



PORTUGUESE OMBUDSMAN

REPORT TO THE PARLIAMENT

2011

SUMMARY



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2011

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**Lisbon
2012**





O PROVIDOR DE JUSTIÇA

**Her Excellency
President of the Parliament**

Excellency,

In compliance with article 23, paragraph 1, of the Statute of the Portuguese Ombudsman, I am honoured to present to the Parliament the Annual Report of Activities for 2011.

I take this opportunity to convey my availability to be present before the competent Parliamentary Committee in order to present the report and provide all clarifications that are deemed necessary.

Yours faithfully,

THE OMBUDSMAN,

Alfredo José de Sousa



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How to contact the Ombudsman:

The Ombudsman's Office
Rua do Pau de Bandeira, 7-9,
1249-088 Lisboa
Portugal
Telephone: +351 213 92 66 00 | Fax: +351 21 396 12 43
provedor@provedor-jus.pt
<http://www.provedor-jus.pt>

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ALFREDO JOSÉ DE SOUSA
(Ombudsman - (2009/....))

**Alfredo José de Sousa was born
on 11 October 1940, in Póvoa
de Varzim.**

PROFESSIONAL CAREER

B.A. Hons. degree in Law from the University of Coimbra (1958/63). Delegate of the Attorney General in Celorico de Basto, Mogadouro and Amarante (1967). Inspector of the Criminal Investigation Police (PJ) in Oporto (1968/74). Judge of the Courts of Tavira, Alenquer, Vila Nova de Gaia and Vila do Conde (1974/79). Judge of the Oporto Court of 1st Instance of Taxes and Contributions (1979/85).

Promoted to High Court Judge of the Court of 2nd Instance of Taxes and Contributions, in February 1986. Coordinator of the Working group responsible for drawing up the draft bill on tax infringements. Post-graduate course (unfinished) in European Studies, from the Faculty of Law of Coimbra (1986/87).

Elected on 22 January 1987 by the Parliament as member of the Supreme Council of Administrative and Fiscal Courts. Nominated, after a competition, as Judge Counsellor of the Supreme Administrative Court on 13 October 1992. Elected Deputy-President of the Court of Auditors. Nominated President of the Court of Auditors on 2 December 1995. Member of the Inspection Committee of the European Anti-Fraud Office (OLAF) from 2001, reconfirmed on March 2003, but subsequently resigned, at his own request, on health grounds, on 25 February 2005. Reconfirmed as President of the Court of Auditors for four years, and ceased functions on 6 October 2005, when he formally retired.

The Ombudsman



Alfredo José de Sousa was elected to succeed Nascimento Rodrigues, as Ombudsman, **by a vote well above the necessary two-thirds majority**, thus ending a one-year impasse. The candidate was proposed jointly by the PS and PSD parties and was elected by 198 of the 217 members of parliament who took part in the vote (four voted against, ten abstained, with three null votes and two blank votes). He was invested as Ombudsman, in the Parliament, on 15 July 2009.

Message from The Ombudsman

In compliance with Article 23, paragraph 1, of the Statute of the Portuguese Ombudsman (Law 9/91, of 9th April) I have the honour to present to the Parliament the 2011 Annual Report of Activities.

2011 in large numbers

In 2011 I decided to open 5812 cases following complaints presented by 7753 claimants.

About 1673 citizens brought to my knowledge facts or general situations that did not contain a specific request and thus did not lead to further proceedings.

In addition to the cases opened pursuant to a complaint, I decided to open on my own initiative 16 other cases, one of them an inspection to the detention places of the Public Security Police (PSP), the National Republican Guard (GNR) and the Judiciary Police (PJ). Three other inspections took place during 2011, to the Institute of Legal Medicine and Forensic Sciences, to Employment Centres and Homes for the elderly. The last two ended in 2011.

Still regarding inspections, mention should be made to the 16 visits to prisons carried out in the context of cases opened on the basis of a complaint.

Of the 5812 cases that were opened, 4124 were closed in the same year. In total, in 2011, 6098 cases were closed. At the end of 2011 there were 1996 pending cases (13% less than in 2010). Of the 6098 cases closed, 4451 cases were closed within six months (3/4).

Of the 5812 cases that were opened, 2439 resulted from written complaints, 2824 from complaints submitted electronically and 533 from complaints presented in person. **It should be noted that, for the first time, electronic complaints are at the top of the chart, representing 49% of the complaints received.**

Issues related to social rights and rights of workers lead the chart of complaints issues. The central public administration is targeted in more than 50% of cases. Within central public administration, the Ministry of Solidarity and Social Security, followed by the Ministry of Finances, was at the top of the table. Concerning local administration, the municipality of Lisbon was the most targeted entity, with 10% of the total of complaints.

In what refers to the review of the constitutionality, after

having examined 36 requests I decided to present 3 to the Constitutional Court. In one of the cases, a judgement has already been issued, considering my request well-founded and thus declaring the unconstitutionality of the provision of the Portuguese Bar Association Regulation which determined the impossibility, for a three year period, of renewing registration in a traineeship that is mandatory to access the profession of lawyer, after having failed the previous traineeship. In the three judgments of the Constitutional Court delivered in 2011 pursuant to requests for review of constitutionality from previous years, the Court granted my requests. In the cases I decided not to request the review of the constitutionality I founded my decision in the case law of the Constitutional Court.

Throughout 2011, I issued 15 recommendations, 9 of which had been accepted by the end of that year. Of the remaining 6, 3 were not accepted and for the other 3 the deadline for a reply is still running.

These figures allow me to conclude that the normal activity of the Ombudsman maintained the upward trend of closed cases and the reduction of the backlog from the previous year.

The amendment to the Statute of the Ombudsman

The first eighteen months of my term as Ombudsman allowed me to identify the need to introduce specific amendments to the Statute of the Ombudsman. These changes would recognise new activities that have been committed to the Ombudsman within the European Union, United Nations and Council of Europe, namely in his capacity as National Human Rights Institution. These changes were also necessary due to the reorganization of public administration and internal reorganization of the Ombudsman's Office. On the 29th February 2012 I issued a Recommendation to the Parliament proposing the amendment of the Statute of the Ombudsman.

In the first semester of 2011 the legislative work on the draft Organic Law of the Ombudsman's Office was almost concluded. With the investiture of the new government and the decision of making changes to the Statute of the Ombudsman I decided not to resume this initiative, adjourning it until the amendment of the Statute.

Reorganisation of the services that assist the Ombudsman

Within the reorganisation of my services I revised the way of functioning of the local offices of the autonomous regions of Madeira and Azores. On those regions 2 local offices operated in their own facilities and I had two legal advisers there permanently.

Due to the strong budgetary constraints in 2011 and the following years, a significant rationalization of expenditures had to be made, including in those local offices. Therefore, taking also into account the growing trend of electronic submissions of complaints, I decided to reorganize those services. With this aim I celebrated two protocols, respectively with the Representative of the Republic for the Autonomous Region of Madeira, Judge Counsellor Antero Monteiro Diniz, and with the Representative of the Republic for the Azores, Judge Counsellor José António Mesquita, who made available an autonomous space within their own facilities, free of charge (Palace of S. Lourenço, in Funchal and Solar da Madre de Deus, in Angra do Heroísmo). Furthermore, I decided that the legal advisers leading each local office should return to Lisbon, keeping here the same assignments. A technical assistant was maintained locally in order to receive and inform citizens who want to submit a complaint to the Ombudsman. The legal advisers previously working there will be traveling regularly to the autonomous regions, with prior information in the media, to learn about the local office's work and provide information on the pending cases.

Also in 2011, I decided to implement new procedures, developing new Rules of Procedure for the organization of departments and the work of coordinators and legal advisers, as well as their coordination with the Ombudsman's Cabinet and Secretary-General. These new rules, which came into force in 2012, are available on the website of the Ombudsman, to ensure that complainants know the procedure used to assess their complaints, thereby ensuring greater transparency of the activity of Ombudsman.

These Rules of Procedure aim to accelerate and make less bureaucratic the processing of complaints at both the stage of preliminary examination and the stage of investigation. It also includes a Code of Good Administrative Behaviour, thus anticipating in my services the implementation of the Recommendation that I addressed to the Parliament.

In 2011, the Citizens with Disabilities' Hotline began operating on an experimental basis.

Project to modernize the ICT infrastructure

My goal of reshaping the Ombudsman's information systems is not finalized. Based on the budget assigned for that

purpose, I renewed the IT resources, acquiring new computers and updated software as well as 3 new servers.

During 2011 the necessary procedures to create the new site of the Ombudsman were also initiated. This website intends to be friendlier, but also to have additional features and greater capacity to store essential information about the Ombudsman's activity, making it accessible to all citizens. It also intends to allow the citizens to perform free-text searches and file complaints electronically. The complaint form was improved in order to promote and facilitate the online submission.

The next step, already underway, is to improve the case registration system and workflow services of the Ombudsman.

The facilities of the Portuguese Ombudsman

In 2011 the necessary works in the building where the Ombudsman's services are situated came to an end. They were essential for the safety of the people who works here and for the maintenance of the facilities.

I should recall that, when I took office, I found structural problems in the main building and asked the National Laboratory of Civil Engineering (LNEC) for an inspection to the building and its stability. The opinion of the LNEC concluded that the building had structural problems which affected its stability and also detected an infestation by subterranean termites.

Dissemination and promotion of the Ombudsman's actions

In order to promote awareness to and dynamisation of the Ombudsman's action, the means of action available to him and how to appeal to him, on 19th March 2010 a Protocol of Cooperation was signed between the Ombudsman and the National Association of Portuguese Municipalities.

In 2011, training actions took place among the adhering municipalities, designed to inform the employees of municipalities of the mission and tasks of the Ombudsman. Under this Protocol, the **adhering municipalities (today approximately 90) provide free use of computers to the citizens, enabling access to the Ombudsman's website, where they can find the electronic complaint form.** Leaflets on the Ombudsman's mission and duties, on the theme «The Ombudsman and the Defence of the Citizen», were also sent to these municipalities.

In order to promote human rights and citizenship education, on 9th May I signed a cooperation Protocol with the Minister of Education. This Protocol aims at promoting and publicizing the Ombudsman, namely as National Institution of Human Rights, as well as at promoting and disseminating information on citizens' fundamental rights and freedoms and the means of action that citizens,

especially children, can use to complain to the Ombudsman. Based on this Protocol and on a work plan developed in the meantime, awareness-raising actions about human rights, the powers of the Ombudsman and the means to reach him will be carried out in schools. In turn, I will be available to receive visits of education establishments.

On the 13th of April, a Protocol of Cooperation between the Ombudsman and the Law Faculty of the Lisbon University was signed in order to promote cooperation between these two institutions, namely through the organization of joint seminars.

With the same goal I attended and ensured representation in several events at national level, held by civil society organisations, in particular organizations representing and defending the rights of groups of citizens in a more vulnerable situation.

International Relations

As regards international relations, I tried to resume the work of **continuity and deepening of the cooperation with counterpart institutions**, whether bilaterally or within the international *fora* of Ombudsmen and National Human Rights Institutions, in line with the so-called Paris Principles.

Thus, I set out to strengthen the role of the Ombudsman as National Human Rights Institution, promoting the institution amongst NGOs and other civil society actors and establishing a link between the national and the international level.

As part of my participation in Portugal's evaluation under the Universal Periodic Review mechanism of the United Nations Human Rights Council, **I reiterated my availability to take on the function of National Prevention Mechanism for the Prevention of Torture**, based on the powers already conferred to the Ombudsman and the extensive work carried out on the penitentiary system and the rights of inmates. I also considered that such designation should be made simultaneously to Portugal's ratification of the Optional Protocol to the United Nations Convention Against Torture.

I continued to make efforts with **a view to fostering the establishment and effective appointment of an Ombudsman in all the countries of the Community of Portuguese-Speaking Countries**, in order to promote cooperation between counterpart institutions in the area of Portuguese language and enhance their participation in other international *fora*.

With this aim, on the 26th September 2011 I attended an event that took place on the sidelines of the 18th Session of the Human Rights Council, about the implementation of resolution 65/207 of the United Nations General Assembly.

Concerning this subject I intend to organize in 2012, in collaboration with the Office of the United Nations High Commissioner for Human Rights, a seminar on the establishment of National Human Rights Institutions in accordance with the

Paris Principles, with representatives from eight Portuguese-Speaking Countries.

The chapter dedicated to International Relations provides a more detailed description of the events I took part in or those where I was represented.

The Ombudsman and the Parliament

Collaboration with the Parliament is essential for the development of the activity of the Ombudsman. The Ombudsman is elected by the Parliament and in order to deal with matters within his competence, may take part in the work of parliamentary committees when he deems it appropriate and where his/her presence is requested. Since his recommendations are not binding, if the Administration doesn't act according to them or refuses the requested collaboration, the Ombudsman may address himself to the Parliament, stating the reasons for his position.

