an appeal and she is awaiting a response. The GO deems that there is a prima facie case of discriminatory treatment (article 8, 1 Law 3304/2005) and is awaiting the end of the three month period from the submission of her appeal to the hospital or the issuance of a decision on this matter in order to initiate action towards the hospital (case 9581/2005).
- b. A citizen with a history of mental illness was hired by the Greek Postal Service as part of the affirmative action program of Law 1648/1986 concerning persons with special needs. He has been working there since 1990. During the last year, the two subsequent supervisors of the branch, on the one hand, did not accept medical certificates as justification for his absence from work and as a result, they proceeded in abridgements of his salary. At the same time they displayed an unfavorable stance in his request to be transferred, which they finally were forced to repeal. Since the complainant appealed and adduced sufficient evidence to support his claim concerning his adequate service, the GO deemed that there is a prima facie case of discriminatory treatment (article 8, 1a of Law 3304/2005) and addressed the Greek Postal Service immediately awaiting the relevant reply (case 7871/2005).
- c. The GO investigated a complaint submitted by an individual with special needs, who needs to use a wheel chair. More specifically, the complainant requested the intervention of the GO due to the fact that the interruption in the functioning of a traffic light for pedestrians on Basilissis Sofias Avenue resulted difficulties of access to her daily job at the hospital located across the street. The GO reminded the competent public services of its obligation (article 10 in combination with article 12 of Law 3304/2005) to take measures to facilitate the circulation of individuals with mobility problems at the location of the specific traffic light (case 15589/2005).
- d. A woman with special needs pleaded direct discrimination due to the refusal of the management of a branch of the National Bank of Greece in a city in the countryside to hire her in accordance with the provisions of Law 2643/1998 “concerning the employment of staff from special categories”. Since Banks are excepted explicitly from the field of jurisdiction of the Ombudsman (article 3, paragraph 1, Law 3094/2003), the GO passed on the complaint to the Committee for Equal Treatment and to the Directorate of Social Security of the Ministry of Labor and Social Security to investigate whether an examination of this case falls within their jurisdiction, in particular as regards their jurisdiction as agent for the promotion of the principle of equal treatment. (case 5410/2005).

III. Discrimination due to Age

Field:

1. Participation in Professional Organizations

A citizen addressed the GO requesting the investigation of certain provisions of the Lawyers' Code, and more specifically their accordance with the principle of equal treatment. These provisions set an upper limit on the age at which the law school graduate may be entered into the registry of trainee lawyers of the Bar Association. The GO ascertained the need for further specification of the provisions of the Lawyers' Code towards their clear harmonization with the preconditions prescribed in Law 3304/2005 and more specifically their accordance with the requirements related to the legitimate differentiation of treatment due to age in the field of occupation and employment. This further specification should help to avoid the possibility that these provisions be considered contradictory to the principle of equal treatment and for this reason rescinded according to the law 3304/2005 (article 26: "*when this law comes into effect, every legislative and regulatory provision...which is contrary to the existing law, that of equal treatment, is rescinded.*") For this purpose, the GO addressed the Ministry of Justice, notifying at the same time, the relevant complaint to the President of the plenary session of the country's Bar Associations. A response is pending (case 18213/2005).

2. Employment

A citizen submitted a complaint to the GO requesting the investigation on whether the qualifications set out in the official call for candidates experts at the Institute of Immigration Policy correspond to the principle of equal treatment, when an upper age limit was set for participation in the selection process. The GO sent a written communication to the President of the Institute requesting the rationale for this deviation in the terms of the competition from the general prohibition of the setting down of an age limit. The GO examined the accordance of the above procedure with the procedure foreseen in Law 3051/2002) (the prohibition of an age limit for permanent employees of public agencies) and the special preconditions for legitimate exceptions from this general prohibition foreseen by Law 3304/2005). A response is pending (case 18429/2005).

