THE GREEK OMBUDSMAN
INDEPENDENT AUTHORITY

EQUAL TREATMENT

SPECIAL REPORT 2021

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

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PREFACE
- INTRODUCTION

Preface

The on-going emergency operating conditions of the economy and the labour field, combined with the restrictions on social action, as a consequence of the COVID-19 pandemic, had a catalytic effect on society in 2021. As expected, the challenges that the pandemic brought with it were more intense for the most vulnerable citizens. The rapid and extreme rise in energy prices, which quickly led to a price appreciation of almost all goods and services, left a significant number of the population struggling to cover basic needs. The effects of the prolonged rise of extremely high energy prices are expected to have even more dramatic consequences on the economy, labour and society in general in 2022, and once again the most vulnerable groups of our fellow citizens are expected to be impacted the most.

Thus, for 2021, the number of complaints for discrimination on grounds of gender received by the Greek Ombudsman indicates that our country still needs to fill in several gaps in this area. Specifically, about half of the complaints that the Ombudsman received for 2021 were complaints for discrimination on the grounds of gender. The number of reported incidents of discrimination on grounds of disability is also noteworthy, corresponding to approximately ¼ of the total number of complaints for 2021.

Important regulations were recognized and welcomed in the Authority's special report for 2020, specifically those pertaining to work-life balance issues, such as, the expansion of parental benefits and leaves. The year 2021 was marked by the institutionalization of important legislative initiatives for the improvement of work-life balance but also by the substantial revision of family law towards the establishment of an equal role for parents in the upbringing of children. In fact, with Law 4808/2021 (OGG A '191), Directive 2019/1158, on work-life balance, was incorporated, at least one year earlier than the planned transposition deadline (August 2022). Similarly, Convention 190 of the International Labour Organization, on elimination of violence and harassment in the workplace, was transposed. The new law focuses on the protection of employees who make use of the favourable regulations for family life, as a practical proof of the importance attributed by the European Union and, respectively, the national legislator, in maintaining the necessary balance between professional and family life. At the same time, this transposition is of great importance in regard to the Convention on the Rights of Persons with Disabilities, due to the facilitations provided to the caregivers of persons with disabilities, in the field of employment and work.

A legislative initiative that is expected to have a decisive impact in reshaping the social conditions of cohabitation was the amendment of family law. The Ombudsman, who had long been in favour of the urgent need to revise the family law framework, saw important elements of its proposals be included in the draft law, which constituted Law 4800/2021.

Every annual report of the Ombudsman is an exercise of reflection and self-criticism regarding the level of respect for the principle of equal treatment in our country. In addition to the institutional and systemic distortions that it records and highlights, from the entanglements in the functioning of the public sector to the persistent sources of unfair discrimination in the private sector, it raises uncomfortable questions about the mentalities, practices and stereotypes that exist in our society.

The Ombudsman, as the institutional body for the protection, defence and promotion of the principle of equal treatment in the country, aims to continuously reinforce its role, and to strengthen the effectiveness of its interventions in order to make a decisive contribution to alleviate discrimination and secure equal opportunities for all.

Andreas I. Pottakis

The Greek Ombudsman

Introduction

The adoption of Law 4808/2021 (OGG A΄ 191/19.06.2021) in 2021, constitutes a crucial legislative development for issues of equal treatment in employment and occupation. This law, among other things, ratifies the Convention 190 of the International Labour Organization aiming to combat violence and harassment in the workplace and simultaneously transposes into our national law, at least one year before the relevant deadline, the Directive 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance.

The ratification of the Convention expands the scope of protection because it now includes all forms of violence and harassment, regardless of whether they constitute a form of discrimination according to Laws 3896/2010 or 4443/2016. All employees are protected regardless of the type of their contract, whether it is active or not, or whether their work is provided in the formal or informal economy. Other significant directives include the obligation of employers to establish procedures for investigating complaints related to incidents of violence and harassment, and the obligation of larger companies to formulate policies to prevent and combat violence and harassment in the workplace, which include mechanisms for investigating complaints within the company. External control bodies of the relevant complaints are: a) the Greek Ombudsman, if the case falls within the scope of Laws 3896/2010 and 4443/2016 and raises suspicion of discrimination on grounds of gender, race, ethnic origin, religion or other beliefs, disability or chronic disease, marital or social status, age, sexual orientation, identity or gender characteristics and b) the Labour Inspectorate in any other case and for any other ground.

This law maintains the model of cooperation between Labour Inspectorates and the Ombudsman, as formulated by Laws 3896/2010 and 4443/2016, a fact that seals the reliable and efficient cooperation that has been achieved so far between the two authorities. It is worth mentioning that there has already been a significant increase in the labour disputes that are forwarded to the Ombudsman by the local Labour Inspectorates, which concern harassment in its area of competence. In 2021 the Ombudsman received a total of 41 complaints pertaining to harassment (mainly sexual harassment) in the public and private sectors, while, in the recent past, the number of relevant complaints on an annual basis did not exceed the number of 20.

The institutional role of the Authority is further strengthened by Law 4808/2021. In the section concerning the transposition of Directive 2019/1158 the Ombuds-

man is assigned the competence to control article 32 of the law which concerns discrimination in granting leave to parents and caregivers. A characteristic aspect of the new regulations is the emphasis towards the empowerment and legal safeguarding of rights, aiming at the substantial and equal contribution of working parents, regardless of their gender, to the upbringing of children but also, to change perceptions regarding the distribution of gender roles in private and professional life.

It is indicative that in the reality, working mothers tend to work fewer hours in paid activity and spend more time on unpaid care responsibilities. Inequalities in the workplace, whether they concern the employment rate of women, the form of employment (e.g. part-time), remuneration, level of responsibility, or risk of job loss (pregnancy, maternity), clearly manifest that the position of a working woman is more disadvantaged. The position of women in society becomes more burdensome if to the above we add the responsibility of caring for children, elderly or other vulnerable dependent relatives, which is still disproportionately borne by women in our society. This does not mean that male employees are not negatively affected by the consequences of this role distribution. It is revealing that working fathers are often either completely excluded from the exercise of child-rearing rights or are subject to unjust restrictions. This fact undermines the balance between professional and private life and maintains the existing gender stereotypes related to the distribution of work and family roles.

These findings, easily recognisable in the Greek reality and in the experience of the Authority, constituted the basis of the provisions of the Directive and the subject of a special study and intervention carried out by the Ombudsman since the adoption of the Directive in 2019. With its intervention to the General Secretariat for Family Policy and Gender Equality, the Ombudsman, which focused on the crucial importance of balancing professional and private life to promoting gender equality: a) highlighted the protection gaps in the relevant parental status leaves for both the public and private sectors, b) focused on the key provisions of Directive 2019/1158/EU and c) recommended concrete proposals for dealing with long-standing and unresolved problems of working mothers and parents[1]. The central goal of the Authority was to establish at least a minimum, but still uniform protection (in terms of leave and facilitations) for all employees, regardless of the type of their contract or their employment in the public or private sector.

1. See relevant Chapter in the *Equal Treatment - Special Report 2020* (https://www.synigoros.gr/en/category/default/post/equal-treatment-special-report-2020).

In this Report, apart from pointing out the changes brought about by Law 4808/2021, the Ombudsman, reflecting on the statistical data of the year, focuses: a) on the issues highlighted in the complaints classified by ground for discrimination, as well as on their handling and outcome (see "Equal treatment in practice"), b) on legal matters of particular interest (see "Issues of application and interpretation by ground discrimination"), c) on the current issues of the year (see "Current Issues ") and finally, d) on specific legislative and organisational proposals.

The aim is to become more familiar with the subject matter of the Authority's special competence and to highlight the developments and progress that has been achieved in solving the problems raised by the complaints and in strengthening the protection against discrimination.

Kalliopi Lykovardi

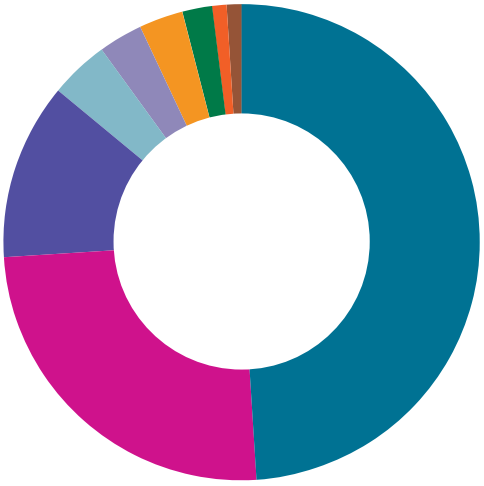
Deputy Ombudsman for Equal Treatment

April 2022

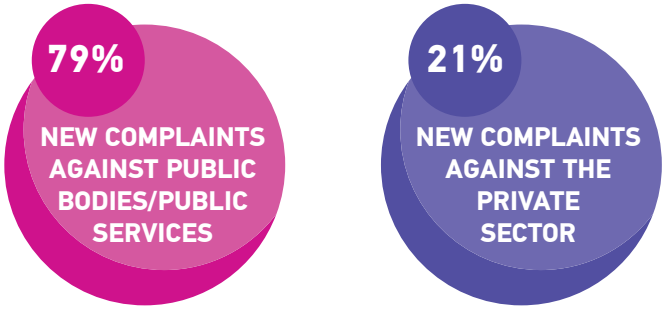
THE YEAR IN NUMBERS

The year in numbers

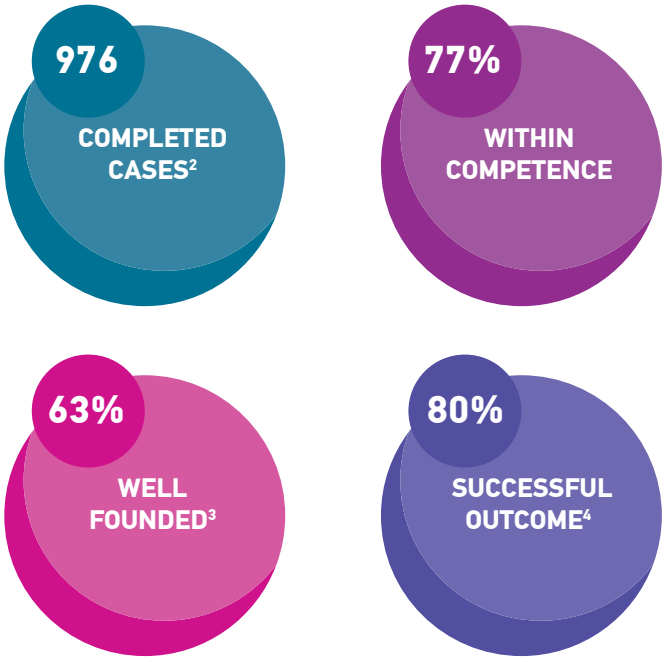
Thematic distribution of new complaints, with the following information



49%	Discrimination on grounds of gender
25%	Discrimination on grounds of disability or chronic disease
12%	Discrimination on grounds of family status
4%	Discrimination on grounds of age
3%	Discrimination on grounds of national or ethnic origin
3%	Discrimination on grounds of social status
2%	Discrimination on grounds of religious or other beliefs
1%	Discrimination on grounds of race or colour
1%	Discrimination on grounds of sexual orientation, identity or gender characteristics



Cases completed within 2021



2. 667 from 2021 and 309 from previous years.
3. On the complaints within competence.
4. On the reports where a problem was detected.

EQUAL TREATMENT IN PRACTICE

Equal treatment in practice

This chapter briefly presents the handling of indicative cases, including the type and scope of each case. It essentially serves as a brief summary of the work accomplished by the Authority. To this end it includes indicative interventions of the Greek Ombudsman in individual cases, in the context of COVID-19 related measures.

GROUND OF DISCRIMI-NATION	WHERE IT OCCURRED	BRIEF DESCRIPTION OF THE CASE AND THE OMBUDSMAN'S ACTIONS
GENDER	WORK	In 2020, the Ministry of Education issued a circular, according to which newly appointed teachers, who at the date of their appointment had a child over two years of age, are not entitled to parental leave for child rearing purposes. The Ombudsman contacted the Ministry promptly, pointing out that this circular modifies the regulatory framework stipulated in the provision of the law itself. Thus, it introduces an unlawful distinction between newly appointed employees who have children at 0-2 years of age and those with children 2-4 years old, while it restricts, without a legal basis, the right to receive parental leave to those in the second category (See *Special Report on Equal Treatment 2020, pages 48-49*). Despite the recommendations of the Authority, the Ministry continued applying the circular. Eventually, as a result of legal actions, the controversial act was annulled by Decision No. 2367/2021 of The Council of State on the grounds that it does not administer existing law in force, but rather it introduces a new regulation contrary to the applicable law, which does not have a legal basis (for example, case 284201).
	WORK	A female employee in the private sector complained to the Ombudsman because the special maternity leaves and the special maternity protection benefit (article 142 of Law 3655/2008, as in force at the time of the submission of the complaint) were not granted to adoptive mothers. It seems that the refusal to grant this benefit to adoptive mothers was based on the argument that the relevant legal requirements do not apply to this particular category, as no postpartum maternity leave has been received. The Ombudsman pointed out that this benefit has been recognized in legislation to be offered to surrogate mothers as well, since the reason for granting it is also related to serving the needs of the child during early infancy. Furthermore, the Authority highlighted that no distinction between natural and adoptive mothers is provisioned in the Civil Code

GENDER	WORK	(CC), emphasising that the legal treatment of an adoptive mother should be equivalent to that of a natural mother with regard to the rights arising from maternity. Article 142 of Law 3655/2008 was modified by the provisions of Law 4808/2021 (article 36) and the special maternity protection benefit was also extended to adoptive working mothers (case 288256).
	WORK	A female salaried employee in the private sector complained about not being able to use a paid leave equivalent to the one provisioned for employees of the public sector who undergo medically assisted reproduction methods (IVF). Such facilitation does not apply to female employees of the private sector, who are obliged to take a sick leave in order to complete this procedure. The Ombudsman pointed out to the Ministry of Labour that in this case there is a legislative gap and requested a pertinent legislative regulation. The contested leave of (7) working days was finally enacted by the provision of article 35 of Law 4808/2021 (case 281159).
	WORK	A female employee complained about the non-renewal of her employment contract following her return from maternity leave. More specifically, she reported facing discriminatory treatment when she returned to her work, as she was placed in a position inferior to the one she was holding before the leave and she was also denied the provision of work-related conveniences (such as remote working). Furthermore, she claimed that she suffered workplace intimidation, so as to induce her to resign. The claimant's allegations were confirmed by the testimonies of her colleagues. The business denied the accusations and explained that the programme, under which the claimant was offering services, was completed and that the employment relationship was terminated for this reason. The Ombudsman focused on the issue of assignation of inferior duties to her following her return to work after the maternity leave, assessed that the business did not refute any of the crucial incidents with regard to this allegation and proposed the imposition of administrative sanctions by the Labour Inspectorate (case 294746).
	WORK	A female accounting assistant holding an open-term employment contract was dismissed when she announced her pregnancy to the employer. During the tripartite meeting before the Labour Inspectorate and the Greek Ombudsman, the employer's lawyer stated that the termination of the employment contract will be revoked, in case it is proven that the employee was pregnant at the time of her dismissal. The Ombudsman notified the employer about the declared date of the employee's Last Menstrual Period (LMP), but the employer claimed that the employee was not pregnant

GENDER		at the time of her dismissal. Based on the evidence brought to the attention of the Authority, it was not possible to draw a safe conclusion as to whether the employer was aware of the employee's pregnancy at the time of dismissal. However, given that the objective fact of the pregnancy shall suffice to declare the dismissal void, regardless of the employer's prior knowledge, and taking into account that the employer did not take steps to re-hire the employee even when the employing company was informed of the pregnancy, but focused on disputing the exact date of conception and pregnancy respectively and on the disconnection from the date of dismissal, the Ombudsman recommended the imposition of administrative sanctions by the Labour Inspectorate (case 290886).
	 WORK	A female employee was employed for three years by a company, which had signed a contractual agreement with another company for the provision of services. The contractual agreement was revoked and the employing company promised the employees of the contractor company that they would be hired on the basis of fixed-term employment contracts in positions that had been already announced and were equivalent to the ones the employees previously held. The employee in question, who had notified both companies about her pregnancy, was not hired. The company which had announced the positions claimed that the reason for this was because they finally chose not to fill in the clerical officer position the employee in question was holding in the company, specifically due to the changes of the company's administrative needs after the pandemic. Considering that any pandemic-related problems already existed when these specific work positions were announced, the Ombudsman concluded that the non-continuation of the person's employment was related to the fact of her pregnancy. As there was no room for an amicable dispute resolution, the Ombudsman recommended the imposition of a fine to the company by the Labour Inspectorate (case 290194).
	 WORK	A female employee reported to the Labour Inspectorate her dismissal during the period in which she was under legal protection due to pregnancy. The complainant was working holding a temporary employment contract, whereby her direct employer was a Temporary Work Agency (TWA) and her indirect employer a gas station business. The submitted evidence demonstrated a continuous employment of the person in question for a period of 16.5 months in total, under three different forms of employment: 1) under an open-term employment contract with the gas station, 2) under fixed-term employment contracts with the Temporary Work Agency and 3) under no valid contract.