In compliance with Article 23 of the Statute of the Portuguese Ombudsman, on **6th July 2011 I personally presented to the President of the Parliament the Annual Report of the activity of the Ombudsman for 2010**, while expressing my entire availability to be present before the Parliamentary Committee for Constitutional Affairs, Rights and Liberties, during the discussion and assessment of the Report. I presented this report on the 28th September 2011, **before the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees**. This Commission issued an opinion on 9th November 2011, and the Annual Report **of the Ombudsman was discussed in the Parliament plenary on the 13th January 2012**.

In 2011 I also went to the Parliament on the 15th March 2011, to present the annual report for 2009, having also accompanied the European Ombudsman on his visit to the President of Parliament on the 21th November 2011.

In order to promote good administration I resumed in 2012 a previous initiative, recommending to Parliament the adoption, under Article 41 of the Charter of Fundamental Rights of the European Union, of a Code of Good Administrative Behaviour, inspired on a similar initiative of the European Ombudsman.

Council of State

In my capacity as member of the Council of State I was present at the meeting that took place on the 31st March to take a position on dissolution of the Parliament.

1. THE OMBUDSMAN'S MANDATE

The institution of the Ombudsman, directly inspired by the Swedish Ombudsman set up in the early 19th century, was introduced in Portugal by Decree-Law 212/75, of 21st April. In 1976 the Ombudsman was consecrated at constitutional level, in Article 24 of the Portuguese Constitution, current Article 23.

The consecration of the Ombudsman in the general principles of Part I of the Portuguese Constitution relating to fundamental rights and duties gives this State body increased protection. Indeed, the Ombudsman has been established within the framework of constitutional values as a fundamental right of the people, thus benefiting of the general regime of fundamental rights and the special regime of rights, freedoms and guarantees, instead of a simple institutional guarantee. So the Ombudsman is, *de jure*, a constitutional body due to ensure the fundamental rights and, more generally, human rights.

Thus, it was the responsibility of the Portuguese legislator to establish the respective Statute, by Law 81/77, of 22 November, that in the meantime has been revoked by Law 9/91, of 9th April, and subsequently amended by Laws 30/96 of 14th August and 52-A/2005 of 10th October.

In essence, the Constitution and the Law define the Ombudsman as a single person body of the State, irremovable, completely independent¹ and impartial in the exercise of his functions, and endowed with parliamentary legitimacy.

The mandate holder is designated by the Parliament, by a qualified two-thirds majority of MPs present, provided that this is higher than the absolute majority of MPs effectively in functions. The Ombudsman's mandate is four years, and may only be renewed once. His/her functions cannot terminate prior to the end of the period for which he/she has been designated, except in the cases specified in the law (Articles 23, paragraph 3, and 163, indent i) of the Constitution and Articles 5 to 7 of the Statute).

Furthermore, the Ombudsman is exempt from civil and criminal liability for the recommendations, comments or opinions that he/she issues or for the acts that he/she practices in exercise of his/her functions (Article 8, paragraph 1 of the Statute).

The Ombudsman's main function is to defend and promote the rights, freedoms, guarantees and legitimate interests of citizens, guaranteeing, through informal means, the justice and legality of the exercise of public powers (Articles 23 of the Constitution and Article 1 of the Statute).

At a subjective level, the scope of his/her activity covers, in particular, the services of the central, regional and local public Administration, the Armed Forces, public institutes, public companies or the companies whose capital is mostly public and the concessionaires operating public services or exploiting state property (Article 2, paragraph 1 of the Statute).

The scope of the Ombudsman's activity does not include sovereign bodies (President of the Republic, Parliament, Government and Courts), or the Regional Parliaments and Regional Governments of the Autonomous Regions of the Azores and Madeira, except in issues associated to their administrative activity or acts of supervision of the Administration. As a result, the Ombudsman's supervision and control powers do not extend to the political activity, in the strict sense of the term, nor to the judicial activity (Article 22, paragraph 2 and 3 of the Statute).

On the other hand, the Ombudsman's remit is no longer restricted solely to the public authorities, although this does configure its main scope. Since 1996, the Ombudsman may also intervene in relations between private entities, but only when there is a special relation of power and if this falls within the scope of protection of rights, freedoms and guarantees (Article 2, paragraph 2 of the Statute)².

The Ombudsman acts, as a general rule, pursuant to citizens' complaints (Article 23, paragraph 1, of the Constitution and Article 3 of the Statute). Nonetheless he/she may also act on his/her own initiative (Articles 4 and 24, paragraph 1 of the Statute), in response to facts that he/she becomes aware of by any other means, either via: the media; alerts issued by a NGO's and reports from International Organisations; his/her sensitivity in diagnosing more problematic situations of national scope and also by the special depth with which he/she analyses complaints and withdraws the common denominator that resides therein, classifying and analysing issues or questions that require more in-depth analysis³.

¹ The constitutional revision of 1989, approved by Constitutional Law 1/89, of 8th July, clarified the Ombudsman's degree of independence (1st part of paragraph 3 of Article 23 of the Portuguese Constitution).

² Legal provision introduced in the Ombudsman's Statute by means of Law 30/96, of 14th August.

³ The Ombudsman may, in particular, after studying a complaint, analyse the dysfunctional aspects of the respective system or sector of the Public Administration.

In the exercise of his/her functions, the law attributes broad powers to the Ombudsman as a national constitutional fundamental rights' protection body. In summary, in accordance with Articles 20 and 21, 23 and 38 of the Statute, the Ombudsman can:

- address recommendations to the competent bodies with a view to correcting illegal or unfair acts of public authorities or to improving their services (administrative recommendations). If recommendations are not accepted, and whenever the collaboration requested is not forthcoming, the Ombudsman may address the Parliament, or if applicable, Regional Parliaments, stating the reasons behind his actions.
- point out shortcomings in legislation, issue recommendations concerning its interpretation, amendment or revocation, or suggesting the drafting of new legislation (legislative recommendations);
- request the Constitutional Court to declare the unconstitutionality or illegality of any legal provisions, or to rule on cases of unconstitutionality due to a legislative omission;
- issue opinions, upon request of the Parliament, on any matter related to its activity; If he/she deems it convenient, and at their request, the Ombudsman may participate in the work of parliamentary committees for the purpose of dealing with matters within his/her competence;
- promote the divulgation of the content and the meaning of each of the fundamental rights and freedoms, as well as of the aims of the Ombudsman, the means of action at his/her disposal and how to appeal to him;
- intervene, in accordance with the applicable law, in the protection of collective or diffuse interests whenever a public entity is involved.
- make, with or without prior notice, inspection visits to any area of activity of the central, regional and local administration, including public services and civil and military prisons, or to any other entities under his/her control, hearing their bodies and officials and requesting such information, and the exhibiting of documents, as he/she may deem adequate;
- Undertake such investigations and enquiries as he/she may deem necessary or convenient;
- Search, in cooperation with the competent bodies and services, the solutions which best allow the protection of the legitimate interests of citizens and the improvement of the Administration's activity.

In the performance of his/her duties, he/she may carry out investigations and inquiries as he/she deems necessary, make inspections⁴ (Article 21, paragraph 1, indents a) and b)) and is entitled to order any civil servant or any official of any public body to be present at his/her Office (Article 29, paragraph 5 of the Statute). Correspondingly, the bodies and agents of public entities, civil and military, have a duty of cooperation, also defined in broad terms (Article 23, paragraph 4, of the Constitution and Articles 21 and 29 of the Statute). Given that this is a legal duty, non-compliance constitutes a crime of disobedience, liable for a disciplinary procedure (Article 29, paragraph 6 of the Statute).

The Ombudsman is a member of the Council of State.

The right to present a complaint to the Ombudsman

Citizens' access to the Ombudsman is broad, direct and free of charge. All citizens are entitled to present complaints to the Ombudsman, regardless of their age, nationality⁵ or residence. The complaint may be presented by citizens, either individually or jointly, and depends neither on the complainant's direct, personal and legitimate interest nor on any time limits (Article 24, paragraph 2 of the Statute). The complaints must concern illegal or unfair actions or omissions by public authorities, that the Ombudsman is responsible for redressing or preventing (Article 23, paragraph 1, of the Constitution and Article 3 of the Statute).

Complaints may be presented in writing or orally, identifying the identity and address of the complainant and, whenever possible, his signature. When presented orally, a record of the complaint must be drafted, which the complainant will sign, if he/she knows how to, and is capable of doing so (Article 25, paragraph 1 and 2 of the Statute).

Citizens may send their complaints by letter, telephone or fax, and also by electronic means, by filling in the specific form available at the Ombudsman's website (<http://www.provedor-jus.pt/queixa.htm>). They may also present their complaints in person at the premises of the Ombudsman.

In addition to the possibility of sending a complaint directly to the Ombudsman, they may also be sent to the Public Prosecution Service, who shall immediately forward them to the Ombudsman (Article 25, paragraph 3 of the Statute).

⁴ Either by exercising his right to take own initiatives, or after a specific complaint, the Ombudsman may carry out, without providing any prior notice, inspection visits to all and any activity sector of the central, regional and local Administration - specifically public services and civil prison establishments and military personnel establishments, or to any entities subject to its control - and also undertake all the investigations and inquests that it considers to be necessary or convenient.

⁵ As a result of the constitutionally-established principle of equivalent treatment (Article 15, paragraph 1, of the Constitution), the Ombudsman is an institution that is open to foreigners and stateless persons, regardless as to whether or not they have regularised their legal situation.

The Ombudsman is not bound by the complaint itself, or by the exact terms in which it is formulated. He/she may, first and foremost, reject complaints that he/she objectively considers to be unfounded; he/she may check facts and issue recommendations beyond the terms of the request; or even, propose measures that stand in opposition to the interests of the complainants, given that he/she is a defender of both the legality and the justice of the activity of the public powers.

Within the fairly diversified range of communications received on a daily basis by the Ombudsman, the first relevant task consists in qualifying the communication as a «complaint», or as a simple statement of facts. Next, the complaints are subject to a judgement of admissibility, in order to ascertain whether their material scope lies within the Ombudsman's sphere of powers. In all circumstances, it is always the substance, rather than the form, of the communication, that must be considered.

In this context, a complaint is considered to be any communication, regardless of its form, that is presented by one or more complainants, in which the Ombudsman is requested to intervene in relation to questions falling within his scope of competence.

In relation to any complaint, the parameters determining the possibility of the Ombudsman's intervention include both the mission and competencies legally attributed to this body; and respect for the principle of separation of powers, consecrated in Articles 2, 110, and 111, paragraph 1, of the Portuguese Constitution; and also the purely recommendatory nature – rather than a binding nature – of his/her intervention.

A complaint that fails to respect the scope of the Ombudsman's attributions will be preliminarily rejected.

There is also the possibility that the Ombudsman will conclude that the complainant has access to acts of grace or legal remedies, as specified in the law, and the complaint may therefore be forwarded to the competent body (Article 32, paragraph 1 of the Statute).

If the complaint is neither preliminarily dismissed nor simply forwarded, a case will be opened (to be sequentially numbered) and inquiries carried out.

The Ombudsman operates in an informal manner. In other words, the Ombudsman is not bound to strict procedural norms, nor to specific procedural norms in relation to the production of evidence (Article 1, paragraph 1, and Article 28, paragraph 1 of the Statute). Indeed, the Ombudsman frequently recurs to telephone calls or organises meetings between the entities addressed and complainants, in order to foster consensus and conciliation of the interests involved, and thereby resolve or overcome the dispute.

After investigation of the case, the Ombudsman may conclude that the complaint is unfounded, due to lack of due grounds, in which case the case will be closed, and the complainant will be informed of the reasons underlying this

decision, highlighting the justice and legality of the position assumed (Article 31, indent b) of the Statute).

If pursuant to the inquiries made it is demonstrated that the complainant has a well-founded complaint, the case may still be closed if the illegality or injustice has been redressed in the meantime (Article 31, indent c) of the Statute).

In other cases, unless measures are adopted to restore legality or overcome the injustice cited in the complaint, the Ombudsman may issue recommendations to correct the illegal or unfair act, or the irregular situation (Articles 20, paragraph 1, indent a), and 38 of the Statute). In other situations, he/she may make suggestions or formulate proposals to the public powers, in order to restore the legality of the act against which the complaint has been submitted. He may also, in less serious cases, of a one-off nature, simply issue a warning to the body or service against which the complaint has been submitted or terminate the subject with the explanations provided, in which case the case will be closed (Article 33 of the Statute).

2. THE OMBUDSMAN AND HIS TEAM

In exercising his functions the Ombudsman is assisted by two Deputy Ombudsmen and by a Cabinet with a Head of Cabinet, Advisers, Secretaries and a Press Adviser.

In what concerns the work related to the investigation of complaints the Ombudsman is assisted by 6 Coordinators and 40 Legal Advisers (Advisory Service). The work is organized in 6 main departments, according to the nature of the fundamental rights in question: Environment and Life Quality Rights; Rights of Taxpayers, Consumers and Economic Operator, Social Rights, Worker's Rights, Right to Justice and Security and Other fundamental Rights.

