



# PORTUGUESE OMBUDSMAN NATIONAL HUMAN RIGHTS INSTITUTION

REPORT TO THE PARLIAMENT 2014

Lisbon, 2015

**Title: Portuguese Ombudsman - National Human Rights Institution  
Report to the Parliament – 2014**

Published by – The Ombudsman’s Office – Documentation Division

Design – Lagesdesign

Photographs – Manuel Gomes Teixeira

**How to contact the Portuguese Ombudsman:**

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](mailto:provedor@provedor-jus.pt)

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

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# *Introduction*

> Detail - facade of the Portuguese Ombudsman's building



José de Faria Costa, Ombudsman

# *Introduction*

The English version of the Portuguese Ombudsman's report to the parliament portrays the various dimensions in which are developed the activities regarding the promotion and protection of human rights. Bearing in mind that the field of intervention of the Portuguese Ombudsman spreads beyond the verification of actions or omissions by the public administration and the eventual reparation of injustice or illegality, this report will also illustrate the actions developed as a National Human Rights Institution and the initiatives taken in the domain of international relations.

The activity concerning the role of the Portuguese Ombudsman as the National Preventive Mechanism, under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is analyzed in an autonomous report.



*The Portuguese Ombudsman and his staff*





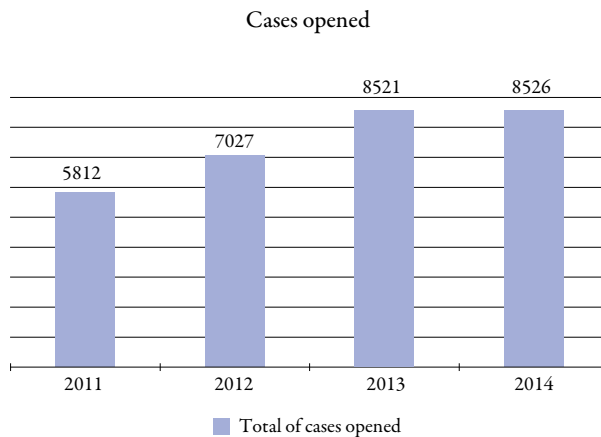


# *1. The Ombudsman's activity in the complaints procedures*

# 1. The Ombudsman's activity in the complaints procedures

## 1.1. Statistics: brief notes

Graph I



In 2014, 8526 cases were opened which means that in the year under review the number of new cases remained in roughly equal value compared to 2013, with a slight increase of 5.

Comparing the years 2013 and 2014 there is stabilization on the number of new cases, despite the growth trend that has been observed since the year 2011<sup>(1)</sup>, reaching in the year under review the highest value ever. This value is also above, by half, the average of last decade.

It is noted that of the total of cases opened in 2014, 8518 resulted in complaints to the Ombudsman (6 more than in 2013) and 8 were opened on his own initiative (one less than the previous year).

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(1) For a better understanding of the data above, it is to be noted that, since 2011, complaints that are dismissed are not counted as new opened cases and that the growth of 2011 to 2013 has been 47%.

Graph II



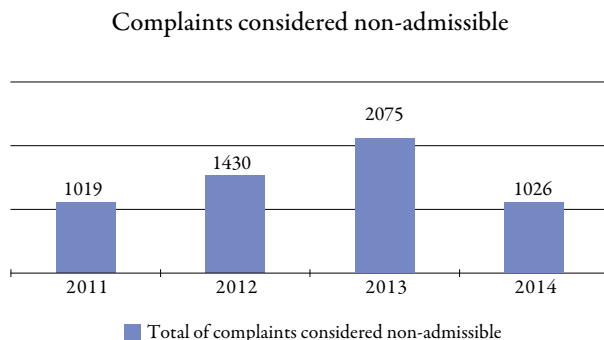
In 2014, the number of complaints dismissed maintained the growth trend observed in recent years. Compared to the previous year, there is the year under review an increase of 105 complaints, representing an increase of 6%<sup>(2)</sup>.

Comparing the number of complaints dismissed in 2011 (654) - the year in which these complaints started to not give rise to a new case - with the amount recorded in 2014 (1815) it is possible to conclude that growth in three years is 63%. It should be noted that when a complaint is dismissed it implies an elucidation to the complainant to explain the reasons for refusing - in some cases with referral to the entity with powers of supervision or regulation that could decide the problem - and often requires a summary investigation and sometimes the necessity to invite the complainant to perfect the claim.

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(2) For example, among other grounds, complaints are dismissed when they concern a subject that is outside the scope of competence of the Ombudsman, when his intervention is premature for lack of prior intervention of the competent administrative authority with hierarchical powers, supervision or internal control of the addressed entity, the complaint is about a subject involved in a legislative initiative that is following its normal procedure or the question presented to the Ombudsman is subject to pending court judgment or decision already transited.

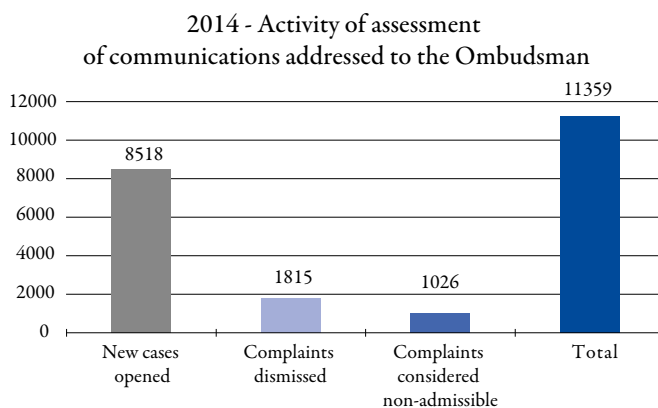
Graph III



With regard to communications considered non-admissible<sup>(3)</sup>, it is noted a decrease in their number from 2075 to 1026 in 2014. Note also that 74 of the 1026 complaints considered non-admissible were anonymous.

This decrease can be justified by the work being developed by this State body in clarifying the intervention of the Ombudsman.

Graph IV



(3) Non-admissible complaints are those communications made anonymously or with generic character and for that reason does not motivate specific intervention of the Ombudsman. As an example: the communications that are simply used to inform the Ombudsman of a fact or situation, with no claim to any intervention or complaints that configure simple requests for information or general interest.

This graph, introduced in the report presented last year, is intended to reflect the Ombudsman’s traditional activity of assessment of complaints. Despite the decrease in the number of complaints considered non-admissible, the sum of the number of new cases opened and complaints dismissed shows an increase of 111 units compared to the year 2013.

Please note that the number 11 359 does not reflect the actual number of situations in which the citizen requested the intervention of the Ombudsman<sup>(4)</sup>. The graph above just explains the total of cases opened by complaints, complaints dismissed and complaints considered non-admissible occurred in 2014.

*Table 1*

<b>Number of complainants</b>	
Natural persons	14 953
Legal persons	491
<b>Total of complainants</b>	<b>15 444</b>

Regarding the number of complainants, there was a decrease in mass complaints, either by collective petitions, or by the use of individual form, which explains the decrease in the total number of individuals who complained to the Ombudsman from 17 687 in 2013 to 14 953 in 2014.

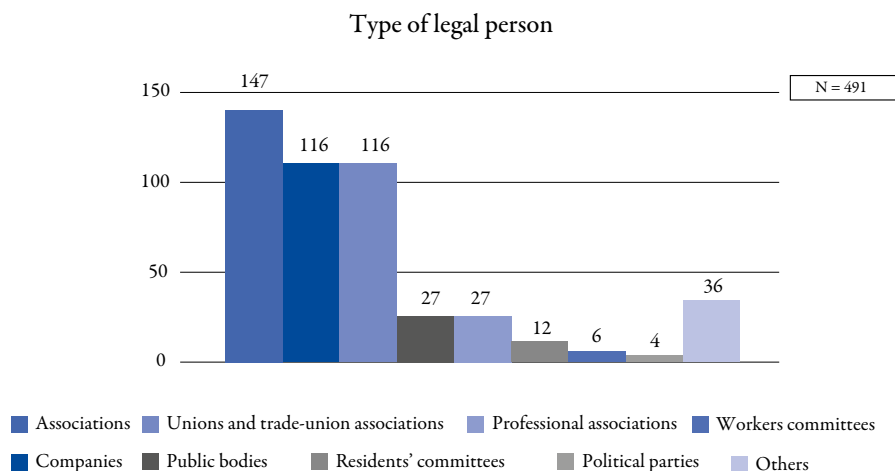
In respect to legal persons there was an increase of 432 to 491 complainants. Comparing the 2014 data with the one registered in 2012, it is important to stress that, for a growth of 20% in the number of cases (and thus several issues presented), there was a decrease of 44% in the number of complainants.

Concerning natural persons, 53% of complainants were female, which means that, for the first time, the comparison of complainants by gender is close to parity (in 2013 percentage of females complainants stood at 57%).

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(4) For example, several complaints to the Ombudsman may cause the opening of a single case which will incorporate all these claims. It must be remembered that the total number of complainants is 15 444 (see *Table 1*).

Graph V



With regard to the type of legal persons, the growth recorded is especially felt in complaints from unions (22 more complaints than in the previous year, representing an increase of 23%) and associations (22 more complaints than in 2013, which in percentage terms translate into an increase of 18%). Noteworthy is also the increase in complaints of legal persons classified as «others»<sup>(5)</sup> from 11 complaints in 2013 to 36 in 2014.

On the other hand, the graph shows a decrease in the number of complaints with origin in public entities<sup>(6)</sup> (31 in 2013 to 27 complaints in 2014) and works councils (from 11 in 2013 to six complaints in 2014).

Table 2

**Number of cases opened and reopened**

Written complaint	2413
Oral /in person complaint	401
Electronic complaint	5704
Ombudsman 's own initiative	8
<b>Total of cases opened</b>	<b>8526</b>
Cases reopened	14
<b>Total of cases opened and reopened</b>	<b>8540</b>

(5) As an example of the category of «others» we highlight condominiums committees or ad-hoc committees (other than those of workers and residents who have an own category).

(6) As a rule, it is a case for complaints dismissed.

The electronic complaint continues to be the procedure most used by citizens to address the Ombudsman. In 8526 new cases opened, 5705 were presented through this channel. In 2014 the proportion of electronic complaints maintained, consistently, the growth trend that is established since 2011, registering an increase of 250 units in the absolute number, which corresponds to two more percentage points in total, now 67%. It should be noted that ten years ago, this proportion was 20% of the total. On the other hand, the number of written complaints remained virtually the same. Therefore, it seems that the increase of electronic complaints is also achieved by the decreasing of the number of oral or in person complaints (decreased from 7% in 2013 to 5% in 2014).

Regarding reopened cases - and for complete clarity in reading this table - it is stressed that the 14 procedures reopened, 9 were already recorded among open cases in 2014. There were two main reasons for reopening of cases: (i) the presentation of new facts after the decision of closing the case; (ii) a premature complaint that, by passage of time or by the occurrence of a relevant fact, needs to be addressed; and (iii) the late submission of information needed to assess the complaint, these elements were brought to the case after a decision to close it based on the lack of response and supposed lack of interest of the complainant.

*Table 3*

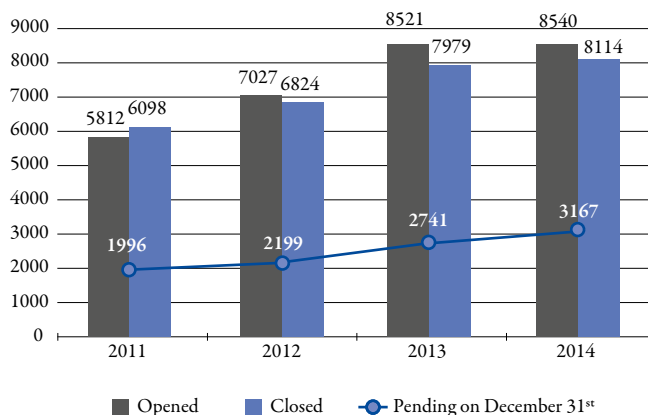
<b>Number of cases closed and reclosed</b>	
Cases closed from 2011	15
Cases closed from 2012	187
Cases closed from 2013	2098
<b>Total of cases prior to 2014 closed</b>	<b>2300</b>
Cases closed that were opened in 2014	5810
Cases reopened and reclosed in 2014	4
<b>Total of cases closed and reclosed</b>	<b>8114</b>

*Table 4*

<b>Number of cases pending on December 31<sup>st</sup></b>	
Cases from 2011	3
Cases from 2012	64
Cases from 2013	372
<b>Total of cases prior to 2014</b>	<b>439</b>
Cases opened in 2014	2718
<b>Cases reopened in 2014</b>	<b>10</b>
<b>Total de procedimientos pendientes</b>	<b>3167</b>

Graph VI

Cases opened, closed and pending on December 31<sup>st</sup>



In 2014 the number of cases closed had a 2% increase when compared to 2013 and if we consider the year of 2011 - which marked the beginning of the period of strong growth in the number of new open cases - there has been a cumulative increase of 33%.

However, although since 2012 an upward trend was registered in the number of closed cases and that in 2014 were closed - in absolute numbers - more cases than in the previous year, it wasn't possible to achieve an equilibrium that compensates the increase of new open cases and, thereby, reduce the number of pending cases.

It is noted that during the year 2014, 14 procedures were reopened and that they were included in the total shown in the above graph (8540). The category of reopened cases was non-existent in previous years.

The graph in question must also be interpreted taking into account what is mentioned below regarding the duration of the cases.

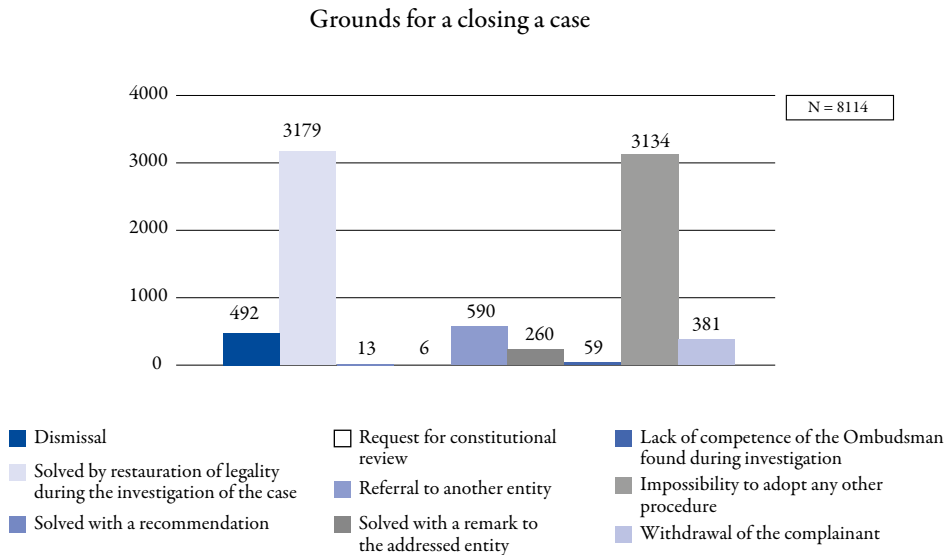
Table 5

**Summary of cases assessment activity**

Total of cases pending on December 31 <sup>st</sup> 2013	2741
Total of cases opened	8540
Total of cases closed	8114
Cases opened and closed in 2014	5804*
Cases pending on December 31 <sup>st</sup> 2014	3167

For roughly the same amount of open cases, to which is added the reopened cases (totaling 8540), the proportion of opened and closed cases in the same year, 2014, decreased three percentage points.

Graph VII



In absolute numbers, 135 more cases were closed when compared with 2013.

Considering the total amount of 8114 closed cases, in 3179 procedures there was an agreement, at least partially, with the object of the complaint or was achieved a fair solution according to the complainant's claim (corresponding to 39,2% of the total cases that are closed).

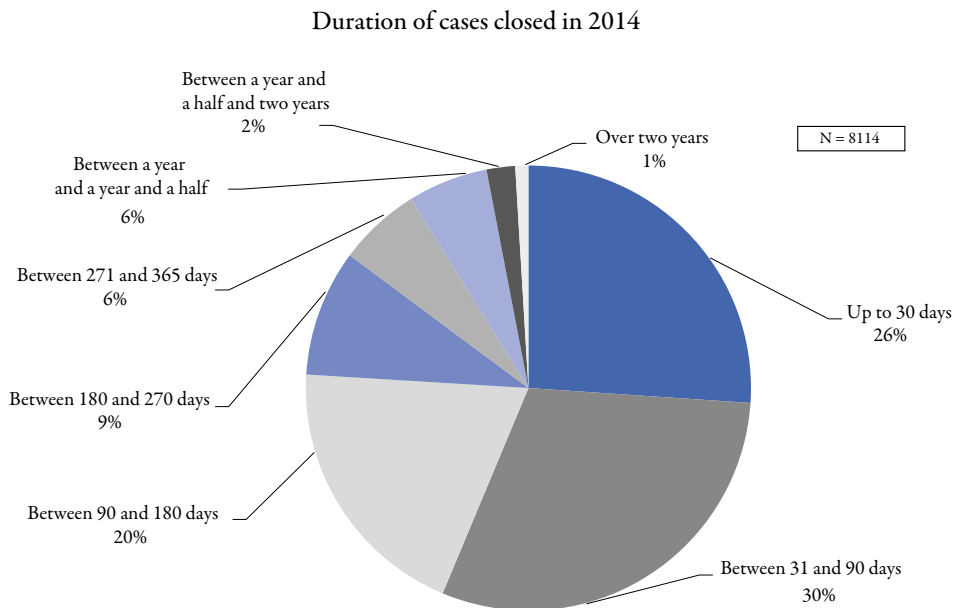
On the other hand, the proportion of cases where the complaint was dismissed or it was considered useless to conduct any other diligence, increased when compared with the numbers verified in 2013, from 2724 to 3134 closed cases (which corresponds to 38,6% of the total closed cases, an increase of 4,5% compared to 2013 which had settled at 34,1%). In 13 procedures, the case was closed by issuing a recommendation (8 recommendations), the same applies to 6 cases in which the intervention of the Constitutional Court was raised (4 requests made)<sup>(7)</sup>.

(7) For a better understanding of the data presented in the chart above it is important to clarify that a recommendation or a request for review of the constitutionality often is the subject of several procedures. For this reason, the number of cases based on these two reasons is higher than the number of recommendations issued or constitutionality review requests raised by the Ombudsman.

The remaining closed cases were divided between: referral to another entity or most appropriate ways (590 cases, accounting for 7,3% of all closed cases); by issuing a remark to the addressed entity (in 260 cases, corresponding to 3,2% of the total closed cases), or simply were subject to a summary decision (492 cases, which corresponds to 6,1% of the total above).

We refer also to the cases of express or implied withdrawal of the complaint (4,7% of all filed proceedings).

*Graph VIII*



Taking into account the growth trend in the number of opened cases in recent years, it proves to be equally important, in addition, to analyse of the number of pending cases and the time needed to close the cases.

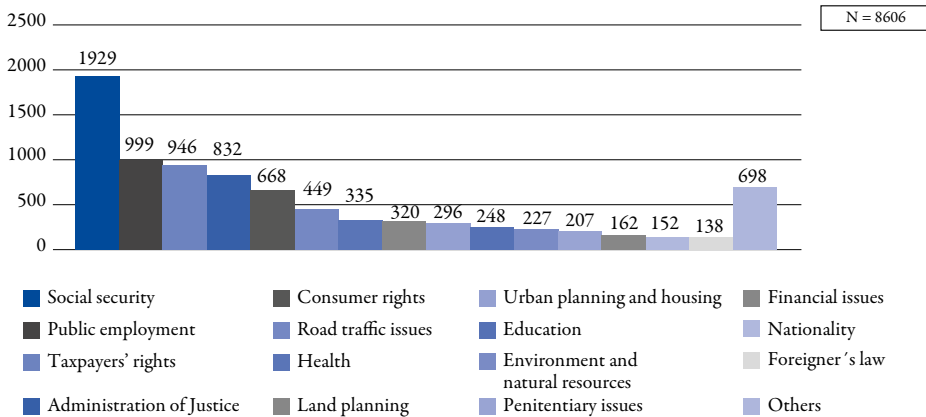
This chart indicates the duration of the cases closed in 2014, remaining broadly the same pattern of duration of proceedings filed in previous years, with a slight decrease in lower tiers.

In 2014, 26% of the cases were closed within the first thirty days after its opening (corresponding to 2115 cases), 56% in the first three months (corresponding to 4568 cases) and 76% in first six months (corresponding to 6164 cases). Considering the full

year 2014, the proportion of closed cases before twelve months after its opening registered a value of 91%, slightly below the value obtained in 2013 (92,8%) but more than in 2012 (90,5%).

Graph IX

Subject of the complaints



In 2014 the four most discussed issues presented to the Ombudsman - representing 55% of the total universe of 8606 - were social security, public employment, taxation and administration of Justice. It is important to clarify that the universe considered in the graph above is the issues present in the cases. This implies that sometimes one single case relates to more than one single issue. This explains why the number of issues is higher than the number of opened cases.

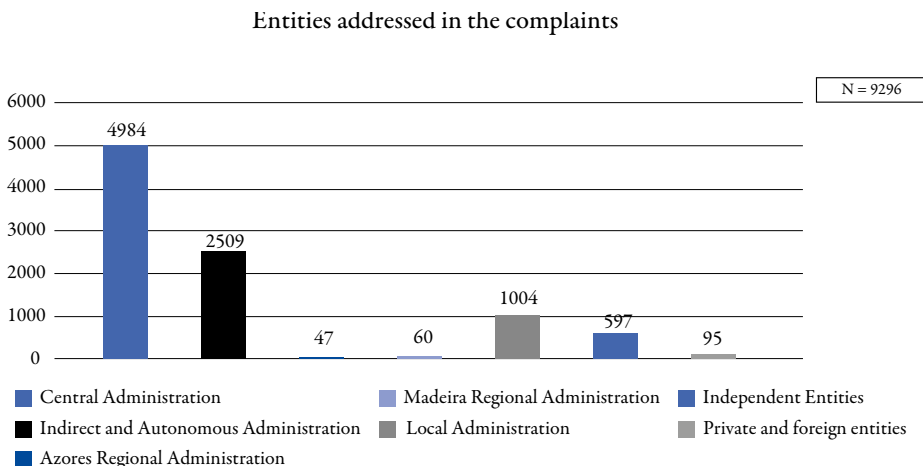
Compared to the year 2013, there was a slight change in the distribution of the issues addressed. In fact, the issues regarding public employment exceeded the ones concerning taxation. The evolution of each matter is, however, mixed. Thus, on the one hand there was a decrease in the number of procedures on social security issues (less 13%) and taxes (less 12%), on the other hand, there was an increase in the number of cases about public employment (5%) and the administration of justice (16%).

In respect to other issues addressed, it is relevant to underline, in relative terms, the decrease of the number of cases that analyze education issues (although in absolute terms, the number of cases increased) and more significantly, on the nationality issues.

Comparing the values of the year under review with 2013, the issues with a greater increase, were consumer rights (55%), land planning (32%), urban planning and housing (22%) and administration of Justice.

In the opposite direction, besides the already mentioned cases of social security and taxation, we registered financial issues (less 14%), nationality (less 18%) and the foreigner's rights (less 22%) as those in which there was a greater decrease.

Graph X

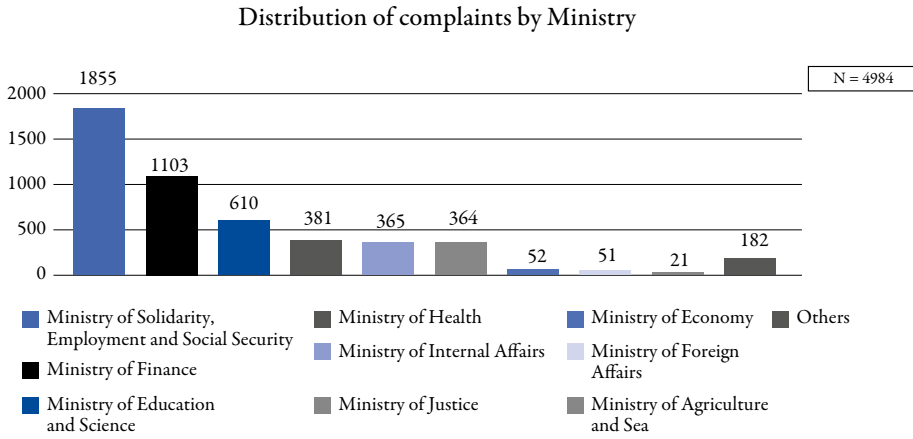


Firstly, it is important to explain that the universe seen in this graph is greater than the number of opened cases, due to the fact a single procedure may have several entities concerned. In general terms, the data for the year 2014 are very similar to those in the previous year, standing out the decrease by one percentage point of the number of cases in which the targeted entity is the Central Administration or Independent Entities.