GENDER		As soon as the employee requested a sick leave for the second time for illness reasons related to her pregnancy, her work relationship with her co-employers was discontinued. The latter did not present any evidence justifying the reason why the work relationship was discontinued and the dismissal date coincided with the end of her first sick leave. Meanwhile, the employers were aware of the employee's pregnancy and actually the Temporary Work Agency admitted that the indirect employer's order not to renew the contract was related to the fact of the pregnancy. In its findings the Ombudsman ascertained that this was a gender discrimination incident and recommended the imposition of a fine against the co-employers of the employee, as it assessed that they did not refute the allegation that the dismissal was due to the employee's pregnancy (case 298731).
	WORK	A business, in violation of the relevant provisions of the law, served a female employee with a "notice of voluntary termination of employment", which had already had been uploaded to the ERGANI Information System. The employee claimed that she never expressed any intention to resign and that she was absent from work when this happened due to pregnancy-related problems, a fact about which she had informed the company by sending the required supporting documents. The company claimed that the employee was inexcusably absent for three days and that the uploading of the notice to the ERGANI Information System prior to sending the pertinent extrajudicial notification to the claimant was due to a mistake, resulting to the fact of contract been considered as improperly terminated. The Ombudsman referred extensively to the provisions pertaining to the methods of submitting a notice of voluntary termination of employment by the employee and the relevant obligations of the employer. It determined that the required conditions were not observed in this particular case and recommended the imposition of a fine (case 287616).
	WORK	A female café worker, also performing duties as business director among others, claimed that she was dismissed while being under maternity protection and for this reason the termination of her employment contract shall be deemed null and void. The employer claimed that the dismissal was due to an "important reason" (termination for cause), which pertains to criminal offences committed by the employee against the employer and more specifically to the offences of embezzlement, extortion and defamation. Taking into account the evidence brought to its attention, the Ombudsman did not ascertain any violation of the legislation prohibiting gender discrimination, as it was proven that the professional

GENDER		relationship between the employee and the employer was seriously damaged, whereas the required formalities pertaining to the termination of the employment contract of a pregnant employee were observed (case 300694).
	WORK	The fixed-term employment contract of a female employee in a nursery school was not renewed after the end of her postpartum maternity leave, whereas the employee in question was continuously concluding successive contracts with the school for 9.5 years. Even though the protection against dismissal for a period of eighteen months after birth is not extended following the completion of the fixed-term employment contract duration, the Ombudsman focused on the fact that the contract of the aforesaid employee, despite the continuous successive renewals for 9.5 years, was not renewed by the company for the first time two and a half months after the birth of her child. In response to the pertinent questions of the Authority, the company claimed that the fixed-term employment contract ends on the agreed date and pointed out that the number students in the nursery school as well as the range of services requested by parents change from year to year and thus the relevant business needs in staff are modified accordingly. However, the Ombudsman ascertained that at the time when the claimant's contract ended, the company hired two employees of the same specialisation on fixed-term employment contracts, indicating that there were existing needs for staff positions of this specialisation. Considering this, the Ombudsman determined that the non-renewal of this employee's contract constitutes discrimination on grounds of gender and family status and recommended the imposition of a fine by the Labour Inspectorate (case 299868).
	WORK	A female employee holding a fixed-term dependent employment contract under the implementation of the 2021-2022 Sports for All Programme in a Municipality's Legal Person governed by Public Law (NPDD) complained to the Labour Inspectorate that unbeknownst to her, the NPDD proceeded with the early termination of her contract, while she was on pregnancy leave. As a result thereof, among the other entitlements, she also lost the maternity benefits that she was entitled to. The case was forwarded to the Ombudsman. The latter ascertained that the employee, who had to be hired in accordance with a pertinent ranking table, was already in an advanced pregnancy stage at the time she was hired and right after the signing of her contract she took the pregnancy leave she was entitled to. On the next working day, the NPDD proceeded unilaterally with early termination of her employment contract, thus violating the legal maternity protection

		framework, by submitting a declaration of early termination of a fixed-term contract to the ERGANI Information System, even though the conditions for submitting such a declaration were not met. The aforementioned declaration was filed unbeknownst to the employee, who found out about this event at a much later date. The Ombudsman recommended the imposition of administrative sanctions against NPDD by the Labour Inspectorate. The sanctions were imposed (case 299392).
GENDER	 **WORK › SEXUAL HARASSMENT**	A female beautician reported to the Labour Inspectorate and the Ombudsman that she experienced sexual harassment from her employer, who in the process terminated her employment contract. The employee submitted an affidavit by a female store customer, as principle of proof, whereby two sexual harassment incidents, witnessed by the customer herself based on her own confirmation, were described. Upon request for reversal of the burden of proof, the employer submitted, among others, audio-visual material (DVD) recording movements in the store during the days in question. The Authority, however, did not examine the aforementioned material as it was found to be unlawfully obtained, since no relevant permission had been granted for the recording. Furthermore, affidavits by members of the company's board of directors and other employees were submitted, including an affidavit from a colleague who had been an eyewitness of the incident, who unequivocally denied the allegations. Finally, text messages with season's greetings, sent by the complainant to the defendant at the time of the purported incidents, were also submitted. The Ombudsman concluded that from the sum of the evidence presented, conflicting claims of the two parties emerged and thus difficulty in safely assessing the actual facts as to whether or not sexual harassment had transpired (case 281310).
	 **WORK › SEXUAL HARASSMENT**	Two female employees at the stockroom of an e-shop reported to the Labour Inspectorate that they had experienced sexual harassment by a close relative of their employer, who was assisting in the business operations. The cases were forwarded to the Ombudsman. The Ombudsman ascertained that the employees, who had actually worked during consecutive periods in the aforementioned business, had indeed suffered sexual harassment by the aforesaid person, who demonstrated a specific repeated pattern of harassing behaviour in both cases. The employer, although was informed about the sexual harassment incidents by

GENDER		the employees themselves, indeed at a different time periods from each one of them, did not undertake proper preventive measures to safeguard the staff's work interests and personality, within the context of the employer's duty to ensure the employees' welfare. The Ombudsman recommended administrative sanctions, which were imposed by the Labour Inspectorate (cases 299664 and 299665).
	SOCIAL SECURITY › BENEFITS	The former Health Fund for Lawyers of Athens (TYDA) refused to grant the nursery allowance to insured men on the grounds that the social allowance beneficiaries shall be directly insured female lawyers and female trainee lawyers, based on the provisions of its statute. The Ombudsman had previously mediated about the same issue during 2015-2016 and the TYDA had committed back then to proceed with the necessary modifications of its regulation. The Authority reintroduced the issue to the Ministry of Labour, reminding that the aforesaid provision constitutes a direct discrimination on the grounds of gender and, on that basis, all rejection decisions pertaining to this benefit that had been issued should be revoked and relevant allowances should be paid to male lawyers fulfilling the conditions for receiving them. Moreover, the Authority requested for steps to be taken in order to modify the regulation, so that male lawyers can also benefit from the allowance. The Ministry replied that the provision in question remains in force, as the Uniform Regulation of Benefits has not been issued yet (indicatively cases 282418 and 283013).
	SOCIAL SECURITY › BENEFITS	A woman insured via the National Social Security Fund (EFKA) requested to be granted the maternity benefit and was informed that she is only entitled to postpartum maternity benefit and not to pregnancy benefit, as she was on sick leave due to high-risk pregnancy during the period prior to birth. Actually, the pregnancy leave she should have taken was offset against the sick leave and as a result the employee entirely lost both the pregnancy benefit and the pregnancy leave. The Ombudsman contacted the EFKA branch in charge, pointing out that the total duration of the maternity leave cannot be less than 119 days and in case birth is given at a time prior to the initially estimated due date, the remaining duration of the leave is mandatorily granted after birth. Responding immediately, the agency granted the pregnancy leave (as well as the respective benefit) after the end of the postpartum maternity leave (case 302116).

GENDER	SOCIAL SECURITY › BENEFITS	A female electrical engineer insured via the National Social Security Fund (EFKA, former Greek Engineers and Public Works Contractors Pension Fund-TSEMDE) requested a 50% discount on her contributions after the birth of her 4th child (in accordance with article 141, par. 2 of Law 3655/2008). Based on the decision of the competent local EFKA branch for salaried workers, the time period, during which the aforesaid discount could be calculated, was a lot shorter than the one initially requested. The employee filed an appeal and the Ombudsman contacted both the agency in question and the General Secretariat of Social Security (GSSS), mentioning, among others, that the presented correspondence indicated a confusion of the local EFKA branch, as far as the application of the provision of article 141, par. 2 of Law 3655/2008 is concerned. The issue was solved after the GSSS sent a pertinent document to the local branch (case 279074).
	SOCIAL SECURITY › BENEFITS	A female employee appealed to the Ombudsman regarding a delay in granting her a salary clearance certificate by the Asylum Service, so that she can apply for maternity benefit. The delay was due to the fact that the aforementioned certificate, which is a necessary supporting document for the submission of the application, requires the co-signature of two different directorates of the aforesaid agency. The co-signature was not taking place due to the lack of collaboration between the two directorates. The issue was finally solved thanks to the intervention of the Authority to both agencies (case 304770).
RACIAL ORIGIN	HOUSING	A citizen complained about insanitary conditions in a Roma settlement established at an abandoned factory. According to the complaint, there was heavy pollution in the area during the last two years, caused by the people living in the factory, who empty the waste bins in the area and scatter garbage over the nearby streets, trying to find useful items. Furthermore, the complaint mentioned also delinquent acts (water, electricity theft, etc.) as well as threatening behaviour by some Roma residents towards their neighbours. Repeated complaints to the competent public services did not bring any outcome. The Ombudsman asked information from the services involved (Municipality, Police and Prefecture) regarding any actions taken under their responsibility, on the basis of the protection of citizens' rights and the defence of decent standards of living for all involved parties, irrespective of their racial or national/ethnic origin. The Directorate of Health Control and Environmental Hygiene of the Region of Attica cleaned the facilities and sealed the

		place. However, these actions were not combined with arrangements to relocate the Roma settlement in another available and suitable location (case 282381).
NATIONAL / ETHNIC ORIGIN	SOCIAL SECURITY › BENEFITS	A mother appealed to the Ombudsman, when the Organisation of Welfare Benefits and Social Solidarity (OPEKA) informed her that her request for receiving a birth allowance could not be examined, because the foreign father had not submitted a tax return in Greece for the financial year 2019 and for this reason it was not possible to calculate the family income, which is a precondition for the approval of the allowance. The child's father and partner of the mother (holding a civil partnership), citizen of the United Kingdom, was not a resident in Greece, nor had he acquired income or other assets in the country. For this reason, he was not obliged to file a tax return in Greece for the previous year. The Ombudsman asked OPEKA to examine the request for granting a birth allowance to the mother, considering the special conditions of the situation of the father (case 296523).
	SOCIAL SECURITY › BENEFITS	An NGO appealed to the Ombudsman, because the Supreme Confederation of Multi-Child Parents of Greece (ASPE) refused to grant multi-child status to beneficiaries of international protection, as they were unable to submit a family status certificate from their country of origin, in accordance with the provisions of Law 3454/2006. The Ombudsman pointed out to the competent services (Ministry of Labour and Ministry of Migration & Asylum, Central Asylum Service and ASPE) that the multi-child status is granted also to recognised refugees, stateless persons and beneficiaries of humanitarian status, who reside permanently in Greece. Furthermore, the Authority highlighted the obligation of Greek state agencies to issue documents and certificates requested by the aforementioned groups in order to exercise their rights, given that they are objectively unable to transact with the competent services in their countries of origin. In another case, the Ombudsman pointed out that the exclusion of recognised refugees from social benefits constitutes discrimination against them. Following the Ombudsman's intervention, the aforesaid beneficiaries were granted multi-child status and received certificates from the Asylum Service, which indicated their family status (case 252095).

RELIGIOUS BELIEFS	GOODS & SERVICES	A Jehovah's Witness had appealed to the Ombudsman already in 2017, complaining about the narrowing of the space of her family grave by the owners of an adjacent grave (See Special Report on Equal Treatment 2017, pages 58-59). The Ombudsman ascertained that the illegal extension of the adjacent grave, to the detriment of the aforementioned person's family grave, was the only one observed in the cemetery. Following the Ombudsman's interventions, the Municipality initially accepted to reinstate both graves to their rightful dimensions, as defined by law. In the end, however, proposed to resolve the issue either by granting a new grave to the complainant's family or by shifting the existing one at the expense of the shared corridor. Through its findings report in 2021, the Ombudsman called on the Coordinator of the Decentralised Administration to take all appropriate actions to reinstate legality in the disputed case and remove suspicions of religious intolerance (case 224638).
DISABILITY OR CHRONIC DISEASE	WORK	A female candidate in the job announcement of the Hellenic Railways Organisation (OSE) to cover guard needs for level crossings, had been included in the temporary table of successful candidates and underwent the provisioned health examination. The candidate was listed in the final ranking table, having sufficient points in order to be hired. However, she was informed by phone that an official recruitment act was not going to be issued on her behalf, for the reason that the health committee had found her unsuitable. The Ombudsman asked the Hellenic Railways Organisation to justify the exclusion of the candidate and the latter invoked a term in the announcement, according to which selected candidates should be in a suitable health and physical condition that allows them to fulfil the duties of the selected specialisation. Moreover, the Organisation mentioned that the candidate did not qualify for employment in this specialisation. Addressing the Organisation, the Ombudsman referred in detail to the reasons why OSE's answer contained significant gaps in its justification. At the same time, the Authority highlighted that the Hellenic Railways Organisation should bear the burden of proof in order to demonstrate that the circumstances of the case did not amount to violation of the principle of equal treatment. Finally, the Ombudsman issued a Findings Report, whereby it ascertained direct discrimination on the grounds of disability, since OSE failed to prove the necessity to exclude the candidate, so that such exclusion could be deemed lawful as a justified deviation from the principle of equal treatment (case 294618).