Matters concerning the rights of children, elderly persons and persons with disabilities are currently handled by a specialized structure – the Department on Children, Elderly Persons and Persons with Disabilities (N-CID) – which has been in operation since late 2009 and is placed under the direct supervision of a Deputy Ombudsman. In addition to defending the rights of children and young people, elderly persons and persons with disabilities pursuant to complaints, it also seeks to develop more proactive action, by focusing on promoting and disseminating information on the rights of these particularly vulnerable groups. Since its creation, the N-CID has brought together two specialized and toll-free telephone services of the Portuguese Ombudsman: the Children's Hotline and the Elderly Citizens' Hotline. In 2011, the Citizens with Disabilities' Hotline began operating on an experimental basis.

The Ombudsman also has a Directorate of Technical and Administrative Services, under the supervision of the Secretary-General.

Staff in functions in the Ombudsman's Services (as of 31 December 2011)

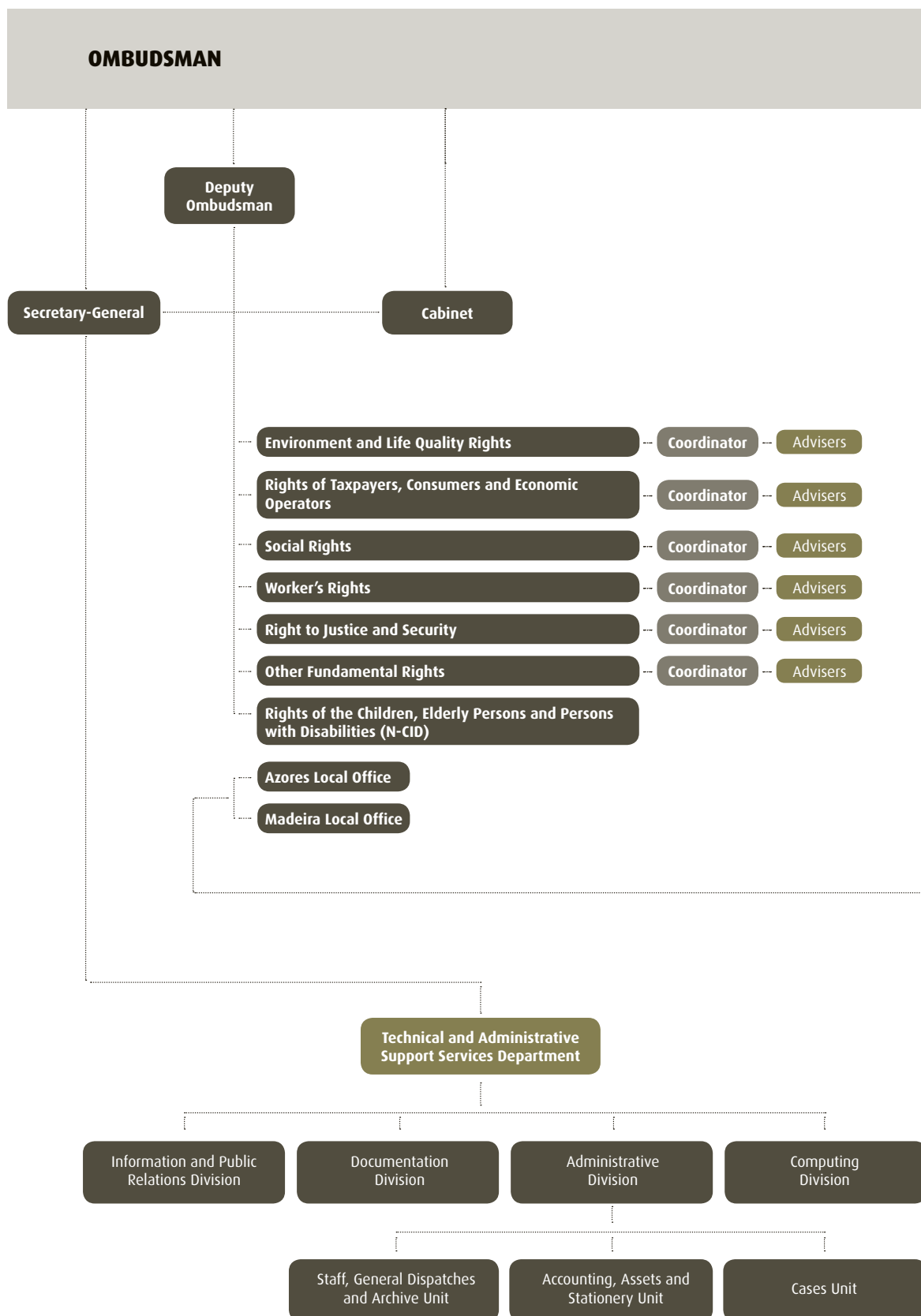
Ombudsman's Cabinet and Deputy Ombudsmen	12
Advisory Legal Service	45
Directorate of Technical Services and Administrative Supports	45
Contracted Staff	1

2011 Budget

Budgetary execution was based on policies of restriction of the current expenses. Initial budget (inferior to the budget of 2010): 5 348 511,00 €.

Current services and goods	4 937 351,00 €
Investment expenses (new technologies and repairs of the building)	411 160,00 €
Total	5 348 511,00 €

Organisational Chart



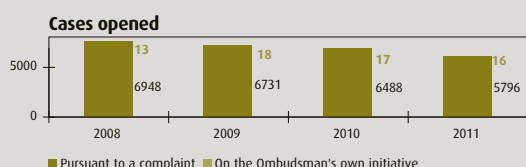


THE HEADQUARTERS OF THE OMBUDSMAN

3. THE OMBUDSMAN'S ACTIVITY IN 2011

3.1. Statistical Comment on Global Data

Graph I



In 2011, 5812 cases were opened, 16 by the Ombudsman on his own initiative and the remaining following a complaint. From February 2011 onwards it was decided not to open a case if the situation at stake was deemed inadmissible, namely due to falling outside the Ombudsman's jurisdiction. There were 654 such instances. This change of criteria explains the number of cases formally opened, which is substantially lower than in 2010 and previous years.

Table 1 – Number of complainants

Natural persons	7341
Legal persons	412
Total of Complainants	7753

Regarding the number of complainants, there were 7341 individuals and 412 legal persons, making a total of 7753. These figures are similar to those recorded in 2010 (less 82 individuals and less 14 legal persons). A further 1019 communications were also received, without elements allowing a specific intervention of the Ombudsman.

Table 2 – Number of cases opened

Written complaint	2439
Oral / in person complaint	533
Electronic complaint	2824
Ombudsman's own initiative	16
Total of cases opened	5812

There was another increase on the number of complaints received by electronic means, 2011 being the first year where this procedure was the most used by citizens to address the Ombudsman. 49% of the complaints that originated a formal case were presented through these channels.

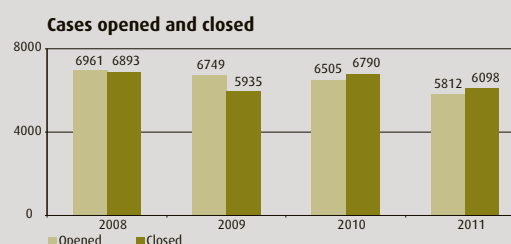
Table 3 – Number of cases closed

Main cases from 2005	1
Main cases from 2006	2
Main cases from 2007	8
Main cases from 2008	23
Main cases from 2009	230
Main cases from 2010	1710
Sum of cases prior to 2011	1974
Cases opened in 2011	4124
Total of cases closed	6098

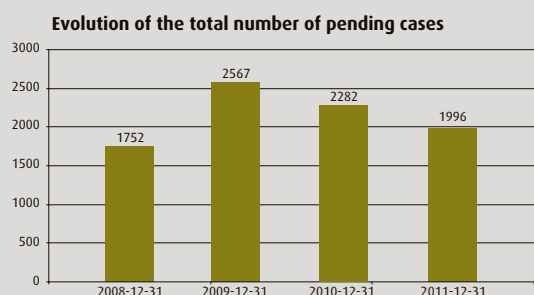
Table 4 – Number of cases pending on 31 December

Main cases from 2005	0
Main cases from 2006	0
Main cases from 2007	1
Main cases from 2008	0
Main cases from 2009	14
Main cases from 2010	293
Sum of cases prior to 2011	308
Cases opened in 2011	1688
Total of pending cases	1996

Graph II



Graph III



Although the number of cases closed decreased, it is noted that, unlike previous years, this figure does not include the complaints considered non-admissible. At the end of 2011, there was a drop of 286 units in the number of cases still in progress (a drop of 13%).

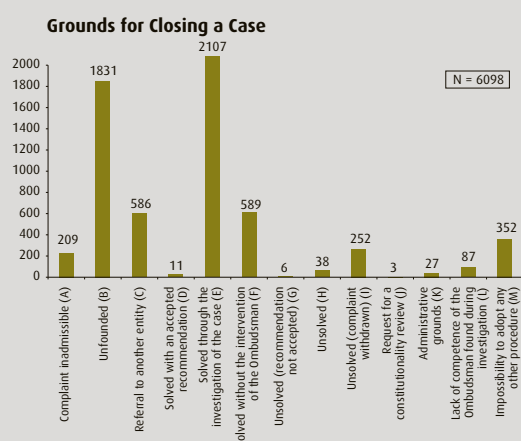
Table 5 – Summary of case activity

Total of cases from 2010	2282
Total of cases opened	5812
Total of cases closed	6098
Cases opened and closed in 2011	*4124
Cases pending on 31 December	1996

**Corresponding to 71,0 % of the total of cases opened

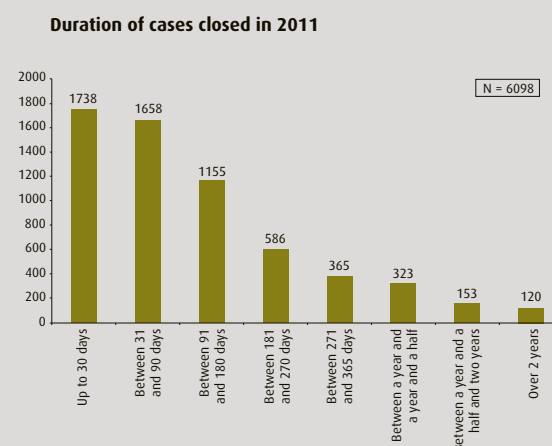
The number of new cases closed in the same calendar year was of 4502 in 2011, accentuating the tendency felt in the previous year.

Graph IV



Any analysis of the reasons for closing cases, compared to previous years, must take into account the aforementioned new criteria, as the number of cases closed due to absence of jurisdiction or any other grounds for inadmissibility became residual. In any case, to a total absolute number of cases closed which was lower in about 700 units than the previous year corresponded a sharp rise in the number of cases resolved with an essential intervention of the Ombudsman (446 more than in 2010), which means also a significant increase in relative terms. In 11 cases, the intervention involved a formal recommendation (26 cases in 2010). The opposite situations, i.e. of non-compliance with recommendations of the Ombudsman, remained in equally low numbers. The number of cases closed due to the complaint being unfounded declined slightly from 2011.

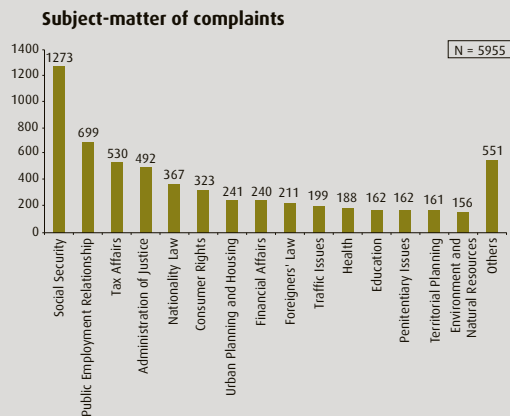
Graph V



The comparison with the values of 2010 presents, at first sight, a sense of continuity. The same 3/4 of cases closed lasted less than a semester, the same 30% did not go beyond the first month after their entry. Again, the modification of criteria regarding the criterion on inadmissibility of complaints affects this simple reading, as previously a significant number of the cases with shorter durations certainly corresponded to situations of early rejection of the complaint as inadmissible. Therefore, it is reasonable to infer from the available data a significant acceleration of the progression of most cases. Control of the older backlog is also evident in the halving of the number of cases with a longer duration.

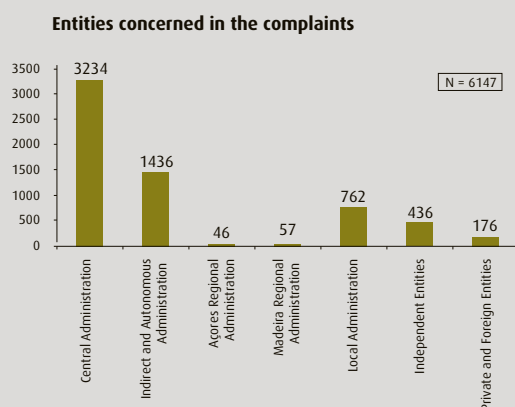
Not yet benefiting from this observation, the indicator on the percentage of new cases in 2010 that received a final decision in less than twelve months shows an increase, inverting the trend of the previous year, this value being now 90.4%.