On the other hand, the cases involving entities from the Indirect and Autonomous Administration increased two percentage points and in the Local Administration the increase was of one percentage point, very close to what happened in 2012.

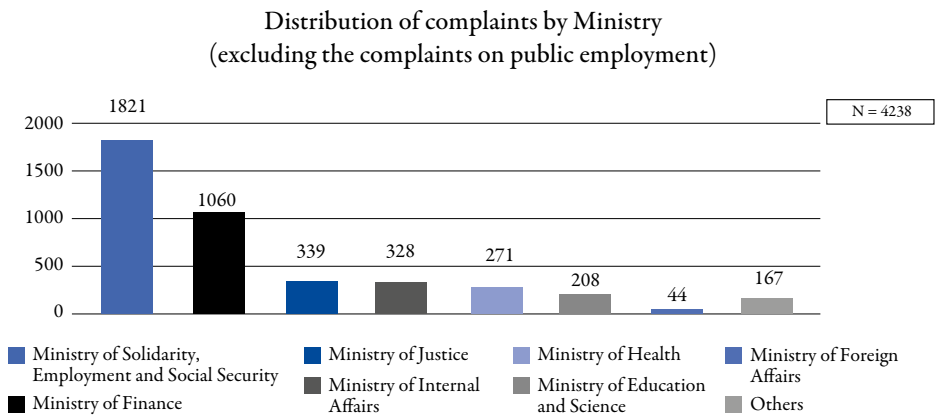
With regard to Regional Administration, the cases to the Regional Administration of Madeira remained at roughly the same number recorded in the previous year, highlighting only a slight decrease in the number of procedures from 62 to 60. In the Azores there was an increase in the number of cases concerning this Regional Administration from 36 in 2013 to 47 in 2014.

Graph XI



Regarding the allocation of cases to the governmental organization, it is noted that the relative position of the various ministries follows the ordering seen in previous years. The Ministry of Solidarity, Employment and Social Security, the Ministry of Finance and the Ministry of Education and Science, have the largest number of cases. It is also noted the change in position in the ordering of the Ministry of Health which is now the fourth most addressed ministry (from 356 procedures in 2013 to 381 in 2014). In turn, there was a decrease in the number of procedures that involve the consular services. These changes in the ordering follows the trend of the year 2013.

Graph XII



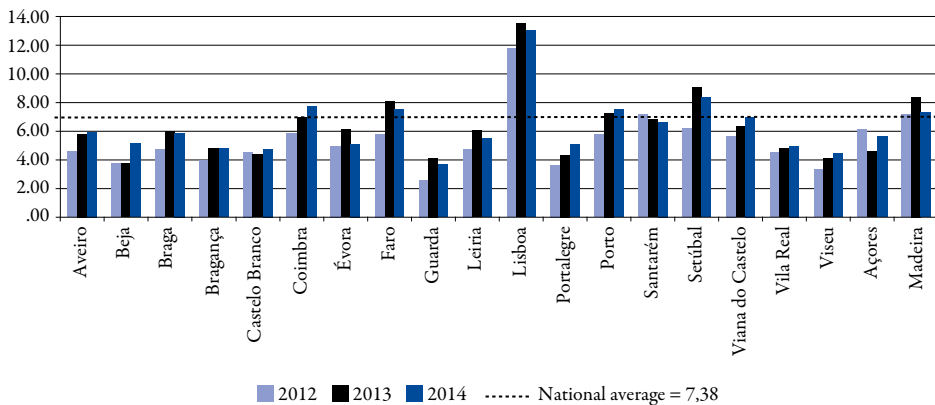
Excluding the complaints filed by employees in the public sector, there has been a net increase in the proportion of complaints in which the targeted entity is the Ministry of Solidarity, Employment and Social Security (37% overall complaints concerning Central Administration to 43%) and the Ministry of Finance (22% overall complaints regarding Central Administration to 25%). As expected, given the high number of workers, the Ministries of Education and Science and Health show more significant changes in reverse (respectively, from 12% to 5% and from 8% to 6%), if not it is not taken in account the complaints by workers of these ministries. The weight of labor issues remains high especially in the Ministry of Education and Science, representing in 2014, 66% of the complaints filed (in 2013 the figure was 76%).



It is noted still a 5% increase in the number of situations aimed at the municipalities. The ten municipalities(8) occupying the top place in 2013 maintain the ratio of about 2/3 of the total complaints targeting entities with this nature. The municipalities concerned are Lisbon (127 procedures), Cascais (26 procedures), Sintra (23 procedures), Funchal (21 procedures), Porto (18 procedures), Loures (17 procedures), Oeiras (16 procedures), Seixal (16 procedures), Matosinhos (14 procedures) and Odivelas (14 procedures).

Graph XIII

Complaints per 10 000 inhabitants: districts and Autonomous Regions



(8) With the emergence of Municipalities of Oeiras, Seixal and Matosinhos and the exit of the top ten of the Santa Maria de Feira, Almada and Braga.

Table 6

**Complaints and population - The five highest values**

	2010	2011	2012	2013	2014
1.º	Lisboa	Lisboa	Lisboa	Lisboa	Lisboa
2.º	Madeira	Madeira	Santarém	Setúbal	Setúbal
3.º	Açores	Setúbal	Madeira	Madeira	Coimbra
4.º	Setúbal	Faro	Setúbal	Faro	Faro
5.º	Faro	Santarém	Açores	Porto	Porto

Observing the ratio of the number of complaints received, that originated new cases, and the resident population in each district or Autonomous Region, based on *Census* 2011, the recorded national average in 2014 was 7,38 complaints per ten thousand inhabitants.

It should be noted that the decrease of 9 hundredths compared to 2013, is entirely attributable to the increase in the number of complaints with unknown origin, given the increase in the use of email, coupled with the omission of the physical address.

It is found that, in 2014, the district of Lisbon remains in first position, followed by the district of Setúbal and the district of Coimbra. It should be noted that compared with 2013, there was a change in the table with the district of Coimbra replaced by the Autonomous Region Madeira. As in 2013 the districts of Faro and Oporto are also part of the five districts with higher complaints according to population.

In turn, the five districts with the lowest values were, in descending order, the districts of Vila Real, Bragança, Castelo Branco, Viseu and Guarda. With percentages of growth in the number of procedures in more significant proportion than the national average, are the districts of Beja (38%), the Autonomous Region of the Azores (23%) of Portalegre (17%), Coimbra (11%) and Castelo Branco (10%).

It is also observed that five districts showed a decrease in the number of complaints: the districts of Setúbal (less 7%), Leiria (less 9%), Guarda (less 11%), the Autonomous Region of Madeira (less 13%) and Évora (less 17%).

It is noted that the number of complaints coming from abroad remained roughly the same as the year 2013.

The increase in situations of unknown geographic origin - as has happened in 2013 - a circumstance which may be related to said continuous increase in electronic complaint.



Finally, it is also important to mention the data received through the questionnaire that is sent to the complainants after the opening of the case. The response to this questionnaire is optional and anonymous. As recorded in 2013 the percentage of responses was 40%, from these, 3156 questionnaires were validated (178 legal persons; 2978 natural persons).

Regarding the age of the complainants, the four more significant age groups are: over 65 years (17%); 60 – 65 years (14%); 30 – 39 years (19%); 50 – 59 (25%).

## *1.2. Promotion and protection of fundamental rights*

### *1.2.1. Environmental, urban planning and cultural rights*

#### *Complaints and ex officio investigations*

Complaints from all-over the mainland related to environment, urban planning and culture resulted in 850 cases, which represent an increase of 23% compared to 2013. Two more cases were opened *ex officio* by the Ombudsman. The first one concerned the Government's duties in regard to the works for asbestos' removal in public buildings such as schools, hospitals and courts. The second one referred to the demolition works ordered by courts: as a result of the principle of the division of powers, these works are not subject to building permission, which constitutes a gap of safety regulations especially when it comes to follow up actions.

Citizen's complaints are diverse and refer to many different matters: housing and all issues in connection thereto such as family rehousing, waiting lists, social rent levels and conservation works both inside the households and in common areas; the condition of roads and damages caused to vehicles due to the lack of monitoring and maintenance works; noise control, water and air quality monitoring; the imposition of connection works to water and sanitation public networks; objections to either small and big construction works; compliance of rules set in general and special land development plans as well as compliance of rules about distance between buildings. The very same general and special land development plans are objected by citizens challenging their programmatic contents and requesting their amendment. Forests are another cause for complaints mainly related to the supervision of landowners' obligations to provide for cleaning and maintenance works to prevent summer fires. Similar complaints are lodged about the cleaning-up of river embankments in order to prevent flows. The safety of gas installations, particularly of gas bottles, industrial chimneys, cooling towers or exhaust ventilators are a significant source of concern to neighbours that request the Ombudsman's

action to persuade the competent entities to adopt adequate measures. Management of public spaces including paid parking places, fairs and markets, street selling, terraces and kiosks, bicycle paths, sidewalks for pedestrians, parks and public gardens is also motive for complaints. The list of complaints' issues also includes environmental impact of constructions and equipment, public rights of way imposed by communications and water supply networks, pipelines and electric distribution networks. In regard to electric distribution networks, an investigation to the regional offices of the General Directorate of Economy and to the regional services of the energy distribution concessionaire *EDP – Distribuição S.A.* was conducted.

### *Improvement of legislation and regulatory framework*

New legislation motivated complaints requesting the Ombudsman to recommend its partial repeal or amendment.

Several complaints were filed regarding Decree-Law No. 53/2014, of 8 April, which exempted urban renovation's works from meeting significant requirements, even when such works result in new constructions. This is the case of some requirements on architectural accessibility and minimum safety and health standards (*e.g.* protection of housing compartments against the deprivation of sunlight and natural ventilation).

Differently, the approval of Law No. 34/2014, of 19 June, on maritime and fluvial public domain resulted in a decrease of complaints on the expiration of the right of action for recognition of historical rights over land plots on banks and cliffs (before 1864). In 2013, the Ombudsman had transmitted to the Government his objections to the regime revoked by Law No. 34/2014, namely regarding its compliance with the right of access to courts and the guarantees of private property (Articles 20 and 62 of the Constitution).

The amendment of the New Urban Lease Regime, through Law No. 31/2012, of 14 August, justified 14 complaints from both tenants and landlords. Already in 2013, the Ombudsman had started screening a number of objections raised in respect of the new regime. Finally, in 2014, the Ombudsman suggested amendments to the New Urban Lease Regime concerning out-dated (and much higher) property evaluations and the protection of vulnerable elderly tenants that were reflected in Law No. 79/2014, of 19 December.

Likewise, ordinance No. 122/2014, of 16 June, issued by the Minister of Finance and the Minister for Environment, Land Development and Energy and Agriculture and the Sea, met the Ombudsman's suggestions to abolish the fees charged by the Institute for Nature Conservation and Forestry for handling requests to hike in national parks and nature reserves.

The Municipal Assembly of Braga amended its tax table in order to reduce the fees on inspections to lifts. In 2013, the Ombudsman had demonstrated that the fees charged largely exceeded the real cost of the inspections.

The Secretary of State for Infrastructure, Transport and Communications informed that Recommendation No. 4/B/2008 would be complied with and a draft Law to that effect had been submitted to the Parliament. Since 2008, the Ombudsman insisted on measures to put an end to the sacrifice imposed on land owners once a preliminary study on a new road is published and their plots are included therein. From the moment the preliminary study is published, land owners can neither build nor request for compensation until the final route is selected, which may take several years. According to draft Law No. 275/XII, Article 32, paragraph 5, this encumbrance now expires five years after the publication of the preliminary study and it can only be renewed once if duly justified and upon payment of just compensation to the land owner.

The Secretary of State for Tourism transmitted to the Ombudsman that, in compliance with Recommendation No. 8/B/2012, would provide for legal amendments to increase the protection of players participating in poker tournaments held in casinos. Regarding the admission of inveterate gamblers in casinos, the Secretary of State for Tourism informed that closed circuit video systems had been installed in all casinos so that banned players are forbidden to access the gambling premises.

Serving as a bridge between citizens and public authorities, the Ombudsman can be regarded as skilled enquirer, committed to ask the right questions to the right decision-making entities in order to overcome lack of coordination of services. A prime example is the action developed in order to restore the circulation of two bus lines in Lisbon. Due to the collapse of a limestone cliff, the circulation of buses had been partially suspended and passengers were forced to walk up over a steep kilometre to take public transport. Although consolidation works had been finished for over one month, the buses and tramways service's concessionary (Carris S.A.) was waiting for municipal services to install traffic signs in order to reopen the routes. The circulation of buses was resumed after five days of intense phone calls and e-mails exchanges with the concessionaire, the parish council, the municipal department of mobility and transport, the municipal department of projects and works, the municipal department of traffic, the municipal department of maintenance infrastructure and the office of the Mayor.

Following complaints initially filed in 2013, the Ombudsman considered that measures should be taken in respect of premium-rate telephone calls advertised in television shows (the so called «760» lines). It was concluded that this activity exceeded significant limits: the prizes were not paid in cash but through a debit line restricted to certain goods and services and within short expiration periods; economically and socially vulnerable groups (indebted and unemployed people) were strongly encouraged to participate under the pretext that winning a prize would improve their situation; the final cost of the calls was not disclosed, sidestepping the restrictions imposed on games of chance and similar; legal constraints on advertising were avoided since the appeal for calls was made by the television's hosts and not through commercial advertisements. Questions were asked

to the General Directorate for Consumer Protection, the National Communications Authority, the General Secretariat of the Ministry of Internal Affairs and the Communications Regulatory Authority. Both the General Directorate for Consumer Protection and the Communications Regulatory Authority recognized the need for action. Shortly thereafter, the Ombudsman was informed of a self-regulatory agreement between the three main television networks stipulating information obligations and moderating the appeal for participation.

Another issue worth of special consideration was the removal of asbestos in public buildings. On last August, the Ombudsman asked the Prime Minister to provide an update on the compliance of the schedule established in Law No. 2/2011, of February 9 (procedures and objectives for the removal of products containing asbestos fibres in buildings and other public facilities). In approximately 84% of the public buildings and facilities the presence of asbestos was not detected. The remaining 16% will be subjected to a comprehensive data analysis in order to determine whether regular monitoring is sufficient or if further actions are required.

### *Distribution by issue*

The most significant increase of complaints referred to land development (over 36%) namely questions regarding to (i) special land planning regimes (coastal areas, nature reserves, agricultural reserve, irrigation areas and protected areas), (ii) damages attributed to the lack of surveillance and maintenance of public roads and (iii) management of public space. The number of urban complaints also raised considerably (over 26,1%) particularly in respect of cost controlled housing, conservation works and urban renovation. Finally, although the total number was not high, complaints regarding to the protection of cultural rights almost doubled (over 85%).

### *Construction and housing*

Even at a time of slowdown in real estate, the number of complaints against constructions works is still significant (29%). Currently, the office of the Ombudsman is examining some complaints against complex urban operations, particularly in Lisbon.

### *Environment and natural resources*

Noise pollution continues to be the main cause for environmental complaints (46,2%). However, it is fair to acknowledge the development of new administrative practices reflecting a more serious approach in regard to this type of pollution and reinforcing the exercise of environmental police powers such as the imposition of restrictive measures to

reduce the noise caused by bars and nightclubs in historical areas. These practices are in line with the suggestions made in the 2012 thematic report «Good Practices in Municipal Noise Control - Survey of the Ombudsman to the Municipal Councils».

### *Land planning*

A major part of complaints concerns the management of public urban space and public roads, including paid parking places and damages resulting from the lack of maintenance of pavements and sidewalks.

The Ombudsman's mandate does not include assessing the convenience and suitability of administrative decisions and/or actions. However, the Ombudsman cannot disregard either the legality or the merit of such decisions and/or actions and shall review their rationality and reasonableness. This was precisely the case of a complaint against the contents of a detailed zoning plan based on its non conformity with the municipal master plan. The Ombudsman concluded that, following the amendment of the legal framework governing land development instruments, special municipal plans prevail over more general municipal plans such as master plans.

Finally, although in recent years the number of expropriations on the grounds of public interest has decreased, there are still complaints for breach of agreements that at times take up to 10 years to be complied with by public administration.

### *Culture*

While its number is not high, complaints on cultural issues reveal a remarkable degree of complexity and are well-founded. Most commonly complaints refer to the award of grants and prizes. The need to provide for protection of cultural and architectural heritage is another important cause for complaints.

### *Leisure*

As previously mentioned the Ombudsman followed-up the recommendation to increase the protection of gamblers and monitor the admission of chronic gamblers in casinos and gambling premises.

One special reference to the fact that complaints frequently target the Tax and Customs Authority due to the delay in converting invoices in vouchers that allow the participation in a lottery.

## *Cases closed*

703 cases were closed:

41 cases were summarily dismissed and the complainants received detailed legal information in respect to their complaint (5, 8%);

318 cases were favourably solved (45, 2%);

7 cases were closed with a recommendation of the Ombudsman (1%);

29 cases were closed after the complainants being instructed to use appropriate means of resolution (4, 1%);

12 less serious cases were closed following a remark for the revision of administrative practices (1, 7%);

233 cases were dismissed due to lack of substance (33, 1%);

64 cases were closed due to complainants' withdrawal (9, 1%).

### *1.2.2. Taxpayers', consumers' and economic operators' rights*

The issues addressed in this thematic unit are essentially of an economic and financial nature. It therefore comes as no surprise that the complaints received reflect the way the citizens react to the economic and financial crisis that exists, since 2008, at a national, European and global level.

The main issues of the cases opened are closely connected to the biggest problems of the citizens affected by a crisis, which was initially had a financial and banking nature, but rapidly became a social crisis.

In 2014 were opened 1792 cases (slightly surpassing the 1788 cases opened in 2013). However, as from 2014 most civil liability claims have started to be allocated to other thematic units, considering the respective competences.

Also during 2014, 1676 cases were closed. In 523 of them (31,21%), the invoked illegality or unfairness has been remedied. Also, a critical remark was directed to the addressed entity in 27 of them (1,61%).

Besides addressing the complainants of those 1676 cases, this thematic unit has also elucidated 849 citizens whose claims did not give rise to cases and were dismissed without further investigation. This occurs when complainants have not directed their complaints to the competent public entity entitled to decide, or having done so, a reasonable time period for the answer to be supplied has not elapsed. Exception to this rule happens when there is a real need or usefulness in the intervention of the Ombudsman. For example, the interruption of essential services supply always gives rise to cases to which priority is given, for obvious reasons.

## *Taxpayers' rights*

As expected, the most frequent claims among tax matters relate to tax enforcements and individual income tax.

It should be noted that tax enforcements are not exclusive of tax authorities. Although representing a bit more than half of complaints as to those relating to the tax authorities, enforcements made by social security services are of great concern. Such concern justified a critical remark regarding the failure of the 20 days deadline to send actions contesting enforcements to courts. Being such period often exceeded, even in years, the Ombudsman showed his dissatisfaction and simultaneously expressed his conviction that the solution depend on a profound review in the way the credit entity (social security) and the enforcement entity (IGFSS) relate.

A matter of concern in some complaints is still the exaggerated length in cancelling seizure of assets as well as the violation of the minimum limits for the seizure of assets.

With regard to the Individual Income Tax, the year was decisively marked by the tax reform.

The appointment by the Government of a Commission in charge of studying and proposing measures to reform the Individual Income Tax, has influenced decisively the course of case P-0008/13. This Ombudsman's own initiative case was opened in 2013 with the aim of considering an intervention for the protection of the rights of taxpayers more affected by the socio-economic situation and which is reflected in the daily complaints received, particularly in relation to taxation.

This was an opportunity to share with the Commission the inputs considered more relevant by the Ombudsman, in view not only of the current concerns but also taking into account his investigation experience on hundreds of complaints over the two and a half decades existence of the Individual Income Tax Code.

Among the issues raised to the Commission it should be highlighted the proof regime of non-marital partnership when opting for the taxation regime of married (and not legally separated) taxable persons. Regarding Individual Income Tax, this issue originated the bigger number of complaints that reached the Ombudsman in recent years.

The Commission followed the Ombudsman in his longstanding position in that the proof of non-marital partnership existence and duration is accepted when provided by any means legally permissible and not only when the registered tax residency of both partners was the same for a period of at least two years, as sustained by the Tax and Customs Authority.

Following the publication of Law No. 82-E/2014, 31 of December (reform of the Individual Income Tax), the expectation of the Ombudsman is that the tax administration can follow-up and implement, by way of interpretation, the good principles underlying this reform.

Regarding Municipal Property Tax and the taxable value of the property, an own initiative case was opened in 2014 since it was noticed that a Ministerial Ordinance that should have published the location coefficients to be applied by each municipality was outstanding. The Ombudsman ascertained that this was not on the agenda of the National Commission for the evaluation of urban real estate. The State Secretary for Tax Affairs assured the Ombudsman that the works would be resumed. Taking into account that the end of 2014 was reached without the publication of the Ministerial Ordinance, this is a matter that will most likely be resumed in 2015 by the Ombudsman.

Also, the functioning of the Tax and Customs Authority's internet site and computer system operation was again addressed by the Ombudsman. As happened in 2012, the Ombudsman noted the total lack of harmony between the versions of the problem submitted by the complainants (mostly accountants) and the Office of the State Secretary for Tax Affairs. It was decided to review the situation in the traditionally more problematic months of April and May 2015.

### *Consumer rights*

Compared with the previous year, cases opened based on complaints about rights of consumer registered an increase of about 60%, from 411 to 656. The origin of this increase lays in complaints related to communications routes, which went from 53, in 2013, to 271 in 2014. This relates to complaints where citizens are confronted with notifications for payment of values that they consider excessive or undue, arising from the use of routes subject to toll, in their vast majority the previously designated «routes without cost to the user» (SCUT).

The Ombudsman's intervention varies, depending on the theme placed in each complaint and also depending on the facts established along the investigation of the cases. For example, when the complainant claims not to have had an opportunity to settle the tolls before the referral of the procedures to the Tax and Customs Authority, the Ombudsman endeavors to correct the address contained in the notifications within the motorway companies and/or Vehicles Registry.

Other examples of interventions that occurred in this area during this year are the following: unlock the reimbursement of tolls unduly paid, obtain the recognition of the limitation period for the collection and inform the citizens on the means of defence available to them or about the possibilities of payment in installments before the introduction of tax enforcements for this type of debt collection.

When the complainants question the very decision of charging tolls on the *ex-SCUT* or the legitimacy of the Tax and Customs Authority to collect this type of debt, the Ombudsman seeks to clarify the legal basis underpinning these decisions and to clarify

that the assessment of merit of policies adopted by the Government does not integrate his competences.

Effectively, in compliance with the principle of separation of powers, it is not for the Ombudsman to reflect on whether the introduction of tolls is the best way to finance the construction of highways or to ensure the financial stability inherent to concession contracts.

The complaints of users of public transport continue to take important expression, having also recorded an increase in comparison with 2013. The cast of the problems most often reported suffered no relevant changes: transport tickets, imposition of fines, withdrawal of lines, changing schedules and delays, especially in air transport and rail, as well as the losses alleged by people with passes or other pre-purchased tickets in the days when they cannot use the transport because of workers' strike.

Regarding this last issue, in 2014 continued the work started in 2012 and recently resumed, to encourage dialogue between the competent public entities of the sector of transport and consumer protection, urging them to cooperate in the ongoing studies and to participate actively in the improvement of the rights protection of public transport users affected by the strikes. The Government informed that other Member States that have already legislated on the matter were heard, with a view to consider the need or opportunity to initiate legislation designed to protect the users of public transport affected by strikes in the sector, as recommended by the Ombudsman. It is believed that progress in the right way will be made throughout the year of 2015.

It should also be highlighted the intervention which secured the access of foreign citizens with permanent residence in the municipality of Póvoa de Varzim to the social tariff for water, sanitation and solid waste. The municipality was requiring that besides the state of financial need, the users were also registered as voters in the municipality.

The Ombudsman concluded that the electoral registration condition imposed by the municipality embodied an objective impossibility of access of these domestic end-users to the social tariff for water and waste, in violation of the Constitution and the law. The municipality was urged to remove such condition and responded positively.