IV. Discrimination due to Religion or other Beliefs

Fields:

1. Employment

Three citizens complained about their treatment in their occupation, claiming that due to their party affiliations they were subject to discrimination on the grounds of their political beliefs. The GO rejected their complaints and filed them due to the fact that discriminatory treatment against an employee based on party affiliations does not fall under the jurisdiction prescribed in Law 3304/2005. This is because party affiliations do not connote the concept of "*beliefs*" such as those which are safeguarded under article 7, paragraph 1 of Law 3304/2005.

The concept of beliefs, according to the above law is not of course confined exclusively to religious beliefs. However, the will of the legislator was not to broaden the concept of beliefs so as to include all types of choices, practices or motives. According to the interpretive approach of the GO, following a comparative study on

the issue, the Office has concluded to consider as beliefs safeguarded by the above provision only the conscious choices related to an ideology or a worldview, of which:

- a) the foregoing manifestation is proven with analogous public action or way of life and b) there is a causal relation between the beliefs and the unfavorable discrimination. In contrast to the current broad use of the term “*discrimination due to beliefs*” the more narrow legal use of the term “*political persecution*” does not include without any other precondition the phenomenon of unfavorable treatment in the terms of employment in the public service. Law 3304/2005 does not safeguard the requirements of meritocracy and transparency in the terms of employment in the public service in general. It simply safeguards the holder of comprehensive beliefs from the dangers of discrimination. The need for meritocracy among public servants has the force of a principle of law and the requirement that it be upheld constitutes an actionable right. Nevertheless, however, the legislator did not grant the jurisdiction for the implementation of the above regulations to the GO. This jurisdiction is reserved exclusively for the administrative courts (cases 13820/2005, 18035/2005, 16885/2005).

2. Participation in a Professional Association

A Muslim doctor, former citizen of Jordan, who had acquired the Greek citizenship, complained about the refusal of the Medical Association of Thessalonica to register him as a member, although he met all the required preconditions. After an informal intervention of the GO, the Office was informed that finally the registration had taken place (case 12573/2005).

3. Provision of Services

A group of Muslims, residents of a municipality in the Prefecture of Rodopi, complained about the behavior of the policeman who serves at the police station of the region. In particular the complainants protested against the imposition of fines upon them for questionable infractions in addition to the use of threats and insults. They claimed that this behavior constituted harassment and given this they requested that the above mentioned behavior be investigated under Law 3304/2005. Although the GO deemed that the actions charged do not fall under the field of action of the Police which can be considered as “*provision of services*” in the way it is defined in the law, the GO proceeded with informal intervention to the Supervisory Authority (the Directorate of Police for Rodopi), in order to check the legality of the actions of the policeman under the general legislative framework. This intervention led to the conducting of preparatory research and to the final conclusion that there was no responsibility requiring disciplinary action on the part of the policeman involved. The GO carefully monitors these type of cases because disputes of this kind may lead to a disturbance of social peace (case 12356/2005).

V. Discrimination due to Sexual Orientation

Fields:

1. Education-Training

A citizen of FYROM, a post-graduate student on a Greek government scholarship, accused the administration of a department of the University of Athens of discriminatory behavior against him, due to his sexual orientation. Specifically, he protested to the GO against the administration of the University, claiming that while

he reported harassment by his fellow students, the administration took measures against him and threatened him with expulsion as the person responsible for the disturbance of the smooth running of the department.

The research of the GO demonstrated that the University quite correctly understood that there could be a conflict between students that was based on problematic personal relationships rather than on the sexual orientation of the complainant. However, the GO disagreed with the possibility of the expulsion of the student. So, following the intervention of the Ombudsman, the recommendation of expulsion was withdrawn and the student in question was allowed to continue his studies as a scholarship student. In any case, despite the arguments put forward by the complainant, the case in question does not fall under the protective field of articles 7 and 8 of Law 3304/2005, since, according to the above provisions, post secondary education is protected against discrimination only on the grounds of race or ethnic origin, but not on the grounds of sexual orientation (case 2967/2005).