Graph VI



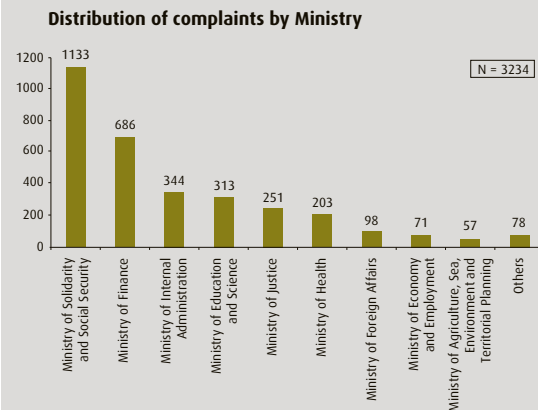
There was a large drop in cases relating to Justice and Financial Affairs. Social Security and Public Employment issues were on top of the list, with the third place being occupied by complaints relating to Taxation. In absolute terms, there was a significant increase in Social Security, Health and Traffic Affairs. On the other hand, the greatest decreases are felt in Financial Affairs, Justice and Law of Foreigners Affairs and, more slightly, in Nationality issues.

Graph VII



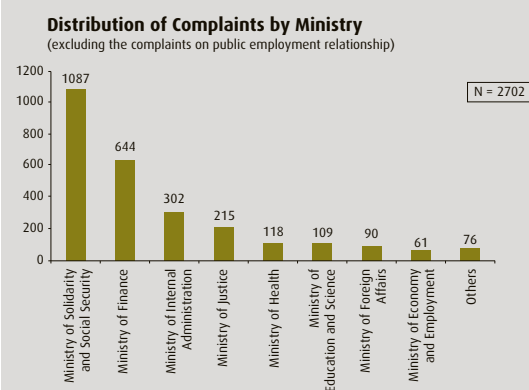
There was a natural decline in the proportion of complaints against private and foreign entities (5% less) and independent entities (2% less). The rise of 3% in cases against the Central Administration may just be due to this factor, although the same explanation cannot be sufficient to clarify the strong increase (6%) of complaints against entities within the Autonomous and Indirect Administration.

Graph VIII



The Ministry of Solidarity and Social Security and the Ministry of Finance remain in the top positions, with sharp strengthening of the position of the first. The large drop in the weight of complaints against the Ministry of Justice, in a continuing movement since the previous year, led to the exchange of positions with the Ministry of Education and Science, although the latter also had a decline in the number of complaints. There was a significant decline on complaints against the Ministry of Foreign Affairs, here including consular services.

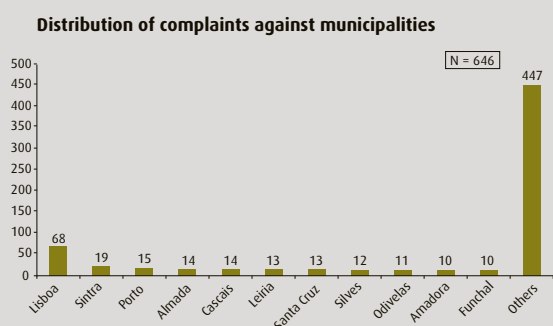
Graph IX



Excluding the complaints filed by employees of each government department connected with the employment relationship, the only change in the ordering of ministries is the descent of two positions by the Ministry of Education and Science. This Ministry, in fact, is the only case in which the proportion of complaints in employment is more than half (65%), being closely followed by the Ministry of Health

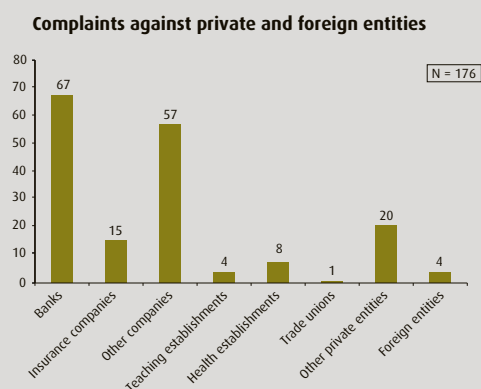
(42%). The generality of other departments, also because of the smaller number of its labour force, comes with values below 15%, more accentuated in the case of the Ministries of Solidarity and Social Security, Finance and Foreign Affairs, with less than 10% (4%, 6% and 8% respectively).

Graph X



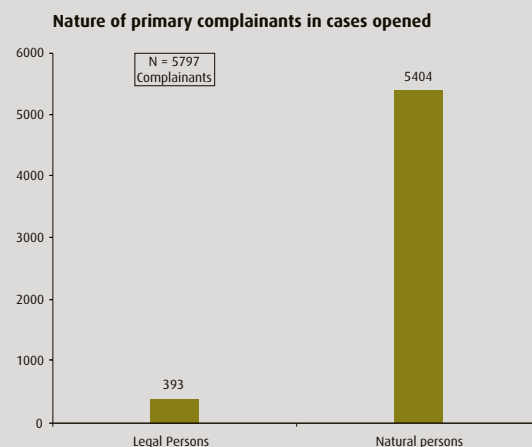
The 11 most targeted municipalities continue to represent nearly 1/3 of complaints against local authorities, once more Lisbon being the top case, although with a slight decrease in the number of complaints received. In absolute values, there was also a significant drop in the number of complaints against the Municipality of Funchal (to 1/3 of the value recorded in 2010), of Oporto (to 2/3 of the value recorded the previous year) and of Almada (falling below 50% of the figures recorded in 2010).

Graph XI



The number of cases addressed against individuals or foreign entities dropped strongly. In relative terms the trend previously observed persisted, with an increase in the relative weight of complaints against a bank or a private health facility and a decline in the cases against other kind of companies.

Graph XII

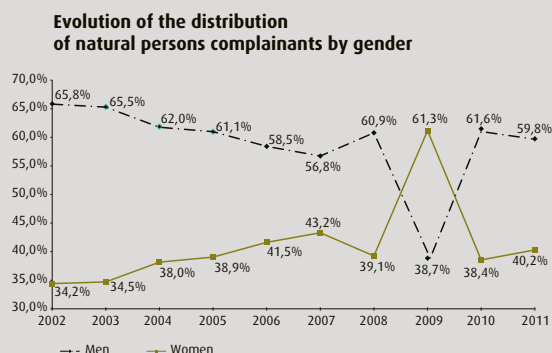


Graph XIII



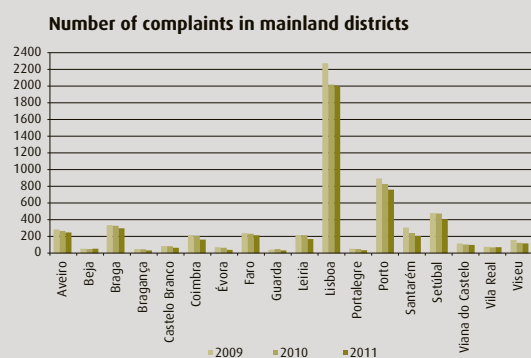
The proportion of legal persons in the universe of complainants (first subscribers only) has increased slightly. A descent in the number of companies that presented a complaint was compensated by a symmetrical growth on complaints presented by associations, in a trend already enunciated in previous reports.

Graph XIV

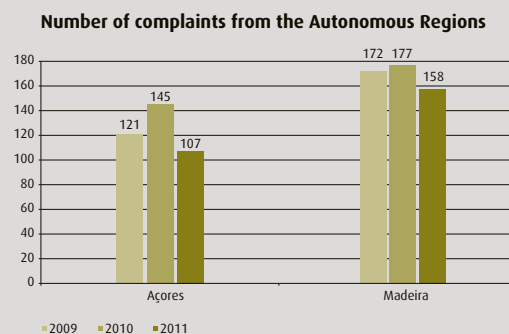


The predominance of male complainants persisted, with a slight decrease of 2%, compared to 2010. The number of responses received to the questionnaire sent to complainants after acceptance of the complaint was similar to that of 2010. As in previous years, this response was obtained from about 1/3 of the complainants. Among those who replied, the proportion of those presenting a complaint for the first time declined slightly. The response rate of individuals remained much higher than the figure concerning legal persons. The number of replies received from women increased. Almost half of the respondents were aged between 40 and 59 years, 30% being more than 60 years old. The percentage of those responding without college education decreased 4%, the number of responders with BA or above being now about 50%. Regarding the employment status of respondents, in absolute and relative terms, there were significant increases in the number of unemployed and workers on the public enterprise sector. The number of answers from workers on the private sector diminished, with an increase of the figures relating to liberal professionals or workers in the public administration.

Graph XV

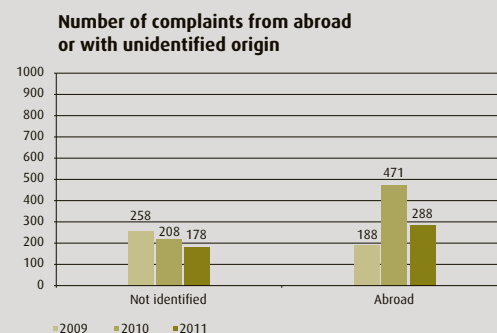


Graph XVI



The most significant growth of complaints was recorded in the districts of Beja, Vila Real, Lisbon, Viana do Castelo and Viseu. On the other hand, the most significant break occurred in the Azores and the districts of Portalegre, Bragança, Guarda and Évora.

Graph XVII



Demonstrating its volatility already mentioned in the 2010 Report, the decline of complaints coming from abroad is explained by a decrease, of about 30%, of cases relating to the nationality of persons born in the former Portuguese State of India.

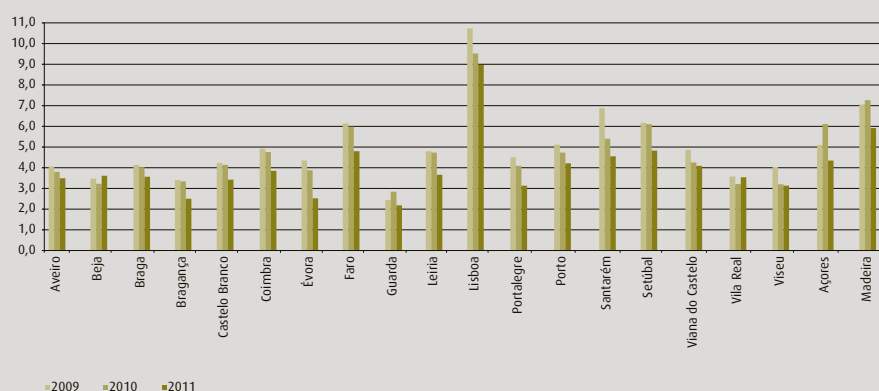
Table 6 – Complaints and Population

The five highest values

	2007	2008	2009	2010	2011
1st	Lisboa	Lisboa	Lisboa	Lisboa	Lisboa
2nd	Açores	Santarém	Madeira	Madeira	Madeira
3rd	Santarém	Faro	Santarém	Açores	Setúbal
4th	Setúbal	Madeira	Setúbal	Setúbal	Faro
5th	Faro	Setúbal	Faro	Faro	Santarém

Graph XVIII

**Complaints per 10 000 inhabitants:
districts and autonomous regions**



Comparing the number of complaints with the resident population, the five top places were occupied by the district of Lisbon, in the first position, followed by Madeira. Returning to the scenario occurred in 2009, albeit with different relative positions, the districts of Setúbal, Faro and Santarém followed.

3.2. Recommendations of the Ombudsman

The Ombudsman has the competence to address recommendations to the competent bodies, with a view to correcting illegal or unfair acts of public powers or to improving their services.

The addressed body must, within 60 days, inform the Ombudsman of its position on the issue. The decision not to accept the recommendation must always be grounded.

If the Administration does not act according to the recommendations or if it refuses to cooperate as requested, the Ombudsman may address him/herself to the Parliament, stating the reasons for his/her initiative.

In 2011, 15 Recommendations were issued, 2 of which concerning the need for amendments to legislative acts («B» recommendations). These recommendations were addressed to the following entities: Minister of State and Finance (1); Minister of Agriculture, Sea, Environment and Land Use Planning (1); Minister of Interior (1); Secretary of State Assistant to the Minister of Health (1); Secretary of State of Science (1); Vice President of the Regional Autonomous Government of Azores (1); President of the Board of the Municipal Public Enterprise for Mobility and Parking of Lisbon (1); President of the Board of the Municipal Public Enterprise for Mobility and Parking of Lisbon (1); Mayor of Vizela (1); Mayor of Ponta do Sol (1); Mayor of Portimão (1); Mayor of Santa Cruz (1); Mayor of Sintra (1); Mayor of Santa Cruz das Flores (1); General Director of Human Resources do the Ministry of Education (1).