DISABILITY OR CHRONIC DISEASE	 WORK	The National Confederation of Disabled People (NCDP) and the Hellenic League Against Rheumatism complained to the Ombudsman about an announcement to fill fixed-term positions governed by private law by the Municipality of Heraklion. The call included a term which excluded persons suffering from chronic or underlying diseases, as well as persons belonging to vulnerable groups facing an increased risk for Covid-19. The Municipality argued that the positions are meant to cover the need for restricting the spread of the coronavirus and invoked the necessity to protect public health or the employees' health, as well as, the accomplishment of the call's purpose, which does not allow special purpose leaves or remote work. The Ombudsman highlighted that the generally formulated term of the announcement in question cannot be justified, as it constitutes discrimination on the grounds of disability or chronic disease, and added that the exclusion of persons belonging to high-risk groups for Covid-19 infection could only be deemed legitimate under conditions, in case this is imperative due to the nature of duties of each position. Finally, the Authority recommended to avoid similar formulations in the future (case 292325).
	 WORK	The Ombudsman issued a findings report ascertaining discrimination against a disabled person with a 70% rating, for whose appointment the competent Municipality assessed that there is an obstacle, despite the fact that he was in the list of appointees. As it was found, the Municipality assumed from the start that the claimant is unsuitable for the position of the cleaning staff due to his disability and for this reason it tried to prevent his appointment. The refusal to appoint the applicant constitutes discrimination on the grounds of disability with regard to access to work, given that, although the applicant was found capable of exercising certain responsibilities provisioned in the position, the Municipality did not take steps to adapt the duties to be assigned in accordance with the relevant medical opinion, as a measure of reasonable accommodation. Considering this, the Ombudsman called on the Municipality to complete the hiring procedure for the individual concerned (case 281053).
	 WORK	A trade union of a big company providing services to financial institutions reported mass dismissals of employees with disabilities or chronic diseases to the Labour Inspectorate. The company invoked financial and technical reasons accounting for staff reduction and claimed that the selection of these specific employees was made on the basis of their low performance, compared to other colleagues,

DISABILITY OR CHRONIC DISEASE		and not because of their health condition. However, three cases were examined and it was found out that in one of them the company fired a female employee, while she was undergoing chemotherapy, without submitting evidence justifying the selection of the aforesaid employee on the basis of objective criteria pertaining to her performance. Furthermore, no evidence was presented to demonstrate that the company made efforts to improve the employee's performance, nor was it proven that the company run out of alternative solutions allowing the continuation of the employment. Considering this, the Ombudsman recommended the imposition of administrative sanctions provisioned in the law against the business (case 297745).
	SOCIAL BENEFITS	A divorced mother with an 18-years old child (with an 80% disability rating) appealed to the Ombudsman, when her application for receiving a housing benefit to the Organisation of Welfare Benefits and Social Solidarity (OPEKA) was rejected. The mother was receiving this benefit during the previous years, falling under the category of single parent families, since her child was still a minor and she had custody. However, once the child reached adulthood, her household was adjudged not to fall into the category of single parent families. The Ombudsman brought the issue to the attention of the Ministry of Labour and the OPEKA, proposing the examination of the possibility to include in the single-parent household definition the instance whereby a parent lives together with an adult child, when the latter has a high disability rating and is declared by the parent as a dependent member in the tax return. Alternatively, the Authority suggested to also include in the single-parent household definition (always as far as the housing benefit is concerned) the instance of a sole parent living together with an adult child with disabilities, provided that the parent is appointed as a legal guardian and has got full custody of the child. The Secretary General for Social Solidarity and Fight Against Poverty informed the Ombudsman that the proposal shall be examined (case 287733).
AGE	**WORK**	The Ombudsman raised the issue of establishing the maximum age limit of 45 years, which is provisioned in the law as a condition for candidates to participate in the admission examination of the National School of the Judiciary (NSJ), to the Ministry of Justice. The maximum age limit established for the admission to the NSJ remains overall an issue of concern, as in most European countries the start of a judicial career is not subject to an age requirement. The Authority asked the Ministry to consider the possibility of a judicial career is not subject to an age requirement. The

AGE		Authority asked the Ministry to consider the possibility of either further rising the upper age limit of 45 years provisioned for the admission to the NSJ or to completely abolish it. Nevertheless, the article 17, par. 1 of Law 4871/2021 sets the maximum age limit required for the admission of candidates to the NSJ at 40 years (case 272201).
	WORK	The Ombudsman received complaints about the upper age limit of 28 years set as a requirement for the participation of candidates to a 2021 recruitment competition for special guards, for the purpose of setting up Protection Teams for University Institutions (PTUI). The Authority asked the Hellenic Police Headquarters to specifically justify the necessity for setting the aforementioned age limit. Following their response, the Ombudsman ascertained that the establishment of an upper age limit for the participation of candidates in this specific procedure is in principle legitimate and necessary, for reasons of public interest related to the protection of public order and security. However, it concluded that the usefulness for establishing this specific age limit of 28 years was not sufficiently documented and suggested for it to be reviewed by the Hellenic Police (cases 299747and 300830).
	WORK	The Ombudsman investigated the issue of establishing an upper age limit of 35 years, set as a condition for the participation of candidates in a 2020 call of the Urban Rail Transport Company STASY to fill positions of SE (secondary education) Train Drivers. The Authority asked and received evidence from STASY data verifying the necessity for setting this specific upper age limit. The age distribution of staff already serving in this position clearly demonstrated that the most underrepresented age group in this specialisation was that of 30-35 years old. The Ombudsman concluded that seeking to maintain a balance in the age structure of the organisation's labour force, by strengthening the specialisation of the call through staff of younger age, is legitimate and conforms to the spirit of the provisions in article 6 of Law 4443/2016 (indicatively, cases 289981 and 290249).

AGE	VOCATIONAL TRAINING	The issue of establishing an upper age limit of 23 years, set as a condition for the admission to and the attendance at the Apprenticeship Vocational Education Schools (EPAS) of the Hellenic Manpower Employment Organisation (OAED), was brought to the Ombudsman's attention. Addressing OAED, the Ombudsman put forward the legislative framework prohibiting discrimination on grounds of age and requested to be informed about the exact reasons that led to the establishment of the above-mentioned age limit, as well as about the necessity and the purpose served by this limit. In response to the Authority, OAED said that it would forward the Ombudsman's recommendations to the Ministry of Labour, so that a possible modification of the relevant Ministerial Decision, provisioning the upper age limit of 23 years as a condition for the admission to and the attendance at the Apprenticeship Vocational Education Schools, may be examined (case 284217).
FAMILY STATUS	WORK	A military professional, father of a minor, for whom he has sole custody by court decision, made a hierarchical appeal, whereby he requested the cancellation of his transfer to a location far from his residence, invoking the fact that he is a single parent. His request was rejected on the grounds that he does not meet the conditions for being granted single parent status. According to the legislation in force, military professionals that fall into specific vulnerable groups, such as single parents, are explicitly excluded from regular and exceptional transfers. The Ombudsman assessed that although no definition for the single parent status is included in the provisions pertaining to the protection of special family needs of single parent members of the Armed Forces, it clearly emerges that this particular provision includes the parent who has child custody. In this regard, the Ombudsman suggested that the military professional's request should be reviewed, so that he can continue serving at his preferred location. The Ombudsman's recommendation was not adopted by the Hellenic Army General Staff (case 262577).
	WORK	A female candidate for auxiliary staff positions (except doctor positions) was removed from the relevant tables on the grounds that she did not prove her single parent status. The candidate submitted a final court decision awarding her the exclusive parental responsibility of her three children, but the Regional Health Authority in charge did not accept it, because the provisions of the relevant Joint Ministerial Decision specified that the required supporting document, which proves single parenthood, shall be

FAMILY STATUS	WORK	a final court decision regulating the child's custody. The Ombudsman pointed out that parental responsibility has a broader meaning compared to child custody, therefore it includes the latter, so the court decision pertaining to the candidate's exclusive exercise of the parental responsibility for her children should be accepted as a supporting document proving her single parent status. However, the Regional Health Authority insisted on the literal interpretation of the provision. The Ombudsman in its report on findings requested the explicit addition of the aforementioned court document, which assigns exclusive exercise of the parental responsibility to one of the two parents, to the pertinent Joint Ministerial Decision, as a supporting document proving single parenthood (case 294939).
SEXUAL ORIENTATION	SOCIAL PROTECTION	The Ombudsman received and examined a complaint about the exclusion of a donor from blood donation on the grounds of the donor's sexual orientation. More specifically, the form that is made available during blood donation and needs to be completed with information regarding the medical history of the volunteer blood donors, mentions, among others, that no blood should be donated by *"1. Persons who had at least one homosexual relationship since 1977"*. The Ombudsman pointed out that a general exclusion of people with homosexual relations from blood donation constitutes an unjustified discrimination on the grounds of sexual orientation or gender identity and reduces the number of eligible blood donors. This has been repeatedly highlighted in the past, while it is also mentioned in the current National Strategy for the equality of LGBTQI+ persons. Furthermore, the Authority reminded that in the past it had brought the issue to the attention of the National Blood Donation Centre, which assured that the relevant reference to homosexual relations will be removed, and requested information about the steps undertaken by the competent bodies with regard to this issue (case 300424).
GENDER IDENTITY	SOCIAL SECURITY › BENEFITS	An intersex person appealed to the Ombudsman due to delays caused by the National Organisation for the Provision of Health Services (EOPYY) regarding the examination of her request to cover healthcare costs for a scheduled medical intervention abroad. The Ombudsman contacted the EOPYY asking for information about the examination procedure with regard to this person's request. In response to this, it was informed that the application had been rejected on the grounds that the medical act in question could be performed in Greece. Moreover, the response even mentioned a specific hospital, as an example. The Ombudsman,

GENDER IDENTITY		however, asked for the application to be re-examined, as the person concerned had already been informed by the suggested hospital that this kind of operation is still in an experimental stage. The EOPYY recommended another hospital as well, informing the Ombudsman that the request to cover hospitalisation costs abroad will be re-examined, if the person concerned submits new medical evidence, such as a certificate by one of the suggested hospitals, confirming that it is not possible to provide adequate care (case 279212).
COVID-19	WORK	A female employee working as a clerical officer at a business for six years complained that she was fired because she used a provided "special purpose leave" for her disabled child. She pointed out that shortly after her dismissal, a job opening was posted concerning the position she previously held. During the labour dispute resolution process, the business representative stated that the employment contract was terminated due to the redundancy of the claimant's position, since the latter was serving as a secretary of a business manager who passed away, and rejected the allegation that another employee was hired for the same position. The Ombudsman called the business to answer specific questions that arose, with the ultimate aim to assess whether the claimant faced a less favourable treatment right after the "special purpose leave" she took for her disabled child. Given that the date of the first hearing of the case in court was imminent, the Ombudsman was obliged to complete the examination of the complaint, without reaching a safe conclusion as to whether there is a causal link between the termination of the claimant's employment contract and the fact that she used a "special purpose leave". In its findings, it highlighted though that it is seriously doubted whether the company made every effort to examine less severe alternative solutions, in order not to terminate the claimant's employment contract, as the reason why it was impossible for the latter to continue working as a clerical officer was not adequately justified (case 283626).
	WORK	The "special purpose leave" of a nurse, taken due to the suspension of in-person classes in school units, was suddenly terminated, despite the fact that the complainant explained to her employer the problems she was facing due to the discontinuation of her leave with regard to her ability to respond to the care needs of her child. Following this, she was confronted with a hostile work climate that led her to resign. The Ombudsman highlighted that the sudden stop of the "special purpose leave" had evident consequences

COVID-19		on the family planning and the care needs of the child and called the employer to re-examine the issue, towards the direction of finding a solution and achieving an rudimentary at least balancing of the work-life of the employee. The competent Regional Health Authority's justification for the termination of the "special purpose leave" was the increased operational needs of the specific medical centre, which concerned its on-call function as a Covid-19 referral centre and its preparation as a vaccination centre. In its report on findings, the Ombudsman pointed out that, based on the evidence brought to its attention, on the one hand the employee was not offered sufficient justification regarding the need for the discontinuation of the "special purpose leave", and on the other it did not ensue that the organisation made every effort to find a suitable solution. This resulted in the creation of a hostile work environment which led to the employee's final resignation (case 290838).
	WORK	A beneficiary, placed at a treatment and rehabilitation centre for disabled children, through a community service programme offered by the Manpower Employment Organisation (OAED), complained to the Ombudsman, when he was informed by the Centre that it is impossible to proceed with his placement because he refused to submit a negative Covid-19 test result. The concerned party even lodged an appeal, requesting from OAED to change the receiving placement agency. The appeal was rejected. Taking into account that the purpose of the Centre was to provide services to persons with disabilities, who are worse affected than healthy people if exposed to the risk of the disease, and that the employer must take strict measures to protect employees, the Ombudsman determined that it was reasonable to request a test before the beneficiary can be placed at the work position, in view of the nature of the diagnostic test for Covid-19 as a par excellence preventive measure against the transmission of the virus (case 293485).
	WORK	A female employee working in a health services centre requested the assistance of the Ombudsman with regard to the fact that she was pressed to get vaccinated against Covid-19, emphasizing that she has a serious allergy to pharmaceutical substances. Furthermore, she clarified that she was only asking for the Authority's advice, by sending an additional request. The Ombudsman informed her that at this particular moment of time there were no special legal provisions obligating certain categories of employees to get vaccinated. However, it pointed out that such a development may arise as a result of the employer's obligation to adopt welfare and security measures in order to protect

COVID-19		the employees' life and health, as well as when it is deemed appropriate due to the nature and the scope of the provided service. The Ombudsman referred, among others, to recent judgements of the Council of State and the European Court of Human Rights, by which compulsory vaccination of children enrolling at nursery schools was deemed permissible, provided that this is necessary based on documented scientific data and that it is possible to exempt individual cases, when the vaccination is contraindicated for serious health reasons (case 296631).
	SOCIAL SECURITY › BENEFITS	Women who were in a state of pregnancy or had just given birth and were employed in hotel and tourist lodgings of seasonal operation, the operation of which was suspended during the summer season of 2020 for rCovid-19 related reasons, appealed to the Ombudsman due to the long delays encountered regarding the appearance of their insurance stamps in the National Social Security Fund system. Their insurance settlement for this specific period of time was crucial in order to be granted maternity benefits. The Ombudsman found out that the said settlement was particularly complicated and time consuming, as it presupposed the development of a specialised software system and the performance of extensive processing and interexchange of data for approximately 130,000 employees. Thus, the Ombudsman remained in constant contact with the agencies involved following up the relevant developments. Finally, the insurance coverage issues faced by the above-mentioned employees were gradually resolved and around mid-November 2021 the pending applications to be granted maternity benefits started to be processed (indicatively, cases 304166 and 304564).
	GOODS & SERVICES	Parents of disabled children and adults with disabilities following their treatment programmes in Nea Smyrni swimming pool, complained about the drastic restriction, or even exclusion, of their access to the facilities of the swimming pool. The Municipality, arguing about the multitude of users it was called to serve at the swimming pool, combined with the restrictions imposed on its operation due to covid-19, significantly reduced the hours of use of the swimming pool by people with disabilities, while it excluded non-municipal resident users. The Ombudsman pointed out to the Municipality, among others, that the swimming programmes for this specific social group constitute an important therapeutic activity, pertaining to aspects related to health, physical rehabilitation and socialisation, rather than being simply used as a sports and entertainment activity As far as the

 COVID-19		disabled persons not residing in this Municipality are concerned, their exclusion prevents them from utilising this treatment programme, given that there are not many swimming pools, adequately equipped for and accessible to persons with disabilities, available in all areas or in all Municipalities. The Ombudsman recommended that access to the swimming pool be allowed and asked for the re-examination of the Municipality's decisions regarding the hours of use of the swimming pool by persons with disabilities. Following extensive consultation in the City Council, the Municipality satisfactorily resolve the problem (case 286848).