D. Developing the Ombudsman's New Institutional Weaponry for the Promotion of Equal Treatment

I. Strategic Planning and Policy Implementation Monitoring concerning Housing and Resettlement of Roma Population

Various manifestations of exclusion, which most Greek Roma continue to experience in social, economic and political life have repeatedly been investigated by the GO. Aspects of this eight year experience are recorded in the annual reports of the GO (see Annual Report 2000, pp. 61-67, Annual Report 2002, pp. 106-107), in the Special Report of the Department of Human Rights and the "*Disciplinary/Administrative investigation of charges against police officers*" (See Annual Report 2004, pp. 222-223), in many findings and also in the Special Report of the National Committee for Human Rights (2002).

The unacceptable and, in certain cases, demeaning to human dignity, phenomenon of the, mainly indirect, discriminatory treatment of members of this population is often linked to institutionalised practices of discrimination. Despite the legal and ethical importance of such discrimination, what experience taught the GO is that the persistent practices of social exclusion of the Greek Roma rest in structural characteristics of Greek society (such as the non-transparent organization of employment market, the anarchic residential structure of the country and the clientelistic nature of political life, particularly at a local level).

The structural nature of this phenomenon in reality makes the intervention of agencies whose mandate includes safeguarding human rights, such as the GO who focuses its action on individual cases, in large part ineffective. Thus even if the particular Roma citizen finally manages to acquire the permit or the certificate which he needs, in order to avoid the violent demolition of his temporary residence or finally to register his children in school, the effects of too many factors may well defeat the more long term life plans which he attempted to serve in the above noted manner. Such findings clarified for the GO the need to escalate its involvement in this specific, exceptionally broad field for human rights activism, by developing projects of broader scope and seeking solutions at the level of the coordination between state agencies, local government and of civil society, as well at that of legislative or administrative regulatory activity. The Ombudsman's establishment as the national equality body for the public sector under the terms of article 19 of Law 3304/2005 has the potential to attribute to this escalation of the GO's activities the character of *strategic enforcement of the directions of the Directive* (EC 2000/43 (see in particular article 7,

paragraph 1). Within the framework such upgrading, the GO chose to focus its attention on institutional practices in handling of the settlement of the Greek Roma population. In addition, as the Ombudsman's experience has demonstrated to date, the peculiar issue of settlement constitutes a condensation of the basic problems of social integration and participation of this sensitive segment of the population and, at the same time, the axis around which these problems evolve. This is of course now recognized by the Greek administration since the only two substantial national positive actions for the Roma which have to date been developed and are evolving (the "*Integrated Action Program*" and the program for granting mortgages for settlement) are also focused precisely on the issue of settlement.

Such strategy consists into broaden the field of investigation of individual cases brought at the GO through complaints by examining the influence of side factors such as concentration of populations at regional level, living conditions settlements, local sentiment and institutional practices etc. This will enable to focus on, put forward and evaluate: the current settlement practices of the Roma; the particular manner in which various types of settlement are connected with the more specific problems of social exclusion, particularly with regard to health, employment, education, participation in public life; in addition to ways in which the administration has responded particularly in the practices for the handling of the problem, in the field of land use, town planning, their status on the municipal roll, welfare, and education. It is expected that such an approach will reveal in their tangible manifestations some important factors for the tremendous lack of participation of some hundreds of thousands of Greek citizens in mainstream social, financial and political life. It will also enable a typology of the ways in which responsible authorities respond to and handle such problems on their part. In this way, a more holistic assessment of the these practices, both from the point of view of their legality as well as from that of their effectiveness with respect to the declared aims of public care for the Greek people of Roma origin will be possible. Consequently, it is also anticipated that the institutional and regulatory deficit, which contributes to the perpetuation or the exacerbation of the problem, will be systematically demonstrated so that a useful contribution of the GO with specific institutional proposals becomes to the greatest degree possible.