A good part of the communications addressed to the Ombudsman did not give rise to the immediate opening of cases. Such communications - in the matter of consumer rights round 600 - were dismissed without further investigation. However, the complainants were informed of the reasons of such rejection and, not infrequently, were referred to the competent authorities (in particular the addressed entity itself, if not yet contacted or the regulatory and supervisory entities). Also, where appropriate, they were referred to means of alternative dispute resolution.

The work of elucidation and referral of these citizens reveals another dimension less known of the Ombudsman, i.e., the promotion of a genuine culture of citizenship, not limited to seeking solutions to the problems that are exposed to him, but rather providing

citizens with the essential knowledge to the exercise, by themselves, of the rights they enjoy.

### *Economic operators' rights*

There has been, in 2014, a slight decrease of cases dealing with economic and financial matters. However, the number of cases opened not always coincides with the complaints received. For example, in the field of banking, the 120 cases opened in 2014 correspond to a slightly higher number of complaints (128), since whenever there is an identity of subjects of complaints they are incorporated in a single case. That is what happened, for example, with part of the complaints received in the wake of the financial crisis that struck *Banco Espírito Santo (BES)*.

In this respect, the Ombudsman early registered the entry of the first complaints, questioning the nature and timeliness of the measures adopted or not adopted by *Banco de Portugal* (Bank of Portugal) and by *Comissão do Mercado de Valores Mobiliários* (Portuguese Securities Market Commission). By the time the cases were opened, those entities had already released in the respective internet sites, several statements explaining and justifying decisions taken on the subject, reason why the Ombudsman considered not necessary a formal hearing. It was decided therefore to inform the complainants on the substance of the positions of each of these entities, clarifying that, for being at stake decisions not challengeable by the Ombudsman, taking into account its predominantly technical nature, it would be more effective, in particular for protection of rights that shareholders believe to have, the recourse to judicial process.

Also with regard to economic and financial affairs there has been a considerable number of complaints that were dismissed without further investigation (about 230), i.e. complaints which, although have not given rise to the opening of cases, have deserved replies. About half of these 230 complaints targeted private credit institutions, which, by nature, are outside the scope of activity of the Ombudsman.

### *Other issues*

On the remaining subjects allocated to this thematic unit 46 cases were opened, of which 36 focused on European and national funds (mainly disagreement of beneficiaries of aid and financial support regarding notifications for refund of amounts received in due course) and 10 on public procurement.

### 1.2.3. Social rights

In 2014 the Ombudsman continued to receive a large number of complaints about issues concerning social rights, in particular, on social security, confirming the trend of the last years. In this area, 1848 cases were opened, representing about 22% of the total number of opened cases in the Ombudsman's office.

The high number of complaints in this area is justified by multiple reasons: the persistence of the economic crisis in the country; the successive legislative changes which have occurred in this regard<sup>(9)</sup>; the lack of information about these changes; a certain inability to adapt services in a timely manner to such changes; a radical change of the paradigm of the Administration, now with an economic view on decision making, that is, more focused on reducing public spending and less worried, in practice, with the rights of the citizen.

In fact, some of the complaints denote some deterioration in the quality of service provided to citizens, hindering the effective and timely access to their rights, in particular the access to social benefits, whether pensions, compensatory allowances for loss of remuneration or other allowances or benefits in the context of the social protection and citizenship. This concern became sharper because we are faced with benefits which aim to prevent or combat poverty and social exclusion.

Despite the high number of open cases and a greater difficulty experienced in obtaining responses from the addressed entities, it was possible to give an adequate response to their resolution.

Actually, the swift and effective instruction of open cases allowed the conclusion of a significant number: in 2014 the number of procedures concluded (1849) is higher than the number of cases opened (1848), being that 1388 were concluded in the same year, which means that approximately 75% of open cases in 2014 had an instruction in less than a year.

Within the 1849 concluded cases, 1027 (55%) have succeeded in repairing the illegality or injustice, following the Ombudsman's intervention; 644 (35%) were considered groundless, after instruction; in 94 (5%) the complainants were referred to other means of resolution, with clarification on the respective rights; 42 were filed by withdrawal of the complainants; 39, with remark or warning call and 8 were summary closed through information provided to the claimants.

During the instruction of cases, emphasis is placed, whenever possible, on drawing up cases informally - through recourse to rapid means of consulting the entities addressed (e.g. telephone contact, fax and e-mail), as well as conducting meetings with the addressed

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(9) Such changes have led to the establishment of more stringent conditions on access and calculation of pensions and other social benefits, and led also to cuts in pensions and benefits already assigned.

entities more often referred to in the complaints. The goal of these meetings is not only to ensure the improvement of cooperation of these entities in the respective answers, but also the clarification and resolution of individual cases and, in particular, issues of general interest to citizens.

In fact, the Ombudsman continued to favor corrective interventions of general scope, whenever justified and possible, although starting from the experience of the specific complaints received, thus benefiting other citizens on equal terms.

On the other hand, the feature of formulation of suggestions and warning calls to the addressed entities, whenever justified, also allowed the expeditious resolution of some concrete or general scope cases.

Regarding the subject of complaints received in 2014 concerning social security there are no deep changes compared to the previous year.

Anyway, there is a significant increase of complaints on issues relating to special education allowance, old-age pensions, unemployment benefits, social insertion income, (*RST*), family benefits, wage guarantee fund and also a lot concerning the debts in relation to social security contributions.

In addition to the resolution of specific cases, the intervention of the Ombudsman aims to resolve general issues that require legal changes or correction of the administration procedures.

The following examples are the most common complaints submitted in 2014:

a) The excessive delay and other irregularities in the assessment of the special education allowance requirements, caused by lack of coordination between schools and social security. The Government and the Social Security Institute (*Instituto da Segurança Social, I.P. – ISS, IP*) were informed about this situation.

b) Difficulties in the access to family benefits. Excessive delays in the allocation of parental benefits: prenatal care child benefit and child benefit to children and young people. The Ombudsman addressed a remark to *ISS, IP*.

c) Serious difficulties in the access to family allowance for children and young people with disability allowance. Many applications were rejected without any basis. The Ombudsman issued suggestions to the ISS, including the reviewing of specific cases and a request that the services are given guidelines in order to prevent similar situations. The suggestions were accepted.

d) The debt in relation to social security contributions of the self-employed (*TI*), namely: mistakes in qualifying and positioning of contributory tax base; lack and correction or update of current accounts; errors in non-recognition of the right to exemption from payment of contributions; irregularities in the notifications and the amounts of the debts; excessive and unjustified delay in responses to complaints and refund of contributions that have been wrongly paid. The Ombudsman has formulated several suggestions in order to correct such situations.

e) The delays of the National Pensions Center (*Centro Nacional de Pensões*) in granting of invalidity and old-age pension as well as in translation of documents required and in sending forms to foreign social security institutions with whom Portugal is bound by instruments of international law.

f) The suspension of the payment of old-age pension or invalidity pension to pensioners with contributions that are outstanding at the date of recognition of the right to their pensions. The situation was resolved after the intervention of the Ombudsman. Technical guidelines towards establishing the limits on the compensation of the debt with the old-age or invalidity pension were issued by *ISS, IP*.

g) The problems in the access to the benefits of social insertion income (*RSI*): delay in the assignment, termination, suspension and renewal of that benefit. It was suggested a change of procedures.

h) The problems of organization and operation of the evaluation services of temporary and permanent incapacity for work, in particular: the identification of doctors in the committees; criteria for hiring experts; the technical composition of such committees and the delays in medical examinations. The Ombudsman suggested several changes to this legal framework

i) Problems concerning childcare facilities (nurseries and kindergartens) and residential establishments for the elderly (*ERPI*), particularly regarding the illegal operation, deficient conditions and the calculation of the reimbursement amounts charged to the users and their families. Whereas is up to the Social Security Institute (*ISS*) the supervision and inspection of such social establishments, the Ombudsman signaled the claimed situations to *ISS*, and monitored its intervention, evaluating the results of inspections and other actions taken by *ISS*.

j) Situations of lack of social protection regarding parenting and sickness benefits, concerning the teachers that transited from the civil servants social security system (*Caixa Geral de Aposentações - CGA*) to the general social security system (*ISS*). The Ombudsman addressed the Government a suggestion to legislate on this matter in order to guarantee the social protection on these situations. The suggestion was accepted and, consequently, the Government designated an inter-ministerial working group for the preparation of legislative action.

k) Significant delay of *CGA* in the assessment of applications for retirement, in face of which the Ombudsman conducted periodic inquiries on that matter and addressed a remark both to *CGA* board of direction and to the Government. Welcoming the Ombudsman's concerns, *CGA* obtained the Government approval for hiring new workers, in order to solve the problem.

l) Strong penalization of retirement pensions paid by *CGA* following the entry into force of Law No. 11/2014, of March 6, which, unlike previous legislative amendments, did not establish a safeguard clause concerning the applications submitted

from January 1<sup>st</sup>, 2013. Those requirements, due to the delay of the CGA services above mentioned, were not decided upon before the date of entry into force of the new law, which is more restrictive in the calculation of pensions. This matter was discussed at meetings held by the Ombudsman with CGA and with the Secretary of State for Public Administration, and culminated with a remark addressed to the Government, in view of the adoption of a legislative measure in order to solve the problem.

m) Recognition by the *CGA* of the periods of unemployment, following the termination of a civil service employment contract, as equivalent to the entry of contributions. Despite the existence of legal provision accordingly, only recently the CGA accepted the position of Ombudsman on the subject. Therefore, the periods of unemployment are now accounted for retirement pension calculation purposes, as it happens, since long ago, in the general Social Security System.

n) Excessive delays in the assessment of applications concerning the Portuguese Armed Forces Compensation Scheme, as well as the problem concerning the merits of the decisions taken by the Ministry of National Defense on those applications, which has prompted to different interventions of the Ombudsman over the past few years. Welcoming the Ombudsman's concerns on this subject, the Ministry of National Defense has set up a new decision-making procedure for these processes.

o) Shortcomings in some of the computer applications of Social Security Information System and delay in adequacy or in the adjustment of these applications, with consequences in terms of social benefits, in the collection of social security contributions and in debts notifications. The Ombudsman addressed a remark to the Social Security Institute (ISS), suggesting the adoption of measures, in coordination with the Computing Institute, that ensure the correction of the shortcomings detected in computer applications of Social Security Information System.

#### *1.2.4. Workers' rights*

Each year, and increasingly, the Ombudsman receives complaints aimed at public authorities in the exercise of administrative activities not directly related to the satisfaction of collective needs. In these instances are at issue acts and omissions of public authorities in the exercise of management activity of its human resources. In these situations, the Administration appears as an employer.

The high number of complaints in matters of public employment reveals a significant number of disputes arising from employment relationships in the Public Administration. And, at the same time, the perceptions of the complainants that other remedies at its disposal are not very effective. On the one hand, in administrative appeals, the intervention of the author of the impugned act often determines the final decision. On the other hand, the contentious administrative actions are costly when compared to the values at stake

and especially when wage reductions are imposed to these employees and legal procedures take considerable time.

Disputes arising out of employment relationships in the Public Administration cover very diverse issues and have many causes. These issues are not unrelated to the constraints imposed on public employment by budgetary policies which have an impact on recruitment, evolution in the careers and remunerations or the successive and profound amendments to the legislative framework regulating public employment.

Complaints submitted to the Ombudsman to claim the defense of workers' rights is not exhausted in matters related to public employment relations despite these are more numerous. The Ombudsman is also called upon to intervene in private labor dispute situations when it concerns the activities of public entities with powers to monitor compliance with labor standards such as the Authority for Working Conditions or prevent collective conflicts (is the case of Directorate-General for Employment and Labour Relations).

The Ombudsman also intervenes to defend the rights of the unemployed to benefit from public measures to promote employment, including occupational training.

Compared to 2013, there is an increase in the overall number of opened cases, from 1027 to 1106 (7,7%). Despite this increase, 1076 cases were concluded, 115 more than in 2013 (which represent an increase of 12%). On the other hand the number of closed cases was slightly smaller than the number of open procedures in 2014 (least 30 that represent - 2.7%).

Excluding the complaints that were promptly dismissed - on grounds of manifest unfounded complaint -, in 34% of the cases appreciated the illegality or injustice was repaired as the procedure was being conducted.

The remaining cases were closed. Predominantly it was concluded, after analysis, for the dismissal of the complaint or the impossibility or uselessness of adopting further action. However, when justified, the Ombudsman has redirected the complainants to other authorities or reproached the entities involved.

The distribution by subject of the procedures opened in 2014 shows that, as in previous years, the issue of recruitment of employees for organs and services at Public Administration - which led to the opening of 240 procedures - represented 25% of open procedures in matters of public employment.

By comparison, the distribution of the issues of procedures on public employment relationship in the years 2013 and 2014 reveals some apparent inconsistencies.

The number of procedures on recruitment seems, in fact, little consistent or even contradictory to the reality when it is known that restrictions on admission of employees in public administrations have been applied. The explanation, however, is simple: 625 procedures concerned placements of teachers in kindergarten, elementary and secondary schools for the school year 2014-2015.

In fact, the placement of teachers to this school year met considerable disturbance in practically all types of tendering procedures, motivating significant dispute.

In the general framework of public employment it is observed, regarding the nature and content of complaints about workers' rights, that they are in part a reflection or result of containment measures of public spending, which entered into force since 2011. And although they affect the labor and employment, in general, they are particularly felt within the framework of public employment relationships.

In this context, complaints made by citizens for not having jobs, or because they feel harmed by the actions of private employers and expect of the Ombudsman some assistance are worth mentioning. Despite the impossibility of intervention, considering the nature and powers of the Ombudsman, this State body does not fail to inform people about available resources or means of support.

On the other hand, public expenditure reduction measures have a strong impact on the lives of public employees (wage reduction, reduction of employees and requalification, as well as limiting new admission...). Another case, more subtle but still very relevant, is the administrative reorganization, with concentration of services in a single organic unit. This measure requires workers to perform considerable journeys between the units or workplaces with costs that are not always compensated by the employer.

However, it is fair to acknowledge that the lesser cooperation from some public entities often results of a narrower ability to respond, due to budgetary constraint imposed in recent years.

Still, despite the Ombudsman is not indifferent to the identified problems, it must be reminded that the exercise of its constitutional mission requires the cooperation of all public entities, which is a real duty.

Compliance with this duty requires public authorities to render decisions on reasoned arguments or abide to the suggestions made by the Ombudsman.

Despite the excessive delay in replying to this State body by some authorities and services, in general, cooperation with the public entities addressed was positive.

### *1.2.5. Right to justice and security*

The Ombudsman is particularly qualified to attest the various changes observed in the national community and this feature increases more in times of crisis. In fact, the action of this body the State allows the verification of the concerns of the perplexities and the adversities experienced by the majority of people.

The administration of Justice, on the one hand, and internal security, on the other, are the most sensitive faces of social problems and statistical elements allow, and advise, accurate observations.

We start by analyzing the statistical data.

In relation to delays in justice, the judicial courts were targeted in 318 complaints, the administrative and fiscal courts in 72 and the services of the public prosecutor services in 22. Still in the administration of Justice, it was very relevant the number (150) of complaints aimed at the activity of *agentes de execução* (enforcement officers) and the 26 about the performance of insolvency administrators. About the delay in decision of requests for access to legal aid and exemption from judicial costs or attorney the Social Security Institute was targeted 73 times and, on the professional ethics of lawyers, the Bar Association was in 52 situations.

With respect to the performance or omission of the police forces were organized 55 cases about the Public Security Police, 26 about National Republican Guard and 11 on the activity of municipal police forces.

With regard to road and traffic issues the main target entities were the Mobility and Transportation Institute (293 procedures) and the National Road Safety Authority (80). However, since many complaints referred to transgressions committed in road infrastructure where it's due payment of toll rates, there was also the need to listen concessionary companies, such as *Via Verde* (13 cases) and *Ascendi* (11).

With regard to complaints about registries and notaries, the Institute of Registries and Notaries was heard in 49 procedures.

In short, in the 8526 cases opened by the Ombudsman in 2014, more than 20% have referred to the rights to justice and security. And it is also relevant to note that 7% of the total complaints were about judicial delays. More than 5% of the complaints had to do with road and traffic issues, which demonstrates that this matter poses a socially relevant problem.

In this particular domain, the Ombudsman issued the recommendation No. 3/A/14 to the Mayor of Oliveira de Azeméis, on the question of the competence of municipalities to instruct processes for road and traffic infractions and to impose fines for illegal parking. The Ombudsman recommended the fulfilment of paragraph 1 of article 169 of the Road Traffic Code, and that all the processes by road traffic penalties were sent to be instructed by the competent authority, the National Road Safety Authority. In response, the municipality of Oliveira de Azeméis reported non-compliance the recommendation, claiming, among other arguments, the regulatory power of the municipality. The Ombudsman considered exhausted the possibility to resolve the issue satisfactorily and made use of the option provided for in paragraph 5, of article 38, of the Statute of the Portuguese Ombudsman and informed the Municipal Assembly of Oliveira de Azeméis the position advocated in the recommendation.

The subject of internal security, which refers essentially to protests against police forces, rose close to 90 complaints, and the main difficulty of the Ombudsman lies in the difficulty in reconciling the work made by the informal and expeditious means and the analysis of contradictory testimony of the complainants and the police.

Complaints relating to registers and notaries have referred, as a rule, the civil registration delays and the problems derived from the registration limitations in the land registry.

One can make the following observations about the cases completed, which were 1413:

- a) Only one was summarily closed;
- b) In 608 cases, it was possibly to repair the illegality or unfairness affected;
- c) In 122 cases, complainants were forwarded, in line of the paragraph 1, of article 32, of the Statute of the Portuguese Ombudsman, when the Ombudsman acknowledges that the complainant has at its disposal gracious or litigation means, especially prescribed by law;
- d) 24 warnings were made, under article 33 of the Statute of the Portuguese Ombudsman, that provides that the Ombudsman can close the case with a remark, when the breach is not too severe;
- e) 517 cases were concluded with the dismissal of complaints;
- f) And there was the withdrawal of the complaint, either expressly or tacitly, in 141 cases.

One can try a more comprehensive reading of the complaints received in the thematic unit that deals with the rights to justice and security.

### *Administration of Justice*

In Portugal, 2014 was marked, in the area of Justice, by the entry into operation of the New Judicial Map and by the problems on computer platform that manages the lawsuits, *Citius*.

The economic crisis also had effects on judicial matters, in requests focusing on enforcement of court decisions and wage garnishment, in requests about the difficulties resulting from the maintenance payments and in the complaints concerning access to justice and legal aid.

Showing the link between finance and justice, the Ombudsman addressed the President of the Parliament and the Prime Minister to call attention to the inadequacy of the existing fund on the High Council of the Administrative and Fiscal Courts for payment of amounts due under compliance of judicial decisions.

Relevant by the amount and the connection with the economic crisis was the number of requests about enforcement actions, particularly in the face of ignorance that those involved showed about the amounts involved and the surprise revealed by the discrepancy between the initial value of the debt and the final amounts. As a rule, after hearing the enforcement officers the Ombudsman elucidated the plaintiffs about the amounts initially owed, but also about the amounts of interest, judicial expenses, penalty payments and, at the same time, about the costs and fees of those same professionals with public authorities.

Still in the field of Justice, the Ombudsman continued to be called into action in numerous cases (specifically, 47) involving children and youth at-risk — which should not be confused with the requests made by phone through the Children Toll-free Line, which are accounted for and are treated elsewhere in this report.

As a rule, these complaints have to do with the settlements on parental responsibilities, when one of the parents does not comply with what was agreed or decided. What is request to the Ombudsman is, mainly, to intercede in the quickening of the decision of the incident of non-compliance, which is attached to the main court case.

In 2014, were also received many complaints about the delay in disciplinary proceedings against lawyers.

The law provides that lawyers are subject to exclusive disciplinary jurisdiction of the bodies of the Bar Association and that the disciplinary action is governed only by the provisions of the disciplinary regulations of the Bar Association.

Thus, the Ombudsman only looked into the possible existence of unwarranted delay, which is also the main reason of the citizens' complaints.

### *Internal security*

With regard to police action, there was a small number of complaints (just 4) relating to weapons and explosives.

The complaints concerning the omission of intervention of police forces were a lot more (18) and a large number (50) were complaints against police actions.

In this category are the situations at which the Ombudsman gives special attention such as the disproportionate use of force.

### *Road safety*

In the area of road issues, it should be noted that large thousands of car owners continued to be notified for the payment of the *IUC* (a special tax applicable to motor vehicles) which they had already sold, but whose legal status had never been regularized in the vehicles registration services. The problem had to do with the lack of mechanisms to which citizens could overcome the situation in which they found, as they appear in the register as owners even though they have already passed ownership of the vehicle. The Ombudsman continued, in 2014, the persevering intervention that had already begun with the formulation of recommendation No 6/B/2012, two years ago.

Finally, it was with enjoyment that the Ombudsman took note of the approval of Decree-Law No. 177/2014, of 15 December, that created the special procedure for the registration of vehicles purchased by verbal contract.

On the activity of the Institute of Mobility and Transportation were initiated 110 procedures on delay in issuance of driving licenses.

Linked to this concern were the shortcomings observed in front office services, also as a result of the already mentioned thousands of notifications for the payment of the forward mentioned special tax applicable to motor vehicles.

### *Registries and notaries*

In the area of registries and notaries, more than half of the requests (in number of 55) were about registry issues and only 9 about the notarial acts. 25 complaints were received about identity cards.

### *Good practices and final assessment*

Positively, it should be noted the close collaboration that has been given by the High Councils of the Judiciary and the Administrative and Fiscal Courts.

The Social Security Institute also revealed willingness and commitment on contributions requests by the Ombudsman.

The information requested to the police forces was provided, although not always with the desired readiness.

Protocols have been established with the Institute of Mobility and Transportation and with the National Road Safety Authority, in order to improve, especially in terms of speed, the treatment of the many procedures concerning road issues.

The Institute of Registry and Notary proved, once again, cooperative and very available.

### *1.2.6. Rights, freedoms and guarantees; health, education and constitutionality valuations*

This thematic unit receives complaints about foreigner's law, nationality, penitentiary system, education, health and, in a subsidiary manner, about other issues concerning the constitutional catalogue of rights, freedoms and guarantees. All complaints asking the Ombudsman to seize the Constitutional Court are also dealt by this unit.

The figures of 2014, in comparison with those of 2013 and earlier, showed an increase in the complaints about the education system (of 5%), the health system (of 6%) and the penitentiary system (of 13%). Inversely, the complaints about nationality and foreigner's law continued to decline (respectively, minus 33% and minus 22%).

As in previous years, the number of complaints asking for an initiative to seize the Constitutional Court remained significantly high.

In 2014, 1174 cases were concluded in 2014:

a) In 433 cases (37%), the Ombudsman found the complaint valid, a suitable solution being obtained by the public entity concerned (an increase of 53%, when comparison is made with 2012);

b) In 479 cases (41%) the Ombudsman could not agree with the complainant, otherwise finding that no further actions remained possible;

c) In 143 cases (12%) the complainant was enlightened about the juridical frame of the situation exposed, eventually being directed to the right or better way to defend the rights concerned;

d) In 77 cases (7%), a warning advice to the public entity concerned was the only viable action;

e) In 12 cases (1%) the complainant withdrew the complaint.

23 other cases were summarily dismissed, in one case the study endured concluded by the lack of competence of the Ombudsman and, finally, 5 cases were filed with an initiative to control the constitutionality of norms. One other case was filed because a recommendation with the same object was addressed the year before.

Two files were opened by self-initiative of the Ombudsman, one about the laboral exploitation and the other about the intensive care units installed capacity.

Several visits were made to prisons, health facilities and schools, as it will later be described.

### *Valuations of constitutionality*

After several years of significant increase in the number of complaints concerning the powers detained by the Ombudsman to seize the Constitutional Court, the figure of 2014 was almost identical to the one occurred the previous year.

During 2014, four requests were presented to the Constitutional Court, one of them reiterating a previous initiative.

As in previous years, the approval of the State Budget motivated the presentation of several complaints against its norms. Being publicly known that other entities also competent were preparing their own initiatives, the Ombudsman waited for their presentation, afterwards evaluating if the need remained for further action or motivation.