ISSUES OF APPLICATION AND INTERPRETATION BY GROUND OF DISCRIMINATION

Issues of application and interpretation by ground of discrimination

The Ombudsman, in its capacity as the authority monitoring and promoting the principle of equal treatment, irrespective of gender, race, colour, national or ethnic origin, religious or other beliefs, disability or chronic disease, age, family or social status, sexual orientation, gender identity or characteristics, is often called upon to ascertain whether certain behaviours can be classified as discriminatory based on the provisions of current legislation. In the event of an unjustified deviation, the Ombudsman makes recommendations and proposals to public and private sector bodies.

In 2021, and similar to other years, the Ombudsman has focused its Report on specific interventions undertaken within the framework of its aforementioned special competence. The aim is to highlight issues brought forth by individual complaints that were of a more general interest and were investigated by the Authority.

Flexible forms of work and protection against discrimination

The provisions for maternity protection in labour law have mandatory force, in the sense that they apply universally, leaving employers with no room for deviations and from fulfilling their obligations. The importance of this protected legal right stems from international employment contracts, the European law on health and safety of workers, and the prohibition of discrimination, as well as from constitutional requirements for gender equality, and the protection of maternity and family, which in turn requires the state to undertake all necessary measures to protect these rights. **These protections apply universally to all forms of dependent employment, even the more flexible ones, where the risk of losing protection may become greater.** An example of such a case is employment through temporary work agencies, whereby an employer's role and the obligations deriving from it are frequently and ambiguously distributed between the direct and indirect employer, at the expense of the worker's protection.

According to article 117, par. 2, Law 4052/2012, *"The provisions concerning the protection of pregnant and breastfeeding women, the protection of children and youths, and the equal treatment of men and women, as well as any action taken in the fight against any discrimination on grounds of gender, race, ethnic origin, re-*

ligion, beliefs, disability, age, or sexual orientation, also apply to temporary workers". In practice, however, it often proves difficult to invoke and preserve such protection, which results in the employee being exposed to the risk of dismissal, under the pretext that said dismissal is not based on any of the aforementioned reasons, but rather occurs merely because the term of temporary employment has expired.

Legislation regarding temporary employment (Law 4052/2012, as amended and in force) provides in essence the creation of a triangular work relationship[5], in which only the temporary-work agency (direct employer) and the employee are contractually linked. Work is provided for the user company (indirect employer) and for this reason the latter also has rights (right to manage) and obligations towards the employee (obligation to comply with the rules for health and safety in the workplace). Conversely, it is the temporary-work agency who contracts with the employees and assumes the obligation to pay their salaries and social insurance contributions, as well as to comply with the procedures and formalities pertaining to the employment contract. The work relationship between the temporary-work agency and the employee may involve a fixed-term or open-term employment, but the assignment of the employee, namely their employment at the user company, can only be temporary. However, the actual purpose governing the functioning of the temporary agency work contract, namely the intention to cover emergency, temporary or seasonal needs[6], is de facto circumvented and, as a result, employees keep working in the same positions, thus covering constant needs, without the security of permanent employment. In particular for working women who get pregnant, job insecurity and exposure to the risk of job loss increases significantly during a period of intensified vulnerability, despite any contrary legal provision for protecting maternity.

A typical example of the above is a labour dispute forwarded to the Greek Ombudsman by the Labour Inspectorate, concerning a female employee holding a temporary agency work contract, who got pregnant during her assignment at the user company. The employee was working at a gas station, initially holding an open-term contract and was later awarded consecutive weekly work contracts, four or five per month, with a duration of 6 days each, wherein a Temporary Work Agency was the contracting party and the gas station was the user company. She had been employed in this way for approximately 16 months, until she notified

5. See "Labour Law, individual work relationships", 2015, D. Zerdelis, page 73.
6. See Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work.

the user undertaking of her pregnancy, for which she needed a sick leave of 15 days. Due to pregnancy related complications, she asked for a second period of sick leave as well. At that point, the user company informed her that her fixed-term contract had expired and that, consequently, her employment had been terminated, and therefore no obligation towards her remained. An investigation conducted by the Labour Inspectorate found that the fixed-term contracts did not cover the whole duration of her employment, despite the respective obligation provisioned in the law. During the labour dispute that ensued, the Temporary Work Agency, as the direct employer, claimed that the employee "fraudulently" refrained from signing the contracts of the past three months, in order to succeed in converting her fixed-term contract to an open-term one. The Agency also stated that the employee had been chosen by the user undertaking, who therefore bore sole responsibility for her not signing the three-month term contracts, and that the discontinuation of her employment was related to her pregnancy announcement. The user company, on the other hand, claimed that it was not bound to the employee though an open-term employment contract, and that she had been hired at the establishment by the direct employer on the basis of a temporary, fixed-term employment contract. The employer also claimed that, upon announcing her pregnancy, the employee informed him that she wished to keep working until a specific date, at which time she would stop work altogether.

The Ombudsman did not check the legality of hiring the employee on the basis of temporary employment, nor whether the employment relationship had been converted to an open-term one (article 117, par. 3 of Law 4052/2012). On the contrary, it considered that the provisions of maternity protection and the prohibition of discrimination also apply to cases of temporary employment, without distinguishing between employers' responsibility, which the Ombudsman treated as joint and several liability.

On this basis, the Ombudsman assessed the facts of this case in the light of the provisions of Law 3896/2010 governing the initial evidence and the reversal of the burden of proof in case of discrimination on grounds of gender, and concluded that the worker had been employed for a total period of 16.5 months under three different types of employment: 1) an open-term contract with the business, 2) fixed-term contracts with the Temporary Work Agency, and 3) without a valid contract. When the employee applied for a second leave of absence for reasons pertaining to her pregnancy, her employment was discontinued by her

employers. The latter did not present any evidence justifying the reason why the contract was discontinued, while the discontinuation date coincided with the end of the first leave of absence. Meanwhile, the employers had been aware of the employee's pregnancy, in fact the Temporary Work Agency admitted that the user company's order to not renew the contract was related to the employee's pregnancy. Thus, by virtue of the reversal of the burden of proof, and regardless of the worker's employment circumstances, the employers did not sufficiently rebut the claim that the contract termination was owing to her pregnancy, and therefore constituted less favourable treatment and discrimination on the grounds of gender. Following a relevant recommendation by the Ombudsman, the Labour Inspectorate imposed a fine on both employers (case 298731).

Social security and equal treatment

The framework for the constitutional safeguarding of gender equality is provided by article 4, par. 2, article 116, par. 2 and article 21 of the Constitution. Meanwhile, according to article 141 (former 119) of the EC Treaty, every member-state shall ensure the implementation of the principle of equal pay between men and women in similar roles with equal responsibilities. In fact, par. 2 of the said article stipulates that the term "pay" encompasses not only salaries, but also all other benefits provided directly or indirectly by the employer to the employee, on the basis of their employment contract.

Further guidelines in the field of social security are defined mainly by the Directive 79/7/EEC of 19 December 1978, regarding gradual implementation of the principle of equal treatment of men and women in terms of social security, and the Directive 86/378/EEC of the Council, regarding the implementation of equal treatment of men and women by occupational social security schemes, as subsequently amended by the Council's Directive 96/97/EC of 20 December 1996.

In line with the above, article 5e of the Presidential Decree 66/2002, *On the implementation of equal treatment of men and women by occupational social security schemes, in compliance with the Directives 96/97/EC and 86/378/EEC*, states that the provisions defining different criteria per gender for granting benefits, or granting such benefits only to employees of one or the other gender, contravene the principle of equal treatment. Likewise, article 4, par. 1 of Law 3896/2010, stipulates that men and women deserve equal pay for performing equal work and having the same responsibilities. The term pay shall specifically be perceived to mean any type of salaries and earnings, along with all other benefits, provided directly or indirectly from all sources, in cash or in kind, by the employer to the

employee, because of, or on the occasion of, the latter's employment (article 2[e] of Law 3896/2010).

Although in practice the discrepancy in gender pay gap occurs more commonly at the expense of women, the Ombudsman has also examined cases of men being discriminated against in terms of granted benefits.

An indicative case is the Ombudsman's mediation with the former Health Fund for Lawyers of Athens (TYDA), which refused to grant the nursery allowance to men, on the grounds that *"according to article 15, par. 2 of the statute of former TYDA, social allowance beneficiaries shall be directly insured female lawyers and female trainee lawyers".*

The Ombudsman had already made a relevant intervention on this issue in 2015-2016, in the context of investigating an individual complaint, and had requested that the Fund pay the nursery allowance to the applicant, but also to insured men who are eligible for it and who meet the relevant criteria, as non-payment constitutes prohibited discrimination on grounds of gender. Additionally, the Ombudsman requested that article 15 of the Fund's Healthcare Regulation be amended so as to explicitly foresee that allowance beneficiaries shall be directly insured lawyers and trainee lawyers (irrespective of gender), with children aged 1 to 5 insured at the Fund, and not eligible for any other similar allowance from other social security funds. Yet, following complaints filed in 2021, it was found that the issue had not been handled definitively, and the Regulation has not yet undergone the specific amendment, which results in the problem persisting, despite the Fund's past commitments to take relevant action[7]. **With a new intervention to the Ministry of Labour and Social Affairs, the Ombudsman requested that the objections submitted against the rejection decisions be accepted, and that the nursery allowances be paid to the male lawyer applicants, citing the Authority's previous mediation and court decisions which had been in the meantime issued** (indicatively, cases 282418, 283013).

7. The fund had informed the Ombudsman that the allowance had been granted to the applicant by virtue of a decision of the Governing Board, and ensured that they have taken all action required to change their rules of operation (PD 162/1998), See relevant post in: https://old.synigoros.gr/?i=equality.el.imfyloservices.333255.

Sexual harassment and means of evidence

a) The evidential value of illegally acquired audio-visual material

Sexual harassment is defined as a form of unwelcome verbal, non-verbal or physical behaviour of sexual nature, aiming at, or resulting in, an insult to the dignity of another person; it is considered discrimination on grounds of gender and is prohibited (Law 3896/2010, article 3, par. 2a). In other words, the aim of insulting the dignity of another person and creating a hostile working environment is not required to determine sexual harassment; on the contrary, merely ascertaining the objective fact suffices, without the need for the subjective element of intention.

During the investigation of sexual harassment cases, evidential facilitation of the alleged victim consists of lessening their share of the burden of proof, and accordingly shifting the burden of proof to the employer's side. But, whereas the cited facts of the case need to be fully proven by the complainant, conjecturing suffices to establish causality (between actual facts and discriminatory treatment), hence the burden of proof lies with the employer[8].

The investigation of complaints of sexual harassment by the Ombudsman is most often difficult, owing to the conditions under which such behaviours are manifested, and particularly due to the absence of third persons. The lack of evidence and the ensuing difficulties of proving the actual facts, even though reversal of the burden of proof is foreseen, obviously make harassment documentation very challenging. These difficulties become even more complicated when, in an effort to document harassment (on the part of the injured party) or rebuttal (on the employer's part) the presented evidence has not been acquired legally.

An indicative case is the following: a female employee reported that she was sexually harassed by her employer, who afterwards terminated her employment contract. The employee submitted, as initial evidence, an affidavit by a female store customer, who had been an eyewitness to two sexual harassment inci-

8. See. *D. Zerdelis, Labour Law*, 2011, page 307 et seq.

dents. During the process of reversal of the burden of proof, the employer provided, among other things, affidavits and audio-visual material (DVD) from the store's closed circuit tv system, which was recording the movements in the store in the period in question.

However, the Ombudsman did not assess the audio-visual material, on the grounds that it had been acquired illegally, as no permission had been granted by the Hellenic Data Protection Authority. In particular, the latter Authority's decision No. 171/2017 was taken into account, which states that using evidence of a prohibited nature in a court trial conflicts with the defendant's right of defence and gives rise to the proceedings' fundamental nullity, according to article 171 par. 1 D of the Code of Criminal Procedure. Meanwhile, the relevant legislation of the Penal Code foresees criminal penalties for whomever illegally monitors verbal exchanges, or non-public acts of others in general, using special technical equipment, or records them on material media.

In any case, the remaining evidence submitted by the employer resulted in casting a shadow of doubt on the complainant's allegations, and therefore the actual facts that had been reported could not be verified, nor could the sexual harassment itself be substantiated (case 281310).

b) The evidential value of behavioural repetitive patterns

Complaints of inappropriate verbal, non-verbal or physical behaviours potentially perceived as sexual harassment in the workplace are of much greater gravity when submitted by more than one victim, against a specific harasser and within the same workplace, as they demonstrate behavioural repetitive patterns.

Two female employees working under fixed term contracts for a private company, through an employment program of OAED, reported to the Labour Inspectorate that, while working, they had been experiencing sexual harassment by a close relative of their employer, who was also employed in the same company. At first the harassment was manifested as indecent and offensive gestures, followed by a generalised offensive behaviour towards the two women. When informed of the behaviour in question, the employer ensured the employees that he would prevent such incidents from reoccurring.

During the discussion of the dispute in the premises of the competent Labour Inspectorate, the employer did not deny that the complainants had indeed been subjected to sexual harassment, but claimed that he himself had taken all the necessary measures to ensure a similar incident would not be repeated.

The Ombudsman discovered that the employer had, on separate occasions, received complaints on sexual harassment instances from each of the two employees, while the data submitted led to the conclusion that the employer had had sound knowledge that his relative had indeed proceeded to actions constituting sexual harassment. The fact alone that the employer himself had not been present in any such incident was immaterial, given that, as a rule, sexual harassment does not normally occur in the presence of others, therefore there are hardly ever any witnesses to such incidents.

Taking into account the case file details, the Ombudsman found that the harasser had exhibited a specific repetitive pattern of harassing behaviour in both cases. More specifically, he made verbal remarks and offensive gestures aimed at the two employees, and then, upon finding that the employer had been respectively advised, he adopted an aggressive behaviour offending their personality in general, as "retribution" for the fact that they had exposed his harassing conduct to the employer. **The Ombudsman also concluded that the employer did not make, as he should in the context of his obligation to ensure the employees' welfare, every possible effort, or take every necessary measure, to prevent other similar incidents of sexual harassment, and to safeguard the personnel's labour interests and personality** (by removing, for instance, his relative from the workplace). On the basis of the above conclusions, the Ombudsman recommended to the competent Labour Inspectorate the imposition of a fine, which was indeed imposed (cases 299664, 299665).