The action in question for strategic implementation has developed and continues to do so through a number of visits to and examinations of Roma settlements throughout the country and through meetings with the responsible agencies of local government and of the central administration. Part of the action of the Children's Rights Ombudsman is focused in this instance particularly on issues of the education and medical care of Roma children and is to a significant degree coordinated with the other activities of the GO.

The starting point for these projects are individual complaints that come from the Roma, from organizations of civil society and from citizens who have complained about the negligence of responsible authorities concerning the confrontation of the inconveniences they suffered due to their symbiosis with the Roma population. These actions aim initially, at direct intervention on the specific problems underlined by these complaints, given that these problems, in the vast majority of cases, is connected with the familiar fundamental issues of the social exclusion of the Roma. The action of the GO also includes the recording of the parameters which connect the background of the problem in the area (also including the settlement of other groups of Roma in the vicinity) and of the handling of this by the responsible local authorities (police, municipal, regional) as well as of the creation of close relationships and cooperation with the parties involved.

Within the framework of this action, the Department of Human Rights, in cooperation with the Department of Quality of Life and the Department of Social Welfare held a series of meeting with the responsible agencies, both at the level of local government and the central administration. At the same time, they attempted to make direct contact with the Roma individuals directly affected. The main goal of the meetings with the responsible agencies was to monitor the planning and to put solutions into effect, particularly with regard to the complex issue of institutional practices for the handling of the settlement of the Greek Roma population, given that the basic problems of social integration and participation of this sensitive population are focused first and foremost on this field. Besides, it is in this field that the experience of the Ombudsman has demonstrated the importance of the coordination of actions and the on-going cooperation of the agencies involved, in addition to the creation of good trusting relationships between the state agencies and the Roma themselves. More specifically, within the framework of the above initiatives, the Deputy Ombudsman from the Department of Human Rights and its staff, held meetings with the General Directorate of Development of the Ministry of Internal Affairs, Public Administration and Decentralization and with the Mayors of the cities of Agia Paraskevi, Patras, Aspropyrgos and Halandri. At the same time, the Ombudsman conducted investigations in Roma settlements in Attica (Aspropyrgos, Votanikos) and also in Municipalities throughout the country and more specifically in the Municipalities of Ermioni, Larissa, Mesloggi, Midea, Patras, Rio, Nea Kios, Tegeas and Nea Tyrentha. The results of these meetings and the findings from the investigations have already provoked, in more than the above noted cases, the written intervention of the Authority towards each of the agencies involved and are presented in detail in the 2005 Annual Report.

II. Public Awareness Activities- Dissemination of Knowledge- Dialogue with Civil Society

- 1. Formation of a permanent group within the Ombudsman dealing with cases related to the implementation of Law 3304/2005*
- 2. Ombudsman staff training and dissemination of knowledge*

Members of the GO staff participated in instructional and consultative seminars during the stage prior to the incorporation of the Directives, which are organized by international agencies and aim at harmonizing EU Directives with national laws. Indicatively:

- Participation in the second Conference of the Program of the European Commission *“on the dynamic incorporation of EU legislation concerned with the combating of discrimination (on the basis of nationality, race, sex. etc.) into the national legislations of the member states: The Role of Special Agencies”* on the subject : *“Safeguarding against Discrimination and Equality of the Sexes”*. The conference (Vienna, Austria 20-21.05.2003) was organized by the Migration Policy Group and the Austrian Ombudsman on equality of opportunities in employment.
- Participation in the fourth conference of the above mentioned program on the subject of *“Discrimination in Employment. Rectification and Strengthening Measures”*. The conference (Stockholm 14-15.10.2003) was organized by the Swedish Ombudsman in cooperation with the Migration Policy Group within the framework of a broader Program of the European Commission on the Combating of Discrimination (2001-2006).
- Participation in a conference within the framework of the above mentioned program (London 29-31.01.2004) on the subject *“Towards the*

Uniform and Dynamic Implementation of EU legislation against Discrimination. The Provision of and Access to Goods and Services and Positive Actions”.