This was the case regarding two issues:

a) the remuneration reduction provided for in article 33, 9, r), when applied to those workers of majority public-owned enterprises, and

b) the new method for calculating survival pensions to be granted, as well of recalculation or reduction of those already assigned, all set out in article 117, paragraphs 1, 5, and 6 of the said State Budget.

The Constitutional Court, by its judgment No. 413/2014, declared as unconstitutional the whole of article 33, therefore not addressing specifically the situation invoked by the Ombudsman. The second issue raised caused a decision of unconstitutionality.

As Law No. 75/2014 of 12 September reiterated the solution provided in the State Budget for 2014, reducing the salary of workers in majority public-owned enterprises, the Ombudsman lodged a further application to the Constitutional Court, raising the same arguments as before.

Another initiative required to successive abstract review of the constitutionality of the rule contained in subparagraph a) of paragraph 1, of Article 6, of Law No. 13/2003 of May 21, modified by Decree-Law No. 133/2012, of 27 June, when it required to the Portuguese citizens, applying for the social insertion income, a minimum period of residence in Portugal. In 2015, this rule was deemed unconstitutional.

Finally, a further request to the Constitutional Court was conveyed, explicitly requiring the declaration of unconstitutionality of a norm of the General Labour Law of Civil Servants, approved by Law No. 35/2014 of 20 June, when it requires the intervention of the Government in labour agreements concerning local bodies and its staff.

### *Nationality*

The number of complaints concerning nationality issues continued to fall, following the trend of the last few years (minus 32% of the complaints received in 2013 and minus 58% if the comparison is made with 2011).

In qualitative terms, a stagnation is noted in the number of complaints relating to the recognition of Portuguese nationality by birth, especially in situations arising from the specific legal status of persons related to the former Portuguese State of India (34 complaints, comparing to 325 in 2010).

The proportion of complaints on substantive issues, rather than simple delays, now represents almost 25% of the total. Among these substantive issues addressed by the Ombudsman, one should highlight the assessment that was made of the practice of the Central Civil Registry of the discretionary powers endorsed by the Nationality Act, to dismiss some of the naturalization requirements, to those persons who have been or are descended from a Portuguese citizen. The evaluation made concluded that, on the consideration of the nationality of close relatives of the petitioner, like his or her siblings, those being Portuguese citizens *jus sanguinis* were more favorable appraised than those who were Portuguese citizens by reason of their place of birth. The inadequacy of such a difference was stated, asking the Administration to reinforce the congruence on the use of a discretionary power, always allowing the clear understanding of the reasoning behind any decision.

Various situations occurred, of a naturalization being refused when the applicant was convicted in the payment of a fine, penalty provided by law as an alternative to prison, although contrary jurisprudence exists and is known. Some difficulties persisted with the need for naturalization applicants to prove their knowledge of Portuguese, this situation only starting to be overcome at the end of the year.

Some dramatic situations are recurrent, of persons who always considered themselves as Portuguese citizens by birth, only to take knowledge very lately that the real situation is not so. Since 2006, a special provision of the Nationality Act gives adequate response to those situations detected at an early stage. However, by demanding continuous residence in Portugal for the last ten years, this provision is not adequate to solve the problems of elder persons, especially when, benefiting from the European freedom of circulation, they left Portugal to work and live in another member state of the European Union or abroad. The current legal framework could only give suitable treatment to the concerned persons with a family background in any of the former Portuguese colonies in Africa, but is ineffective if the parents of the concerned person, for instance, were migrants from other areas of the Globe.

### *Foreigner's law*

In 2014, the number of complaints concerning residence permits and visas declined further, in line with the migratory situation. The underlying reality also explains the proportional strengthening of complaints on substantive aspects of the juridical framework, as well as the huge decline in situations of alleged delay in assessing the concession of visas (minus 70%).

The issue more focused on complaints invoking excessive delay, as well on substantive matters, was the application requesting the concession of residence permit without previous visa, to those persons already living in Portugal (articles 88 and 89 or Article 123 of Law No. 23/2007, 4 of July).

The collaboration with the National Centre for Immigrant Support and other local services with similar functions continued, within the framework of the cooperation protocol signed by the Ombudsman and the High Commissioner for Migrations, providing legal counseling and the forwarding of complaints.

One intervention with a broader scope required the participation of the national director of the Foreigners and Borders Service, regarding the issue of visas in cases involving participation in student exchange programs. Arising from concrete situations, in which the options taken caused an excessive burden of visa renewals, the Ombudsman asked the Administration, in the case of such programs, to give previously full information about the mechanisms, procedures and terms available, in order to provide the concerned person a chance to choose wisely the best option. The suggestion was accepted.

On a certain case of a foreign national who wished to benefit from a visa waiver rule for residence permit granting, for those who, having seen expiry their right of residence, remained always since in Portugal, this claim was denied, because of a trip made to Paris. As this trip was indispensable to the renewal of the passport, as it was the nearest consular service of the nationality state, this document being also required for the success of such claim, the Ombudsman proposed that the absence in question should be deemed as irrelevant for the intended purpose.

### *Education*

The number of complaints about the public educational system increased 5%, at a similar rate already observed on the previous year. This increase was higher on situations concerning the Basic Education level, with the maintenance of levels in pre-school education and secondary education and, for the second time, decline in the complaints about the Higher Education system.

The increase in basic education related complaints, especially in its final cycles, is largely attributable to three distinct issues, as follows.

Although on a lesser extent than in previous years, there were difficulties in the registration process, seeking to a place in a specific school. The interpretation and enforcement of the applicable rules suffered also some regional and local variation, causing the Ombudsman to request the intervention of the central authorities.

The academic year of 2014/2015 began with problems in the allocation of teachers, meaning a significant number of pupils with an incomplete daily schedule. The intervention taken in this perspective passed through contacting the schools and verifying what alternatives were being in place to minimize the damage occurred.

Finally, a large increase in complaints relating to the school integration of children with special educational needs should be noted, particularly noticeable concerning the enforcement of a legal rule diminishing the class size if such children were a part of it. Besides the inquiry on every case, a general suggestion has been made to the Government, proposing an alternative answer from the side of the offer of educational resources.

A basic school was allegedly discriminating roma pupils, creating a class exclusively formed by children with this ethnic origin. The inquiry made could not condone this allegation, as an acceptable criterion for establishing this class was provided: this group was formed by all pupils that have failed some grade, thus being mostly with special needs and significantly older than other pupils. On the other hand, the class in question only concerned a minority of roma pupils, with other children with this ethnicity being incorporated normally in all other classes. However, the Ombudsman found that the concerned school had failed in providing families all the relevant information, causing misunderstandings and not gaining their necessary commitment.

In what concerns the higher education system, the issues more often addressed were of social or pecuniary nature, namely the refusal of grants and the payment of tuition fees. The Ombudsman's recommendation concerning the modification of the regulation about grants was partially implemented, making irrelevant any debt one of the student's parents may had to the Tax Service or the Social Security. Other issues were relegated to a more thorough reform, scheduled to 2015.

The lack of regulation required by law for the effective fulfillment of the duties established for parents association to provide information about their financial situation, especially regarding the state support they received, was pointed out to the Government.

In 2014, besides the meetings held in schools for clarification of issues at stake, the Ombudsman made visits to four schools, three of them basic and on secondary.

## *Health*

The number of complaints concerning access to the National Health Service (NHS) remained high during 2014, especially concerning financial issues, namely the moderating fees and the rules about its exemption, the administrative procedures in health facilities and the care provided in hospitals.

The public health special financing schemes, like *ADSE* (to civil servants and their families), were also frequently targeted, both concerning registration rules and reimbursement denied or delayed. One issue especially on focus was the disparity between the health programs for civil servants, on one hand, and for the military and police, on the other, the former being voluntary, all this in a situation of rising fees asked to the beneficiaries.

The access to specific drug treatments, mainly in oncology and hepatology, motivated several complaints, as in 2013. The intervention of the Ombudsman, in each specific case and in general terms, as well, is essentially guided by the enforcement of the principles of transparency and equal access by the users of the NHS to a medically advised therapy.

The same concern about equality motivated an intervention in the framework of the National Program for Diabetes, providing automatic insulin pumps free of charge, searching for non-discrimination between patients seeking only access to consumables and those also requiring the device.

An open discussion continued, by writing and personal contacts with the Minister of Health, concerning the modification of moderating fees exemption rules, especially focused on the relevance of the composition of each household, eliminating the negative discrimination of single parent case, and on a better definition of the relevant income.

The delays until the execution of diagnostic and therapeutic exams, in particular as regards the colonoscopy motivated an intervention, specifically targeting a certain hospital, assuring the patients were aware of the conditions provided and of the available alternatives in the context of the NHS.

The unavailability of sufficient vacancies to enroll patients to attendance by a specific doctor (called family doctor) is often cause of complaint. The main intervention consisted in evaluation with the primary healthcare unit concerned the existence or the possibility to establish suitable alternatives, with proper procedures especially addressed to more sensitive groups, like pregnant women and early age children.

The establishment of the National Network of Integrated Continuous Care, besides cases of delay due to the lack of vacancies, provided many complaints stating disagreement with the kind of offer decided in a certain situation. In order to better safeguard the rights of potential users, the implementation of an error prevention mechanism, allowing a revision by another medical team was suggested.

There was a decrease on complaints regarding the exercise of oversight functions or regulation. There was an initiative towards the reinforcement of the information provided to plaintiffs by the Health Regulatory Authority.

In 2014, the Ombudsman visited the Metropolitan Lisbon Urgency service, functioning in Santa Maria Hospital and St. Joseph Hospital. A health center was also visited during this year.

### *Penitentiary issues*

The number of complaints concerning the prison system increased 13% compared to 2013, with a very similar thematic distribution. As before, about half of the complaints were related to petitions of transfer to other facility, access to health care or the enforcement of disciplinary or security measures.

The relevant number of transfer petitions, most often motivated by alleged vicinity with family or friends, is also related with a perceived but possibly erroneous ease, in the required facility, in obtaining an occupation. The lodging conditions are also relevant on this subject.

Although the new facility of Angra do Heroísmo prison has been inaugurated, the specific situation of Azorean inmates did not have been overcome, by the end of 2014, the said facility not being already in full use.

The implementation of a new system to use the telephone, enforcing strict limits, motivated the presentation of a significant number of complaints, some dealing about particular issues of certain facilities, solved or clarified immediately, but others rising from problems of a more general nature. This was another unevenness in the implementation of the new prison legislation, felt and expressed in complaints about the difference in the degree of enforcement of the legal rules establishing rights, compared with that of the rules imposing duties, an example of the former being the recurrent invoked argument of the lack of conditions to offer conjugal visits in several facilities.

Among the latter, the Ombudsman reproached the action of a certain prison, without legal basis limiting the total number of possible visitors of each inmate, also criticizing the fee collected to changes in the visitor card, not due to loss or damage, but only to objective and natural modifications of the relationship with the visited person (for instance, a girlfriend becoming a spouse).

16 visits were carried without previous warning, encompassing six different facilities (Alcoentre, Linhó, Lisboa, Monsanto, Paços de Ferreira and Vale de Judeus), in one case for two days. It should be noted that 2014 was the first year with visits carried on under the National Preventive Mechanism (*OPCAT*) mandate, also including prison facilities.

### *Other issues*

Among several other issues assessed in this thematic unit, four interventions can be noted as more emblematic or relevant.

It is the case of the reiterated initiative about the needed clarification of the rules allowing access to health data, the current situation addressing the intervention of two different independent bodies with a divergent mandate and different perspectives. During 2014 but circumscribed to the competence of these two bodies, this issue was also posed concerning the data detained by public universities.

On the subject of freedom of profession, the Ombudsman intervened on the legal definition of nutritionists, stressing that the competent Public Association could not make any other distinctions than those explicitly allowed by its Statute, namely not being able to discriminate those professional with a degree conferred by a university from those completing the same degree at a polytechnic school. This intervention was addressed to the Association of Nutritionists, but also to the Minister of Health, as a revision process of the Statute was under way.

On religious freedom, municipal police officers opposed to the distribution of pamphlets by members of a church, claiming they had not complied with the provisions applicable to commercial advertising. The different nature of these two activities, their different aim and legal regime were pointed out to the respective Municipality, asking for a stronger information of the members of the local police force.

Finally, in the broader framework of the right of access to official documents, but also in the specific guarantee of access to information by the press, an intervention occurred, targeting a public enterprise refusing or delaying the fulfillment of a requirement by a journalist.

### 1.2.7. Autonomous Regions

The Ombudsman has designated two advisors to deal with claims originated respectively in the Autonomous Regions of the Azores and Madeira, regardless of the subject at hand, when a targeted entity has an office there.

#### 1.2.7.1. Office of the Autonomous Region of the Azores

During this reporting period, 93 new cases were submitted to the Ombudsman with its origin in the Azores. To these one has to add 46 carried over from previous years. In 2014, 91 cases were closed of which 45 were from that same year.

The following chart summarizes the relevant data:

Table 7

#### Cases opened, closed and pending on December 31<sup>st</sup> - Azores

Carried out in 2014	
Following complaint	93
Carried over from previous years	46
Closed in 2014	
From 2014	45
From previous years	46
Carried over to 2015	
From 2014	47
From previous years	10

Regarding the cases closed, 56% of the complaints were deemed unfounded or it was considered that no further useful measures could be adopted with a view to reaching an adequate solution. The intervention of the Ombudsman helped to solve 18% of the claims and in 15% of the cases the organs or services involved were cautioned.

As far as the nature of the complaints is concerned, those dealing with the rights of workers stand out (one third of the complaints). There were also claims regarding the tax system and the European funds allocation criteria. As it pertains to the environment and urbanism, citizens alleged, for instance, favoritism and illegalities in construction works licensing. There were also complaints regarding delays in judicial procedures. There were fewer about education, health and prisoners' rights issues.

Examples of the work done: (a) a local council was questioned about the illegal operation of a livestock farm. In a short time, the issued was addressed and the farm was closed,

because there were public health issues involved. (b) The complainant had purchased an urban building at a public auction. But the purchased had been annulled. There was a delay in returning the money that had already been paid. The Ombudsman questioned the local services of the Tax and Customs Authority about that and the money was returned without further ado.

Complainants came from all the islands except Corvo. From Pico there were six and from Faial five complaints. Graciosa and São Jorge added one complainant each. Flores originated two cases and Santa Maria three. Terceira and São Miguel stand out with 44 and 28 complainants respectively.

In 2014, 48% of the public entities targeted in the Azores were from the Autonomous Regional Administration. Central and local Administration attracted around 20% of the complaints each. Courts, public corporations and private entities also moved the citizens to address this organ of the State.

#### *1.2.7.2. Office of the Autonomous Region of Madeira*

In the activity of the extension in the year 2014 the Ombudsman's visit to the autonomous region of Madeira, for institutional greetings presentation and personal hearings with complainants in the archipelago should be noted. The occasion also included a contact with the Mayor of Funchal, for the purpose of defining joint procedures.

In the year 2014 the extension of the autonomous region of Madeira instructed 134 new procedures, 3 of these resulting from redistribution promoted by other thematic advisory units. To this quantitative were added 56 procedures from previous years, resulting in a total volume of 190 cases carried out in this period.

In 2014 the extension closed 131 procedures (in 60% of the cases where it was possible to close complaints submitted in the year itself), and in about 40% the cases were satisfactorily resolved after the Ombudsman's intervention.

The table below summarizes the number of procedures carried out and completed in 2013, as well as the amount carried forward to 2014:

*Table 8*

#### **Cases opened, closed and pending on December 31<sup>st</sup> - Madeira**

<b>Procedures carried out in 2014</b>	
New cases	134
From previous years	56
<b>Procedures closed in 2014</b>	
From that year	82
From previous years	49

Carried away for 2015	
From 2014	50
From previous years	7

Of the 131 closed procedures:

- i)* 51 were resolved following the Ombudsman's intervention;
- ii)* 4 correspond to procedures in which the Ombudsman directed his attention to the targeted entities, suggesting amendments about identified irregularities in their performance;
- iii)* In 2 cases the complainants were referred to other especially competent entities;
- iv)* 17 cases resulted from withdrawal of complaint;
- v)* 57 claims were dismissed, following the competent study of the case, or judging unable or useless the adoption of other measures.

The year 2014 has deepened the tendency, already identified in the previous year, with regard to the strengthening of Regional Autonomous Administration (44%) as the main interlocutor in complaints addressed to the Ombudsman, to the detriment of the role assumed by the Local Administration (26%). In this context, the municipality of Funchal has consolidated his predominance, gathering a majority of 57% in the complaints, followed by the municipality of Machico (8%). Concerning the Regional Government of Madeira, it should be highlighted the position of the Regional Directorate for Tax Affairs, with a percentage of 20% in the complaints.

The lower incidence of cases referring to courts represented only 4% of all situations.

In the global context of the complaints brought before the Ombudsman, remained the traditional predominance of environmental and urban development cases (32%). As in 2012, and in counterpoint with the previous year, the complaints concerning the rights of economic agents, taxpayers and consumers (18%) recovered the second place, followed by matters relating to safeguarding of citizens' rights, freedoms and guarantees (14%).

In terms of distribution of complaints as to the geographical origin the municipality of Funchal remained as the most representative (45%), holding a considerable distance from the localities of Santa Cruz (9%) and Machico and (7%), respectively. The complaints from the Continent (15%) assumed particularly evidence as well.

With regard to gender, the predominance of complaints by males was mitigated (54%) concerning the previous year, with a better balance by women's claims, which originated about 35% of the procedures. In 11% of cases, the complainants who approached the Ombudsman were companies.

The two main forms of presentation of complaints (the use of the internet, with 66%, and the written expositions, with 30%) remain consistent since 2011 (year in which the Ombudsman services in the autonomous region of Madeira were restructured).

Following visits to Madeira, the Ombudsman advisor received 41 persons and held 9 work meetings with representatives of regional entities.

In the course of the previous year steps were taken to complete the own-initiative procedure organized by the Ombudsman to monitor the adoption of mechanisms of suppression of a context of environmental illegality identified in the municipality of São Vicente. The Ombudsman also set up a new procedure for execution of monitoring inspection to the homes of children and youth and temporary reception centers existing in the autonomous region of Madeira.

In the latter case, the physical conditions offered by the facility, the administrative aspects and the conditions of security and fire-fighting equipment offered were verified, and after, the processes of minors with judicial promotion measure applied were consulted.

The findings of the report indicated that, in health<sup>(10)</sup>, in some cases is not assigned a family doctor, and that, in the area of education, it was concluded that a Plan to combat absenteeism and school failure was not defined, as already suggested by the Ombudsman in 2010.

In parallel, measures have not yet been adopted concerning the execution and conclusion of emergency plans against fires, evacuation plans and installation of means of alert and alarm, as had already been pointed out by the Ombudsman in the year 2010.

Finally, the Ombudsman reiterated the need for revision of the legal framework in article 62 of Law No. 147/99 of September 1 (promotion and Protection Act) before the Minister of Justice.

### *1.3. Children, Senior Citizens and Disabled Persons Unit (N-CID)*

The Children, Senior Citizens and Disabled Persons Unit commonly referred to by the acronym (*N-CID*), is a structure both specialized and multidisciplinary, combining several disciplines, such as Law, Psychology and Social Work, to address the subjects engaged in a perspective the most complete and comprehensive possible. In addition to ensuring the rights of children and young people, older people, and people with disabilities, following the receipt of complaints, the *N-CID* also intends to develop more proactive ways of action, focusing on promoting and disseminating the rights of these groups especially vulnerable.

The *N-CID* offers three toll-free telephone lines — the Children's Toll-Free Line, the Senior Citizens Toll-Free Line and the Citizen with a Disability Toll-Free Line.

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(10) The full report can be found at <http://www.provedor-jus.pt>

In addition to the requests lodged through the phone toll-free lines, the Ombudsman opened formal processes to be instructed in the thematic units in which were raised problems concerning those vulnerable groups.

Table 9

**Cases open by N-CID**

Total number of open cases in 2014		
8526		
Children	Senior Citizen's	Persons with Disabilities
224	107	160

*Children's Toll-Free Line*

The Children's Toll-Free Line received 701 telephone calls during 2014, representing a significant increase over the previous year (20%).

It should be noted that the universe of disadvantaged children offers various support services, public and private, which explains why the number of calls received in the Children's Toll-Free Line is considerably lower than the Senior Citizen's Toll-Free Line.

Table 10

**Total calls received and made – Children's Toll-Free Line**

Received	Made	
	Users	Entities *
701	153	34

\* Includes both the entities referred to in the complaints addressed to the line, as other entities with which the Line seeks for collaboration.

The main subjects of the calls are given in the table below.

Table 11

**Principal subjects dealt – Children's Toll-Free Line**

Principal subjects dealt with	Total
Lawsuits of parental responsibility	173
Education	71
Negligence	45

Principal subjects dealt with	Total
Ill-treatment (psychic and physical)	31
Social Security	28
Domestic violence	19
Exposure to deviant behaviour	17
Health care	17
Protection Commissions for children and youth and other services	47
«Bullying»	13

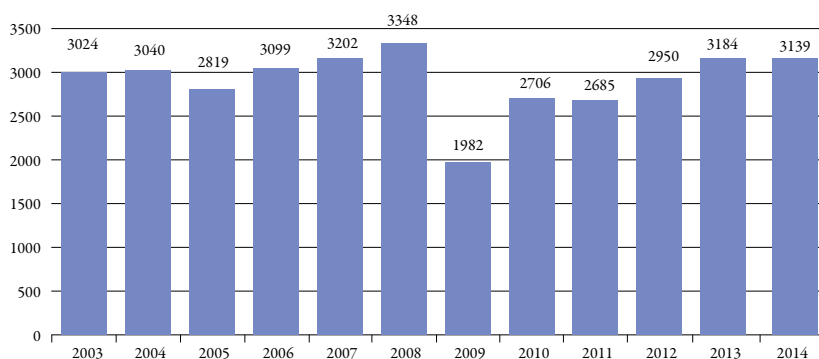
As usual, the main reason of contact was the lawsuits of parental responsibility, near one-third of the total calls.

### *Senior Citizen's Toll-Free Line*

In recent years, the Senior Citizen's Toll-Free Line received, on average, more than 2800 calls per year. The last two years the number of requests has even exceeded the three thousands.

*Graph XIV*

Annual Evolution Senior Citizen 's Toll-Free Line



And, also on average, the Line made 17 calls daily.

Table 12

**Total calls received and made – Senior Citizens’ Toll-Free Line**

Calls Received	Calls made	
	Plaintiffs	Entities*
3139	879	193

\* Includes both the entities referred to in the complaints addressed to the line, as other entities with which the Line seeks for collaboration.

The main interventions had to do with the provision of information (1190), routing (61) and the combination of these two (1023).

The principal subjects dealt with are indicated in the table below.

Table 13

**Principal subjects dealt – Senior Citizens’ Toll-Free Line**

Principal subjects	Total
Health	387
Mistreatment	209
Nursing homes	196
Social support	187
Specific Rights	181
Pensions	174
Support at home	162
Public Services	151
Neglect of care	138
Material and Financial abuse	135

The largest number of calls (696) was related to special situations revealing situations of fragility of elderly people, encompassing social support (187), support at home (162) and nursing homes (196).

But many calls were about financial issues, in particular on the allocation of subsidies, mostly due to economic deprivation (155).

*Disabled Citizen's Toll-Free Line*

The total number of calls received amounted to 586. But if they are coupled with telephone calls made by the service in 2014 were almost 800 calls relating to the Disabled Citizen's Toll-Free Line.

*Table 14*

**Total calls received and made – Disabled Citizen 's Toll-Free Line**

Calls Received	Calls made	
	Claimants	Entities*
586	165	15

\* Includes both the entities referred to in the complaints addressed to the line, as other entities with which the Line seeks for collaboration.

The main subjects of the calls are given in the table below.

*Table 15*

**Principal subjects dealt – Disabled Citizen 's Toll-Free Line**

Principal subjects dealt with	Total
Family obligations	80
Social benefits	64
Tax benefits	55
Rehabilitation and physical and mental health care	53
verification of disability	39
Support for the disabled	32
Special parking rights	22
Employment	19
Accessibility	18
Negligence and ill-treatment	17

The main reasons of contact have to do with the issue of family obligations. The complainants want to know what their rights vis-à-vis the family and what can they require from them.



## *2. The Ombudsman as a National Human Rights Institution*

> Detail – facade and balconies of the Portuguese Ombudsman's building

## 2. *The Ombudsman as a National Human Rights Institution*

### 2.1. *Background*

The National Human Rights Institutions, hereinafter referred to as NHRIs, are state institutions with an express mandate by constitutional or legislative command to promote and to protect human rights. Despite being embedded in the organizational framework of the state and, therefore, endowed with public authority, NHRIs develop their activity with autonomy and independence from typical trilogy of state powers - legislative, executive and judiciary.