«A» Recommendations (Article 20, paragraph 1, indent a) of the Statute of the Ombudsman)

Recommendation 1/A/2011

Entity addressed: Vice-Presidency of the Regional Government of the Azores

Subject: Civil servants tenure, careers and salaries legal regime. Transfer of competences from the Institute of Financing for Agriculture and Fisheries (IFAP) to the Autonomous Region of the Azores. Transition of legal and labour relations.

Date: 19.01.2011

Summary: The Ombudsman recommended:

A: The revocation of Order 1046/2010, of October 28, of the Vice-President and of the Regional Secretary for Agriculture and Fisheries, on the grounds of its illegality;

B: That the transition to the new careers and grades should be made according to the legal regime of public servants;

C: That the new remuneration levels should be defined according to Law 12-A/2008, of February 27.

Status: Accepted.

http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec_1A2011.pdf

Recommendation 2/A/2011

Target entity: Mayor of Vizela

Subject: Regulation of Parking Zones.

Date: 14.04.11

Summary: The Municipal Council decided to investigate and decide cases of parking offenses under the Municipal Regulation on Parking Areas with Limited Duration Controlled by Parking Meters. The Ombudsman recommended the repeal of that municipal regulation, because it contained provisions contrary to the Road Code, and that all cases be closed, because only the National Road Safety Authority can process and impose fines for illegal parking, while municipal councils do not have such a competence.

Sequence: Accepted.

http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec_2A2011.pdf

Recommendation 3/A/2011

Target entity: Chairman of the Board of the Municipal Public Enterprise for Mobility and Parking of Lisbon (EMEL)

Subject: Titles of parking improperly positioned in the vehicles.

Date: 29.04.11

Summary: Recommendation 3/A/2011 was addressed to the Chairman of the Board of EMEL and had to do with the titles of parking improperly positioned in the vehicle and the possibility to rebut the presumption of non-payment. The Ombudsman recommended that EMEL should issue instructions so that records of administrative offences are not drawn up in relation to drivers who actually prove having paid.

Sequence: Since EMEL did not follow the recommendation, the Ombudsman referred the matter to the Lisbon City Council and is waiting for a response.

http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec_3A2011.pdf

Recommendation 4/A/2011

Target entity: Minister of the Interior

Subject: urgent public interest service.

Date: 12.05.11

Summary: Recommendation 4/A/2011 was addressed to the Minister of the Interior on the issue of driving official cars in violation of traffic rules by reason of public service. It was recommended that the Minister issue guidelines for the police forces so that the police agents who, in the performance of supervisory functions, witness traffic offences committed by official vehicles, draw up a record of such offences. Then, it will be for the National Authority for Road Safety to analyze the compliance with the requirements of the urgent public interest service.

Sequence: Accepted.

http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec_4A2011.pdf

Recommendation 5/A/2011

Entity addressed: Mayor of Ponta do Sol

Subject: Environmental Law. Insalubrity.

Date: 17.08.11

Summary: The Ombudsman recommended that a building owner should be notified with urgency, in order to promote the immediate cessation of unauthorized use of the facilities identified above, according to Article 109 of the Legal Regime of Urbanization and Construction. He also recommended that the transfer of the structure to an alternative space duly authorized be pondered, upon the application of safeguard measures provided by the Legal regime for the activity of cattle raising and, if necessary, in cooperation with the competent services of the Regional Direction of Agriculture and Rural Development.

Sequence: Accepted.

http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec_5A2011.pdf

Recommendation 6/A/2011

Entity addressed: President of the Board of the Executive Directors of the Azores Electricity Company SA (EDA)

Subject: Union leaders. Meal allowance.

Date: 07.09.2011

Summary: The Ombudsman recommended that EDA should recognize the complainant's right to receive the unpaid meal allowances corresponding to the period between 17.04.1997 and 31.12.2003, plus interest arrears since the maturity date, an amount due for the four days of release regarded as effective work that he was entitled to as a union worker.

Status: Accepted.

http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec_6A2011__1.pdf

Recommendation 7/A/2011

Target entity: Mayor of Santa Cruz

Subject: Consumer rights. Guarantee deposit for access to public water supply.

Date: 04.11.11

Summary: The Ombudsman recommended that the necessary administrative measures be initiated to ensure that the complainant is paid an amount equal to the value of the guarantee deposit whose refund he requested under Decree-Law 195/99, of June 8, which established the regime on deposits in contracts for the provision of essential public services to consumers, as amended by Decree-Law 100/2007, of April 2.

Status: Awaiting response.

http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec_07112011.pdf

Recommendation 8/A/2011

Entity addressed: Director-General of Human Resources of the Ministry of Education

Subject: compensation for the termination of contracts.

Date: 09.11.11

Summary: The Ombudsman recommended the amendment of the interpretation disclosed in circular B11075804B, of June 8, 2011, whereby the termination of contracts concluded under special hiring teachers regimes does not confer the right to compensation established by the Legal Regime of the Contract of Employment in Public Functions. The Ombudsman considered that the right to compensation occurs whenever the expiry of the term contract does not derive from the will of the worker and he/she does not get a new position that will ensure the maintenance of a public employment legal relationship. It was therefore recommended that the decisions refusing such compensation to teachers whose contracts expired without having obtained new employment should be reviewed.

Status: Not accepted.

http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec_8A2011.pdf

Recommendation 9/A/2011

Entity addressed: Mayor of Portimão.

Subject: Access to and pursuit of the activity of itinerant trader. Restriction of access to non-residents in the municipality.

Date: 10.11.11

Summary: The Ombudsman concluded that article 4, paragraph 2 of the Regulation on the Activity of Itinerant Trader of the Municipality of Portimão went beyond the limits of the enabling law (Decree-Law 122/79, of May 8, which regulates the itinerant trade) and imposed an unacceptable restriction of access to the activity of itinerant trader to the

non-residents in the municipality. The aforementioned provision was invoked to substantiate the refusal to issue the itinerant trader's card to the non-residents in the municipality. The Ombudsman recommended that such rule, as well as all those that in the same way imply the granting or restricting of rights to itinerant traders based on their residency within or outside such municipality, be removed from the Regulation.

Status: Accepted.

http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec_9A2011.pdf

Recommendation 10/A/2011

Entity addressed: Secretary of State for Science

Subject: Research grants. Scholarships for doctoral and post-doctoral studies. Teaching functions.

Date: 11.11.11

Summary: The Ombudsman recommended that the Secretary of State for Science should ensure the modification of decisions that have denied the grant or the renewal of scholarship, in the case of accumulation with teaching activities, by applying criteria not present in the current legal framework or at least violating the confidence created by former rules of procedure, without adequate justification. It was also recommended, for the future, that a proper consideration of conditions of accumulation of teaching with the receipt of a research grant should be enacted as law, as part of an overview of the national scientific system and in conjunction with the legislative framework which provides the framework for teaching careers.

Status: Accepted.

http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec_10A2011.pdf

Recommendation 11/A/2011

Entity addressed: Secretary of State for Health

Subject: Update of health fees. Time of collection.

Date: 15.11.11

Summary: As new amounts owed by the issuance of certificates of disability and other medical certificates were established by Decree-Law 8/2011, of January 11, the Ombudsman recommended to the Secretary of State for Health to standardize criteria as to when the collection of fees was due and the issuance of guidelines to ensure that no doubling of payment occurred. It was also recommended that the new values should not be charged if a considerable delay of a procedure previously initiated was due to the Administration.

Status: Partially accepted.

http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec_11A2011.pdf

Recommendation 12/A/2011

Entity addressed: Mayor of Sintra

Subject: Payment after the trial period

Date: 17.11.11

Summary: The Ombudsman addressed a recommendation to the Mayor of Sintra, following a complaint by a Municipal Police Officer who continued to receive the salary of a trainee, despite having completed the traineeship in January 2011. Considering that the approval in the traineeship may not be recognized without producing effects in terms of pay, it was recommended that the municipal agents who completed the traineeship successfully be paid as 2nd class municipal agents, with effect from the date of the act that recognized the approval in the traineeship.

Status: Accepted.

http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec_12A2011.pdf

Recommendation 13/A/2011

Entity addressed: Mayor of Santa Cruz das Flores

Subject: Performance evaluation.

Date: 15.12.11

Summary: The Ombudsman recommended that the Mayor, as regards performance evaluation, should assign one point to a worker that, in 2008, did not have six months of service rendered in actual contact with her evaluator, as established by Regulatory Decree 18/2009, of September 30, that adapted to the local administration the Integrated System for Performance Assessment in Public Administration (SIA-DAP).

Status: Not accepted.

http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec_13-A_R_1910_10.pdf

«B» Recommendations (Article 20, paragraph 1, indent b), of the Statute of the Ombudsman)

Recommendation 1/B/2011

Entity addressed: Minister of Agriculture, Sea, Environment and Land Planning

Subject: Forestry. National forests.

Date: 02.11.11

Summary: Pursuant to a complaint against the undue removal of one part of Monsanto's Park, around Lisbon, in order to build an electrical substation, the Ombudsman noticed very severe gaps on forestry statutes, mainly those concerning national forests. In essence, the National Forestry Authority argues that national forests prior to 1901 can be removed without Council of Ministers approval. The

Ombudsman recommended that the Government should improve the Forests' Code. Actually, there are more than one hundred statutes and other legal provisions about forests and too many public agencies working on this subject under different ministers (Finance, Economy, and Agriculture). Nevertheless, one important act on forest guards' powers, from 1954, was revoked in 2006. Therefore, national forests are much more vulnerable. The Ombudsman also recommended that there should be specific reasons to support removals from national forests. If the reasons given do not become effective, the land should revert to public domain.

Status: Partially accepted.

http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec_182011.pdf

Recommendation 2/B/2011

Entity addressed: Minister of State and Finance

Subject: Chartered Accountants. Debt to a previous professional. Need to terminate the obligation prior to the assumption of duties by a new Chartered Accountant.

Date: 30.11.2011

Summary: The Ombudsman recommended to the Minister of Finance the amendment of article 56 of the Statute of the Order of Chartered Accountants and of article 17, paragraph 2, of the Code of Conduct for Chartered Accountants, expressly stating that the existence of a debt to a previous professional does not imply the impossibility of another Chartered Accountant to provide services, notwithstanding the need to undertake every adequate effort towards the clearance of such debt, with an assessment of each individual situation.

Status: Awaiting a reply.

http://www.provedor-jus.pt/restrito/rec_ficheiros/617-10.pdf

In relation to the 15 recommendations issued in 2011, 9 had been accepted by the end of the year. In what refers to the other 6 recommendations, 3 have not been accepted and the other 3 were awaiting a reply – the ones issued at the end of the year and in relation to which the deadline of sixty days for reply had not yet lapsed.

3.3. Review of the Constitutionality

The Portuguese Ombudsman, in accordance with Article 281, paragraph 2, indent d), of the Portuguese Constitution and Article 20, paragraphs 3 and 4, of his Statute, may seize the Constitutional Court to declare the unconstitutionality or illegality of legal provisions and to assess and verify situations of unconstitutionality by omission. He/she may exercise these competences either pursuant to a complaint or on his/her own initiative.

In 2011, 36 complaints were received on such grounds, only three less than in 2010. As in the past few years, none of them related to unconstitutionality by omission. The ground most often invoked was the violation of the principle of equality.

UNCONSTITUTIONALITY			36
	CONFIDENCE	1	3%
	EQUALITY	13	36%
	ORGANIC AND FORMAL DEFECTS	7	19%
	OTHER GROUNDS	15	42%
	OMMISSION	0	0,0%

During this year **three requests were presented by the Ombudsman to the Constitutional Court**, asking for a judicial review of the constitutionality and/or legality of:

- Article 69-D, paragraph 1, indents a) to j), of the Statute of the Chamber of Solicitors, approved by Decree-Law 88/2003, of April 26, as modified by Decree-Law 226/2008, of November 20, for violation of Article 199, indent d) and Article 267, paragraph 4, of the Constitution and of Article 5, indent b) of Law 18/2008, of April 21, in what concerns the creation and composition of the Commission for the Efficiency of Enforcement Procedures;
- Article 34, paragraph 1, of Organic Law 1-B/2009, of July 7, approving the National Defense Law, and Articles 2, 4 and 5 of Law 19/95, of July 13, as these provisions

limit the right of complaint to the Ombudsman by military personnel on active duty, in violation of Article 23, paragraphs 1 and 2, and Article 18, paragraphs 2 and 3, of the Constitution;

- Provisions of Regulation 52-A/2005, of August 1, as last amended by Resolution 3333-A/2009, of December 16, of the Bar Association, concerning its traineeship, for violation of the organic and formal constitutional rules about restrictions to fundamental rights, freedoms and guarantees. Those provisions prohibit candidates, who previously failed to pass the due examination, from reapplying for a period of 3 years.