- Participation in a conference organized by the European Commission and the Dutch Ministry of Labor within the framework of the Dutch Presidency of the EU on the subject “*Mainstreaming Policy against Discrimination*” (The Hague 22-23.11.2004)
- Participation in a conference organized by The Academy of European Law on the subject of the “*Combating Discrimination in Everyday Practice*” (The Academy of European Law, Trier 2-3.05.2005)

An internal workshop, attended by the entire scientific staff of the GO, was organized, as well. Its purpose was to examine in detail the interpretation and the implementation of the provisions of Law 3304/2005 and the two EU Directives and to identify best practices in the handling of such cases.

Furthermore, two staff members of the Authority attended the instructional program of the European Institute of Public Administration in Maastricht on the subject of the implementation of the principle of equal treatment.

Finally on 20.12.2005, the Deputy Ombudsman for Human Rights and a member of the scientific staff of the GO participated as lecturers in a training session of the Labor Inspection Body.

3. Participation in the National Working Group of the EU Program against Discrimination.

The GO participated in the National Working Group of the program “*On the Differences in and the Differentiation of Discrimination*”, an initiative of the General Directorate of Employment, Social Affairs and Equal Opportunity of the European Commission. The aim of this program is for the national agencies that combat discrimination to coordinate with the organizations of the groups representing those who suffer from discrimination to take measures to publicize the related legal framework and practices. In addition, the program aims at the sensitization of the services and organizations of the private and the broader public sectors on issues of discriminatory treatment and in the mobilization of civil society in the combating of such phenomena. Within the framework of attempting to achieve this goal, the Deputy Ombudsman for Human Rights and a member of the staff of that Department participated in a special one day seminar on 7.12.2005 at the Ledra Marriot Hotel on the subject of “*The New Legal Framework for the Combating of Discrimination and the Agencies for Promoting the Principle of Equal Treatment*”.

4. Participation in Equinet

The GO actively participates in “Equinet”, a European network of horizontal connections for the coordination of the official agencies in the realization of the EU Directives against discrimination in the EU countries as well as in the countries in the process of becoming members. Specifically, the GO plays a strong role in the second working group of the network which is involved with the exchange of information on the means and the strategic actions with which the agencies implement the directives for a more effective and concerted exercising of their responsibilities over and above the individual cases. Specifically, this cooperation involves the continuous exchange of data with regard to cases and good practices in the handling those cases through the electronic exchange of questionnaires and

regular meetings. In Equinet, the Deputy Ombudsman for Human Rights represents the GO.

E. Conclusions – Issues for the Practical Implementation of Law 3304/2005

The small number of complaints investigated by the G.O. as a national equality body and the fact that this role was accorded to it quite recently, do not at present allow the drawing of definitive conclusions. They do however make possible the formulation of some basic preliminary observations:

1. The attempt to implement the provisions under discussion during the investigation of the above noted cases has demonstrated serious interpretive difficulties connected with the very broad and unclear regulatory content of the EU provisions incorporated into Greek law under Law 3304/2005. The interpretive difficulty in the concept of “*provision of services*” has given rise to a singular skepticism, particularly with regard to the public sector and to actions, such as granting permits or policing, of state institutions which belong first of all to the core of public or, rather, administrative action. Equally thorny interpretive issues appear to be stirred up in: the lack of clarity in the designation of “*others*” except in the case of religious beliefs which may constitute a basis for discrimination; the unclear relationship of subjective and objective data to prove the occurrence of “harassment”, and the vague formulation of the procedural mechanism for the new distribution of the burden of proof. By and large, the acquired experience of the GO in the field of combating discrimination and his/her cooperation with the specialized equality bodies for promotion in the other member states of the EU allows the overcoming of these difficulties. However, it is quite possible that general guidelines from the EU Commission would be extremely welcome and would at least smooth the way for a largely uniform implementation throughout the EU.
2. Unfortunately the national legislator did not take care to smoothen these interpretive difficulties since, as we have already noted, he/she was largely satisfied with the transferring of the EU regulations themselves. In some cases, the impression is created that the national legislator deviates to some degree from the EU regulations. One might question for instance the degree to which the specialized equality body created by the said statute for the private sector strictly conforms to the commonly accepted standards of institutional independence under the so called *Paris Principles*. Over and above this, the condition of the formal power of attorney for mobilizing the agents of civil society supporting persons suffering discrimination seems clearly more limiting when compared to the condition of “*consent*” mentioned in the EU regulations (article 7, paragraph 2 of Directive 2000/43 and article 9, paragraph 2 of Directive 2000/78). Primarily however, it must be noted that the national legislator neglected to make use of the clause of potentiality of the respective Directives and to extend the field of protection of its regulations, as he/she

could have done, into other areas well beyond those specifically mentioned in the Directives and limited it in essence to the field of employment.

3. Despite the activation of the National Working Group, under the aegis of the EU and the Ministry of Labor aimed at broadly publicizing the new institutional framework, it would definitely be inaccurate for one to speak today of the public having a serious level of knowledge on this issue. A more intense activation of the Group, in combination with the planned publication of the related printed informational matter of the GO itself on combating discrimination, particularly in the public sector, is anticipated to alter this situation. In contrast however to the broad public, NGOs and other agencies of civil society appear, at least initially, well informed of the institutional developments in the field of the combating of discrimination. However, interpretation of the respective provisions on their behalf appears to serve the goals of militant activism, particularly with regard to the issues of the new distribution of the burden of proof and of the preconditions for representation of offended parties. It is however worth mentioning that although the organizations of civil society are relatively well informed, only one of these has addressed itself to the Ombudsman on issues regulated by Law 3304/2005. It was in fact done without certification, without power of attorney or any other form of consent on the part of the offended parties. This relative inertia should constitute a problem and activate the responsible Ministries of Justice, Labor and Internal Affairs towards providing incentives and support and perhaps funding to trustworthy organizations which function effectively, particularly in the field of counseling, victim support and of representation before the authorities.
4. Furthermore, it must be noted that the citizens who explicitly sought the protection of Law 3304/2005 belong to groups with relatively easy access to the specific legal information (public employees, members of associations, and so on). Nevertheless, in these cases, the level of knowledge on the issue appears to have been insufficient, since many of the complaints were likely due to reasons mentioned in the related legislation. They do not however fall under the provisions of this field of protection. The fact that the GO intervened in their cases on the basis of his general jurisdiction mitigated the disappointment of those mentioned above. This jurisdiction is thus demonstrated to be an important means of counteracting the reduced range of the new regulations attributed to the hesitancy of the national legislator
5. In addition, it is also problematic that most of the complaints which reached the GO concern discrimination based on reasons, the publicizing of which, would not usually cause additional social distress to the offended parties (as for example age or disability). The relative ignorance, the fear of social exposure or other suffering unofficial sanctions or social pressure in case a complaint for unjustified discrimination is filed (e.g. by a teacher of a public school on

grounds of sexual orientation), in addition to the relatively low participation of persons from visible minorities on the staff of the Greek administration may explain the reduced flow of serious complaints. The smaller number of complaints itself cannot however be seen as proof of the non-existence of serious phenomena of illegitimate discrimination.

6. Finally, one must not overlook the general clause of exception from the regulatory field of Law 3304/2005 concerning discrimination due to citizenship. So long as discrimination based on citizenship finds a foothold in this legislation, in combination with the fact that in our country, access to a number of fields of employment continues, perhaps unjustifiably to be tied to Greek citizenship, the preconditions are created for extensive discrimination against foreigners due to race or national origin.