Although their specific mandates may vary, the common role to all NHRIs is to fight against discrimination - in its many forms - and to promote and protect human rights.

Based on this matrix, all NHRIs present themselves as a real aggregator point of the community and the state, contributing, through their actions, to establish a bridge between the concrete protection of citizens' rights and the corresponding state's responsibilities in this matter.

In Portugal, the creation of the Ombudsman as an independent body occurred by ordinary law just before the approval of the Portuguese Constitution of 1976, although this did not limit the subsequent consecration in the fundamental text. Legally established by Decree-Law No. 212/75, of 21 April, and with the original matrix in the Swedish Ombudsman, the Portuguese Ombudsman has the primary duty of ensuring justice and legality of public administration's actions with the use informal means. However, you can glimpse from this constitutive moment a key dimension that distinguishes the Portuguese Ombudsman from the classical Ombudsman construction. And that constitutes the addition of a transverse dimension to the Ombudsman's mission, directed to the main purpose of ensuring fundamental rights and freedoms.

Therefore, the Portuguese Ombudsman is an NHRI accredited within the United Nations, with the «A» *status* - fully compliant with the Paris Principles.

The independence of the Ombudsman - a requirement of his quality as NHRI - is reinforced by the preparation of contributions addressed to the regional and international mechanisms that monitor the implementation of human rights. Added to this it is important to mention the effective exercise of participation rights before the Human Rights Council of the United Nations and other specific or thematic committees, *e.g.*, the Committee on Economic, Social and Cultural Rights the Committee on the Rights of the Child and the Committee for Prevention of Torture.

In addition to the development of its activity at the international level it is relevant to highlight that the Ombudsman developed various initiatives and actions in the national scene as it is possible to see in this report regarding the presentation of the work accomplished by the various thematic units.

## 2.2. Activities with the purpose of promoting and protecting human rights

Throughout the year 2014 the Ombudsman, carried out actions regarding the promotion and protection of human rights. In this area it is relevant to highlight the following events:

- January 17<sup>th</sup>, delivered a communication entitled «O Provedor de Justiça e os Direitos Humanos», in the XVI postgraduate course in human rights, organized by the Centre for Human Rights (*Ius Gentium Conimbrigae*), from the Law Faculty of the University of Coimbra;

- March 21<sup>st</sup>, delivered a communication entitled «O Provedor de Justiça, os Direitos Fundamentais e o Direito Penal Atual», in the conference of criminal Law, organized jointly by the Association of Portuguese Judges, Association of Portuguese Prosecutors Prosecutors and the Faro's District Council Lawyers' Bar;

- June 19<sup>th</sup>, delivered a communication entitled «The Ombudsman and the promotion of human rights of citizens in a perspective of present and future», delivered at the International Conference «The law of the future and the future law in the era of the international and intergenerational crisis / What rights to the future and what future for the law in the age of international and intergenerational crisis», organized by the Public Law Research Centre at the Faculty of Law, University of Lisbon;

- July 11<sup>th</sup>, delivered a communication entitled «Direitos fundamentais na prática do Provedor de Justiça», at the Seminar *Direitos Fundamentais na jurisprudência do STJ e na prática da Provedoria*, organized by the Centre for Judicial Studies;

- October 8<sup>th</sup>, delivered a communication entitled «Carta a uma jovem ou a um jovem Magistrado» at the solemn opening session of the 31<sup>st</sup> Magistrates' Training Course and 3<sup>rd</sup> Normal Training Course for Magistrates of Administrative and Tax Courts in the Centre for Judicial Studies;

- October 28<sup>th</sup>, delivered a communication entitled «O Trabalho e a Justiça social», at the opening session of the *II Conferência Luso-Espanhola de Direito do Trabalho* organized by the Faculty of Law of the Universidade Nova de Lisboa;

- October 29<sup>th</sup>, delivered a communication «Conferência Videovigilância», organized by the Security and Defense Review, in the Institute of Social and Political Sciences;

- October 31<sup>st</sup>, delivered a communication entitled «Comunicação Social e Direitos fundamentais. Um Círculo Virtuoso?» by the occasion of 20<sup>th</sup> anniversary of the Degree in Journalism, organized by teachers and researchers of the Faculty of Arts and Interdisciplinary Studies Center of the century. XX (CEIS20) at the Faculty Letters of the University of Coimbra;

- November 4<sup>th</sup>, delivered a communication entitled «A transparência fiscal: a perspectiva do Provedor de Justiça» at the celebrations of the 10<sup>th</sup> Anniversary of the South Central Administrative Court.

Noteworthy is also the participation or intervention of the Deputy Ombudsmen in the following events:

- January 31<sup>st</sup>, participation in the opening session of the XIV Congress of ANAFRE - National Association of Parishes;
- February 6<sup>th</sup>, participation in the celebration of the «International Day of Zero Tolerance to Female Genital Mutilation», organized by the Secretary of State for Parliamentary Affairs and Equality and the Ministry of Health;
- February 12<sup>th</sup>, participation in the presentation of the program PT07: Integration of Gender Equality and Promoting balance between work and private life, organized by the Commission for Citizenship and Gender Equality;
- April 1<sup>st</sup>, participation in the Second Meeting of Portuguese Speaking Lawyers», organized by the Pontifical Council for the Family and the Academy of Jurisprudents of Portuguese in Rome;
- On April 14<sup>th</sup>, hearing session of the National Ethics Council for Life Sciences on the situation of older people living in public and private residential care homes;
- April 24<sup>th</sup>, participation in *109 Presidium* of Euromil, organized by the European Organisation of Military Associations;
- May 5<sup>th</sup>, participation in the celebrations of the Day of Portuguese Language and Culture, organized by the Community of Portuguese Speaking Countries;
- May 15<sup>th</sup>, participation in the symposium «Futuro Condicionado: Profissões Vedadas aos Seropositivos», organized by SOL - Association for the Support of Children infected and affected by HIV / AIDS;
- June 27<sup>th</sup>, participation in the launching ceremony of the commemorative medal of 8 Centuries of Portuguese Language, organized by the National Mint and the Association 8 Centuries of Portuguese Language;
- September 15<sup>th</sup>, participation in the event «Celebrating 35 years of the National Health Service», organized by the Ministry of Health;
- October 2<sup>nd</sup>, intervention entitled *El TEDH – una tutela supranacional de los derechos humanos*, delivered at the International Congress of the Federacion Iberoamericana del Ombudsman, Mexico;
- From October 10<sup>th</sup> to 12<sup>th</sup>, presentation of the report's conclusions as part of the Inspection to Youth and Children Centres and Homes and to the President of the Social Security Institute of Madeira;
- October 18<sup>th</sup>, participation in the opening ceremony of the VI Congress of Solicitors, organized the Chamber of Solicitors;
- From October 20<sup>th</sup> to 21<sup>st</sup>, intervention at the Conference «Os Direitos da Criança – Prioridade, para quando?» Organized by the IAC – Child Care Institute;
- October 21<sup>st</sup>, participation in the round table: «Decisores Políticos, Instituições Públicas e Privadas versus Apoio às Famílias» as part of the 2<sup>nd</sup> Meeting Embracing

Family, organized by the Association for the Recognition of the Family on Policies Family and the Association Embracing Family;

- October 31<sup>st</sup>, participation in the event «O Conselho Superior da Magistratura e o Conselho Nacional de Justiça: as experiências comparadas de Portugal e Brasil na organização das magistraturas.», organized by the Jurisprudents Academy of Portuguese Language;

- November 19<sup>th</sup>, participation in the «Seminário sobre prevenção e combate a todas as formas de violência contra as mulheres e violência doméstica – Convenção de Istambul: um compromisso», in the scope of the *III Jornadas Nacionais Contra a Violência Doméstica e de Género*, organized by the Secretary of State for Parliamentary Affairs and Equality and the Commission for Citizenship and Gender Equality;

- November 20<sup>th</sup>, participation in the Commemoration of the 25<sup>th</sup> anniversary of the Convention on the Rights of the Child, organized by the Forum on the Rights of Children and Youth;

- November 25<sup>th</sup>, participation in the launch of the campaign «Nunca é tarde» to mark the International Day for the Elimination of Violence Against Women, organized by the Secretary of State for Parliamentary Affairs and Equality;

- November 27<sup>th</sup>, participation in the solemn opening session of the International Conference «The Istanbul Convention and Sexual Crimes», organized by the Portuguese Association of Women Lawyers;

- November 28<sup>th</sup>, participation in the public presentation ceremony of risk assessment forms and domestic violence police manual, organized by the Ministry of Internal Affairs;

- November 28<sup>th</sup>, participation in the commemorative symposium of the 25<sup>th</sup> anniversary of the Convention on the Rights of the Child, organized by the Institute of Education, University of Lisbon;

- December 11<sup>th</sup> communication entitled «O papel do Provedor de Justiça em prol do reconhecimento e da defesa dos direitos da criança», delivered in the *5.ª Jornada de Criminologia* under the theme «Teorias e Práticas Criminológicas», organized by the Núcleo de Criminologia da Universidade Fernando Pessoa.

Regarding the activities developed in order to promote human rights, it is noted also the participation or intervention members of the Ombudsman's office in the following initiatives:

- January 16<sup>th</sup>, participation in a program organized by a national radio Renaissance entitled «Em nome da Lei», concerning the activities of the Ombudsman in defending the right to health;

- March 1<sup>st</sup>, participation in the conference «Jurisprudência portuguesa e europeia sobre Contratação Pública», organized by the Public Law and Regulation Research Centre, Faculty of Law, University of Coimbra;

- March 6<sup>th</sup>, participation in the solemn opening session of the III Congress of the Association of Notaries;
- March 7<sup>th</sup>, participation in the commemorative session of the International Women's Day under the theme «Sob o Signo da Memória», with the launch of *Feminae - Contemporary Dictionary*;
- March 11<sup>th</sup>, hearing under the Interministerial Working Group on the amendment of the Special Education Allowance and the review of the regulatory framework of Special Education;
- March 12<sup>th</sup>, participation in the seminar «Comunicação da Comissão Europeia sobre Prevenção da Radicalização e Extremismo Violento»;
- March 27<sup>th</sup>, participation in the launching session of the «Projeto Novos Desafios no Combate à Violência Sexual»;
- April 10<sup>th</sup>, participation in the meeting for behavioral supervision organized by the Portuguese Central Bank;
- April 10<sup>th</sup>, participation in the debate *XIV Jornadas da ANDAR* (National Association of Patients with Rheumatoid Arthritis);
- May 16<sup>th</sup>, intervention in the module: «La place et le rôle du Ombudsman (Le Défenseur des droits)» as part of a workshop organized by AVO / SIAL (Association d'Avocats d'Entreprise en France);
- May 17<sup>th</sup>, intervention in the 2.º *Curso Breve de Pós-Graduação em Direito do Envelhecimento*, organized by the Family Law Center, Law Faculty of the University of Coimbra;
- May 24<sup>th</sup>, intervention in the seminar «Movimento contra o Discurso de Ódio — Jovens pelos Direitos Humanos *On Line*», organized by the *Pro Dignitate* Foundation;
- May 26<sup>th</sup> to 30<sup>th</sup>, intervention entitled *Os Direitos dos Idosos e o Envelhecimento Activo*», no *II Curso de Aperfeiçoamento sobre Direitos e Técnicas de Serviço Social – Área de Idosos* organized by CNAF - National Confederation of Family Associations, Faculty of Law, University of Lisbon and the Government of the Macao Autonomous Special Region;
- May 27<sup>th</sup>, participation in the seminar «Promoção e proteção de direitos humanos nos Estados-membros da CPLP», organized by the CPLP;
- June 24<sup>th</sup>, intervention at the 4<sup>th</sup> plenary meeting of the EU VAT Forum, as an expert of the Portuguese mediation services in respect of VAT;
- July 18<sup>th</sup>, intervention in the International Workshop - National Human Rights Institutions: Establishment and Functioning, organized by the Council of Europe and UNDP, in Minsk;
- September 23<sup>rd</sup>, participation in the meeting organized by the Council of Europe (CoE), the European Agency for Fundamental Rights (FRA), the European Network of National Human Rights Institutions (ENNHRI) and the European Network of equality

bodies (Equinet), to establish a platform on the Rights of Migrants and Asylum Seekers, in Vienna;

- September 24<sup>th</sup>, participation in the Meeting on asylum and migration, organized by the FRA, in Vienna;
- September 26<sup>th</sup>, participation in the conference «A Reforma do IRS», organized by the Institute of Economic, Financial and Fiscal Faculty of Law, University of Lisbon;
- October 3<sup>rd</sup>, intervention at the seminar on changes to the code of urbanization and construction, organized in Faculty of Law, University of Lisbon;
- October 17<sup>th</sup>, intervention in the opening panel of the Seminar «Satisfação dos utilizadores de transportes públicos», organized by the Metropolitan Transportation Authority of Lisbon, in partnership with ISCTE;
- October 21<sup>st</sup>, intervention in the 2<sup>nd</sup> meeting on family policies;
- October 21<sup>st</sup>, participation in the conference «Direito das Comunicações», organizada pela AICEP», organized by AICEP - International Association of Portuguese Speaking Communications;
- November 3<sup>rd</sup> to 4<sup>th</sup>, it was delivered a conference at the *XXXIV Colóquio Nacional da Associação Nacional dos Trabalhadores da Administração Municipal*, entitled «Alterações ao Regime Jurídico da Urbanização e da Edificação»;
- November 1<sup>st</sup> to December 8<sup>th</sup>, participation in the virtual training course *Taller virtual de elaboración e difusión de informes temáticos de las Defensorías del Pueblo*, organized by the University of Alcalá, Spain;
- November 17<sup>th</sup>, intervention at the Seminar «Os Direitos da Criança no Acolhimento Institucional», sponsored by the Calouste Gulbenkian Foundation in Lisbon.

Furthermore the Ombudsman has an observer status in the National Commission for Human Rights and he is was also represented in the National Commission for the Protection of Children and Youth at Risk.

In 2014, the Portuguese Ombudsman continued the actions directed at the promotion of human rights under various protocols established with several entities. It is important to highlight the actions developed during the academic year of 2014 – 2015 with the Ministry of Education and Science, as well as the participation in various events organized by the Faculty of Law, University of Lisbon.





### *3. International relations*

### 3. *International relations*

The Ombudsman's Statute defines important responsibilities in the field of international relations, a natural and necessary consequence of his particular nature as Ombudsman of human rights.

Furthermore, his recognition as a National Human Rights Institution, accredited with A-status by the International Coordinating Committee of National Human Rights Institutions (*ICC*), involves a wide range of actions in order to maintain that status.

In 2014, the Ombudsman cooperated with several homologous institutions, as well as with other entities with whom he shares a similar mandate in defense and promotion of human rights. Accordingly, in this domain, the following initiatives were developed:

- February 21<sup>st</sup>, meeting with the Regional Representative for Europe of the Office of the High Commissioner for Human Rights;
- From April 2<sup>nd</sup> to 4<sup>th</sup> 2014, working visit to the office of the *Defensora del Pueblo* in Madrid;
- May 26<sup>th</sup>, meeting with the Municipal Secretary for Human Rights and Citizenship of the City of São Paulo, Brazil;
- June 16<sup>th</sup> and December 12<sup>th</sup>, meetings with the Ombudsman of Angola;
- September 2014, contribution with an article for the 20<sup>th</sup> anniversary of the Ombudsman of the Republic of Uzbekistan;
- September 18<sup>th</sup>, signed a Memorandum of Cooperation with the Ombudsman of Israel;
- November 21<sup>st</sup>, meeting with the Ombudsman of Mozambique.

In the area of institutional collaboration, the Ombudsman develops his activity bearing in mind the prime objective of promoting and protecting fundamental rights, as a path to enroot, within the national and international communities, the culture of respect for human rights.

In order to accomplish that end, the Ombudsman cooperated in 2014 with several institutions and entities by replying to questionnaires or requests of information, namely, the following:

- Reply to two questionnaires from the Office of the High Commissioner for Human Rights about violations of the right to water and sanitation;
- Reply to the questionnaire from the Office of the High Commissioner for Human Rights on best practices resulting from the implementation of international environmental obligations;
- Collaboration in the study *National Human Rights Reporting and Coordinating Mechanisms - Case Studies. Case Study 6 - Portugal*, promoted by the Office of the High Commissioner for Human Rights;

- Reply to the questionnaire from the Office of the High Commissioner for Human Rights on the right to adequate housing;
- Reply to the questionnaire from the Office of the High Commissioner for Human Rights on child mortality and morbidity;
- Reply to questionnaire from the *Federación Iberoamericana del Ombudsman* (FIO) in relation to the work developed by the thematic network on migrants and trafficking of human beings;
- Contribution for the XXI Thematic Report *Right to Water* by the *Federación Iberoamericana del Ombudsman*;
- Reply to the questionnaire from the National Institute of Rehabilitation, on Discrimination of Persons with Disabilities;
- Participation in the discussion forum promoted by the European Network of Ombudsmen.

The international activity of the Ombudsman in his capacity as a National Human Rights Institution was developed in two distinct dimensions: replying to questionnaires or preparing reports and other contributions for national and international organizations in the context of international obligations regarding the promotion and protection of human rights; participating in several international initiatives.

Concerning the first dimension, it is important to mention the committed work of the Ombudsman in the periodic evaluations from international organizations about the obligations assumed by the Portuguese State in the domain of human rights. This activity was developed by drafting contributions requested by institutions of the international and regional human rights system, namely the United Nations, the Council of Europe and the European Union.

Equally, the Ombudsman collaborated with the National Human Rights Commission of Portugal (*CNDH*), in which he holds the special status of observer, ensuring the autonomy and independence he enjoys before the public authorities. That collaboration materialized through the participation in the plenary sessions and working groups – emphasizing the participation in the Working Group to elaborate a set of indicators on violence against women, based on the model developed by the High Commissioner of Nations United for Human Rights - as well as giving feedback on the evaluation of compliance with the state's obligations on human rights.

Therefore the Ombudsman wrote in 2014 an autonomous contribution under the Universal Periodic Review (UPR) mechanism concerning the 2nd examination of Portugal. It is also worth to mention that the Ombudsman addressed a video statement to the UN Human Rights Council during the debate in which the results of the UPR examination were analyzed.

For the development of the objectives committed to this state body, since August 2nd 2014, an advisor from the Ombudsman's office is attending the fellowship program in the Office of the High Commissioner for Human Rights in Geneva.

Still, in the development of its international activities, the Ombudsman attended or was represented in several meetings and initiatives, of which, the following, are worth mentioning in particular:

- January 24<sup>th</sup>, attended the inauguration ceremony of Cape Verde's Ombudsman;
- March 10<sup>th</sup>, participation in the General Meeting of ENNHRI - European Network of National Human Rights Institutions, in Geneva, Switzerland;
- March 11<sup>th</sup> - 13<sup>th</sup> attended in the 27<sup>th</sup> Annual Meeting of the International Coordinating Committee for National Human Rights Institutions (ICC), held in Geneva, Switzerland;
- June 4<sup>th</sup>, attended the celebration of the 30<sup>th</sup> Anniversary of Galicia's *Valedor Pobo* in Santiago de Compostela, Spain;
- June 25<sup>th</sup> - 27<sup>th</sup>, attended the 8<sup>th</sup> Meeting of the Mediterranean Ombudsman Association (AOM) held in Tirana, Albania;
- September 17<sup>th</sup> - 19<sup>th</sup>, attended the General Assembly of the IOI - International Ombudsman Institute, held in Tallinn, Estonia;
- November 27<sup>th</sup> - 30<sup>th</sup>, participation in the *Forum Mondial des Droits de L'Homme*, held in Marrakech, Morocco;
- December 1<sup>st</sup>, presentation of the *Proposition Espagnole - Portugaise de Jumelage MAI 14/ENP-AP/OT32. «Renforcement des Capacites du Conseil National des Droits de L'homme (CNDH) du Royaume du Maroc à Exercer des missions de Protection et de Promotion des Droits de l'Homme»*, in Rabat, Morocco.

As in previous years, the Ombudsman developed or took part in training initiatives, as they are a fundamental aspect for the success of his activities. Consequently between December 8 and 12, two staff members attended, as trainers, in the training course organized by the African Ombudsman Research Centre and the African Ombudsman and Mediators Association (*AOMA*), in association with the Queen Margaret University, with the support from the Department of International Relations and Cooperation of the South African Government.

Also in this regard, between February 10th and 14th 2014, the Portuguese Ombudsman welcomed two staff members from the Office of the Ombudsman of Mozambique. The training program was oriented to various aspects of this state body's activity, namely, complaint procedures and other administrative practices.

In the area of cooperation initiatives, a training session was held between September 2nd and 4th, under the aegis of a TAIEX project, addressed to the Albanian Ombudsman and two members of his Cabinet.

In the development of the international activity it is very important to mention the participation in the *Federación Iberoamericana del Ombudsman* (FIO), an organization in which the Portuguese Ombudsman was elected for the Fourth Vice Presidency of the Executive Council in December 2013 and, since December 2014, became the Third Vice-President of that executive body.

The Ombudsman was represented at the FIO General Assembly, as well as the International Congress and the Executive Council meeting, events that took place in the days October 1<sup>st</sup> – 4<sup>th</sup>, in Mexico City.

Alongside the activities carried out in the FIO governing bodies it is also relevant to make a reference to the work being developed within the four thematic networks of this organization. Accordingly, members of the Portuguese Ombudsman staff took part in the following events:

- April 9<sup>th</sup> and 10<sup>th</sup>, first meeting of the Network of Migrants and Human Beings Trafficking – whose creation was decided in the FIO's XVIII General Assembly of held in 2013 - in Puerto Rico. At this meeting were discussed the proposals for regulations of that Network and the work plan for the year 2014, and proceeded to the choice of regional coordinators;
- On May 8<sup>th</sup> and 9<sup>th</sup>, under the FIO's Communicators Network (ComFIO), participation in the International Meeting *Periodística y Derechos Humanos*, held in Quito, Ecuador;
- April 2<sup>nd</sup> to 4<sup>th</sup>, participation in the Meeting of Regional Coordinators, in representation of the Coordinator for the European Region, in the Network on Childhood and Adolescence, in Brasilia, Brazil;
- December 2<sup>nd</sup> – 5<sup>th</sup>, participation in the Workshop on the Development of Monitoring Systems and in the VII Session of the Network on Childhood and Adolescence, in Panama.





## *4. Management and resources*

*> Detail – lateral facade of the Portuguese Ombudsman's building*

## 4. Management and resources

### 4.1. Administrative and financial management

Despite the budget restrictions, the planned strategy for 2014 was to develop internal procedures, regarding administrative and financial management, in order to improve and the quality of service offered to citizens. As an example of the measures that were put in place we can highlight the review of contracts for running services, aimed at cost reduction without diminishing the quality of service

#### 4.1.1. Financial resources

As in previous years, the budget of the Ombudsman suffered a reduction following the global measures to decrease public spending. In 2014 the budget reduction totaled €143 006,00.

Table 16

#### 2014 Budget

Current expenses	€ 4 736 725,00
Investment costs	€ 15 000,00
<b>Total</b>	<b>€ 4 751 725,00</b>

Later in the year there was a budget increase of € 195 000,00, to cover the payment workers' salaries, because to the total allocation of the 2014 budget was insufficient.

#### 4.1.2. Investment costs

In 2014, particular attention was given to the building maintenance, without carrying out very expensive works, in order to give proper dignity to the institution premises.

The implementation process of a new IT system to manage complaints and internal procedures continued during 2014. The conclusion of this process is expected soon.

### 4.1.3. Human resources

Human resources are, in any organization, one of its pillars. Privileging skills, and, despite the existing economic conditions, enhance the motivation of human resources were the main goals to achieve.

It has also continued the coordinated work and cooperation between the different services of the Ombudsman.

Table 17

#### Existing staff in the Ombudsman's services (31 December 2014)

Ombudsman's Cabinet and Deputy Ombudsmen	12
Advisory Legal Services	46
Directorate of Technical Services and Administrative Support	43
Children's, senior citizen's, disabled citizen's toll-free	3

Most of the civil servants and other collaborators performing duties in the Office of the Ombudsman are female.

Table 18

#### Gender

Male	25
Female	77

The most representative age group is 45-49 years, as it is clear from the table below.