Concerning previous initiatives of the Ombudsman, the Constitutional Court delivered three judgments in 2011, two of them upholding totally, and the remaining upholding partially, the requests made by the Ombudsman:

- Judgment 3/2011 declared the unconstitutionality of Article 9, paragraphs 1 and 2 of Regulation 52-A/2005, of August 1, as last amended by Resolution 3333-A/2009, of December 16, of the Bar Association, for violation of Article 165, paragraph 1, indent b) of the Constitution. At issue was the requirement that holders of a degree in law in the context of the Bologna process pass a special examination for admission to the traineeship.
- Judgment 362/2011 declared the unconstitutionality of Article 4, paragraph 2, of Decree-Law 211/2004, of August 20, and in consequence of Article 6, paragraph 4, indent c), Article 25, paragraph 2, indent b), and Article 44, paragraph 1, indent d), for violating the organic and formal constitutional rules about restrictions to fundamental rights, freedoms and guarantees. The provisions at stake prohibited the exercise of other commercial or professional activity by real estate salesmen.
- Judgment 612/2011 declared the unconstitutionality of Article 14, paragraph 1, Article 47, paragraph 2, indent a), and Article 58 of Decree-Law 307/2007, of August 31, for violation of the principle of prohibition of excess (as set out in Article 2 of the Constitution), in conjunction with Article 63, paragraph 5, of the Constitution.

Those provisions imposed on entities in the social sector who wished to own pharmacies the need to create companies.

In several other situations, such as the ones that follow, **the Ombudsman chose not to present a request to the Constitutional Court:**

- The obligation of the accused in criminal proceedings to be represented in his defense by a lawyer. According to the complaint received, the possibility of self-representation would stem from international law, specifically the European Convention on Human Rights and the International Covenant on Civil and Political Rights. The Ombudsman did not uphold this opinion, on the basis of jurisprudence of the European Court of Human Rights and of the Portuguese Constitutional Court.
- The reduction, between 3.5% and 10%, in the total gross monthly earnings of workers in public functions earning over €1500. Since an initiative of successive abstract review of constitutionality had already been undertaken by a group of Members of Parliament, a further initiative by the Ombudsman was considered unnecessary.
- The impossibility for a worker in the public sector to make pension payments for more than one simultaneous occupation and have both of them considered in the calculation of the pension amounts. This solution is coherent with the latest trends in the public pensions system, which the Constitutional Court had already considered not to be unconstitutional (Judgments 188/2009 and 3/2010).
- The rules of the Autonomous Region of Madeira (Regional Legislative Decree 16/2010/M, of August 13) about drug prescription by International Nonproprietary Name (INN). The complaint was based on a recent veto of a piece of legislation with allegedly similar content, approved by the Government of the Republic, as well as the alleged violation of the «right to public health» by failing to control the drug effectively prescribed or taken. It has been clarified that the legislation of the Autonomous Regions did not depend on the validity of a similar law at national level and that the veto did not have any effects on any other diploma apart from the one actually vetoed. Concerning the substantive argument, since the Ombudsman could not provide scientific evidence for the discussion about the merits and demerits of the prescription by INN, it was expressly signaled that the said legislation allowed the physician, providing a brief technical justification, to choose a specific brand of drug.
- The exclusion of teachers not actually giving classes, by virtue of their trade union functions, of the specific provisions that facilitate early retirement of first cycle teachers. It was considered that this possibility is directly associated with the effective exercise of a certain function, offsetting the effective added burden endured. The Ombudsman also considered that the existing legislative provisions were, as whole, appropriate to comply with the guarantees provided to trade union activists under Article 55, paragraph 6, of the Constitution.
- The alleged breach of the constitutional guarantee of University autonomy by the legal regime of higher education institutions (Law 62/2007, of September 10), for example Articles 81 to 95 and 96 to 105 thereof. Considering the result of the doctrinal debate that occurred in this respect, the Ombudsman found that much of the criticism concerned the adequacy of the chosen paradigm. As this dimension did not fall within the Ombudsman's scope of action, he explained that he could not make an assessment on the merits of the options taken, which rested within the margin of discretion of the legislative powers.
- The solution established in Article 154 of the State Budget for 2010 and later enforced by Article 78 and Annex II of Decree-Law 72-A/2010, of June 18. According to that solution, local authorities should transfer directly to the budget of the National Health Service (NHS) the value of expenses paid in 2009 to the specific health subsystem of civil servants (ADSE) relating to services provided by NHS establishments. This solution was not considered as violating the financial autonomy of local authorities, as it was a consequence of a sustained change in the financial relations between the NHS and public health subsystems. Until 2009, the public entities with financial autonomy would be required to pay these expenses directly to the NHS. From then on, this payment was made, as a forfait, directly by the ADSE to the NHS. This new model of financial relationship between the NHS and health subsystems simultaneously demanded that it be withdrawn from local authorities the amount that previously served to comply with the obligations now missing, namely the cost of health care expenditure of the respective workers.

3.4. Cases and Inspections of the Ombudsman's Own Initiative

In 2012, 16 cases were opened on the initiative of the Ombudsman, one of which related to an inspection.

P-1/11

Entity addressed: Santo Espírito Hospital of Angra do Heroísmo

Subject: Support to users of the Hospital affected by serious or painful events that occurred as a result of medical care at the healthcare facility.

Summary: This *ex officio* case was opened following news that, during a routine visit, a 28 weeks pregnant woman was told the foetus was dead and sent home to wait for delivery, without any psychological support. The hospital commented that this was a routine procedure.

Back in 2003, the Ombudsman had opened a case against the same addressed entity. A similar situation was then handled and, at the conclusion of the case, the Hospital had decided to create a multidisciplinary healthcare team, composed of a psychiatrist, a psychologist and a senior social service technician, in order to support patients and their families when affected by serious and painful events. The news mentioned above seemed to indicate that the commitment had not been kept.

Now, in the course of these new investigations, the Hospital's Board of Directors affirmed that the Hospital had a team of psychiatrists available 24/7, as well as senior psychological technicians and senior social service technicians, who, under the coordination of the Psychiatry Service, supported the users affected by serious and painful events.

From this clarification it follows, on the one hand, that the Hospital has a team of psychiatrists that resorts to other technical areas in specific situations, and, on the other hand, that such support was not triggered in this case.

The Ombudsman's suggestion was that a multidisciplinary healthcare team be created and its action triggered whenever deemed necessary, rather than only at the patients' request.

Status: Closed; a critical remark was addressed to the Hospital Board.

P-2/11

Entity addressed: Ministry of Finance. Secretary of State for Fiscal Affairs.

Subject: Taxation. Personal Income Tax (IRS). Irreversibility of the options taken by IRS taxpayers regarding the composition of the household. The special situation of dependents that can be integrated in the household of parents or autonomously taxed.

Summary: This *ex officio* case was opened with the objective of leading tax administration to change its understanding with respect to the irreversibility of the options taken by IRS taxpayers regarding the composition of the household. Through an administrative order, the then called Directorate-General for Contributions and Taxes (DGCI) issued instructions to the services stating that all the options of taxpayers are reversible by filing an administrative complaint against the subsequent tax assessment. However, the following exceptions to the rule of the reversibility of options are contained in the administrative order: (1) options taken by those who, while still meeting requirements to be considered dependent, may opt to be autonomously taxed and (2) options taken by those who, being married, are «*de facto*» separated and who may therefore submit a tax return separate from the other spouse's.

Because the referred administrative order distinguishes where the legislator does not distinguish, efforts were started aimed at its revocation. Despite signs of openness on the part of the then-called DGCI to a change of position in a direction consistent with the position of the Ombudsman, it makes such change of position dependent on a legislative change, which, however, has been delayed.

Status: At the end of 2011 efforts were underway with the Secretary of State for Fiscal Affairs to accelerate the resolution of this issue, even if it means resorting to a legislative route.

P-03/11

Entity addressed: Regional Secretariat for Social Affairs of the Autonomous Region of Madeira

Subject: Study on poverty in the Autonomous Region of Madeira.

Summary: The case was opened *ex officio* following a submission filed by the Parliamentary Group of the Socialist Party of the Regional Legislative Assembly regarding the implementation of the Regional Plan of Action for Inclusion in the Autonomous Region of Madeira [PRAI-RAM 2003]. In particular, it questioned the omission to conduct a study on

«Social exclusion in the Autonomous Region of Madeira», under the responsibility of the Social Security Centre of Madeira (CSSM) as foreseen in the plan for the three-year period of 2003-2005. After asking the Regional Secretariat for Social Affairs for a clarification, the Ombudsman was informed that the CSSM has no technical and human means for studies of this kind and therefore uses partnerships with private multidisciplinary entities for this purpose. In this case such partnerships have not been implemented, making it impossible to carry out the study. Furthermore the Regional Secretariat noted that the study in question would necessarily be incomplete, as social policies and its measuring indicators do not correspond only to the data obtained by the social security services, leaving out other dimensions of people's life (education, health, employment, professional training, culture, consumption, trade, etc.).

Status: Closed.

P-04/11

Entity addressed: Institute for Mobility and Transportation (IMTT)

Subject: Validity of driving licenses.

Summary: Following reports disseminated by mass media and dozens of complaints from citizens, the Ombudsman opened a case concerning the entry into force of the regime of Decree-Law 45/2005, of February 23, as amended by Decree-Law 103/2005, of June 24, which set a new period of validity for driving licenses, different from those appearing on the licenses that each driver was carrying.

Despite the impossibility to argue ignorance of the law, the Ombudsman did not fail to recognize that the subject took on particular gravity and large impact on the social level, because the people involved were carrying licenses with a different expiration date from that determined by new regime.

Also, the consequence of non-revalidation of the license was very serious: it led to its expiry, which resulted also in the possible criminal liability of drivers, since the holders of a driving license expired for lack of revalidation are deemed equivalent, for all legal purposes, to those not entitled to drive.

Furthermore, some drivers had been notified of the amendments and the consequent need for revalidation of the license before the deadline fixed by it, while others had never been contacted by IMTT.

The IMTT stated, in summary, that measures were taken in order to overcome the impediment to drive and thus minimize the inconvenience to all who find themselves in that situation, including:

- a) In relation to drivers whose titles were expired for more than two years, and who should undergo a special exam at the IMTT, it was provisionally authorized that they undertook such exam in private centres and on a self-registration basis;
- b) On the decision of the IMTT's Board of Directors, temporary titles valid for six months were issued to replace the driving license of all those who requested to undertake that exam, so that they would not be prevented from driving to the place of the exam;

c) IMTT's regional services, private centres for driving tests, Citizen Shops and citizen service centres would be provided with panels warning to the validity periods of driving titles and dates of the revalidation;

d) A table was included in the IMTT's website with the dates of birth of the drivers and the corresponding dates on which they should proceed with the renewal of their licences, to better inform the interested citizens.

Status: Closed.

P-05/11

Entity addressed: Parliament

Subject: Criminal procedure rules regarding the control of the interception of communications involving high-level political officials.

Summary: After filing a complaint about the current legal regime concerning the control of the interception of communications involving high-level political officials (Head of State, President of the Parliament and Prime-Minister) the Ombudsman decided to conduct a study of comparative law solutions in Spain, France and Italy. No ground for a recommendation towards a legislative change has been found.

Status: Closed.

P-06/11

Entity addressed: Minister of Solidarity and Social Security and Health Minister

Subject: Assessment of incapacity of persons with disabilities. Decree-Law 202/96, of October 23. Inadequacy of the National Table of Disabilities for accidents at work and occupational diseases (TNI) to assess citizens with disabilities.

Summary: The case was opened *ex officio* to study the system for evaluating disabilities of persons with disabilities, in particular the implementation of the TNI for calculating and fixing the degree of devaluation. The legal regime (Decree-Law 202/96, of October 23) determines that the said evaluation must use the TNI with observance of some special rules. However, from the preamble clearly results that such rules were created transitorily to meet the lack of a specific table that should be established for this purpose.

Despite the legislative changes that have occurred in the meantime, both with regard to TNI (Decree-Law 352/2007, of October 23, which, although aiming to fix the incorrect application of the TNI «as reference table in other areas of law in which the disability assessment may be raised, to remedy the absence of specific regulations directly applicable», in fact, in addition to approving a new TNI, only created another table targeted for damage compensation under civil law) and to Decree-Law 202/96, of October 23 (with the approval of Decree-Law 291/2009, of October 12,

which only adapted evaluation procedures to the new TNI), the legal framework has remained the same.

In light of the study that he carried out, the Ombudsman concluded that the TNI, as a table specifically designed to assess disabilities resulting from accidents at work and occupational diseases, is not the appropriate instrument for the assessment of people with disabilities. Hence it was suggested to the Minister of Social Security and Solidarity and the Minister of Health, in conjunction, the adoption of specific rules to overcome these constraints by creating another table that allows the correct evaluation in relation to persons with disability, without having to resort to a table that was meant for another purpose.

Status: Pending. Awaiting an answer from Minister of Solidarity and Social Security. The Health Minister informed that has asked an opinion to the Directorate-General for Health.

P-7/11

Entity addressed: State Secretary for Public Administration
Subject: Admission to recruitment procedures.

Summary: This *ex officio* case was opened to investigate and clarify the legal regime applicable to the military, namely the possibility to apply for an internal recruitment procedure when they only had a work contract.