Special maternity leave and special maternity protection benefit to adoptive mothers

The Ombudsman had in the past received a significant number of complaints from adoptive mothers with regard to the rejection of their applications for the special maternity leave and special maternity protection benefit granted by OAED (article 142 of Law 3655/2008, as amended and in force). According to the relevant provision: *"After the end of the postpartum maternity leave and the respective leave equalling the reduced working hours, a mother who is insured in IKA - ETAM and works under fixed term or open-term employment contract in enterprises or undertakings is eligible for special maternity leave of six (6) months, as foreseen*

in article 9 of the National General Collective Agreement (EGSSE) of years 2004 - 2005. […]" In fact, par. 3 of article 44 of Law 4488/2017 had been added to the above article, foreseeing that the said special leave is also granted to the biological mother (article 1464 of the Civil Code), who has a child through surrogacy.

However, despite the clear provision of granting the special maternity leave and protection benefit to biological mothers having children through surrogacy, no such consideration was ever given to adoptive mothers. In administrative practice, OAED had been refusing to grant such benefits, on the grounds that no labour had taken place and no postpartum maternity leave had been taken, according to the above provision. Par. 2 of article 44 of Law 4488/2017 has already provided for granting postpartum maternity leave to the biological mother as well. Par. 1 of article 44 of Law 4488/2017 also provided for granting maternity benefits to self-employed women who adopt a child younger than two years of age.

In previous interventions, the Ombudsman had proposed an amendment to the existent legal framework and an explicit provision for granting special maternity leave and protection benefit to adoptive mothers as well. Specifically, the need to modernise the legal framework in line with the provisions of the Civil Code in force had been stressed, as according to the latter there is no reason to treat a biological and an adoptive mother differently, and therefore they must be treated equally in terms of the rights deriving from maternity.

With a recent intervention, the Ombudsman reintroduced the issue to OAED and to the General Secretariat for Family Policy and Gender Equality, who in turn replied that the recommendation in question would be taken into account in a draft law under preparation. Indeed, article 36 of Law 4808/2021 amended article 142 of Law 3655/2008 and extended the special maternity leave and protection benefit to working mothers who adopt a child, from the time of the child' s inclusion into the adoptive family up to the age of eight (8) years (case 288256).

Religious or other beliefs in the workplace: a discrimination that goes unreported

The protection of religious and other beliefs is at the heart of EU legislation on the prohibition of discrimination in the workplace. This is not surprising, given that the EU's legal culture is based on the principles of the rule of law and respect for individual rights, which is reflected both in the EU's founding treaties and in the commonly accepted and binding legal texts, such as the European Convention on Human Rights and the European Charter on fundamental rights in the European Union. The combination of provisions on the prohibition of discrimination and the protection of religious conviction and beliefs in general leads to a high-level protection framework in the European territory, reflected in the wide case law of the European Court of Human Rights and of the Court of Justice of the European Union. Europe's contemporary social reality is shaped in a multicultural context and therefore such protection is very current and necessary, especially in the fields of work and employment. Issues as important as the respect for religious beliefs and the expression of faith through the use of religious symbols are today the focus of public debate, with the decisions of European courts[9] having a catalytic effect on them, while the Ombudsman's counterparts on promoting the principle of equal treatment often receive complaints from employees of a different religion, citing violations of the law on discrimination on grounds of their religious beliefs[10].

In Greece, however, not many people submit complaints to the Ombudsman on religious discrimination. In spite of this, acting in the capacity of monitoring as well as promoting the principle of equal treatment, the Ombudsman intervenes to prevent practices which may lead to discriminations in the workplace on grounds of religious or other beliefs, even when the relevant complaint merely hints at possible discrimination.

9. Case C-157/15 Samira Achbita & Centrum v. G4S (2017, CJEU: Case C-188/15 Asma Bougnaoui & ADDH v. Micropole SA (2017), ECtHR: Ebrahimian v. France (2015), ECtHR: Eweida and Others v. the United Kingdom (2013).
10. See https://equineteurope.org/publications/faith-in-equality-religion-and-belief-in-europe/.

Access to employment and military service certificates: the delicate balance of personal data

This was the case in the series of complaints submitted by citizens who did alternative service as conscientious objectors and brought the content of their military service certificates to the Ombudsman's attention. In particular, according to these complaints, the special mention of doing alternative service entails the risk of discrimination when accessing employment or occupation, as it makes it clear that the owner of the certificate is a conscientious objector.

Taking into consideration that the concept of alternative service is in place only for those who cite conscientious objection, and that the military service certificates refer to alternative service, clearly indicates that third parties shall indirectly become aware of the ideological reasons that led the individual to choose the status of conscientious objector. This explicitly violates the established right of the freedom of thought, conscience and religion (article 9 of the European Convention on Human Rights), and of the freedom of religion established in article 13 of the Constitution.

As a body promoting the principle of equal treatment, the Ombudsman addressed the Hellenic National Defence General Staff, pointing out that the mention of alternative service may lead to discrimination on grounds of beliefs when gaining access to employment, whereupon the assessment of candidates is often conditional on their submitting a military service certificate. Although the possibility of being exposed to discrimination risk does not fall exactly under the protection scope of Law 4443/2016, the Ombudsman deemed it necessary, in the context also of its role as a body promoting the principle of equal treatment (article 18 of Law 4443/2016) to highlight the fact that the practice of recording additional data – beyond what is absolutely necessary – actually makes the data subjects of the certificates easy prey to discrimination in the workplace. This remark concerned not only religious beliefs, but also other objects of discrimination which are protected by law, such as disability or chronic disease, which may also be deduced from a full and extensive reporting on how exactly the employee fulfilled his military obligations or was exempted from them.

In the relevant document, **the Ombudsman also expressed concerns over the proper processing of personal data in the military service certificate, according to the laws on protection of personal data** (Law 2472/1997 and Regulation 2016/79) and the decisions no. 162/21.10.2000 and 34/2006 of the Hellenic Data Protection Authority. It was noted in particular that the aim of processing is what defines the legality of the use of personal data, and that, according to the general

principle of "data minimisation", only the data which is absolutely necessary is legally used, to serve the intended purpose. Supposing that the aim of requesting a military service certificate is to ascertain that the employees have no military obligations pending, the full mention of data relating to the method, time and place of their fulfilment clearly transgresses the intended aim and is therefore illegal.

The Hellenic National Defence General Staff did not share the Ombudsman's concerns with regard to alternative service being mentioned either in certificates of type A, which record in detail the changes in service, or in certificates of type B, which merely attest to the performance of alternative service and the absence of military obligations; they did not, however, sufficiently document this position, especially in the part concerning the protection of personal data. For this reason, the Ombudsman decided to forward the issue to the Hellenic Data Protection Authority. **The Hellenic Data Protection Authority issued decision no. 79/13.01.2022, confirming that military service certificates must only include the information required to serve the aim for which they are issued.** Mentioning any other detail that does not serve this aim is superfluous and contravenes the principles of proportionality, suitability and data processing minimisation which are outlined by the provisions on the protection of personal data (cases 241698, 246259, 250773, 251984).

Persons with disabilities and work capacity: stereotypes and reality

The principle of equal treatment is delimited taking also into account the terms or conditions under which it is permitted to derogate from it. According to article 4 of par. 1 of Law 4443/2016, a difference in treatment based on the grounds for which discrimination is prohibited is by exception permitted when i) because of the nature of the activity, this difference in treatment constitutes an essential and defining professional precondition, ii) the relevant objective is legitimate, and iii) the precondition is proportional. The burden of proof of whether these terms are met in any specific case is usually borne by the public service or the private enterprise being investigated.

These terms also define the context in which the rules of operation of bodies and businesses can be implemented in accordance with the principle of equal treatment.

The principle of equal treatment concerns, among other things, the terms of gaining access to employment and work in general, including the selection criteria and the terms of engagement, regardless of the field of activity, and on all levels of professional hierarchy, as well as the terms of career and professional development.

Further specifying the principle of equal treatment in relation to individuals with a disability or chronic disease, article 5 of Law 4443/2016 defines, under the title ***"Reasonable accommodation for disabled persons*** *(article 5 of Directive 2000/78/EC)": "In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned."*

According to article 7 of the same law, *"2. With regard to disabled persons or persons with a chronic disease, the principle of equal treatment shall be without prejudice to the right of Member States to maintain or adopt provisions on the*

protection of health and safety at work or to measures aimed at creating or maintaining provisions or facilities for safeguarding or promoting their integration into the working environment.".

It is also pointed out that, according to par. 17 of the Preamble of Directive 2000/78/EC, which was transposed into the Greek legal order with Law 4443/2016, *"This Directive does not require the recruitment, promotion, maintenance in employment or training of an individual who is not competent, capable and available to perform the essential functions of the post concerned or to undergo the relevant training, without prejudice to the obligation to provide reasonable accommodation for people with disabilities".*

In view of the above legal framework for protection, the Ombudsman estimates that **the refusal of bodies of the public sector to finalise the engagement of persons originally deemed suitable for appointment, on the grounds that their disability makes them by default not fit for the position, constitutes direct discrimination.**

a) Abstract claims of health and safety reasons

This was found during the examination of a complaint from a female candidate in a call for the Hellenic Railways Organisation (OSE) to cover guard needs for level crossings; although she had initially been included in the temporary table of successful candidates, subsequently she was disqualified. OSE claimed to have legitimately based this decision on article 14 par. 1 of its Rules of Operation, which stipulate that the personnel must necessarily be in good health and physically fit so as to perform the assigned duties. As per the specific case, OSE further pointed out that the duties of guarding level crossings involve ensuring the safe crossing of trains throughout the territory, wherever level crossings are to be found, and are directly related to the safe traffic of trains and, consequently, of passengers, who are ultimately the main concern of OSE. **In other words, in the light of article 4 par. 1 of Law 4443/2016, OSE claimed that the nature of duties foreseen for the specific position justified a difference in treatment on grounds of disability.**

However, they failed to name the officer who judged that the disqualified candidate was unable to respond to the position's duties, or the information on which such judgement was based. Another point they failed to mention was the exact job description, the candidate's specific disability and how it would prevent her from exercising the particular duties for this position, and, finally, whether the possibility of taking measures for reasonable accommodation had been thoroughly explored according to article 5 of Law 4443/2016. Therefore, **OSE did not**

prove, as it bore the burden of proof and as the Ombudsman had requested, the necessity of disqualifying the particular candidate from participating in the competition, as legitimate basis for the derogation from the principle of equal treatment (case 294618).

b) Certification of competency

A violation of the principle of equal treatment regardless of disability or chronic illness was also found in the case of an individual who, despite being considered competent to exercise work duties, if not all, at least part of the specified duties of a position, the public service determined that there was an obstacle to the appointment because of the health problems the individual was facing and refused appointment.

In particular, an individual with a 70% disability rating took part in the personnel selection process of Local Government Authorities (OTA), by virtue of a vacancy competition via the Supreme Council for Civil Personnel Selection (ASEP). According to the Table of Appointees of the special category of persons with disabilities, the individual in question was deemed an appointee in the Municipality of Vari – Voula – Vouliagmeni in a regular staff member position, in the department of cleaning staff having completed compulsory education. However, the Municipality not only failed to proceed to adapt the duties to be assigned in accordance with the relevant medical opinion, but also, as was later found, was seeking to prevent the interested party's appointment from the very beginning.

In particular, as proven by medical opinions, **the candidate could have been employed by the municipal authority as a cleaning worker, performing certain of the duties foreseen in the job description (cleaning public spaces and streets).** This was confirmed in practice, given that the candidate had been employed as a worker, cleaning public spaces in a different municipality for 19 months, without any evidence of inadequate performance of his duties. The municipality did not take into account this evidence, nor did they explore the possibility of assigning the candidate duties which he had proven fully capable of. Additionally, the municipality failed to prove that there was no need for cleaners of public spaces or street cleaners. Thus, they referred the complainant to the competent Committee, so that the latter would issue an opinion on whether he was fit to perform the total duties covered by the specific position. Not surprisingly, a negative opinion

was issued, as the applicant failed to perform certain of the duties foreseen for this position.

Furthermore, the municipality considered that potentially adapting the duties of the position to the candidate's abilities, and assigning to him only those duties which he was fit to perform, would be "unlawful" to other candidates that did not take part in the competition. However, since the applicant was formally deemed an appointee in the context of the competition in question, failing to take the necessary measures to ensure his ability to respond to specific duties announced in the job description substantiates, according to the Ombudsman's estimation, a discrimination against him in accordance with the legislation in force (article 5 of Law 4443/2016) and, in this sense, an omission on the part of the municipality.

In conclusion, the competent authority did not prove that they had exhausted all means which would have made the candidate's appointment possible, bearing in mind that he had proven capable to perform certain duties involved in the announced position.

On the contrary, the Municipality assumed from the start that, due to his disability, the claimant is unsuitable for the position of cleaning staff and for the total of duties involved in it. Consequently, the Ombudsman issued a Findings Report and called on the Municipality to complete the hiring procedure for the individual concerned (case no. 281053).

The above examples, though isolated incidents, echo an outmoded negative stereotype of disabled people and their abilities, which Greek public administration does not seem to have fully eradicated.

Maintaining a balance in the age structure of the personnel: an attainable pursuit, under certain conditions

Despite the great number of insufficiently justified cases, investigated by the Ombudsman, of setting maximum age limits as a prerequisite for accessing work, there have also been cases in which the Authority has found, based on the information provided by the competent bodies, that setting a maximum age limit is deemed necessary for accessing work in specific professional activities.

In examining whether the conditions set in article 6 of Directive 2000/78/EC (article 6 of Law 4443/2016) apply, to consider legitimate and specially justified any derogation from the general principle of prohibition of discrimination on grounds of age, the Court of Justice of the EU (CJEU) has particularly drawn attention to the following: a) the aim pursued by setting a maximum age limit may not be clarified in the specific regulation, but may be indirectly deduced from other details of the measure in question[11], b) it is legitimate to facilitate certain groups of workers (e.g. younger of age) to actively enter working life[12], c) **it is a legitimate pursuit to achieve a balance in age structure, which means ensuring the inclusion in a specific profession both of young workers, at the beginning of their career, and older workers, who have progressed in their career, as it aims to facilitate retirement from the service, but also to ensure that workers, especially younger ones, are promoted**,[13] and d) it is a legitimate pursuit for a service to ensure that there is a sufficient number of employees capable of performing any physically challenging duties – when these are essential to the execution of a specific work task – and for a sufficiently long time to ensure the smooth running of an enterprise.[14]

11. See, in particular, recital 39 of C-159/2010 and C-160/2010 *Fuchs&Köhler*, recital 40 of C-341/2008 *Petersen*, recital 58 of C-45/2009 *Rosenbladt*, recital 40 of C-250/2009 and C-268/2009 *Georgiev*.
12. Indicatively, see recital 65 of C-341/2008 Petersen, recital 45 of C-250/09 and C-268/09 *Georgiev*.
13. Indicatively, see recital 60 of C-159/2010 and C-160/2010 *Fuchs&Köhler*.
14. Indicatively, see recitals 42, 43 and 46 of C-258/2015 *Sorondo*.

In light of the above, the Ombudsman has accepted that the overrepresentation of older personnel, and the respective underrepresentation of younger ages, in specific specialisms adequately justifies the need to define a maximum age limit as a condition for participating in personnel selection procedures. In other words, the Ombudsman has accepted that the need for maintaining a balance in the age structure of the personnel, of specific specialisms within any given body, is legitimate.