Table 19

#### Age group

25-29	30-34	35-39	40-44	45-49	50-54	55-59	+60
1	3	17	14	32	15	11	9

It should be mentioned also that the prevailing academic degree is the law degree. What is understandable, given the powers of this the State body defined in Article 1 of the Statute of the Ombudsman.

#### 4.2. Public relations

In 2014 it was maintained a personalized and close assistance to the citizen, either in person or by telephone, in order to:

- Bring the Ombudsman closer to citizens;
- Inform the public about the right to complain to the Ombudsman;
- Provide a prompt reply to information requests regarding cases in instruction.

##### 4.2.1. Attendance and telephone assistance

Table 20

**Attendance. 2013-2014 variation**

Year	Attendance in person			Total
	Information on cases	Other information	New complaints	
2013	538	137	682	1357
2014	466	119	565	1150
<b>Fluctuations (%)</b>	<b>-13,3%</b>	<b>-13,1%</b>	<b>-17,1%</b>	<b>-15,2%</b>

Table 21

**Telephone assistance (general number). 2013-2014 variation**

Year	Telephone assistance (general number)			Total
	Information on cases	Other information	New complaints	
2013	4552	723	25	5300
2014	5205	848	34	6087
<b>Fluctuations (%)</b>	<b>+14,3%</b>	<b>+17,2%</b>	<b>+36%</b>	<b>+14,8%</b>

In 2014, the Public Relations Division has met 1150 citizens.

Regarding the telephone assistance the number of requests by 14,8% compared to the year 2013.

In whole, were attended in presence and by telephone 7935 citizens, which signifies an increase of 4,6% in comparison with 2013.

*Table 22*

**Telephone assistance (Toll-free line). 2013-2014 variation**

Year	Telephone assistance			Total
	Information on cases	Other information	New complaints	
2013	244	670	11	925
2014	158	534	6	698
<b>Variation (%)</b>	<b>-35,2%</b>	<b>-20,2%</b>	<b>-45,4%</b>	<b>-24,5%</b>

*Table 23*

**Total of citizens assisted. 2013-2014 variation**

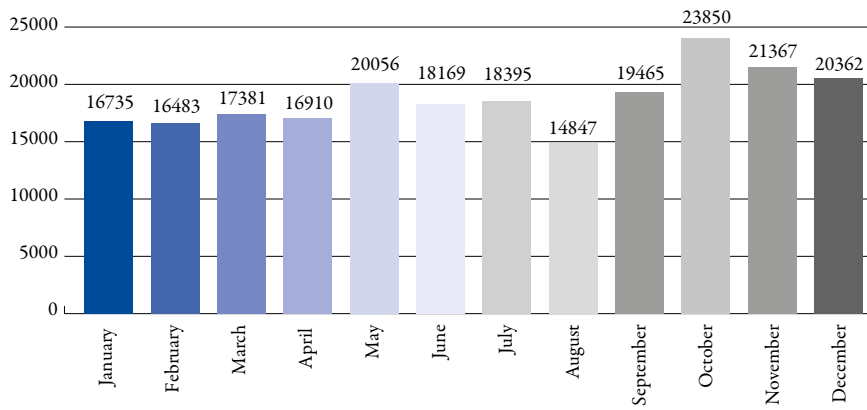
Total of citizens assisted	
2013	7582
2014	7935
<b>Variation (%)</b>	<b>+4,6%</b>

*4.3. Monthly accesses to the Ombudsman's website*

In 2014 the Ombudsman's website was continuously updated and were registered 224 020 accesses.

Graph XV

Monthly accesses to the Ombudsman's site





*Ombudsman's decisions  
in the promotion and  
protection of fundamental  
rights*

> Detail – garden stairway of the Portuguese Ombudsman's building

## *5. Ombudsman's decisions in the promotion and protection of fundamental rights*

In order to illustrate part of the Ombudsman's activity, below it is possible to find a summary of some of the Portuguese Ombudsman's decisions regarding complaints presented to this State body.

### *5.1. Environmental, urban planning and cultural rights*

#### *5.1.1. Ombudsman's decisions favourable to complainants*

##### *a) Recommendations*

**Recommendation no. 2/A/14**

**Case Q-2778/12**

**Entity addressed:** Mayor of Paredes

**Date:** 2014/05/21

**Subject:** Land development. Public works. Parking. Requalification works

**Status:** Accepted

The complaint was filed against the dispossession of a land plot included in the common parts of a building under joint ownership (horizontal property). The Municipality of Paredes claimed that the land plot, used for the construction of a public sidewalk and parking places, had been acquired through an informal agreement with the owners. However, the Ombudsman concluded that the delay of time required for acquisition of ownership through special adverse possession had not yet passed and recommended that the Municipality should pay due compensation to the owners, in line with the legal criteria established for expropriations.



**Recommendation no. 4/A/14**

**Case Q-2290/12**

**Entity addressed:** Chairperson of the Board of Social Welfare's Institute

**Date:** 2014/07/18

**Subject:** Housing. Urban leaseholds. Rent subsidy. Rent increase. Works made by the landlord. Laws in time

**Status:** Referred to the Ministry of Solidarity, Employment and Social Security

The complaint was filed against the cessation of payment of rent subsidies granted under a legal regime that had not been replaced nor revoked with retroactive effect. It was concluded that the legal regime continued to apply to tenants as long as they did not benefit from other subsidies. The scope of application in time and the objective prerequisites of the regime seemed to exclude the possibility of cumulation with other benefits. The legal regime at issue covers the subsidies to tenants whose rents were increased due to works made by landlords under public funding, in the period between the entry into force of Decree-Law No. 329-B/2000, of December 22<sup>nd</sup>, and the entry into force of the New Urban Lease Regime, approved by Law No. 6/2006, of February 27<sup>th</sup>. The Ombudsman recommended that the payment of subsidies should be resumed and the tenants should be compensated.



**Recommendation No. 5/A/14**

**Case Q-0169/13**

**Entity addressed:** Mayor of Cascais

**Date:** 2014/07/18

**Subject:** Land development. Reversion. Land parcel. Legitimacy. Succession rights

**Status:** Reply's deadline extended

A complaint was filed against the requirement imposed by the Municipality of Cascais according to which all heirs to an inheritance should sign the public deed for reversion of a land plot never applied for a public green area. It was concluded that only the two heirs to whom the right to the land plot had been awarded should sign the public deed and that the participation of a third heir who had inherited other assets was not required. The Ombudsman recommended the Municipality of Cascais should refrain from conditioning the signing of the public deed to the intervention of a third heir.



**Recommendation no. 6/A/14**

**Case Q-6342/12**

**Entity addressed:** Secretary of State for Culture

**Date:** 2014/07/22

**Subject:** Culture. Architectural heritage. Public interest listing. Special protection area. Principle of proportionality. Misuse of power

**Status:** Accepted

A complaint was filed against the terms under which the special protection area of a listed building (*Casa Gaspar Lino*, in Caxias) had been delimited. The Ombudsman concluded there had been (i) misuse of power due to the lack of legally required specifications to compensate the sacrifices imposed on owners, (ii) infringement of the principle of proportionality since there was no balance of encumbrances, charges, restrictions and limitations, and (iii) absence of prior hearing of municipal bodies in regard to the special protection area's object. Moreover, it was noted that an interpretative guideline had been issued by a body with no competence to do so. The Ombudsman recommended (i) the revision of the ordinance delimiting the special protection area of the *Casa Gaspar Lino*, in the municipality of Oeiras, in accordance with legal substantive requirements, (ii) the repeal of the interpretive guideline issued by an noncompetent body and (iii) the instruction of public services to ease requirements when delimiting special protection areas that might be established through integrated land development plans or detailed safeguard plans.



**Recommendation no. 7/A/14**

**Case Q-2767/13**

**Entity addressed:** Chairperson of the Board of Lisbon's Mobility and Parking Municipal Company

**Date:** 2014/07/23

**Subject:** Land development. Public domain. Parking restrictions. Automatic payment in cash. Fines. Reasonability

**Status:** Partially accepted

Several complaints were filed against the immediate imposition of fines in areas subject to parking restrictions. The Ombudsman concluded that frequently drivers do not have prepurchased vouchers or coins to pay parking taxes and it takes them some time to obtain the means to proceed with payment. For this reason, the Ombudsman recommended that control staff should be instructed to act with some degree of tolerance, namely by posting a first warning on the car windshields. It was also noted that many drivers only park in Lisbon occasionally and therefore ignore the need to have coins for parking-meters. Furthermore, bank notes cannot be used in the parking-meters and exchanging them for coins in a very short term can present some practical difficulties.



**Recommendation no. 8/A/14**

**Case Q-2190/11**

**Entity addressed:** Minister of Health

**Date:** 2014/08/14

**Subject:** Land development. Public domain. Cemetery. Exhumation. Protection of family member's feelings

**Status:** Accepted

According to the mortuary law in force, three years after been buried in temporary graves, human remains must be exhumed every two years until they are fully decomposed. This procedure is a too frequent and extremely painful act to families and to those legitimately interested in preserving the memory and dignity of the deceased. If the mineralization of the remains is completed and the family has not taken further action, the bones are considered abandoned. The Ombudsman, bearing in mind there were neither scientific objections nor obstacles related to cemetery management, recommended legal amendments in order to (i) extend the two-years period for successive exhumations, (ii) allow a multidisciplinary team from the National Institute of Legal Medicine to use catalyst means of decomposition provided that the previous consent of the family or a judicial authorization is obtained, and (iii) allow the reburial or cremation according to procedures established and monitored by the health authorities.

*b) Suggestions*

**Cases Q-1051/13 and Q-6352/13**

**Entity addressed:** Minister of Environment, Land Development and Energy

**Date:** 2014/07/18

**Subject:** Urban leaseholds. Out-dated property evaluations. Transitional regime for evaluation updating. Social support. Protection of legitimate expectations

**Status:** Integrated in the Law No. 79/2014, of December 19th

The suggestions made in respect of (i) property evaluations for the purpose of rent increase and (ii) protection of vulnerable elderly tenants were welcomed and have been reflected in Law no. 79/2014, of December 19th (that amended the New Urban Lease Regime) and Law No. 81/2014, of the same date.



**Case Q-4643/12**

**Entity addressed:** Secretary of State for Infrastructure, Transportation and Communications

**Date:** 2014/05/22

**Subject:** Land development. Administrative rights-of-way. National road. Preliminary study. Land reserve. Right to request expropriation on the grounds of public interest

**Status:** Integrated in the legislative reform of the National Road's Statute

The suggestions made by the Ombudsman were welcomed and have been taken in to consideration in the legislative initiative to amend the National Road's Statute. The amendment is aimed at giving the owners of lands subject to administrative rights of way for the construction of roads the right to request expropriation.



**Case Q-4411/13**

**Entity addressed:** Mayor of Silves

**Date:** 2014/05/09

**Subject:** Environement. Noise pollution. Special noise licenses for festivities

**Status:** No objections by the addressee

The Municipality of Silves raised no objections in respect of suggestions made by the Ombudsman to further detail the content and conditions set in special licenses that exceptionally allow noisy activities such as public festivities.

*c) Remarks*

**Case Q-4305/12**

**Entity addressed:** Chairperson of the Board of APA - Portuguese Agency for the Environment

**Date:** 2014/06/05

**Subject:** Environment. Noise pollution. Acoustic measurements. Concurrent competences. Subsidiarity principle

**Status:** No objections by the addressee

No objections were raise in regard to the suggestion that the Portuguese Agency for the Environment should provide for acoustic measures in case municipalities do not possess the required technical means to do so.



**Case Q-2536/14**

**Entity addressed:** Mayor of Seixal

**Date:** 2014/08/05

**Subject:** Environment. Water supply. Urgent repairs. Continuity principle

**Status:** No objections by the addressee

The municipality of Seixal raised no objections to remarks according to which prompt measures should be taken in case of water supply disrupting, if necessary through cooperation with other municipalities, in order to avoid risks and damages to consumers.



**Case Q-2034/14**

**Entity addressed:** Chairperson of the Board of Housing and Urban Rehabilitation Institute

**Date:** 2014/08/04

**Subject:** Housing. Promise to sell. Delay in performance

**Status:** Accepted

No objections were raised to remarks that the Housing and Urban Rehabilitation Institute should adopt measures to ensure prompt compliance of its obligations under sale promise agreements. The entity addressed provided additional explanations on the difficulties to obtain documents necessary for the signing of public deeds.

*5.1.2. Ombudsman's decisions non favourable to complainants*

**Case Q-5739/14**

**Entity addressed:** Company for the Development and Infrastructures of Alqueva

**Date:** 2014/12/30

**Subject:** Land development. Special instruments. Hydro agricultural development works. Multi-purpose developments. water resources tax. Calculation of tax. Personal exemption

A complaint against the payment of water resources tax was dismissed since legal requirements for exemption were not fulfilled.



**Case Q-6661/14****Entity addressed:** Mayor of Lisbon**Date:** 2014/02/17**Subject:** Environment. Air quality. Low-emission areas. Restrictions to traffic

A complaint against the creation in Lisbon of a low-emission area, where vehicles must meet established emissions standards, was considered unjustified and therefore dismissed.

**Case Q-7918/13****Entity addressed:** Chairperson of the Board of ERSAR - Regulatory Authority for Water and Waste and Chairperson of the Board of AmbiOlhão Municipal Company**Date:** 2014/08/11**Subject:** Environment. Water treatment. Management of urban solid waste. Taxes

A complaint against the payment of sanitation, urban solid waste management and water treatment taxes was dismissed since it was concluded they were lawfully due and had been correctly calculated.

## *5.2. Taxpayers', consumers' and economic operators' rights*

### *5.2.1. Ombudsman's decisions favorable to complainants*

#### *a) Suggestions*

**Case P-0008/13****Entity addressed:** Commission for the Individual Income Tax Reform**Date:** 2014/07/18**Subject:** Inputs by the Ombudsman to the Individual Income Tax Reform**Status:** Many of the solutions that came to be adopted by Law No. 82-E/2014, of December 31st (reform of the Individual Income Tax), although not always providing solutions exactly equal to those suggested by the Ombudsman. However, such solutions substantially meet the Ombudsman's concerns. It is now a matter of waiting the results of the paradigm shift operated by this reform

The Ombudsman addressed the President of the Commission for the Individual Income Tax Reform, the following inputs, reflections and suggestions arising from his practice and experience accumulated in this area:

*A - Legal regime of reporting income from previous years*

This respects to the taxation in the year of receipt and jointly with the income earned in that year, of salaries and pensions of previous years («retroactive»), due, for example, to incorrect calculation of the value of pensions or the lack of payment of wages.

The regime currently in place leads to a situation where the year of receipt of retroactive implies, to the tax payer, an increase of its tax burden or even in the case of citizens with low levels of income, moving from a non-taxation status to taxation at rates which do not show at all their real ability to pay.

By reading the Recommendation No. 7/B/2008, June 26, one may see the extent of the problem, worsened now by the widespread increase of the tax burden. Such Recommendation was surprisingly not accepted in the name of the alleged «transparency that should preside over future tax relationships».

The Ombudsman has greater legal reluctance to accept that income of this nature is fiscally treated as windfall profits. In normal circumstances, the taxpayer would not be entitled to such income and therefore he is doubly penalized - by the late payment of income that was long due and the tax on such income.

The introduction of a fair system of reporting income from previous years it is therefore imperative and urgent.

*B - Proof regime of non-marital partnership*

The Ombudsman called the attention of the President of the Commission for the Individual Income Tax Reform that the law should enshrine that the proof of non-marital partnership existence and duration is accepted when provided by any means legally permissible.

For the Tax and Customs Authority, the option for the taxation regime of married (and not legally separated) taxable persons only produces tax effects when the registered tax residence of both partners was the same for a period of at least two years. This interpretation has caused considerable damage to households where one of the taxpayers, for whatever reason, did not communicate the change of residence, although living for years in non-marital partnership.

As arises from Recommendations No. 1/A/2013, January 11th and No. 13/A/2013, July 4th, the Ombudsman considers that the requirement to notify any change of tax residence refers only to formal tax relationship and therefore the lack of such communication cannot have material effects on the situation of tax payers, such as to prevent the application of a particular legal regime of taxation.

The Ombudsman takes the view that the principle of real ability to pay does not allow absolute presumptions of taxation and that is why the Tax General Law states that the presumptions laid down in the rules of tax incidence always allow proving the contrary, i.e. this a rebuttable presumption.

#### *C – Economy common regime*

Tax and Customs Authority refuses applying the taxation regime of individuals living in common economy (Law No. 6/2001, May 11th) without a previous tax regulation, not basing such refusal or taking any initiative to regulate the respective regime.

For example, a case showed that mother and daughter (the later severely disabled) cannot jointly submit the tax return.

Although it is believed that Law No. 6/2001 is directly applicable for Individual Income Tax purposes, the concept of household foreseen in the Individual Income Tax Code should eventually be changed.

#### *D – Payment on instalments of Individual Income Tax debts (Decree-Law No. 492/88, November 15th, with changes made by Decree-Law No. 150/2006, August 2sd)*

Regarding the payment on instalments before tax enforcements, exemption to the obligation of supplying guarantee only applies up to the amount of €2,500.

As we all know, the economic and financial situation worsened considerably, as well as the requirements of credit institutions in respect of commissions charged to provide the guarantees. These conditions prevent many taxpayers with Individual Income Tax debts exceeding €2,500 to apply successfully the instalments of those debts, without the burden of tax enforcements.

It seems therefore to be the time to consider the amendment of the system of granting exemption from guarantees prior to the commencement of the tax enforcement, for higher values to current €2,500.

#### *E – Shared parental responsibilities versus joint custody or staggered*

The Ombudsman takes the view that paragraph 9, article 78, of the Individual Income Tax Code, should be interpreted in the sense that in case of joint custody/shared/staggered of descendants, it should be possible that parents deduct 50% each of the expenses incurred with them.

However, it is maintained the current regime of total deduction of expenses by the parent who has the single custody and deduction of alimony, where exists, by the other parent who also share parental responsibilities but has not the custody of the child, under judgment or agreement approved in court, in the context of ruling the exercise of sharing parental responsibilities.

*F – Exclusion of non-marital partnership taxpayers from the scope of paragraph 9, article 78, of the Individual Income Tax Code*

The Ombudsman sees no reason for a legislative option which aims to exclude the possibility of both parents, who lived in a non-marital partnership from deducting the expenses incurred with children, as long as the judgment or agreement approved in court, in the context of sharing parental responsibilities, establishes joint custody.

The Commission for the Individual Income Tax Reform should look at the discrimination which non-marital partnership taxpayers are subject to.

*G – Communication of income and withholdings (article 119 of the Individual Income Tax Code)*

The option to aggregate income depends on obtaining a statement evidencing the sums due in the previous year, in the case of income from securities and interest on deposits, to be issued at specific request of the tax payers until 31 January of the year following that to which the income respects.

The Ombudsman asked the Commission for the Individual Income Tax Reform to abolish this anachronistic regime, since it prevents the tax payer from the possibility of claiming the tax assessment and Tax and Customs Authority has easy access to this data in advance, namely through the submission of the respective withholding tax returns.



**Case Q-1655/14**

**Entity addressed:** Directorate for Individual Income Tax

**Date:** 2014/07/10

**Subject:** Tax. Individual Income Tax. Indemnity interest

**Status:** Accepted

Following the intervention of the Ombudsman, the Directorate for Individual Income Tax decided that indemnity interest should be paid to a complainant (over the amount that he paid in excess), since it was recognized that in a claim there was an error in law attributable to the Tax and Customs Authority and therefore it was not necessary that the complainant formally requested the payment of such interest (as previously and at a lower level sustained by the Lisbon Tax Directorate).

The Directorate for Individual Income Tax also accepted the suggestion to publish internal instructions on this matter as well as regarding the underlying question, i.e., that the capital gains exemption foreseen in indent a), paragraph 5, article 10, of the Individual Income Tax Code (applicable to the full proceeds arising from the sale of the real estate that taxpayers previously allocated as their permanent residence and that of the members

of their household, provided it had been fully reinvested in the purchase of another real estate with the same aim) should apply regardless the real estate sold was owned by both tax payers or only by one of them.



### **Case Q-0111/13**

**Entity addressed:** Oporto Metropolitan Transport Authority

**Date:** 2014/02/04

**Subject:** Consumption. Transport. Zoning of the intermodal tariff. Prices in the Line no. 304 of Oporto metro

**Status:** Oporto Metropolitan Transport Authority recognized the importance of re-arranging the zoning/tariff system of the Intermodal System *Andante*, whilst invoked the human and budgetary resources scarcity to justify the fact that had not implemented any measures in this respect. The subject continues to be followed by the Ombudsman, not being ruled out the possibility of new intervention in the matter

The Ombudsman received two complaints related to the intermodal tariff practiced in Oporto metro line *Andante*.

In the first case, it was required a ticket with 5 zones (Z5) for the route Rio Tinto - Póvoa de Varzim and a ticket with 6 zones (Z6) in the opposite direction, i.e., Póvoa de Varzim - Rio Tinto.

The Ombudsman considered disproportional the costs of the operator with the transport of users in both directions and the values charged for the ticket. In fact, taking into account that stations that are travelled from Rio Tinto to Póvoa de Varzim are exactly the same (in identification and in number) that are crossed in the way back, and that the duration of the route is the same, there is no basis for the tickets to be of a different value.

The second case relates to the tariff in Line no. 304 – Sá da Bandeira/St. Luzia.

Although being possible to make this path using valid titles to zones C1 and C2, the circulation for two stops («Carlos Amarante» and «Br. Regado») can only be made by passengers who are also bearers of tickets to zone C6. To avoid having to bear this increase on the price of their tickets, passengers see themselves forced to interrupt the journey in the preceding stops («Cintura Interna»/«Capela Sra. Fátima») and to resume 100 meters ahead, which is hassle.

The Ombudsman considered unfair to compel users of Line no. 304 to pay an additional zone only by a stop. In fact, there is disproportionality between the costs incurred by the company to provide the service (in terms of allocation of a driver and fuel costs) and the tariff imposed to users.

*b) Remarks*

**Case Q-5898/13**

**Entity addressed:** *Instituto de Gestão Financeira da Segurança Social, IP (IGFSS)* and *Instituto da Segurança Social, IP (ISS)*

**Date:** 2014/09/10

**Subject:** Tax. Tax enforcements. Compliance with the deadline to send actions contesting the enforcements to courts, provided by article 208, paragraph 1, of the Tax Procedural Code

**Status:** No objections from the addressed entities

The article 208, paragraph 1, of the Tax Procedural Code provides that the tax enforcement authority should send the actions contesting the enforcements to courts within 20 days. Paragraph 2 adds that in the same time period the tax enforcement authority may analyze the merits of the actions and revoke the previous decision.

The Ombudsman has been receiving complaints for several years now about the failure of complying with the referred period of 20 days by *IGFSS* (Social Security Financial Management Institute), the tax enforcement authority through its departments.

In more recent complaints directed to the Ombudsman, and upon his intervention, the Social Security Financial Management Institute ended up revoking the decision, i.e. not sending the actions to court, but it happened 4 years after the presentation of the action in one case and almost 15 months after in the other case.

The Ombudsman recalled the Social Security services that (i) tax enforcements should be completed swiftly (the Tax Procedural Code foresees an indicative period of 1 year) and that (ii) since the tax enforcements are only suspended with the presentation of guarantees, the longer *IGFSS* takes to send actions to courts, the greater are, in principle, the costs to the appellants (if no guarantee is provided, the tax enforcement follows its procedures, i.e., seizure of assets and respective sale).

The Ombudsman has thus critically remarked the lack of compliance of the above referred 20 days period and suggested *IGFSS* and the Social Security Institute (creditor entity) to consider the following procedure:

As competent to send the certificates of debt to the departments of *IGFSS*, the *ISS* departments should do so with the utmost certainty, so as to avoid the introduction of tax enforcements doomed to extinction. Basically, it is requested an effort to anticipate the moment of analysis on whether the debt must be charged. Instead of making this reasoning in later time, when the tax enforcement has already been established and the enforced reacted, it must be done prior to any decision to set up the tax enforcement.

In cases where the tax enforcement is, in fact, initiated and the enforced appeals, then the *IGFSS* should request the analysis of fundamentals of the appeal to the competent district *ISS* centre, so that such services can issue an opinion with the desirable speed.