Status: At the investigation phase.

P-8/11

Entity addressed: Minister for Economy and Employment
Subject: Safety. Children playgrounds. European law.

Summary: The Portuguese law on children playgrounds contains more demanding specifications than those that would result from the implementation of European law. Many of the requirements do not correspond to increasing levels of security. The new Portuguese law led to the closure of many playgrounds. Schools and other institutions lack the resources to comply with the conditions imposed. The Government accepted the need to amend the existing legislation.

Status: Waiting for the new legislation.

P-09/11

Entity addressed: Portuguese Public Security Police, National Republican Guard and Criminal Police

Subject: Inspection to the places of detention of citizens of the responsibility of the Criminal Police, the Public Security Police and National Republican Guard.

Summary: The Ombudsman decided to carry out inspection visits to places of detention of citizens in order to assess, particularly:

- a) The physical conditions (location, accessibility, safety and service);
- b) The working conditions of staff, military and other personnel;
- c) The conditions of detention of citizens;

d) In the case of the Portuguese Public Security Police and National Republican Guard, the compliance by agents and military with legal requirements provided for specific procedures, such as the submission of complaints, the arrest of citizens, the submission of complaints concerning domestic violence and the interventions under the Law on the Protection of Children and Young People in Danger, issues relating to the elderly population and the Mental Health Act.

Status: The inspection was completed in 2011, but the wording of the respective reports moved for the following year.

P-10/11

Entity addressed: General-Directorate for Treasury and Finance

Subject: Land. Buildings. Unknown owners.

Summary: Many urban regeneration operations and many forest clean-ups are not being carried out by the land owner. Often there are dozens of heirs who are not willing to enter into an agreement with each other. Under the Portuguese law, it is assumed that the Government is the owner of the buildings without known owner. As only a very limited number of cases were identified in which the Administration resorted to that legal provision, the Ombudsman is looking into why this legal procedure is not being further used.

Status: In the investigation phase.

P-11/11

Entity addressed: Lisbon District Centre of the Institute of Social Security, IP (ISS)

Subject: Social Security debts. Delay in processing complaints of contributors.

Summary: The case was opened *ex officio* due to the high number of complaints about delays of the Lisbon District Centre of the ISS in processing complaints submitted by taxpayers in the context of proceedings for enforcing payment. The questions raised concern significant mismatches in the current accounts of some companies, who were charged with debts, in some cases, totally or partially non-existent (some had been paid, other found undue). The delay in the review of the respective current accounts implied relevant losses for businesses that were wrongly confronted with outstanding accounts, which, *inter alia*, is a barrier to enter in tenders for new works. The significant increase in such complaints, in the years 2010 and 2011, led the Ombudsman to determine a visit to the Contributions Unit and to the Identification and Qualification Unit of the District Centre and to meet with the leaders of that entity, in October 2011, with a view to identifying reasons behind such delays and the suggestions of possible solutions for resolving the high backlogs in record.

Following this visit, a meeting was held with the Board of Directors of the ISS in December 2011, aiming to convey

the Ombudsman's concerns in respect of this situation so harmful for taxpayers, some with outstanding attachments and unable to pursue the respective activities, in particular because they cannot access tenders for realization of new projects.

The Board of Director of the ISS recognized the existence of the problem and, accordingly, ordered an internal audit to the District Centre of Lisbon.

Status: Pending. The audit has already been completed and the Office of Audit and Quality of the ISS already prepared the respective final report and the file is awaiting submission of the aforementioned report and decisions of the Board of Directors of the ISS.

P-12/11

Entity addressed: Minister of Education

Subject: Quota system of public employment for people with disabilities.

Summary: This *ex officio* case was opened to clarify the implementation of Decree-law 29/2011, of February 3, which establishes a quota system of public employment for people with disabilities in national competition for teachers to be hired temporarily. The general rule of preference of the candidate with a disability is not being applied when the number of vacancies is less than three. In these situations, the application of the preference in favour of candidates with disabilities should result in the derogation of the general rules on tiebreakers, contained in the scheme of the competition for teachers.

Status: Awaiting reply.

P-13/11

Entity addressed: Ministry of Foreign Affairs

Subject: Closure of Portuguese consular services in the Principality of Andorra.

Summary: This initiative was a result of a communication by the Raonador del Ciutadà, the Ombudsman of the Principality of Andorra, transmitting the terms of a protest signed by members of the Portuguese community in that country, against the announced closure of the Portuguese consular services.

Status: At the investigation phase.

P-14/11

Entity addressed: Secretary of State for Public Works, Transport and Communications.

Subject: Consumer. Communication routes. Tolls. Former routes without cost to the user (SCUT). System of positive discrimination. Exemptions and reductions in the payment of tolls.

Summary: This *ex officio* case was opened in mid-December 2011, after the Ombudsman became aware, through the investigation in several other cases, of various situations of difficulties, doubts and alleged irregularities in applying

the existing system of positive discrimination in the former SCUT. The system design itself has been challenged on a number of complaints received during 2011. Thus, in opening this case, the intention was to deepen the knowledge of the system and assess the need for intervention of the Ombudsman towards a fine-tuned system and/or improving the interpretation and practical application that is being made.

Status: At the beginning of 2012, request for information was directed to the Secretary of State for Public Works, Transport and Communications.

P-15/11

Entity addressed: Parliament

Subject: Proposal for a Code of Good Administrative Behaviour.

Summary: In the framework of this initiative, the Ombudsman reiterated to Parliament a proposal to adopt, by an instrument deemed adequate, a Code of Good Administrative Behaviour. The proposal now made restates, with minor changes, the initiative previously addressed to the previous Legislature, in 2010.

Status: Closed. Recommendation issued to the President of the Parliament on the 19th February 2012.

P-16/11

Entity addressed: Parliament

Subject: Amendment to the Statue of the Ombudsman.

Summary: The Ombudsman recommended to Parliament some amendments to his Statue in order to recognize his activity in the field of international relations, within the European Union, United Nations and Council of Europe and his quality of National Humans Rights Institution. The amendments were also necessary due to the reorganization of public administration and the internal reorganization of the Ombudsman's Office.

Status: Closed. Recommendation issued to the President of the Parliament on the 28th February 2012.

3.5. International Relations

The international activity of the Portuguese Ombudsman fundamentally derives from two roles this institution plays simultaneously: that of Ombudsman, pursuant to the Swedish institutional model created at the outset of the XIX century; and that of National Human Rights Institution, fully compliant with the guidelines affirmed by the United Nations in the so-called «Paris Principles».

In this domain, despite the effort of budget limitation required by the adverse economic situation face by the country, 2011 was a year marked by continuity and deepening, with a consolidation of the work done on the thematic priorities chosen by the current Ombudsman at the beginning of his mandate.

As regards bilateral cooperation with counterpart institutions, work visits were carried out to the *Defensora del Pueblo* of Spain and the *Síndic de Greuges* of Catalonia. Visits were received from the European Ombudsman, the Ombudsman of Thailand, the Ombudsman of Angola, a delegation of the Protector of Citizens (Ombudsman) of Serbia and a delegation of the Ministry of Supervision of China.

At the multilateral level, participation was ensured in annual meetings and other events promoted by the European Network of Ombudsmen, the Iberoamerican Federation of Ombudsmen, the Association of Mediterranean Ombudsmen, the European Network of Ombudspersons for Children and the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

Highlight should be given to:

- The Ombudsman's intervention at the 8th Meeting of the European Network of Ombudsmen, on 22nd October, regarding «The Relations between Ombudsmen and SOLVIT»;
- The Ombudsman's intervention on the 5th Meeting of the Association of Mediterranean Ombudsmen, in Malta, on 30th and 31st May, concerning «The importance of Good Administrative Behaviour Codes and Quality Charters for Public Administration in the context of Good Governance»;

- The Ombudsman's intervention on the International Human Rights Congress, held in Madrid, promoted by the Iberoamerican Federation of Ombudsmen, and organized by the University of Alcalá, on 2nd and 3rd June, on the topics «Organization and Competences of the Ombudsmen» and «Future Challenges of the Ombudsmen».

Also to be noted are the efforts made to strengthen the Ombudsman's interaction with the international human rights system, in the exercise of rights deriving from his role as A-status National Human Rights Institution, through the participation in different examinations, consultations and meetings promoted in the framework of the United Nations, Council of Europe, Organisation for Security and Cooperation in Europe and the European Union.

To that effect, for example, contributions were sent to a United Nations questionnaire on the role of prevention in the promotion and protection of human rights; a questionnaire on reproductive rights, developed by the Danish Institute of Human Rights at the request of the United Nations Population Fund; a study of the United Nations on children working and/or living on the street; a global progress analysis on the subject of violence against children, promoted by the Special Representative of the United Nations Secretary-General on Violence Against Children; and a United Nations questionnaire to prepare an analytical study on violence against women and girls and disability.

The Ombudsman also transmitted information to the competent national authorities in the framework of the preparation of the first national implementation report on the Convention on the Rights of Persons with Disabilities and the midterm report on the Universal Periodic Review.

In addition, visits were received from delegations of the United Nations Working Group of Experts on People of African Descent and the Congress of Local and Regional Authorities of the Council of Europe. In the context of these visits, the Portuguese Ombudsman shared his experience in the areas covered by each entity, giving note of his perspective on the main successes and challenges faced in our country in relation to each area.

Also to be highlighted is the Ombudsman's intervention, at the invitation of the *Médiateur* of Morocco, in a round table

organised on the margins of the 18th session of the Human Rights Council, on 26th September, about the implementation of United Nations Resolution 65/207. There, the Ombudsman pointed out the efforts carried out to promote the appointment or creation of Ombudsmen in countries of the Community of Portuguese Speaking-Countries in which this institution is still not implemented or established in legislation.

In fact, throughout 2011 this goal remained one of particular priority to the Portuguese Ombudsman, who continued to strive, at the internal and external levels, for its implementation.

The table below provides summarised information on the international events that took place in 2011 and in which the Portuguese Ombudsman was present or represented:

Event	Location and Date	Participant(s)
Workshop on follow-up to the Universal Periodic Review, organized by the United Nations Office of the High Commissioner for Human Rights	Brussels, Belgium 28-29.03.2011	Ms. Mariana Sotto Maior, Head of Cabinet to the Ombudsman
Workshop on the role of National Human Rights Institutions in the Promotion and Protection of the Rights of Women and Gender Equality, organised by the Organization for Security and Cooperation in Europe (OSCE)	Prague, Czech Republic 29.03.2011	Ms. Maria José Castello-Branco, Adviser to the Ombudsman
4 th Annual Meeting of the Agency of Fundamental Rights of the European Union with National Human Rights Institutions	Vienna, Austria 05.04.2011	Ms. Adriana Barreiros, Adviser to the Ombudsman
3 rd Thematic Workshop of the Peer-to-Peer II Project, jointly organised by the European Union and the Council of Europe, on the role of National Human Rights Structures in the Protection and Promotion of the Rights of Children in Care	Tallinn, Estonia 06-07.04.2011	Ms. Helena Vera-Cruz Pinto, Deputy Ombudsperson
International Conference «The Concept of further deepening of democratic reforms and formation of civil society in Uzbekistan»	Tashkent, Uzbekistan 22-23.04.2011	Ms. Mariana Sotto Maior, Head of Cabinet to the Ombudsman
24 th Annual Meeting of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights	Geneva, Switzerland 17-19.05.2011	Ms. Mariana Sotto Mayor, Head of Cabinet to the Ombudsman
5 th Meeting of the Association of Mediterranean Ombudsmen	St. Julian's, Malta 30-31.05.2011	Mr. Alfredo José de Sousa, Portuguese Ombudsman, and Ms. Mariana Sotto Maior, Head of Cabinet to the Ombudsman
International Congress «The Protection of Human Rights by the <i>Defensorias del Pueblo</i> », organized by the Iberoamerican Federation of Ombudsmen	Madrid, Spain 02-03.06.2011	Mr. Alfredo José de Sousa, Portuguese Ombudsman
Meeting of the Statutes and Standards Working Group of the European Network of Ombudspersons for Children	Brussels, Belgium 07.06.2011	Ms. Adriana Barreiros, Adviser to the Ombudsman
15 th Annual Conference and General Assembly of the European Network of Ombudspersons for Children, on the topic «The respect of the rights of children and young people in institutional care»	Warsaw, Poland 14-16.09.2011	Ms. Helena Vera-Cruz Pinto, Deputy Ombudsperson, and Ms. Adriana Barreiros, Adviser to the Ombudsman
Round Table with National Human Rights Structures of the Member States of the Council of Europe, organised jointly by the Council of Europe and the <i>Defensora del Pueblo</i> of Spain	Madrid, Spain 21-22.09.2011	Ms. Mariana Sotto Maior, Head of Cabinet to the Ombudsman
Work visit with the Head of Cabinet to the <i>Defensora del Pueblo</i> of Spain	Madrid, Spain 23.09.2011	Ms. Mariana Sotto Maior, Head of Cabinet to the Ombudsman
Conference «The Council of Europe's Social Charter 50 years on: What next?», organised jointly by the French Economic, Social and Environmental Council and the European Economic and Social Committee	Paris, France 23.09.2011	Mr. Alfredo José de Sousa, Portuguese Ombudsman
Round Table on the margins of the 18 th session of the Human Rights Council, organised by the <i>Médiateur</i> of Morocco	Geneva, Switzerland 26.09.2011	Mr. Alfredo José de Sousa, Portuguese Ombudsman
Work visit to the <i>Sindic de Greuges</i> of Catalonia	Barcelona, Spain 01-04.10.2011	Mr. Alfredo José de Sousa, Portuguese Ombudsman, and Ms. Helena Vera-Cruz Pinto, Deputy Ombudsperson
Seminar on the Application of the Charter of Fundamental Rights: Handling of Citizens' Petitions and Complaints on Fundamental Rights, organized jointly by the European Parliament and the European Commission	Brussels, Belgium 06.10.2011	Ms. Mariana Sotto Maior, Head of Cabinet to the Ombudsman