Thus, exploring the lawfulness of setting a maximum age limit of 35, which was a prerequisite for participating in a public competition of Urban Rail Transport (STASY), for the specialty of Train Drivers (of Secondary Education), the Ombudsman requested and received information on the age distribution of the personnel working in the specific positions. The most underrepresented age group was the one between 30 and 35 years of age, barely reaching a percentage of 0.50%. It was concluded that it is absolutely legitimate for STASY to seek to reinforce this age group by hiring more personnel, aiming to keep a balance in the age structure of workers in the specific specialism. But, since hiring new personnel would alter the age structure in the specific specialism, the Ombudsman underlined that this ought to be taken into account in case of a future public vacancy competition for new employees in the same specialism. **The age distribution of a body's personnel ought to be subjected to systematic assessment and re-evaluation, otherwise there is the risk of the specific professional activities being turned, in the long term, into a field of unjustified age discrimination, even possibly resulting in underrepresentation of older age groups** (indicatively, cases 289981, 290249). Similar were the Ombudsman's findings when looking into the maximum age limit of 45 years set by a public vacancy competition of 2020 held by Athens Road Transport (OSY) for the positions of Bus Drivers (Secondary Education) and Technicians (Secondary Education) of various specialisms. The Authority found that all of the specialisms (except that of refrigeration/cooling technicians) was underrepresented in the age groups below 45 and, with the same rationale, considered the set maximum age limit legitimate (indicatively, cases 287954, 288058).

Age Limits and Security Forces

The maximum age limit set as a prerequisite for gaining access to employment is always judged in relation to the specific professional activity which it concerns: when being physically fit is an essential qualification in practicing this activity, it does not suffice to ascertain that it applies only upon the time of hiring but it must be ensured that it will last for a long enough time.

This parameter is especially crucial for the personnel serving in specific positions in the Security Forces, as well as for all categories of personnel performing similar duties. On the basis of the case law of the CJEU, it has been deemed as legitimate for a certain body to seek to hire a sufficient number of employees to perform physically demanding tasks, even more so when these need to be performed for quite a long time, so as to ensure proper and smooth operation[15]. In fact, adequately performing a service, as in the case of the personnel in question, does not only relate to the need of being so fit as to be fully capable of completing the physically challenging tasks, but also to the need of performing their duties in such a way as to avoid risking their personal safety, the safety of others and the preservation of public order.

The Ombudsman built upon the above case law of the CJEU when looking into the lawfulness of setting a maximum age limit of 28 as a prerequisite for participating in a public vacancy announcement of special guards in 2021, aiming at setting up Protection Teams for University Institutions, based on a legislative provision[16].

15. Indicatively, see recitals 41, 43 in case C-229/2008, *Wolf* (on exercising the profession of firefighter), recitals 42,43 and 46 in case C-258/2015, *Sorondo* (on exercising the profession of police officer) and recitals 39, 40 in case C-416/2013, *VitalPerez* (local police officers).

16. The maximum age limit of 28 is foreseen by the provisions of article 9 par. 5 of Law 2734/1999, as amended and in force, and by the decision of the Minister of Citizen Protection no. 7002/12/1-26 (OGG B' 3010/25.07.2019) which was authorised by this article, as in force (article 1 par. 1 case b of ministerial decision). The age of candidates is calculated presuming that their date of birth is December 31st of their year of birth.

Taking into account the professional duties assigned to special guards, the Ombudsman concluded that, firstly, setting an age limit is justified, as it is a crucial element of exercising the particular profession. The Authority also concluded that the body's pursuit of ensuring a sufficient number of employees capable of performing the more physically challenging tasks, even more so for quite a long time, is legitimate, as it aims to achieve the desired outcome, which is the preservation of public order and security, but also of the Force's operational readiness.

However, even though the Ombudsman initially considered it lawful and necessary to set a maximum age limit for the participation of candidates in the selection process, for reasons of public interest in relation to preserving public order and security, it was not possible to reach a safe conclusion with regard to setting the specific age limit of 28, since the information brought to its attention did not sufficiently document or specifically focus on that. The Ombudsman pointed out, in particular, that it could not be deduced how hiring personnel even slightly older of age (e.g. 30 years old) would jeopardise public order or security, or undermine the goals of the Service. The Ombudsman also stressed that the scientific data drawn from research performed in the field of health, work and sport are constantly changing. In this context, it was recommended that the Hellenic Police re-evaluate the maximum age limit of 28, building upon the experience gained and information obtained from personnel already in the service, as per their fitness to perform their duties, any possible changes in such fitness levels during their career, and the average age at which they retire from the specific service (cases 299747, 300830).

Equal treatment and single-parent status

In its *Equal Treatment Special Report 2019*, the Ombudsman had focused on the category of single parents, pointing out that the scope of their protection remains limited to the field of work, although they are burdened with increased responsibilities related to taking care of and bringing up their children. It had pointed out that Greek law does not have an all-encompassing legal definition for identifying single-parent status and the concept of single-parent family. On the contrary, these terms are differentiated in the relevant provisions, depending on the nature of the relations to be regulated and the purpose each provision seeks to achieve. Thus, a criterion for identifying single-parent status is sometimes the exclusive exercise of parental responsibility and other times the exercise of child custody. The exclusive exercise of parental responsibility is usually set as a precondition for gaining access to employment for those single parents who have taken on the responsibility of bringing up and looking after their children due to the absence of the other parent. In other cases, such as in the case of facilitating single parents and granting leave of absence to them, it is usually sufficient for them to have undertaken child custody to be granted the facilitation in question.

However, in cases where a person can be considered, according to the relevant legal framework, a single parent as long as they exercise child custody for one or more children, the Ombudsman has found that the respective capacity is not attributed to them when they have undertaken the exclusive exercise of parental responsibility by means of a court decision, on the grounds that there is no relevant explicit provision in the relevant legislation.

Specifically, the Ombudsman examined a complaint made by a female candidate for auxiliary staff positions (except for doctor positions), who was removed from the relevant tables on the grounds that she did not prove her single-parent status. The relevant Joint Ministerial Decision (JMD) which was in force at the time of investigating the complaint[17] foresaw divorce documents that the single parent can submit to obtain the 100 points of single-parent status, including "...c) *a final court decision regulating custody, or d) an interim decision regulating custody".* The specific candidate submitted a final court decision attributing to her the exclusive parental responsibility for her three children, but the competent Regional Health Authority did not accept it, on the grounds that it was not among the supporting documents foreseen in the JMD.

17. Article 6 of the Joint Ministerial Decision no. Γ4β/Γ.Π.οικ.7980 (OGG B΄ 460/14.02.2020).

Addressing the Regional Health Authority, the Ombudsman pointed out that, on the basis of the relevant provisions of the Civil Code (articles 1510, 1513, 1514 and 1518 of PD 456/1984, as in force), the concept of parental responsibility is wider than that of custody of children, and in fact the former includes the latter. The fact that the provisions of the JMD do not refer explicitly to court decisions being required to attribute exclusive parental responsibility to one parent proves the legislator's intent to also grant single-parent points to those parents who have just undertaken the custody of their child/ren, i.e. their day-to-day care, and not necessarily exclusive parental responsibility. In no case can this be perceived to mean that the legislator's intent was to not attribute single-parent status and the respective points to parents who not only have undertaken the custody of their child/ren, but also the exclusive parental responsibility, i.e. are handling all of the issues concerning the child. **In light of the above, the Ombudsman requested that the candidate's application be re-evaluated and that the final court decision attributing exclusive parental responsibility of her children to her be accepted as a document proving single-parent status, so that, as long as she also meets the other criteria, she can acquire the relevant points.** However, the Regional Health Authority insisted on the literal interpretation of the provision.

In a relevant Findings Report, the Ombudsman pointed out that, judging from the pertinent provisions and the alternative ways of proving single-parent status put forward in the relevant legislative framework, the legislator is trying to cover all the cases of single parents. What is common in all of these alternative ways is the effort to ensure that the parent who invokes single-parent status is indeed exercising – at least – the custody of his child/ren. Obviously, the legislator has not included in the relevant supporting documents the case of parental responsibility being exclusively attributed to one of the two parents, on the one hand, because such exclusive attribution of parental responsibility to one parent, when the other is inter vivos, only occurs in extraordinary cases, on the other hand because it seems that the legislator's intent was to also attribute single-parent status to parents who just exercise the custody of the child (i.e. its day-to-day care). In light of the above and in order to allow no room for misunderstanding, or phenomena of exclusion from the relevant auxiliary personnel selection procedures of those candidates who have proven to exercise the exclusive parental responsibility for their child/ren and are therefore proven to be single parents, the Ombudsman requested that an addition be made to the relevant JMD, i.e. the court decision exclusively attributing parental responsibility to one of the two parents to be added to the list of documents proving single-parent status (case 294939).

Public documents with marked “father unknown” in the father’s name field

Stating a father’s name as a piece of information supplementary to a person’s name functions as a point of reference for this person, but also as part of their private and family life. Therefore, the mention of a father’s absence may mean that the person is faced with the negative implications of outdated social stereotypes.

This also paves the way for indirect discrimination, in the sense that a neutral action, such as issuing a certificate of permanent residence, on the basis of citizen information included in the Civil Registry, may put a person of a specific family status at a disadvantage compared to others.

The Ombudsman had to deal with such a case, after a relevant complaint made by a female citizen, whose mother never married and who bears her mother’s surname. In all the documents related to her civil status, and in her official identity card, the fields of the father’s name and surname remain blank. When she entered the digital platform mygov.gr to issue a certificate of permanent residence, using her codes for TAXISNET to confirm her personal details, she was provided with a certificate marked “ΑΠ” in the field of the father’s name, which she perceived to mean “Father Unknown”. Upon a second request for the same certificate, she was again provided with a new one, with the word “WITHOUT” marked in the field of the father’s name. **The complainant protested, believing that the specific entries exist and refer to the feature *“father unknown”* or *“without father”*, which is anachronistic and constitutes an insult to her personality.**

The Ombudsman judged that the issue discussed in the citizen’s complaint concerned the protection of her individual rights, more specifically of the right to protect her private life and personality, but also the prevention of those circumstances that might foster discrimination against her because of her family status. The right to protect one’s private life is protected by the Constitution (article 9 par. 1), but also by the European Convention on Human Rights, and therefore the European Court of Human Rights has contributed with its case law to the shaping of its content meaning. It is therefore acceptable that a person’s name, as an element of their personality and as a link to their family, concerns their private

and family life[18], an assumption which is not negated by the fact that the state has a legitimate interest to legally regulate the use of names, aiming, among other things, to record population with precision, or to guarantee proper identification procedures.

Taking into account that the obligation of respecting people's personality and private life creates not only the negative obligation of the state to refrain from any action that violates their rights, but also its obligation to proceed to positive measures aiming at creating the essential conditions for such respect, the Authority proposed the elimination of any mention in relation to the absence of a father's name on the part of the complainant.

Judging that this issue concerns the Civil Registry and the possibility to issue certificates digitally, on the basis of information registered in it, and thus it is beyond the scope of responsibility of the specific Municipality that issued the certificate, the Ombudsman also addressed its intervention to the Ministries of Interior (Directorate of Civil Status and Digital Governance) asking for their opinions and actions. Indeed, the Municipality that had issued the specific certificate replied to the Authority that the information included in the certificates is drawn automatically from the Govhub service hub and the interoperability centre of the G.S.I.S.P.A. (General Secretariat of Information Systems for Public Administration) in a way that safely protects personal data, through the records of AADE, without allowing the option to delete certain data. The issue was finally centrally managed, as the competent Municipality issued a certificate of permanent residence without marking "ΑΠ" ("Father Unknown") in the father's name field (case 301310).

18. *Negrepontis-Giannisis vs Greece.*

The sexual orientation as an obstacle in social contribution and solidarity: the issue of being prevented from donating blood

The free and voluntary blood donation to perform necessary medical procedures is an act of individual and collective responsibility, and as such concerns society as a whole. It is directly related to the value of life, the respect of which is collectively viewed as a legal right of the utmost value. However, though it features among the greatest acts of social solidarity, it is not always accessible to all, not always by choice but often because of restrictions and rules imposed by the system in the frame of ensuring public health. One such restriction has to do with the sexual orientation of prospective blood donors. More specifically, **the form handed out to be filled in by prospective blood donors, concerning their medical history, included the question of whether the subject had had any experience – even if once – of homosexual contact since 1977. In case prospective blood donors replied affirmatively, they were excluded from ever donating blood.**

Such exclusion was linked to the risk of transmitting, through blood transplants, infectious diseases like HIV and hepatitis B and C, which are sexually transmitted, but also linked to research findings classifying whole groups of people with specific sexual attributes under the category of high risk of transmission[19].

Science, however, has significantly progressed, with the use of diagnostic tools that allow for safe control of blood donation products to prevent the risk of transmitting any disease. Thus, **the serious argument is now taking shape that any control or restriction imposed on voluntary blood donors should target potentially dangerous sexual behaviour, irrespective of sexual orientation.** In light of these developments, but also of the strong reactions on the part of LGBTQI+ organisations around the world, the relevant restrictions in several countries are either removed altogether, or made milder[20].

The issue also concerned the competent European authorities, as an issue of violating European Union law, namely Directive 2004/33/EC on technical specifications for blood and its components. Addendum III of the Directive specifies

19. See https://www.cdc.gov/std/treatment-guidelines/msm.htm#:~:text=HIV%20Risk%20Among%20Men%20Who,one%20in%20253%20%28191%29.

20. E.g. in the USA, Canada and the UK, the condition was to have abstained from sexual activity for 1 year, but has now been reduced to 3 months, in France and Finland it has been reduced to 4 months etc.

that people whose sexual activity entails a high risk of transmitting bloodborne infectious diseases should not be allowed to donate blood. Therefore, the Directive leaves room for interpretation so that member-states can properly evaluate what constitutes dangerous sexual behaviour. The question still remains, however, whether such exclusion, be it permanent or for a limited (longer or shorter) period of time, is the most suitable and appropriate means of preventing the above risk, and whether it meets the principle of proportionality in relation to the aim pursued. Meanwhile, the relevant questionnaire's mention of the existence or not of sexual relations and the exclusion from donating blood on the basis of this criterion has been put forward before the European Court of Human Rights[21] as a violation of article 8 (right to respect for private life) in combination with article 14 (prohibition of discrimination) of the European Convention on Human Rights.

The Ombudsman has already raised the issue with Greek authorities since 2019 and had been informed by the National Blood Donation Centre (EKEA) of the intention to replace the relevant mention in the questionnaire (Blood Donor's History) of the National Blood Donor Registry of EKEA. Despite this reassurance, however, no change had been made until 2021, when the Ombudsman again raised an issue based on a new complaint. In its intervention, the Ombudsman pointed out, among other things, that according to the legislation in force (PD 138/2005) on harmonisation with the Directive 2004/33/EC of the European Commission, there seems to be no explicit exclusion from blood donation of people with homosexual relations, while the National Strategy on equality of LGBTQI+ individuals points out that prohibiting people with homosexual relations from donating blood constitutes unwarranted discrimination on grounds of sexual orientation or gender identity and reduces the number of eligible blood donors (case 300424).

21. Cases of *Tosto vs Italy, Crescemonte vs Italy, Feranda vs Italy*, which however were not judged by the court on the merits, as there was a change in Italian legislation that removed all restrictions while the court proceedings were still pending (2002). The issue was nonetheless brought to the court's attention once again in 2018, with the case of *Drelon vs France* concerning the restriction of 4 months (abstinence of 4 months from sexual activity between men as a prerequisite to donate blood), which is still pending.