**Case Q-3516/14**

**Entity addressed:** *Instituto de Financiamento da Agricultura e Pescas, IP*

**Date:** 2014/10/30

**Subject:** National and European Funds. Agri and forest-environment measures. Prior hearing

**Status:** No objections from the addressed entity

The duty of prior hearing, as a corollary of the right of participation of the person concerned during the administrative procedure, represents a legal and constitutional guarantee of the right of defence, which cannot, without justification, be overridden.

Since such right was not granted to a complainant, and there was no reason to override it, a critical remark was addressed to Fisheries and Agriculture Financing Institute to adopt the necessary measures to ensure strict compliance with the legal duty of hearing the parties concerned, before they communicate decisions already made as final and executive acts.



**Case Q-2103/14**

**Entity addressed:** *Galp Energia, SA*

**Date:** 2014/07/02

**Subject:** Consumption. Gas. Interruption of supply. Change of supplier. Change in the holder of the contract

**Status:** No objections from the addressed entity

The Ombudsman's intervention was requested by a consumer of gas, within a scope of a process of changing the supplier, where the supply of gas was interrupted. The complainant did not present any billing debt and has only managed to obtain, as justification for the fact, the alleged lack of an inspection to the site.

The case opened on the basis of this complaint constituted a priority, due to the interruption of supply of an essential public service. The investigation started on the same day

of the complaint's reception (a Friday), and the service was resumed on the following Monday, after informal contacts with the company addressed in the complaint.

The problem laid down in the content of the notifications sent to the complainant, in which Galp Energia expressly admitted the assumption, inapplicable, of the possibility to process a change of holder of the contract (in part on the consumer contractor) under a process of changing supplier.

Being the change of holder of the contract assimilated to a new contract and since, in the case of a new contract, there is legal basis for carrying out an inspection, all it took was the improper mention of change of holder to substantiate the interruption of supply, for alleged lack of inspection.

The Ombudsman addressed a critical remark to Galp Energia where he called the attention to the position of the Energetic Services Regulatory Entity in this issue, namely (i) the change of supplier, by itself, does not imply any change in the installation and therefore cannot be associated with the process of change of supplier the requirement of carrying out inspections and (ii) EU and national legislation establishes as fundamental principles of the procedures of change of supplier the simplicity, speed and free of charge, being reprehensible all practices considered as barriers to the liberalization of the natural gas market.

### 5.2.2. *Complaints' dismissal decisions*

#### **Case Q-2739/14**

**Entity addressed:** Parliament. Government. Tax and Customs Authority

**Date:** 2014/05/08

**Subject:** Consumption. Transport routes. Tolls. Ancient «routes without cost to the user» (Ex-SCUT). Infraction proceedings

In 2014, many citizens directed complaints to the Ombudsman regarding the charging of tolls, namely in the scope of the ancient «routes without cost to the user» (*ex-SCUT*).

The Ombudsman understands the indignation felt by the population arising from the increase of the charges inherent to the circulation on these highways, particularly in the current context of economic crisis. However, the powers conferred by the law and by the Constitution to the Ombudsman limit the respective scope of intervention to illegal or unfair actions or omissions of the public authorities, as long as it does not imply an appreciation of the merits of the policies adopted by the Government.

Effectively, in compliance with the principle of separation of powers, it is not for the Ombudsman to reflect on whether the introduction of tolls is the best way to finance

the construction of highways or to ensure the financial stability inherent to concession contracts.

For this reason, the Ombudsman's intervention in this matter was restricted to the examination of the procedure for the imposition of tolls, particularly with regard to the means of payment available to the users, as follows:

*A – As for the post-paid system and collection of administrative costs:*

In the absence of an electronic billing system of tolls, the respective collection has, necessarily, to be made under a post-payment system, in which are initially due administrative costs and, in case of repeated lack of voluntary payment, increased administrative costs and fines.

Indeed, the post-payment system (voluntary or coercive) implies charges related to record-keeping, processing and sending data by the motorway companies, which are charged to users while administrative costs.

Users who voluntarily pay the fee only have to bear, as administrative costs, the amount of €0,26 per toll, with a limit of €2,08 for act of payment, to which must be added the value added tax (VAT) at the rate in force at the time of settlement, currently fixed at 23%.

If the user does not pay the fees that are due within the legally prescribed deadline (five business days), an infraction procedure will be initiated, in which administrative costs for each toll rise exponentially. Thus, in case of infraction, the amount of €1,80 (+ VAT) for each toll is due, without the possibility of applying the limit of €2,08 per act of payment.

In fact, if we take the values charged for administrative costs and fines, when compared with the values of the tolls, there is no way to argue the clear discrepancy in terms of magnitude of such values.

Nevertheless, when examining the proportionality of these values, it should be born in mind that the legislator has taken care to treat differently the collection of tolls in the scope of post-payment system, depending on the moment in which the user/infringer settles such fees.

Of course, as the collection procedures evolve, involving the expenditure of more human and technical resources, the associated costs, payable by the infringer who caused them, will also be rising exponentially.

Also, the increase of administrative costs and the imposition of fines, serves the purpose not only to bear the costs of the collection, but also to deter users of highways to evade the payment of fees that are due.

*B – As for the requirement to communicate the change of address:*

When the motorway company notifies the holder of the vehicle identification document to the address therein shown, despite the data is inaccurate or outdated, it does not

deserve any comment from the Ombudsman. In fact, the lack of update that address is only attributable to the owner of the vehicle.

*C – As for the competence of Tax and Customs Authority:*

Tax and Customs Authority is competent to initiate and investigate infraction procedures and to impose the respective fines as well as to collect the debt in the scope of a tax enforcement, if required.

*D – As for the setting and requirement to pay fines arising from the repeated non-payment of toll fees:*

The minimum value of fines imposed is 10 times the value of the toll, but not lower than €25,00 and with a maximum value of the minimum fine value multiplied by 5, with respect for the maximum limits laid down in the general regime of tax infringements.

*E – As for the limitation period to charge the toll fee:*

As for the period of time that the motorway companies have for the purpose of collecting the toll fees, it should be noted that infringement procedures, at the date of the infringement under examination in this particular case, were subject to a limitation period of two years.



**Case Q-8365/13**

**Entity addressed:** Tax Office of Amadora 1

**Date:** 2014/05/20

**Subject:** Tax. Vehicle Circulation Tax (*IUC*)

The Ombudsman kept receiving complaints of citizens faced with assessment of *IUC* for vehicles that they were no longer the owners in the year to which the tax relates. To this must be added the notification for the payment of fines for the delay in paying the tax assessed and, in case of non-payment within the voluntary collection deadline, the corresponding tax enforcements.

In one of those cases, hereby exemplified, since similar to many others, after hearing the addressed entity and examined the subject of the complaint, the complainant was informed as follows: Tax Office of Amadora 1 proved to have answered the request for information of the complainant, informing him that *IUC* is due by the vehicle owner in whose name the vehicle is find registered in the year to which the tax relates.

In the present case, and according to the tax office, the vehicle in question had been registered in the name of the complainant, to the date of cancellation of the vehicle number plate, which occurred after the moment the tax became chargeable.

To answer the question of whether the Tax and Customs Authority could or not, require the payment of *IUC* of the vehicle in question it is essential to look at the legal regime applicable.

Law No. 22-A/2007, of June 29<sup>th</sup>, approved the global reform of vehicle taxation, namely introducing the *IUC*.

The taxable persons are the owners of vehicles, being considered as such those in whose name such vehicles are registered (at the Vehicles Registry).

According to this rule, only the registry update entitles the Tax and Customs Authority to charge the *IUC* to the new owner of the vehicle. Hence, as long as the complainant remained as the owner of the vehicle, he was the *IUC* taxable person.

Individuals and companies who are still shown in the vehicles registry as the owners, do not have any effective mechanism to regularize the registration, despite they already sold the vehicles.

This has tax implications (who is shown in the registry as the owner must pay the *IUC*) and infringement consequences (notifications to pay fines are sent to those shown in the registry as the owners).

Recognizing the merits of the complaints that have been directed to the Ombudsman concerning this matter, he addressed, in due course, a recommendation to the Secretary of State for Transport and Communications, on the problem of cancellation of vehicle number plates and the regularization of ownership of vehicles.

It was, namely, recommended the consideration of a legislative amendment in order to speed up the process of ownership registration transfer, so as to enable the individual seller to register the transfer of ownership of the vehicle, under conditions to be set.

Regarding the temporal incidence of *IUC*, it should be noted that it is annual and is due until the cancellation of the vehicle number plates.

It is possible to cancel the vehicle number plates whenever the detention of the vehicle has been requested for more than six months, by presenting a certificate issued by the police stating that the vehicle was not located (the request for detention envisages to withdraw from circulation the vehicles which ownership is not updated; in fact, the buyer has 60 days to make the registry).

Also, Decree-Law No. 78/2008, of May 6<sup>th</sup>, has established an exceptional and transitional regime for cancelling vehicles number plates, which was in force until December 31<sup>st</sup> 2008.

In addition, during 2008 and 2009, a transitional special regime has been in force facilitating registry, which could be made only with the intervention of the seller or the buyer, with documents suggesting the transfer of ownership, for example, an invoice.

This allows concluding that when the global reform of vehicle taxation was introduced, some measures were taken to regularize the vehicle ownership and avoid as far as possible situations like the one described in the complaint.

Regarding the tax infringement procedures, it should be noted that the lack or delay on payment the *IUC* is subject to a fine. The lack of payment of the fine and administrative costs of the infringement procedures in due time will lead to a tax enforcement.

Also, the infringement procedures are subject to a limitation period of four years.

In cases such as the one that led to the opening of the case referenced above, is still often suggested that complainants consider contacting the Arbitration Centre of the Automobile Sector, entity authorized by the Ministry of Justice to provide information and make available mechanisms for mediation, conciliation and arbitration of conflicts in automobile sector, including the purchase and sale of new or used vehicles.

Otherwise, only by recourse to judicial process may citizens in a situation identical to this complainant, obtain a decision, which recognize the sale of the vehicle and declare, with binding force, the change of ownership in the vehicle registry.



### **Case Q-6199/12**

**Entity addressed:** Trofáguas – Serviços Ambientais, EEM

**Date:** 2014/03/06

**Subject:** Consumption. Sanitation. Solid waste. Social tariffs

The complaint to the Ombudsman questioned why citizens living in the municipality of Trofa - especially those with lower income households - were subject to the payment of sanitation and solid waste fees, as well as the obligation of the public water supply.

Regarding the last issue, the Ombudsman informed that, as a rule, the existence of public water supply or wastewater sanitation less than twenty meters from the boundary of the property entails the abandonment of private solutions of water supply for human consumption or sanitation systems (septic tanks) that were being used. Fail to meet this requirement is subject to fines (up to the amounts of €3,740 or €44,890, depending on whether the offender is an individual or company, respectively).

The binding obligation to connect arises from the need to ensure the quality of the water consumed, the proper treatment of effluents and the rational and sustainable management of water resources.

Corresponding basic sanitation to an assignment of the municipalities on the basis of the management model adopted, they can provide the service directly or through a third party, namely a municipal business company, as it is the case of *Trofáguas – Serviços*

*Ambientais, EEM.* However, municipalities keep the fundamental decision-making powers, such as the adoption of regulations and applicable tariffs.

Given the competence conferred to city councils to fix the prices of services supplied for their municipal services, as well as the fact that their assessment and collection is due, largely, to the financial autonomy of municipalities, the Ombudsman's intervention in this area has proved to be very limited.

Nevertheless, it was clarified that among the various principles which the EU law and national law establish in this regard, the cost recovery should be highlighted.

It is in this context that the municipality of Trofa has been approving the fees payable for the supply of services of urban wastewater sanitation, as well as the monthly charges relating to the provision of the service for the collection, treatment and landfill of municipal solid waste.

As for the sanitation service of urban waste waters, where a connection to the public water supply network exists, users are subject to the payment of a fixed component and a variable component.

Also, it is foreseen a reduction in prices applicable to users with lower incomes.

The application for reduction of the price of the service for the collection, treatment and landfill of municipal solid waste, which the complainant had addressed to Trofáguas, was rejected, namely since the sum of the respective household income exceeded the amount of the highest monthly minimum wage.

### *5.3. Social rights*

#### *5.3.1. Ombudsman's decisions favorable to complainants*

##### *a) Suggestions*

###### **Case Q-0546/14**

**Entity addressed:** Secretaries of State for Solidarity and Social Security, Public Administration and School Administration

**Date:** 2014/04/02

**Subject:** Situation of teachers switching from social protection scheme. Protection on parenting and sickness

**Status:** The suggestion was accepted. The Ombudsman has been informed of the establishment of an inter-ministerial working group for the preparation of appropriate legislation

The precariousness of employment with which many teachers are annually faced have evidenced serious problems of social insecurity, specifically in regards to parenting and sickness. In this respect, it is necessary to improve the convergence of social protection schemes in order to ensure respect for social rights constitutionally enshrined.

Following a number of complaints received about the lack of protection on parenting and disease of the teachers transiting from the convergent social protection scheme for unemployment and, from this, to the general social security scheme, the Ombudsman suggested to the Government (Secretaries of State for Solidarity and Social Security, Public Administration and School Administration) the adoption of a legislative measure that solves the situation.



### **Case Q-3407/13**

**Entity addressed:** Social Security Institute (*ISS*)

**Date:** 2014/01/06

**Subject:** Unemployment benefits calculation. Overpaid benefits. Rectification and revocation of administrative acts

**Status:** The Ombudsman suggestion was not accepted but a new intervention is under consideration

In 2013 the *ISS* considered as undue the unemployment benefits paid to a complainant in 2011/2012 and asked her its repayment. The Ombudsman requested clarification of the legal grounds for that demand and the *ISS* alleged a miscalculation of the benefits which allowed a correction of the amounts at any time.

The Ombudsman could not agree with this position because according to the law, as well as doctrine and jurisprudence, the *ISS* did not simply correct a miscalculation of the benefits but revoked the invalid administrative act that awarded them. Since the revocation occurred after the legal deadline, the Ombudsman addressed the *ISS* a letter requesting the cancellation of the complainant debt.

In the same letter, the Ombudsman also questioned the *ISS* about some illegal guidelines about revocation of administrative acts that were issued in Technical Guideline No. 12/2013 of 06/11/2013 and requested its correction.



**Case Q-0425/12****Entity addressed:** Secretary of State for Solidarity and Social Security**Date:** 2014/03/07**Subject:** Review of the legal framework of the Incapacity Verification System (*SVI*). Decree-Law No. 360/97, of December 17<sup>th</sup>**Status:** The Decree-Law draft is under consideration in the Office of the Secretary of State for Solidarity and Social Security

In this context, the Ombudsman suggested to the Secretary of State for Solidarity and Social Security amendments, with a view to better clarification, transparency and safeguarding of the rights and legitimate interests of citizen, in particular with regard: the identification of doctors in the committees; strict obligation to state reasons of the respective resolutions; criteria for hiring experts; the technical composition of such committees and the delay in medical examinations; costs of revaluation and resource committees

*b) Remarks***Case: Q-1848/14****Entity addressed:** Social Security Institute, IP (ISS)**Date:** 2014/03/26**Subject:** Family allowance for children and young people with disabilities allowance. Proof of disability. Payment start date. Permanent disability. Decree-Law No. 133-B/97, of May 30<sup>th</sup>. Resolution of individual cases and issuing of technical guidelines to services for harmonization of procedures**Status:** All specific cases were resolved and Social Security Institute issued technical guidelines

Several complaints were submitted relating to the family allowance for children and young people with disabilities allowance: non-recognition, suspension of payment and termination were the most frequent complaints.

**Case Q-5665/13****Entity addressed:** Institute of Employment and Professional Training (IEFP) and Social Security Institute (*ISS*)**Date:** 2014/02/06**Subject:** Social protection of unemployed migrant workers or unemployed workers receiving unemployment benefits that go abroad searching for work. Malfunction of the *ISS* and *IEFP* services

**Status:** Both entities expressed concern on the subject and have committed to adopt measures to ensure that their attendance services are duly qualified to provide proper information to citizens, namely in what concerns the social protection of migrant workers

The Ombudsman received a complaint referring the malfunction of Institute of Employment and Professional Training (*IEFP*) and Social Security Institute (*ISS*)

Services, in a case of an unemployed worker who was receiving unemployment benefits, and went abroad searching for work.

Due to inaccurate information provided by both entities concerned, and also to the lack of coordination between them, the citizen lost his unemployment benefits.



#### **Cases Q-0361/14; Q-1539/14; Q-1834/10**

##### **Entities addressed:**

**Q-0361/14:** Secretary of State for Solidarity and Social Security and the Secretary of State for Education and School Administration

**Q-1539/14:** Social Security Institute and General direction of Educational Establishments

**Q-1834/10:** Minister of Solidarity, Employment and Social Security and Minister of Education and Science

**Date:** 2014/02/20, 2014/04/14 e 2014/04/11, respectively

**Subject:** The allowance for special school attendance (or special education allowance)

**Status:** The Ombudsman Recommendation was accepted, and, in August 2014, the Secretary of State for Solidarity and Social Security informed that intended to review and update the regulatory framework of the allowance for special school attendance (special education allowance). Presently, we still await the implementation of the announced legislative amendment

The allowance for special school attendance (or special education allowance) is intended to offset the costs with disabled descendants under 24, who need to attend a private school of special education or need individual expert support when the disability does not require a special school attendance.

Over the past years, the Ombudsman has received a significant number of complaints concerning the allocation of this allowance. Those complaints reflect, on one hand, delays in the assessment of applications and the delay in payment of deferred benefits, and raise, in another hand, several issues concerning the appreciation of the applications as well as

the grounds invoked for refusal decisions, in regard to the interpretation and application of law used by the departments concerned.

This situation has prompted to different interventions of the Ombudsman, culminating in the formulation of Recommendation No. 15-B/2012, addressed to the Secretary of State for Solidarity and Social Security and the Secretary of State for Education and School Administration, aiming the revision of the legal framework of the allowance for special school attendance (special education allowance).

### *5.3.2. Ombudsman's decisions non favourable to complainants*

#### **Case Q-4019/14**

**Entity addressed:** Social Security Institute (*Instituto da Segurança Social, IP - ISS*)

**Date:** 2014/07/31

**Subject:** Early pension following unemployment benefit

**Status:** Complaint has been closed

The Ombudsman received a complaint regarding the penalties applied in the calculation of the pension early, after unemployment benefit. The complainant questioned the legal regime of Decree-Law No. 167-E/2013, of December 13, and the penalty resulting from the application of the sustainability factor. The above mentioned Decree-Law, establishes that it is applicable starting from 1 January 2014 and includes the sustainability factor, which ties the value of new pensions to the evolution of average life expectancy at 66 years of age (current legal retirement age).

Although presented in November 19, 2013, the complainant wanted his pension to be recognized, only, as from 18 February 2014.

The complaint was not accepted. The Ombudsman cannot question the application of the sustainability factor, which is a political decision created for the purpose of ensuring the future funding of social protection systems.



#### **Cases Q-2882/13 and Q-3066/13**

**Entity addressed:** Social Security Institute

**Date:** 2014/12/05

**Subject:** Compensatory benefits for the loss of vacation allowance due to sickness work absences

The Ombudsman received two complaints, contesting ISS's rejection of their requests to receive the compensatory benefits for the loss of vacation allowance due to sickness work absences.

The grounds invoked for ISS's refusal decisions was the extemporaneity of the application submitting.

After analyzing the subject, the Ombudsman concluded that the decision of the ISS was correct and in accordance with the law.



#### **Case Q-6015/14**

**Entity addressed:** Social Security Institute

**Date:** 2014/12/05

**Subject:** Application of the rules contained in the State Budget Laws for 2013 and 2014. Recalculation of the survivor's pension. Application of extraordinary solidarity contribution to survivor and retirement pensions

The rules contained in the laws of the State budget for 2013 and 2014 which introduced and maintained this extraordinary solidarity contribution were challenged.

However, such provisions were appreciated by the Constitutional Court and with some amendments they were kept in force. In this context, the Ombudsman's Office took special care to explain the applicable legal regime.

### *5.4. Workers' rights*

#### *5.4.1. Ombudsman's decisions favorable to complainants*

##### *a) Recommendation*

**Recommendation No. 9/A/2014**

**Cases R-228/11 and Q-352/12**

**Entity addressed:** Chairman of the Board of Directors of the Centre for Vocational Training of the Building Industry and South Public Works (CENFIC)

**Date:** 2014/09/01

**Subject:** Occupations of direction and leadership. Retributory complement. Career evolution

**Status:** Not accepted

With regard to remuneration, was formulated Recommendation no. 9/A/2014 following complaints from several workers from Centre for Vocational Training of Building Industry and South Public Works (*CENFIC*) that there having exercised leadership positions in service commission for several years and even before the start of budgetary restraint policies, saw denied the remuneration purposes and the career development of the exercise of similar positions. This refusal, why not substantiated, motivated that was recommended appreciation and consequent repair of the status of those workers by the applicable legal framework.

### *b) Suggestions*

#### **Case Q-2673/13**

**Entity addressed:** Directorate General for School Administration and Directorate General for Administration and Public Employment

**Date:** 2014/02/11

**Subject:** Absence due to sickness

**Status:** The suggestion formulated in the resolution was accepted in both concrete cases, and lead to legislative amendment, which will prevent the recurrence of similar situations

Two complaints were presented reporting similar situations of two female workers - a teacher and an operational assistant - who have returned to work once they completed 18 months of absence due to sickness. They did not get to complete 30 days of service. Both were submitted to surgical procedures of an urgent nature and oncological reasons, during this period of time. The diagnoses were not related to the previous illnesses.

Both were considered on situation of unpaid leave after having been considered apt in medical panel of General Retirement Fund (*CGA*).

The Ombudsman argued with the addressed public entity which, in the case of a different kind of disease which prevents the worker, in absolute, to fulfil the minimum period of employment after a leave of absence for disease, it should not be qualified as an unpaid leave, since the absence is still objectively justified.

In these specific cases, the requirements of unpredictability, non imputability of impending fact and the absolute impossibility for workers to attend their workplace were fulfilled.



### **Case Q- 4925/13**

**Entity addressed:** Minister of Solidarity, Employment and Social Security

**Date:** 2014/11/19

**Subject:** Active employment measures, employment-insertion contracts and employment-insertion+ contracts<sup>(11)</sup>

**Status:** The response given to the Ombudsman stresses the benefits of these measures, though the need to enhance evaluation, inspection and compliance mechanisms was recognized, in order ensure that the aims of job-insertion contracts are fully pursued

The General Confederation of Portuguese Workers - National Inter-Union (*CGTP-IN*) denounced the persistent use of employment-insertion contracts and employment-insertion contracts+, both by public employers and private non-profit entities, to ensure the fulfilment of needs consistent with vacant workplaces. Multiple particular plaintiffs who have signed such contracts have also presented complaints to the Ombudsman, claiming the same problem. They aspire to see recognized the rights inherent to the employed status, such as holidays or the celebration of employment contracts.

The legal framework governing these contracts expressly prohibits that they can be used to provide work, or tasks that are not merely instrumental to the promoter's main activity.

The Ombudsman suggested to the Minister of Solidarity, Employment and Social Security urgent evaluation of these measures and an effective inspection of ongoing projects, in order to control which activities are being developed by the promoting entities within the framework of these types of contracts. Amendment to the regulations on these matters has also been advised, so as to prevent their abusive use.



### **Case Q-4823/14**

**Entity addressed:** Minister for Education and Science

**Date:** 2014/11/19

**Subject:** Knowledge and Skills Assessment Test for teachers

**Status:** Not accepted

The Ombudsman was called upon to intervene in the second edition of the Knowledge and Skills Assessment Test, which must be undertaken by applicant teachers (July

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(11) Employment-insertion contracts and employment-insertion+ contracts are the names of two programmes which aim to promote employment. These contracts are celebrated between public or private entities and people who are unemployed or receiving unemployment compensation, which agree to perform tasks considered «socially useful».

2014). The significant number of complaints, on the one hand, contested the way this exam was applied in the school year 2013-2014 and, on the other hand, the set of rules concerning the test.

The Ombudsman has not questioned the decision to submit the access to the profession of teacher to the previous demonstration of skills and capabilities through a test of this nature.

Nevertheless, he asked the Minister for Education and Science to reconsider the decision to apply this requirement in the school year 2014-2015. In fact, in the moment when the procedures for this school year were initiated and publicized, not all the teachers had been given the opportunity to perform the test. Therefore, it was concluded that the decisions to exclude candidates, based on lack of approval in the assessment test, resulted of a retroactive application of the requirement, which violated the principles of trust and legal certainty, and the fundamental right of access to public functions on equal terms.