Event	Location and Date	Participant(s)
Meeting on «How can we build ever better cooperation in communication between FRA, NHRIs and National Equality Bodies?», organised by the Agency of Fundamental Rights of the European Union	Vienna, Austria 12-14.10.2011	Ms. Mariana Sotto Maior, Head of Cabinet to the Ombudsman
8 th Seminar of the European Network of Ombudsmen	Copenhagen , Denmark 20-22.10.2011	Mr. Alfredo José de Sousa, Portuguese Ombudsman
Seminar «The defence of rights and good practices in private management of public services: The role of the Ombudsman», organised by the International Ombudsmen Institute	Barcelona, Spain 21-22.10.2011	Ms. Catarina Ventura, Legal Adviser
11 th Informal Asia-Europe Meeting (ASEM) Seminar on Human Rights, dedicated to the topic of «National and Regional Human Rights Mechanisms»	Prague, Czech Republic 23-24.11.2011	Ms. Mariana Sotto Maior, Head of Cabinet to the Ombudsman
6 th European Forum on the Rights of the Child, organised by the European Commission	Brussels, Belgium 23.11.2011	Ms. Teresa Cadavez, Member of the Ombudsman's Cabinet
16 th Congress and General Assembly of the Iberoamerican Federation of Ombudsmen	Buenos Aires, Argentina 23-25.11.2011	Mr. Jorge Silveira, Deputy Ombudsman
5 th Annual Meeting of Contact Persons of National Human Rights Structures, jointly organised by the European Union and the Council of Europe, in the framework of the Peer-to-Peer II Project	Ljubljana, Slovenia 07.12.2011	Ms. Mariana Sotto Maior, Head of Cabinet to the Ombudsman

Brief information is also gathered on the visits of foreign entities received by the Portuguese Ombudsman and/or by members of his staff on his behalf:

Entity	Date
Delegation of the Ombudsman of Thailand, headed by the Chief Ombudsman, Mr. Pramote Chotimongkol	02.05.2011
Working Group of Experts on People of African Descent	18.05.2011
Ombudsman of Angola, Mr. Paulo Tjipilica	01.08.2011
Delegation of the Protector of Citizens (Ombudsman) of Serbia, headed by the Assistant Secretary-General, Mr. Robert Sepi	20.21.10. 2011
Delegation of the Ministry of Supervision of China, headed by the Commissioner for Supervision, at the level of Minister, Mr. Li Yufu	02.11.2011
Delegation of the Congress of Local and Regional Authorities of the Council of Europe	08.11.2011
European Ombudsman, Mr. Nikiforos Diamandouros	28.11.2011
<i>Defensor del Pueblo</i> of Andalusia, Mr. José Chamizo De La Rubia	07.12.2011

3. 6. The Ombudsman as National Human Rights Institution

What are National Human Rights Institutions

The concept of National Human Rights Institution designates a multitude of administrative institutions (i.e., non-judicial nor parliamentary) aimed at the promotion and protection of human rights. By and large, we can speak of two types of institutions: Commissions and Institutes of Human Rights and Ombudsmen.

In 1993, with Resolution 48/134, of 20th December, the United Nations General Assembly adopted a set of principles concerning the status of these institutions, defining aspects of their composition, mandate and methods of operation and guarantees of impartiality and pluralism. They became known as the «Paris Principles» and are nowadays considered the minimum standard to be respected by all National Human Rights Institutions, in terms of their full independence and effectiveness of their action.

Also in 1993 the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) was created. Its main mission is to assess these Institutions' compliance with those principles, through a process of accreditation and re-accreditation that may result in three classifications: A (fully compliant), B (not fully in compliance) and C (not compliant).

The international community recognizes to National Human Rights Institutions with A-status accreditation a key role in the implementation of national systems of protection and promotion of human rights.

Like the Ombudsmen, they are also considered key partners by international human rights entities.

This importance is especially evident at the United Nations, which has granted them a set of participation rights in some *fora*, especially in the Human Rights Council, such as submitting documents, attending meetings and making autonomous oral interventions.

The Portuguese National Human Rights Institution

Since 1999, the Portuguese Ombudsman is accredited as A-status Portuguese National Human Rights Institution, in full compliance with the Paris Principles.

The human rights dimension is expressed in several aspects of this institution, starting with its mandate, which is broadly defined, covering the promotion and protection of fundamental rights and not only administrative justice.

Thematically, this dimension is particularly evident in certain areas of activity, such as the penitentiary system and the rights of inmates, the rights of foreigners and migrants and also the rights of children, elderly persons and persons with disabilities.

In such areas, the most essential rights often come into play, those most strictly connected to the principle of human dignity and which appear widely established in international instruments such as United Nations and Council of Europe Conventions.

Let's look, for example, at the Ombudsman's recommendations that in 2010 and 2011 were taken on board by the new Code on Enforcement of Sentences and Measures Involving Deprivation of Liberty and the new General Regulation on Prisons. Their impact clearly went beyond a merely administrative level, contributing in a horizontal way to reinforce the guarantees of inmates.

Similarly, the intervention of the Ombudsman in a case referring to the use of a Taser weapon not only promoted due investigations by the competent authorities, but also contributed to prevent similar future incidents, contributing to combating practices that could be considered as torture or cruel, inhuman or degrading treatment or punishment.

Additionally, in a case concerning a delay to schedule visits accompanied by a Social Security team, between a child and father, pursuant to a divorce, the intervention of the Ombudsman was able to overcome administrative obstacles that stood in the way of a full implementation of the child's right to maintain contact with both parents.

In another situation, regarding the lack of a Disabilities Table adequate to assess the degree of disability of non-professional origin, the Ombudsman's suggestion will allow to put an end to the omission, ensuring the effective access by citizens with disabilities to the corresponding social and tax benefits, in line with the right to an adequate standard of living and to social protection.

Likewise, by defending that the family income to be considered when fixing the level of family benefit should be

the one effectively received on the date of the request, the Ombudsman aimed to ensure access to such a benefit by children and young people of families in need, defending, in that way, their right to an adequate standard of living and to benefit from social security.

Also to be stressed are the interventions of the Ombudsman in the context of his powers of inspection. In 2011, on his own initiative, this State body initiated a set of inspection visits to the detention areas of the Public Security Police, the National Republican Guard and the Judiciary Police. These will allow him, among other aspects, to contribute to a deeper level of respect for the fundamental rights of citizens who are subject to detention or who resort to these authorities, preventing situations of excessive use of force or of disregard for legally established proceedings. Also in that year, the Ombudsman continued the inspections to the National Institute of Legal Medicine and Forensic Sciences, to employment centers and to the homes for elderly persons, all initiated in 2010, the first with reflections on the right to a fair trial, the second contributing to implement the right to work and to an adequate standard of living and the latter aimed at protecting, in various ways, the rights of that especially vulnerable group of citizens.

The Ombudsman's competence as regards dissemination of information and human rights education are also not unrelated to his role as National Human Rights Institution.

In this context, we would highlight, in 2011, the celebration of Protocols of collaboration with the Ministry of Education and the Law School of the University of Lisbon, under which several initiatives are envisaged to promote the study and reflection on human rights issues, and to disseminate information, amongst the general public, namely the younger generations, on the content and meaning of human rights, as well as the existence of the Ombudsman as an institution dedicated to their defense.

The human rights dimension is also reflected on the way in which the powers of the Ombudsman are defined, with the inclusion of the power to issue recommendations – particularly legislative recommendation – and the power to request the intervention of the Constitutional Court.

These two prerogatives, in particular, combined with the ability to act on its own initiative, allow this institution to contribute to the greatest possible alignment of Portuguese legislation and practice with international law on human rights, as well as with the recommendations issued by the international bodies monitoring the respect for these rights.

Conversely, the knowledge and experience gained by the Ombudsman in carrying out his functions allow him to provide to the international entities an impartial and detailed perspective on the human rights situation in Portugal, thus enabling them to carry out their duties in a more informed way.

In this context, in 2011 this State body contributed to several consultations and questionnaires launched by differ-

ent international human rights entities, as well as shared experiences and points of view with the delegations of the United Nations Working Group of Experts on People of African Descent and the Congress of Local and Regional Authorities of the Council of Europe, in the framework of the visits that they carried out to our country.

In addition, the Ombudsman continued to promote, before the Portuguese authorities, the swift ratification and implementation of the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, confirming, on different occasions, his entire availability to take on the functions of the National Preventive Mechanism envisaged therein, in view of the competences that he already has and the sustained work that he has developed over the years as regards the penitentiary system and the rights of inmates.

Simultaneously, the Ombudsman manifested his availability to, together with other entities, integrate the structure for the promotion, protection and monitoring of the United Nations Convention on the Rights of Persons with Disabilities, the creation of which this instrument foresees.

In the chapter concerning International Relations a more complete and detailed account is given of the different international events and initiatives in which the Ombudsman participated or ensured representation, in his capacity as Portuguese National Human Rights Institution.

At national level, the role of the Ombudsman as Portuguese National Human Rights Institution fully compliant with the Paris Principles allowed him to participate, according to the subjects under discussion, in the work of the National Commission for Human Rights. The Ombudsman ensured representation in its meetings, including those open to civil society, and transmitted relevant information in the framework of the preparation of the first national implementation report on the Convention on the Rights of Persons with Disabilities and the midterm report on the Universal Periodic Review.

Aware of the importance of his functions as National Human Rights Institutions, but also of some lack of awareness that still exists in Portugal in relation to them, the Ombudsman has sought, whenever possible, to disseminate information on this role amongst public entities and civil society. In this context, in 2011 he developed a set of proposals to amend the Statute of the Ombudsman, which he would present already in 2012 in a recommendation to the Parliament. The proposals included, among others, amendments aimed at explicitly establishing the National Human Rights Institution role, thus contributing to a greater awareness thereof.

The relevance of the role played by National Human Rights Institutions fully compliant with the Paris Principles has also been affirmed by the Ombudsman at the international level. In this context, in 2011 the Ombudsman continued to develop efforts and contacts with a view to promoting

the creation and effective appointment of Ombudsman in all the countries of the Community of Portuguese-Speaking Countries, so as to promote cooperation between counterparts in the Portuguese-speaking space and to foster their participation in other international *fora*, contributing to the realization of the goals of Resolution 65/207 of the United Nations General Assembly, which encourages the creation of Ombudsman, Mediators and other National Human Rights Institutions compliant with the Paris Principles in the States where they do not exist. Among other initiatives, the Ombudsman participated in a round table organized on 26th September, on the margins of the 18th session of the Human Rights Council, concerning actions regarding the implementation of that Resolution. In 2012, he proposes to organize, in collaboration with the United Nations High Commissioner for Human Rights, a seminar on the establishment of National Human Rights Institutions in conformity with the Paris Principles with representatives of the 8 Portuguese-Speaking countries.

Principles relating to the Status of National Institutions (The Paris Principles)¹

Adopted by General Assembly resolution 48/134 of 20 December 1993

Competence and responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, *inter alia*, have the following responsibilities:
 - (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
 - (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
 - (ii) Any situation of violation of human rights which it decides to take up;
 - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
 - (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and,

¹ <http://www2.ohchr.org/english/law/parisprinciples.htm>

where necessary, expressing an opinion on the positions and reactions of the Government;

- (b) To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
- (c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
- (d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;
- (e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights;
- (f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
- (g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

- (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
- (b) Trends in philosophical or religious thought;
- (c) Universities and qualified experts;
- (d) Parliament;
- (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

Methods of operation

Within the framework of its operation, the national institution shall:

- (a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
- (b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- (c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
- (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly concerned;
- (e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- (f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions);
- (g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

Additional principles concerning the status of commissions with quasi-jurisdictional competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- (a)** Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- (b)** Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- (c)** Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- (d)** Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.



The Ombudsman's Office

Rua do Pau de Bandeira, 7-9,
1249-088 Lisboa
Portugal

Telefone: +351 213 92 66 00 | Fax: +351 21 396 12 43

provedor@provedor-jus.pt

<http://www.provedor-jus.pt>