Finally, according to the Minister of Health's decision no. ΓΠ.οικ.900/2022 (OGG Β΄ 36/10.01.2022), the blood donation form no longer contains a mention of sexual relations with people of the same gender. On the contrary, it contains a series of cases focusing on sexual behaviour that may pose a great risk of transmitting bloodborne diseases, with no mention whatsoever being made to the sexual preferences of prospective blood donors.

Freedom of movement for European workers

The freedom of movement for workers is a fundamental right of EU citizens, established in article 45 of the Treaty on the Functioning of the European Union (TFEU), while it also entails the abolition of all discrimination based on nationality between workers of member-states, as per their employment, pay and working conditions.

Among other things, it includes their right to move freely, seeking to actually offer work within the territory of member-states and reside in them with view to exercising a professional activity.

The principle of equal treatment, in the context of free movement of workers, is also foreseen by the provisions of Regulation 492/2011 of the European Parliament and of the Council of 5 April 2011. It concerns both access to jobs and performing work, and prohibits any form of covert discrimination which in effect, pursuant to other grounds of discrimination, produces the same result. The scope of implementation of these provisions includes any European Community citizen, regardless of place of residence and nationality, who has exercised the right of workers' freedom of movement and practiced a profession in another member-state. Thus, according to the Regulation's provisions, it is prohibited to implement legislative, regulatory or administrative practices that restrict, or impose conditions not applicable to national citizens on work demand and supply, employment and the exercise of a professional activity by foreigners; it is also prohibited to follow practices which, although implemented irrespective of nationality, are aimed exclusively or primarily at excluding other member-states' nationals from the jobs on offer.

The Directive 2014/54/EU of the European Parliament and of the Council, which has been transposed into Greek legislation with Law 4443/2016, specifies certain measures to facilitate access to jobs in the context of the free movement of workers within the EU. According to its provisions, **EU citizens are protected against discrimination on grounds of nationality in terms of access to jobs, and employment and working conditions, and they are entitled to be treated equally to national citizens.**

As the body authorised to monitor and promote the implementation of free movement of working European citizens, the Ombudsman has the competence

to make recommendations, when it finds that unwarranted restrictions or obstacles are being imposed on their free movement or they are discriminated against. In this context, it has examined and identified past cases of violating the principle of free movement[22].

An indirect case of such a violation was **the placement and transfer of teachers employed by the Greek educational system**, especially in relation to the points assigned based on the criterion of locality. In these provisions (article 8 par. 9 of Law 2817/200, article 2 of PD 144/1997 and article 16 of PD 50/1996, as in force), **locality relates to being a citizen of a municipality and not a permanent resident of a country**. But those teachers who have a nationality other than Greek (i.e. of another European Union member-state) cannot receive a certificate from the municipal registry in the place of their permanent residence, even when they have been living in Greece for more than twenty years, given that their entry to the registry is only indicative. In fact, even if they obtain Greek citizenship through naturalisation, they will not be eligible to points of locality before at least two years have elapsed from the time they were properly entered in the municipal registry.

Addressing the Ministry of Education on this issue, the Ombudsman pointed out that, in light of all the above provisions aiming to ensure the unimpeded, free movement of working European citizens, requiring teachers to submit certificates proving that they are municipal citizens to schools in which they wish to work, because they are near their place of residence, puts teachers who are citizens of EU member-states and have not obtained Greek nationality at a disadvantage compared to other teachers. Therefore, the precondition of proving citizen capacity generates, in this case, discriminatory treatment against teachers who are nationals of other EU member-states, since only obtaining Greek nationality would enable them to claim points of locality during their placement.

Besides, the Ombudsman pointed out that, already since 2012, the competition procedures followed by ASEP have disassociated the criterion of locality from citizen capacity and associated it with the capacity of permanent resident, pursuant to the relevant EU provisions on free movement of workers and in order to

22. *See Special Report of 2018 on Equal Treatment, pgs. 43-44*, https://old.synigoros.gr/resources/docs/ee_im_2018_en.pdf. Let it be noted that, in the specific case, the European Commission called upon Greece to take specific measures, on a short deadline, to abolish the requirement of being a Greek national in order to have access to a high-ranking position in public administration, otherwise Greece may be referred to the Court of Justice of the European Union (CJEU).

avoid the country's referral to the CJEU for violating the principle of freedom of movement for workers[23].

In conclusion, the Ombudsman found that associating locality with citizen capacity when hiring and transferring teachers constitutes a practice that results in indirect discrimination against citizens of EU member-states and shall not be implemented.

It also proposed the final removal of the existent discrimination by adjusting the relevant regulatory acts to the principle of freedom of movement for workers within the EU, and the implementation of a system of awarding points of locality on grounds of permanent residency and not of citizenship (indicatively, case 302637).

23. Seehttps://www.hellenicparliament.gr/UserFiles/bbb19498-1ec8-431f-82e6-023bb91713a9/%CE%A4%CE%A1%CE%9F%CE%A0%CE%9F%CE%9B%CE%9F%CE%93%CE%99%CE%91%20%CE%A0%CE%95%CE%99%CE%98%CE%91%CE%A1%CE%A7%CE%99%CE%9A%CE%9F.pdf, pg. 3.

CURRENT ISSUES

Current Issues

Combating violence and harassment in the workplace and balancing work and private life: the new institutional framework and the competence of the Ombudsman

During the spring of 2021, a bill was set for consultation by the Ministry of Labour, which contained important provisions pertaining to the special work scope of the Ombudsman's competence as the national Equality Body for equal treatment in employment and work. The Ombudsman submitted specific commentaries and proposals before the adoption of the law, in order to clarify the new protection framework that was being formed, especially in matters of its competence. The main scopes pertaining to the competence of the Authority include the protection of workers from violence and harassment in the workplace, when it is constituted as discrimination, and the strengthening of the conditions to achieve balance between their professional and family life. The legislator's initiative is aligned with international and EU law, in particular with the Convention 190 of the International Labour Organization for the elimination of violence and harassment in the workplace and with Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance, and is assessed positively in both directions.

a) Violence and harassment in employment and work

The Convention 190 of the International Labour Organization expands the protection framework and operates complementarily to the existing provisions on harassment and sexual harassment, provided for in Laws 3896/2010 and 4443/2016.

Significant innovative elements in relation to the existing framework include the following:

- the extension of the scope of protection to all forms of violence and harassment regardless of whether they constitute a form of discrimination,

- the implementation of the provisions to all workers and employees in the private sector, regardless of their contractual status, including those employed on a work (project) contract, employment contract, independent services contract, or those working through third party service providers, are trainees, apprentices or volunteers, or employees whose employment contract has expired, as well as to jobseekers and workers in the informal economy,
- the establishment of an obligation for all employers, regardless of the number of their personnel, to adopt procedures for reporting and investigating incidents of violence and harassment at work that are accessible to employees, as well as to provide them with information, assistance and access to competent authorities when they face such issues. In addition, there is an explicit provision for employers with more than 20 employees to adopt a policy to prevent and combat violence and harassment in the workplace, which declares zero tolerance for these forms of behaviour and defines the rights and obligations of employees and the employer to prevent and confront such incidents or forms of behaviour,
- the provision for the possibility of employees, who has suffered and reported behaviour that constitutes violence or harassment, to leave the workplace for a reasonable period of time without any salary cut or other adverse consequences, if they have reasons to believe that their life, health or safety is in danger,
- the possibility of an individual to appeal to external control bodies and specifically: a) to the Labour Inspectorate and b) to the Greek Ombudsman, if a case raises suspicions of discrimination and falls within the scope of Laws 3896/2010 and 4443/2016.

The model of cooperation between the Labour Inspectorates and the Authority provided by the new provisions is not unique. It follows the model of their cooperation already established through the framework of Laws 3896/2010 and 4443/2016 for combating discrimination.

The marked difference here is that while allegations of general harassment or violence in the workplace and mobbing are now subject to the intervention of the Labour Inspectorate, the Ombudsman continues to examine complaints that are likely discriminatory, i.e. related to any form of discrimination on grounds (gender, race, ethnic origin, religious beliefs, disability, age, sexual orientation, identity or gender characteristics) against which protection is provided by the law.

The Authority's experience to date demonstrates the significant predominance of complaints regarding harassment based on gender (especially sexual harassment) over any other form of discrimination that the Ombudsman could address. This is not surprising, given that the Ombudsman's specific competence for equal treatment between men and women in the public and private sectors has existed for a number of years and has been the starting point for cooperation with the Labour Inspectorates and an important part of the Authority's work as an Equality Body. **In practice, with the adoption of the new law, all labour disputes submitted to the Labour Inspectorate under Law 4808/2021, are also forwarded to the Ombudsman, so that it can determine whether it has concurrent jurisdiction.**

b) Balancing professional and private life

With Law 4808/2021, the Directive 2019/1158 of the European Parliament and of the Council of 20 June 2019 on the work-life balance was also transposed, at least a year earlier than the deadline that was set for transposition (August 2022). The new law focuses on the protection of employees who make use of the favourable regulations for family reasons, as a practical demonstration of the importance attributed by the European Union and, respectively, the national legislator, in maintaining the necessary balance between professional and family life. At the same time, the transposition is of great importance in the context of the Convention on the Rights of Persons with Disabilities (CRPD) due to the facilitations provided to the caregivers of persons with disabilities, in the field of employment and occupation.

The adoption of an effective institutional framework to ensure the necessary balance between the professional and family life of working parents and carer givers constitutes an important aspect of substantial gender equality and an ongoing challenge to improve the level of its achievement.

Under this approach, the promotion of women's participation in the labour market, the equal distribution of care giving responsibilities between men and women, as well as the bridging of the gender pay gap, are particularly important.[24]

The investigation of cases of discrimination on grounds of gender and marital status in the field of employment and occupation reveal significant deficits, but also obstacles that hinder the improvement of the current situation.

The Authority has examined a wide range of cases, with a subject matter that ranges from non-granting of part-time work due to child rearing, non-recognition of reduced insurance contributions due to childbirth, non-granting of maternity protection benefits to adoptive mothers in the private sector, to dismissal of women returning to work after pregnancy or dismissal of parents using days off to care for their children.

The Ombudsman, as the Equality Body that promotes the principle of equal treatment, as early as November 2019, with its intervention to the General Secretariat for Family Policy and Gender Equality, had highlighted the protection gaps in the relevant framework for leaves in both the public and private sectors, had focused on the key provisions of Directive 2019/1158/EU and had submitted concrete proposals for dealing with long-standing and unresolved problems of working mothers and parents [25]. **The aim was to make good use of the occasion of the obligation to transpose the Directive as an opportunity to adopt a new legal framework for safeguarding the rights of employees that relate to their family situation.**

24. See Preamble to Directive 2019/1158/EU, point 6.

25. See *Equal Treatment - Special Report 2020*, pages 46-48 (https://www.synigoros.gr/en/category/default/post/equal-treatment-special-report-2020)

The provisions of the law on paternity leave, parental leave, caregiver leave, absence from work due to force majeure and flexible forms of work now apply to all employees of the private sector, the public sector, the legal persons governed by public law, local government authorities and the wider public sector, as provided in art. 14 of Law 4270/2014, with any employment relationship or form of occupation.

A significant expansion is also observed regarding the concept of parental status that needs protection, as the new regulations apply to all working parents, natural parents, adoptive parents, foster parents, as well as to presumptive mothers who have a child through the process of surrogacy. There is a special provision for granting leave to single parents, while the extension of the leave for medically assisted reproduction to employees in the private sector is also very important, since this possibility was only provided to employees in the public sector until now. The Authority had highlighted[26] this extension as a necessary positive measure for balancing family and professional life for working women of the private sector, a proposal which was finally accepted and reflected in the new provisions.

In addition, any termination of an employment relationship based on the fact that an employee requested or received leave or flexible arrangements or exercised a right provided for in those provisions is explicitly forbidden and invalid. A crucial point for activating this protection is the regulation for the burden of proof provided by the new provisions. The Ombudsman, in the observations it submitted to the bill27, had pointed out that the wording adopted for the burden of proof in art. 48 of Law 4808/2021, created confusion regarding the evidentiary process and its application, but also doubt as to whether it really constitutes a reversal of the burden of proof.

26. See *Equal Treatment - Annual Report 2020: Subjects*, pages 83-84 (https://old.synigoros.gr/resources/annual_report_2020.pdf).

27. See https://old.synigoros.gr/?i=kdet.el.news.810452

The final wording of the provision of art. 48 now shifts the issue as to the manner in which it will be implemented in practice, which after all applies to the whole set of the new provisions. It is underlined that, according to art. 32 of Law 4808/2021 and in line with art. 15 of Directive 2019/1158, *"... the Greek Ombudsman, as a body for monitoring and promoting the implementation of the principle of equal opportunities and equal treatment between men and women, according to par. 6 of article 3 of Law 3094/2003 (OGG A΄10) and article 25 of Law 3896/2010 (OGG A΄ 207), is designated the competent body for the issues of discrimination that are regulated by this Chapter".*

National Strategy and Plan for the Social Inclusion of the Roma

In December 2021, the National Strategy and the Action Plan for the Social Inclusion of the Roma 2021-2030 were put into consultation.

The Ombudsman, as the Body responsible for the promotion and implementation of the principle of equal treatment, closely monitors all issues concerning the Roma and actively participates in the efforts to eliminate social exclusion and the discriminations that they suffer, either through public actions or in a targeted way, within the framework of handling individual complaints.

In the context of preparing the Plan, the Ombudsman submitted its views on specific issues that were brought to its attention by the Research Laboratory of Social Administration of the University of West Attica. The main comments regarding the Action Plan can be summarized as follows:

- The Action Plan describes (albeit in general) how the objectives of the National Strategy for the Social Inclusion of the Roma (ESKE Roma) will be implemented through specific interventions.
- The inclusion and participation of the Roma themselves in the processes of

planning, implementation and monitoring of the relevant policies and actions is explicitly provided.

- The need to adapt relevant policies and actions based on the social, economic, cultural and geographical specificities of the individual Roma groups and communities is recognised.
- The multiple discrimination suffered by individual social groups (women, children, PwDs, etc.) within each Roma community and therefore their different needs are identified.
- The documentation of Roma settlements - camps is systematised.
- Emphasis is placed on creating a framework of indicators for monitoring and evaluating the implementation of the National Strategy for the Social Inclusion of the Roma, in proportion to the proposed portfolio of FRA indicators.

However, the following should also be highlighted:

- The target group of the National Strategy for the Social Inclusion of the Roma (beneficiaries) does not include foreign Roma. This exclusion is not cured by the connection of the National Strategy for the Social Inclusion of the Roma with the National Strategy for the Integration of Third Country Citizens, given that a large number of foreign Roma are settled in Greece, who face particularly acute problems and usually, among other things, multiple discrimination (e.g. due to nationality, ethnic origin, etc.).
- **Many of the positive measures and pillars for combating poverty and facilitating the access of Roma to income resources or goods and services (granting a national pension, guaranteed minimum income, unemployment benefit, childbirth benefit, social domestic tariff, etc.) are designed in a way that does not take into account the specificities of the Roma.** Given that serious problems are often detected during their inclusion in these procedures, due to the inability to submit the required supporting documents (e.g. non-registration or deficiencies in the registration in the municipal registers, not having an identity card, problems in the issuing of VAT (AFM) or Social Security Registration Number (AMKA)), it is deemed necessary that, in the under preparation of the National Strategy for the Social Inclusion of the Roma, the specific issues of exclusion of the Roma beneficiaries from the aforementioned procedures should be taken into account.
- **Especially in the field of occupation, where exclusion from typical forms of employment and work is often observed, it is important to have special**

planning and to take measures to facilitate access to both, the labour market and vocational education and training.

- Respectively, in the field of education: first of all, aptly a reference is made to problems encountered regarding access to school and school attendance by the Roma children, as well as to the increase of two-year pre-school education, the strengthening of secondary education attendance and actions for combating student dropout. However, the necessary focus is not placed on the main shortcomings that exist and actually prevent the participation and inclusion of Roma children in the school process depending on their age and needs (lack of school buildings and classrooms, refusal to register in existing schools with immaterial excuses, problems of transport to schools outside the settlements).
- Regarding the social, financial and cultural differentiation of the Roma, the privileged connection of the National Strategy for the Social Inclusion of the Roma (ESKE) with the Regional Operational Programmes (PEP) contributes, initially, to a bottom-up approach, in other words, in highlighting "local specificities". It is necessary, however, to ensure that the special characteristics of Roma sub-groups and communities within each Administrative District will not be underestimated, in the context of a geographical-administrative cautionary approach. In any case, for the most effective possible planning and implementation of actions for the Roma, the active participation of the local government authorities (A and B tiers) in each Region or Regional Unit is necessary.
- Regarding the creation of a framework of indicators for monitoring and evaluating the implementation of the National Strategy for the Social Inclusion of the Roma (ESKE), the system is under development and its reliability depends on the detailed documentation of the current situation, in all fields of action. Until the relevant measurements are made available, Base Values and Target Values cannot be formed, which essentially means that there is an absence of an evaluation system. In addition, apart from the cooperation with the Hellenic Statistical Authority - which is a very positive thing - the question that arises is how to continuously collect (e.g. per year or otherwise) reliable, objective data on the number of Roma who are socially excluded and how the necessary cooperation of the Local Government Authorities (A and B tiers) with the Central Administration and the co-competent bodies, for the supervision and monitoring of the activities and the collection of reliable data, will be implemented.

- Finally, regarding the planning and implementation of the actions of PILLAR III *"PREVENTION AND FIGHT AGAINST ANTI-GYPSISM AND DISCRIMINATION" and PILLAR IV "PROMOTION OF ROMA PARTICIPATION"*, it seems that these actions have taken the target group into account. It should be noted, however, that these actions are not further specified, nor do they appear to ensure the participation of Roma organizations and the Roma themselves (e.g. information, training, participation in activities, etc.).

Compulsory vaccination and other restrictive measures: the protection of public health in conflict with individual freedoms

One of this year's critical issues that intensely preoccupied society and was brought before the Ombudsman was the adoption by the government of strict measures to control the spread of the pandemic generated by the Covid-19 virus, which impose severe restrictions on the individual freedoms of citizens. Similar measures were implemented during the previous year, when, for the first time, control measures were set to restrict and prohibit the free movement of citizens. In 2021, however, due to the development of medical means of diagnosis and shielding against the virus, the stakes were different and concerned the obligation to undergo diagnostic testing and vaccination as a condition for the participation in professional and social life.

With the art. 206 par. 1 and 2 of Law 4820/2021, an obligation for vaccination was established for all staff a) of private, public and municipal care units for the elderly and people with disabilities b) of private, public and municipal health structures (diagnostic centres, rehabilitation centres, clinics, hospitals, primary healthcare facilities, hospitalisation units, National Centre for Emergency Care and National Public Health Organisation). Furthermore, according to par. 3 of the same article, as replaced by art. 36 par. 2 of Law 4829/2021 and by a series of ministerial decisions, restrictions were placed on air travel, transportation, access to sanitary control units, entertainment and sports venues (cinemas, theatres),

and in particular access was possible either exclusively to vaccinated citizens, or to those who had a diagnostic test (rapid test) or previous illness certificate. At the beginning of the school year, and after the possibility of vaccination for minors over 12 years of age had been introduced, it was decided that attendance to school facilities will be done for students with a vaccination certificate or with presentation of a diagnostic test result (self-test), provided free of charge, twice a week, while for teachers with a vaccination certificate or with presentation of a diagnostic test result, twice a week, performed by diagnostic laboratories at their own expense (rapid-test).

Consequently, the Ombudsman received a significant number of complaints regarding the legality of the relevant provisions. Responding promptly to these complaints, the Ombudsman informed in writing all the citizens who appealed that, according to its competence: a) the Authority does not directly control regulatory acts or legislative provisions as this would be contrary to the institutional framework governing the Authority, but also to the constitutional principle of the separation of powers (art. 26 par. 1 of the Constitution), b) does not examine issues pertaining to the service status of public service personnel, which includes any issue related to the provision of work to the public body, such as salary, transfers, secondments, leaves, etc., and, consequently, the administrative measures taken in the context of the employee's provision of the service (art. 3 paragraph 2 of Law 3094/2003) and c) an exception for to the ad hoc examination of an issue concerning the application of such restrictions or measures could be if it relates to a breach of the principle of equal treatment in employment and occupation and is linked to a ground for discrimination (e.g. disability or chronic disease, religious or other beliefs, etc.).

Simultaneously, in these letters the Ombudsman informed the citizens about the imposition of the measures and the likelihood of their disparity to the Constitution or to other supra-legislative provisions in force, underlying the fact that all measures are legislatively adopted and deal with the confrontation and the limitation of the consequences of the unprecedent emergency conditions generated by of the Covid-19 pandemic which, since its appearance in March 2020, has caused huge number of deaths and long-term hospitalisations. Consequently, their enactment is mandatory with the evocation of reasons of protecting the collective good of public health. The Constitution, in art. 21 par. 3 stipulates that *"the State shall care for the health of its citizens"*, while in art. 5 par. 5 it mentions that everyone *"has a right to the protection of health"*. In other words, there is an explicit constitutional requirement for the State to take measures to protect the health of citizens. The provision of incentives to citizens to be vaccinated in order to limit the spread and confront the pandemic aims to fulfil this requirement. In

this context, the State may restrict other constitutionally vested rights and personal freedoms, given that certain terms are fulfilled, such as the proviso in law and adherence to the principle of proportionality according to art. 25 par. 1 of the Constitution. For adhering to the principle of proportionality, the restrictions enforced on exercising a right must serve a legitimate purpose and be appropriate and necessary for achieving this purpose. The judgement regarding adherence to this principle, during period of the complaints made were submitted and was pending before the courts..

In conclusion, it is clear that the development of the pandemic and the effectiveness of the measures that are made available for its combat for the benefit of society as a whole, determines to a large extent, during these circumstances, the restriction on personal freedoms, their duration and the impact on the resiliencies of a democratic society.

Already at the end of the year, the increase in hospitalizations and deaths from Covid-19, in conjunction with the emergence of new mutations, led to the extension of the mandatory vaccination to all residents of the country who have reached 60 years of age, apart from those who have been ill in the last 180 days and those who have confirmed health reasons that don't allow vaccination. At the same time, the long-awaited judgement of the Council of State regarding mandatory vaccination was announced. The judgement rejected the appeals of the personnel of the Special Unit for Disaster Management (EMAK) against the decision of the Fire Service's chief regarding the exclusive participation of vaccinated personnel in the forces of EMAK, as well as the appeals of health workers against the acts by which they were suspended from work.

LEGISLATIVE AND ORGANISATIONAL PROPOSALS

Legislative and organisational proposals

This chapter presents the legislative and organisational proposals submitted by the Ombudsman in 2021, in its capacity as the competent body responsible for promoting equal treatment. The chapter also includes previous proposals that were accepted within 2021[28].

Ministry for Education and Religion	
For the connection of locality with the status of municipal resident (citizen) and not with that of permanent resident, during the placements and transfers of teachers	As the connection between locality and the status of municipal resident (citizen)- and not that of permanent resident -results in discriminatory treatment on the basis of nationality, towards teachers, citizens of EU member states, who do not have Greek citizenship, the Ombudsman proposed a provision for the recognition of locality to permanent residents (and not just persons registered in the municipal rolls- citizens).
Ministry of Labour and Social Affairs	
For the granting of housing benefits to single parent families	The Ombudsman proposed the amendment of the definition of "single-parent household" in the JMD with number Δ13οικ.10747/256/ΟGG Β΄ 792/06.03.2019- to include the category of adult children for housing benefits- in cases where the *adult* child has a proven high disability rating. Alternatively, the Ombudsman proposed to include the category of a sole parent living together with an adult child with disabilities in the "single-parent household" definition, provided that the parent is appointed as the legal guardian and has full custody of the disabled adult child.
Ministry of Health and Ministry of the Interior	
For the proof of the single-parent status for candidates of auxiliary staff positions (except doctors)	The Ombudsman proposed the addition of a passage in art. 6 of the Joint Ministerial Decision (JMD) under No. Γ4β/Γ.Π.οικ.7980 (ΟGG Β' 460/14.02.2020) (already modified with the newer JMD under No. Γ4β/Γ.Π.οικ.10394/ΟGG Β΄ 698/22.02.2021), to explicitly include the court's judgment pertaining to the exclusive assignment of the exercise of parental responsibility to one parent, in the supporting documents proving the status of single parenthood.

28. The proposals are presented per ministry, in the current order of the ministries.

Ministry of Citizen Protection	
For the exemption from transfer or secondment of divorced employees of the Hellenic Fire Service who have taken custody of a child/children with a notarial deed	The Ombudsman proposed the amendment of the provision of art. 162 para. 1 case f' of Law 4662/2020, in order to add the category of Fire Service employees who are divorced and have undertaken the custody of a child by notarial deed (or through the provided joint digital statement of art. 4 of Law 4800 / 2021) in the documents provided for exemption from transfers and secondments.
Ministry of the Interior	
For granting part-time work to employees with disabilities in the broader public sector	The Ombudsman proposed the extension of art. 16 para. 5 of Law 2527/1997, regarding the reduction of working hours for Persons with Disabilities, Civil Servants, NPDD and OTA, to those who work in private legal entities, provided that these entities are controlled and subsidized at a percentage of more than 50% by public bodies, NPDD and OTA, and are treated as belonging to the public sector both in terms of budgetary and staffing processes.
To extend the special 22-day leave to employees who are parents of children with developmental disorders	The Ombudsman proposed the granting of the special 22-day leave (art. 50 paragraphs 2 and 3 of the Civil Servant's Code) to employees who are parents of children with a disability rating over 50% and in need of continuous support and care, on the grounds of the developmental nature of the disease.

Acceptance of proposals

Ministry for Education and Religion	
For teachers who have a child over 2 years old at the time of their appointment	The Ombudsman proposed the revocation of the Ministry's circular (under No. 108357/E3/21.08.2020 circular of the General Directorate for Personnel, Teaching Stuff in HE and SE), according to which teachers who have a child over the age of two at the time of their appointment are not entitled to parental leave for child rearing. The Ministry continued to apply the circular, but it eventually was annulled by judgement No. 2367/2021 of the Council of State (CoS), on the grounds that it introduced a regulatory content that was in contrast to existing provisions and lacked legal foundation.
Ministry of Labour and Social Affairs	
For female workers undergoing medically assisted reproduction methods	The Ombudsman proposed the extension of a seven-day leave provided in the Civil Service Code (article 50 of Law 3528/2007, as in force) to female employees in the private sector who undergo medically assisted reproduction methods. Article 35 of Law 4808/2021 now stipulates the granting of this leave to female employees in the private sector as well.
For the non-granting of a special maternity protection to adoptive mothers by OAED	The Ombudsman proposed the establishment of an explicit provision to grant special maternity protection to adoptive mothers, to ensure that the needs of adopted children were met during early infancy. Art. 142 of Law 3655/2008 was amended by art. 36 of Law 4808/2021 and the special maternity protection benefit was extended to working mothers who adopt a child. These provisions stay in place from the moment the child is adopted until it reaches the age of eight (8).

	Ministry of the Interior
For the secondment or transfer of employees who have been appointed as legal guardians and have custody of persons with disabilities	The Ombudsman proposed the amendment of the provision of art. 7 para. 5 of Law 4440/2016, to include employees who have been appointed as legal guardians and have custody of a person with a high disability rating (67% or more) to allow them to ask for secondment or transfer due to proven severe medical reasons. With art. 27 para. 5 of Law 4807/2021, the relevant provision was amended as follows: "The secondment or transfer act of an employee due to proven severe medical reasons of their own, of a spouse or partner or of a person with a 1st degree consanguinity / affinity with the applicant or of a person for which the applicant is designated as legal guardian after their appointment or recruitment and undertakes their custody based on a court judgement, provided that daily care for this person is not undertaken by competent institutions and bodies of social security, shall be issued by the appointing authority of the host service, with the consent of the Central Mobility Committee."

ABBREVIATIONS

Abbreviations

AADE	Independent Authority for Public Revenue
AFM	Tax Identification Number
AMKA	Social Security Registration Number
AP	Supreme Court of Greece
art.	Article
ASEP	Supreme Council for Civil Personnel Selection
ASPE	Supreme Confederation of Multi-Child Parents of Greece
BoD	Board of Directors
c.	Case
CC	Civil Code
CCP	Code of Criminal Procedure
CE	Compulsory Education
CJEU	Court of Justice of the European Union
CoS	Council of State
EC	European Community
ECHR	European Convention on Human Rights
EEKD	Social Administration Research Lab (SARL)
EFKA	National Social Security Fund
EGSSE	National General Collective Agreement
EMA	National Blood Donor Registry
EMAK	Special Emergency Response Unit
EOPYY	National Organisation for the Provision of Health Services
EPAS	Vocational Education Schools
ESKE	National Strategy for Social Inclusion
EU	European Union
FRA	Fundamental Rights Agency
FS	Fire Service
G.S.I.S.P.A.	General Secretariat of Information Systems for Public Administration
GSSS	General Secretariat for Social Security

HAGS	Hellenic Army General Staff
HDPA	Hellenic Data Protection Authority
HIV	Human Immunodeficiency Virus
HNDGS	Hellenic National Defence General Staff
HP	Hellenic Police
IDOX	Fixed-term private law employment contract
IKA – ETAM	Social Insurance Institute - Unified Insurance Fund for Employees
IVF	In vitro fertilization
JMD	Joint Ministerial Decision
L.	Law
LGBTQI	Lesbian, Gay, Bisexual, Transgender, Queer, Intersex Persons
LMP	Last Menstrual Period
NPDD	Legal person governed by public law
MD	Ministerial Decision
NCDP	National Confederation of Disabled People
NGO	Non-governmental Organisation
NSJ	National School of the Judiciary
OAED	Hellenic Manpower Employment Organisation
OPEKA	Organisation of Welfare Benefits and Social Solidarity
OSE	Hellenic Railways Organisation
OSY	Athens Road Transport
OTA	Local Government Authorities
p.	Page
par.	Paragraph
PC	Penal Code
PD	Presidential Decree
PWDs	Persons with disabilities
RHA	Regional Health Authority
ROP	Regional Operational Programmes
SE	Secondary Education
SEPE	Labour Inspectorate

STASY	Urban Rail Transport
TFEU	Treaty on the Functioning of the European Union
TSMEDE	Greek Engineers and Public Works Contractors Pension Fund
TYDA	Health Fund for Lawyers of Athens
TWA	Temporary Work Agency
UE	University Education
UNIWA	University of West Attica
USA	United States of America
YPE	Regional Health Authority