The scheduling of the test with an advance of just four days (instead of the 20 working days that the regulations impose) was also criticized, moreover as it misled candidates to believe that this requirement would not be applicable.

Other complaints claimed that they could not attend the exam for reasons for which they could not be held responsible.

The Ombudsman considered that the right of access to public functions was at stake and claimed for special protection.

The Minister for Education and Science disagreed with the understanding of the Ombudsman about the requirement for approval in the test for the school year 2014-2015. It was also claimed that the matter is being discussed in court, and awaits judicial decision.

### *c) Remarks*

#### **Case Q-6842/12**

**Entity addressed:** Ministry of Health

**Date:** 2014/07/11

**Subject:** Contests. Candidacy restrictions. Freedom and right to equal access to jobs in the public sector

**Status:** In the end, the Minister of Health announced the publication of an administrative decision on the recruitment of doctors for the National Health Service that welcomed the concerns transmitted by the Ombudsman on the subject of candidacy restrictions

The Ombudsman received several complaints concerning the administrative decision of the State Secretary of Health to open tender procedures to the places of junior doctors

in public health establishments limited to physicians who had completed their medical training at a particular period of time.

The right of access to the place of junior doctors is open to all doctors with a specialist degree. In this case several fundamental rights and freedoms have been violated. Namely, the restriction of freedom of application; the violation of the right to equal access to public employment; illegal individualization of candidates with a particular condition (given the specific date of the medical internship); violation of the principle of free circulation of workers and the principle of non-binding commands directed to administrative public establishments and state-owned enterprises.

The Ministry of Health has kept his decision unchanged. But the Central Administration of the Health System (*ACSS, IP*) recognized that it was a controversial issue. For this reason and because was an ongoing review of the medical internship regulations, the concerns expressed by the Ombudsman would have repercussions in the elaboration of the new Statute.

After the case was closed, it was noted that new contracting procedures were opened, in which the contested restriction was no longer applied.



### **Case Q-2736/13**

**Entity addressed:** Treasury Secretary of State

**Date:** 2014/05/16

**Subject:** Transfer of undertakings. Employment contracts

**Status:** No objections from the addressee

The *BPN* was sold by the Government to another Bank (*bank BIC*), but according to the business sale agreement only half the workers would be transferred to this Bank. The remaining employment contracts were previously transmitted to *Parvalorem, SA*, a public company created to relieve the bank from its toxic assets.

The *Parvalorem, SA*, Workers Commission filed a complaint to the Ombudsman, contesting the validity of the transfer of undertaking to the *Parvalorem, SA*, since the only purpose of this agreement was to reduce the number of *BPN* workers before selling it to the *BIC* bank.

In 2013, the Ombudsman drew the attention of the Prime Minister to the fact that the business sale agreement implied nothing but a change in the ownership of the bank, which should not modify the labour structure of the bank neither should it affect the employment contracts.

Moreover, it seemed very questionable that in this case the part of the *BPN* transferred to *Parvalorem, SA* could be qualified as an economic entity which retained its identity, within the meaning of Council Directive 2001/23/EC of 12 March.

The Ombudsman noted that, beyond the choices related to the privatization strategy, in which this body of State is not allowed to interfere, the law rendered it impossible to accept that the profitability of a sale business has been pursued with sacrifice of the rights of workers.

The intervention of the Ombudsman came to an end, since for a substantial part of the workers, the matter is to be settled in court. However, remarks were made to the Secretary of the Treasury on the possible violation of the legal framework applicable. This public entity did not counter the arguments given.



**Case Q-0118/14**

**Entity addressed:** Social Security Institute (ISS, IP).

**Date:** 2014/08/06

**Subject:** Unjustified absences. Repayment of public funds. Deductions from salary

**Status:** No objections from the addressee

A public servant of the Social Security Institute (*ISS, IP*) requested the intervention of the Ombudsman. This employee said he had not received his salary in October 2013. Regarding the November salary he had received less than half the amount owed.

The Institute had deducted from the plaintiff's salary the number of days of unjustified absence that were the result of failure to comply with the working schedule in 2012.

The Ombudsman drew the attention of the President of the Directing Council of the Social Security Institute for the special protection granted by Portuguese law to the fundamental right to retribution. Therefore, the power to make discounts and deductions from public servants' remuneration is especially limited. The public employer cannot deduct from salaries due to credits he has over the worker or make any discounts or deductions that are not permitted by law.

Not even the worker is allowed to freely dispose of his wage claims because it is forbidden by law. The «urgent need to ensure reimbursement of public funds unduly paid» is not a valid justification for the infringement of the fundamental right to remuneration for work. The public entity addressed did not counter the arguments given.

### *5.4.2. Ombudsman 's decisions non favourable to complainants*

**Case Q-0825/14**

**Entity addressed:** University of Minho

**Date:** 2014/04/11

**Subject:** Program of rescissions by mutual agreement. Public interest in well-functioning public services

A worker of the Minho University, who wanted to join the program of rescissions by mutual agreement, requested the intervention of the Ombudsman.

The worker aspired to join the program, and the Secretary of State for Public Administration authorized the celebration of the rescission agreement. However, the employee was not called to celebrate the agreement.

After hearing the public entities involved, it was possible to conclude that only at the end of the procedure has the Rector of the University of Minho been called to state in which «areas there might be reduction of workers without affecting the regular functioning of the activities of the employer».

The public entity addressed concluded it would not be possible to celebrate that agreement with the employee. Reducing its job would compromise the provision of essential services to students at the University of Minho. This would jeopardize the achievement of public interests by the institution.

In conclusion, termination of that employment contract would not guarantee «the attainment of efficiency gains and the permanent reduction of expense for public employer».

Thus, the Ombudsman could not intervene as requested by the complainant.



**Case Q- 2276/14**

**Entity addressed:** Municipality of Lamego

**Date:** 2014/12/18

**Subject:** Tender procedure. Experimental period. Candidates holders of category put out to tender. Applicable selection methods

A candidate in tender procedure for the constitution of legal relationship of public employment, opened by the Municipality of Lamego, complained to the Ombudsman.

The applicant was summoned to perform a knowledge assessment test. He sustained that he should not be obliged to undertake the test, since he was already a civil servant, although in experimental period. Therefore, he was entitled to be submitted only to curriculum evaluation and interview methods of selection.

The Mayor of Lamego was heard about the complaint. He has argued that, only after the end of the experimental period can civil servants be considered integrated in the career. During the experimental period the legal status of workers is not consolidated.

Once completed the investigation of the case and analysed the arguments put forward by both parties, the Ombudsman found that the interpretation promoted by the Mayor of Lamego is not objectionable. In fact, before the experimental period is successfully completed, there is not a stable legal relationship to justify the exemption from usually required selection methods.

Excusing candidates to perform the knowledge assessment test can only be granted to applicants who hold an equivalent category, or have already executed the assignments or characteristic activity of the vacant job.

In fact, if the experimental period is not successful, the nomination ceases and the public employee returns to its previous legal and functional situation. In cases where there is no previous bond to the Public Administration, the contractual relationship ceases with no right to receive a compensation.

In this situation the Ombudsman could not find the complaint to be righteous.



#### **Case Q- 6373/14**

**Entity addressed:** Municipality of Trancoso

**Date:** 2014/10/25

**Subject:** Request for mobility inter-careers

A worker with the technical assistant category contested the rejection of a request to perform duties as a superior technique in an inter-career mobility scheme. The plaintiff claimed to hold the legally required qualifications level and that he already performed the corresponding activity at the functional content of the career.

The issue was appreciated. It was concluded that the decision of the public entity addressed did not contradict the applicable legal framework. In fact, the exercise of functions in internal mobility scheme in any of its forms is not a right of workers. The mobility is always dependent on the existence of «convenience to the public interest, when the economy, effectiveness and efficiency of the agencies or services so require».

Internal mobility of a worker is a human resource management measure that the Administration, within their management skills and according to the interests of the service, may or may not use.

Assessment of the convenience of such a measure can only be made case by case. This implies a judgment that, based on criteria of merit and opportunity, focuses on the concrete reality of the services and their needs. The Ombudsman cannot replace this competence of the public employer.

The mere holding of proper qualification is not sufficient to give the employee the right to exercise functions in a higher technical career.

The Ombudsman noted that it is true that the workers are not entitled to internal mobility. On the other hand, it cannot be required of them to exercise functions that do not correspond to the rank they hold. Therefore, if the activity performed does not match the functional content of their own category, they may request to be assigned the performance of appropriate functions in that category.

## *5.5. Right to justice and security*

### *5.5.1. Ombudsman's decisions favorable to complainants*

#### *a) Recommendation*

**Recommendation No. 3/A/14**

**Case Q-6808/13**

**Entity addressed:** Mayor of Oliveira de Azeméis

**Date:** 2014/07/18

**Subject:** Processes for parking offenses

**Status:** Not accepted

This Recommendation had to do with the fact that the city council decided to instruct processes for parking offenses under Regulation Municipal Parking Limited Duration Controlled parking meters.

The Ombudsman issued the Recommendation No. 3/A/14 to the Mayor of Oliveira de Azeméis, on the question of the competence of municipalities to instruct misdemeanor offenses procedures for road infractions and to impose fines for illegal parking.

The Ombudsman recommended the repeal of a municipal regulation, because it contained provisions contrary to the Road Traffic Code, and that all misdemeanor offenses

procedures should be filed, because only the National Road Safety Authority can process and impose fines for illegal parking, not having local council competencies.

It was also recommended the fulfilment of paragraph 1, of article 169, of the Road Traffic Code, and that all the misdemeanor offenses by road traffic penalties were sent to be instructed by the competent authority, the National Road Safety Authority.

In response, the municipality of Oliveira de Azeméis reported non-compliance the recommendation, claiming, among other arguments already invoked, the regulatory power of the municipality.

The Ombudsman considered exhausted the possibility to resolve the issue satisfactorily and made use of the option provided for in paragraph 5, of article 38, of the Statute of the Portuguese Ombudsman and informed the Municipal Assembly of Oliveira de Azeméis the position advocated in the recommendation.

### *b) Suggestions*

#### **Case Q-7011/12**

**Entity addressed:** The Mayor of Porto

**Date:** 2014/09/26

**Subject:** Temporary road signs

**Status:** The recipient did not raise objections

The Ombudsman addressed a communication to the Mayor of Porto about the cases of temporary parking ban, which often give rise to supervisory and sanctioning intervention of Municipal police.

In accordance with the provisions of the Regulation of traffic Signs, temporary signs are designed to prevent users of the existence of works or occasional obstacles in public and broadcasting obligations, restrictions or prohibitions which temporarily imposed special.

Many times, it is alleged that parking occurs in time prior to the placing of signs.

However, whenever a vehicle is parked before be delimited the zone governed by temporary signage, there is the practice of any misdemeanor offense.

Thus, the Ombudsman argued that in situations where the right services and police forces involved in regulatory terms or imposing penalties for violation of the temporary parking ban imposed by the completion of work on the public highway, there should be special caution and restraint.



**Case Q-7635/13**

**Entity addressed:** Institute of Registries and Notaries (*IRN*)

**Date:** 2014/07/08

**Subject:** Citizen Card. Full Adoption. Secrecy of Identity

**Status:** The Government committed to new legislation on the matter

Several citizens submitted to the Ombudsman a claim that the rules concerning the issuing of the Citizen Card (*CC*) do not comply with the Civil Code rules concerning full adoption (article 1985).

In fact, article 1985 states that the adopters' identity cannot be disclosed to the natural parents unless otherwise expressly provided by the adopter.

But through the databases that feed information to the *CC* confidential information becomes available to those persons who already have knowledge of the card numbers comprised in the *CC*. That is so because the fully adopted child keeps the previous civil, fiscal, social security and health card numbers.

The *IRN* was heard in the inquiry in order to ascertain whether the issue had already been pondered upon and whether additional protection of the secrecy of identity should be sought. The *IRN* endorsed a pronouncement by its Consultative Council recognizing the need to change the Citizen Card law.

Therefore an amendment should be made, adding a paragraph to article 17. of Law No. 7/2007 of February 5, stating that:

«At the request of the person concerned or of a legal representative, a new civil identity number can be assigned, by order of the President of the Institute of Registries and Notaries on the following cases:

Usurpation of identity, forgery or usage of a third party document, provided that the said document is still within its expiration date;

Full adoption;

Change of sex in the civil registry and corresponding change of proper name».

Bearing in mind the cases under the scrutiny of this organ of the State and the scope of the proposed changes, the Ombudsman decided that the Ministry of Justice should also be heard. Ministry of Justice's office confirmed the amendment process was underway, adding that the project would be submitted by the *IRN*.

The case was closed on those grounds.

Notwithstanding, a suggestion was made to the concerned authorities, underlining not only the paramount importance of a swift resolution of the concrete cases that motivated the Ombudsman intervention but also drawing the attention on the necessity that

all numbers included in the *CC* must be altered (civil, fiscal, social security and health card numbers).



**Case Q-7357/13**

**Entity addressed:** Public Municipal Parking Enterprise of Lisbon (*EMEL*)

**Date:** 2014/01/20

**Subject:** Return of locking, deposit and removal rates in case of dismissal of the misdemeanor offenses procedures misdemeanor offenses procedures, by prescription

**Status:** The recipient did not raise objections

The Ombudsman received a complaint about a road misdemeanor offense in which fees were paid, for the car locking, depositing and transportation.

However, the process for illegal parking has never been judged, because of the prescription.

The Ombudsman considered that public companies cannot keep amounts they received because of misdemeanor offenses procedures that were filed by prescription.

Thus, the Ombudsman has taken position in order to be always returned such amounts.



*c) Remarks*

**Case Q-1725/13**

**Entity addressed:** President of the Parliament and the Prime Minister

**Date:** 2014/11/18

**Subject:** Payment of amounts due under compliance of judicial decisions

**Status:** The recipients did not raise objections

The Ombudsman addressed the President of the Parliament and the Prime Minister to call attention to the inadequacy of the existing fund on the High Council of the Administrative and Fiscal Courts for payment of amounts due under compliance of judicial decisions.

The position of Ombudsman came following the information of the High Council of the Administrative and Fiscal Courts that the existing Fund to pay compensation fixed by the courts is exhausted.

The Ombudsman also noted that, in accordance with the provisions of paragraph 3, of article 172, of the code of procedure in administrative courts, the fund should correspond in each year to the cumulative amount of sentences imposed in the previous year.



**Case Q-1375/13**

**Entity addressed:** National Direction of the Public Safety Police

**Date:** 2014/05/14

**Subject:** Disciplinary responsibilities of police officers

**Status:** The recipient did not raise objections

The Ombudsman was informed of a case that involved a Brazilian citizen and two police officers. What began as an ordinary situation (a brief touch of horn), though likely to constitute an misdemeanor offense, punishable by a fine in accordance with Road Traffic Code ended with the citizen thrown to the ground, immobilized, handcuffed and arrested.

The Ombudsman drew the attention of the National Direction of the Public Safety Police for the need of the elements of that Corporation are advised to respect the rules that impose exemption, impartiality and self-control.

The Ombudsman also drew attention to the need for compliance with the principles of the prohibition of excess, of equality and non-discrimination in police action.

In the present case, the Ombudsman considered that, in the face of a situation of transgression of the Road Traffic Code, which is reasonably expected of a police officer is so only the lifting of the respective administrative infraction proceeding.

However, what occurred in this case was a chain of several acts, some of them unclear, that have culminated in the use of force on the part of one of the police agents.

In short, the concern of the Ombudsman was the fulfilment of the principles of prohibition of excess and respect for rights, freedoms and guarantees of citizens, which led this organ of the State to ensure the clearance of disciplinary responsibility.



**Case Q-7246/13****Entity addressed:** Institute of Social Security**Date:** 2014/01/24**Subject:** Legal protection in transnational litigation**Status:** The case submitted to the Ombudsman was resolved

A Portuguese citizen informed the Portuguese Ombudsman that it had been notified by a French court and that she had two months to appeal the decision.

So, she submitted a request to the Institute of Social Security to procedural intervention in a transnational litigation and having presented document in the Portuguese language, the translation had to be made into the language of the court, in case the French.

The Social Security Institute has recognized there is delay in translation, claiming that the service contracts to that effect have expired.

However, the Ombudsman understood formulate called attention to the Social Security Institute, for not having provided timely celebration or renewal of services necessary for the guarantee of access to the law and the courts.

At the same time, the Ombudsman argued that, in the event the interested managed to get the translation by other means, should the Social Security Institute to refund the respective costs.

### *5.5.2. Ombudsman's decisions non favourable to complainants*

**Case Q-1383/14****Entity addressed:** Institute of Registries and Notaries (*IRN*)**Date:** 2014/05/26**Subject:** Pre-approval of firm. Online registration

The Ombudsman's intervention was requested by a citizen who had presented with success, on a Friday, an application of pre-approval of firm with the competent departments of the Institute of Registries and Notaries.

However, he was prevented from continuing the process because the request should have been delivered in services within 24 hours, that didn't happen.

The complainant argued that, given that intervened two non-working days when Services were closed, that should be taken into account.

But the Institute clarified that the procedure adopted respect the law.

This is an online procedure which does not depend on the effective functioning of the services, not justifying the distinction of working days.

In fact, the 24 hours deadline has to be understood as an added value to stakeholders, to enable them to formulate requests or give continuity 24 hours a day, seven days a week.



**Case Q-5263/13**

**Entity addressed:** Public Security Police

**Date:** 2014/02/13

**Subject:** Use of neutralizing gas by police officers

The Ombudsman received a complaint concerning the performance of police officers of Public Security Police, particularly with regard to the use of neutralizing gas in a street fair.

It was intended to investigate the situation and the discharge of responsibilities.

In that situation, there has been a road traffic offence that gave way to action by competent police officer.

However, the booked citizen had refused to remove the car from the place, despite the order issued by the police officer.

In addition, many people that gathered at the site, in a situation of considerable numerical superiority with regard to police officers, have threatened the police elements and incurred in crime of disobedience to the authority, by virtue of the non-compliance of the order issued to disperse.

For all, the Ombudsman concluded that the use of neutralizing gas will not have been neither disproportionate nor unnecessary or inadequate.



**Complaints No. 2730/2014 and No. 16130/2014**

**Entity addressed:** Ministry of Justice

**Date:** 2014/10/16

**Subject:** Appeal. Dismissal of judicial leave

It has been submitted to the Ombudsman a complaint concerning the impossibility of a reclude appeal, in his own interest, regarding any disagreement with the court order that denied judicial leave.

The complaint presented the suggestion of legislative amendment, as it was understood that the regime currently in force was contrary to the Portuguese Constitution, by

not recognizing active legitimacy for not recognizing the prisoner concerned, but only to the public prosecutor.

However, it was understood that the Ombudsman should not open a procedure to study the possible unconstitutionality of normative solution.

The problem must be seen in the light of the different nature of the parole and judicial leave.

The parole first is an incident of the execution of the prison sentence and not, for example, a coercive measure of socialization. Therefore, its implementation always depends on the consent of the condemned and never exceeds the period of imprisonment.

But the judicial leave is a power-duty on the way of execution of the imprisonment sentence.

And the Constitutional Court has already decided that the standard concerned was not contrary to the Portuguese Constitution.

## *5.6. Rights, freedoms and guarantees; health, education and constitutionality valuations*

### *5.6.1. Ombudsman's decisions favorable to complainants*

#### *a) Suggestions*

##### **Case Q-6132/14**

**Entity addressed:** Basic and Secondary Education Secretary of State

**Date:** 2014/12/18

**Subject:** Organisation of classes integrating pupils with special educational needs and implementation of normatively set quantitative limits

**Status:** No objections from the addressee

Several complaints were filed about the non-compliance of school board decisions about the quantitative limits concerning classes with children with special educational needs (*SEN*), more often on the 1st and 2nd cycles of basic education.

These standards provide for reductions, enforcing two limits, one of the total number of pupils and the other concerning children with *SEN*, if the «individual educational program so provides and the respective degree of functionality justifies» this reduction. It is expected, therefore, a maximum of 20 pupils, of which no more than two will meet the conditions lately described.

After a short inquiry, the origin of these disputes was invariably found in the interpretation, for each concrete situation, whether «the respective degree of functionality»

justified or not the said reduction of the class size. Allegedly, a general guideline emanated from the General Directorate for Schools admitted that this degree of functionality should only be relevant if one from a catalogue of educational measures, prescribed in Decree-Law No. 3/2008 of January 7 (article 16, 2, b) e) or f), was previously deemed as adequate to the child concerned.

This criterium not being explicit in the normative texts, the confusion among families and teachers was reasonable, as the other requirement, the specific provision in the individual plan, always existed and was easier to control and understand.

As technical discretionary powers were at stake, the Ombudsman, likewise to many other similar situations, restrained from intervene in a specific case, unless serious or manifest error arose from the inquiry.

However, in general terms, a set of remarks was made to the Government. Concerning the above said guideline and assuming it was the result of technical work, the Ombudsman suggested the relevant reports should be made public, allowing to parents and schools to discern the reasoning behind the decision taken and to scrutiny such a conclusion.

If this guideline was deemed correct, then its content should be more explicit in the norms applicable, for instance containing express references to the educational measures established in Decree-Law No. 3/2008.

The Ombudsman recognized that the strict enforcement of the existing reduction rules could run into justifiable difficulties, due to the demographic reality of each school and the geographical set. An example was made with a hypothetical school, with 62 students enrolled, of which 11 motivating the said class reduction. This would involve the setting up of six groups, each with 10 or 11 pupils, i.e. all about half of the regular size established in the same rule.

Acknowledging this difficulty from the said perspective, but also the necessity to correctly address the special situations at stake, the Ombudsman stressed that the same goal could be achieved by an increase in the resources supplied to the class in question, as a whole or especially targeting the children with *SEN*.



**Case Q-8473/13**

**Entity addressed:** Paços de Ferreira Prison

**Date:** 2014/05/23

**Subject:** Maximum number of visitors per inmate and cost incurred emitting new visitor's card due to modification of the underlying social relationship

**Status:** Non accepted

Two limitations of visits, occurring at Paços de Ferreira Prison, led to the lodging of a complaint before the Ombudsman.

One of the causes was the limitation to a maximum of twenty different visitors to each inmate. The other issue was the fee collected for issuing another visitor's card, when the underlying social connection between visitor and inmate changed (for instance, from girlfriend to wife).

The Prison, to the first issued, argued with the limits established in the General Regulation of Prisons and the shortage of human and material means available.

The Ombudsman did not agree with these arguments. The General Regulation provides only quantitative restrictions for a certain period of visit, limiting access to three people, not including children under the age of 3 years, for each instance. Nothing prevents, however, a significant larger number of possible visitors (for example, for cases of several children, siblings or other relatives), as long as the actual visits take place in several different days.

A brief inquiry found that this limitation was non-existent in several prisons similar in size, with the same level of resources. The Ombudsman noted that the shortage of human resources could justify only a greater delay in the creation of the visitor's registry, but only in the setting-up of this new system and issuing of cards to the whole prison population.

Regarding the cost of the visiting card issuance, it should only be charged when a loss or damage is attributable to the visitor.



#### **Case Q-1820/14**

**Entity addressed:** Local Health Unit Alto Minho

**Date:** 2014/09/30

**Subject:** Visit procedures to a patient internee's relatives; information about health status; Special visitor statute

**Status:** Proposal accepted

A citizen complained about the difficulties opposed to a relative of a person who was interned at the Local Health Unit Alto Minho, concerning:

a) The refusal to disclose information, by phone, about the health condition of the internee;

b) The refusal of delivery of a written document, attesting the consequent displacement and presence of the relative concerned, at the hospital facility, indicating this kind of document was only delivered to beneficiaries of the special visitor statute, which it was not the case.

The Local Health Unit was invited to clarify the reasons for these decisions. After review of the existing regulations, three issues, related to the hospitalized patient status, were deemed worthy of correction:

- a) The rules about providing information by telephone;
- b) The issuance of a document proving the presence of a certain person in the facility, and
- c) The concept of special visitor, as defined in the Regulation about visits of the Local Health Unit.

Regarding information by telephone and considering as a principle the protection of personal data and the privacy rights of patients, the first remark was about the essential difference between those patients able to express their will on providing information to a third part and those who cannot do it. In the first case, the identity of whom may legitimately require information about the health status of the patient and its evolution should be fixed at the time of admission.

The Ombudsman emphasized the increasing complexity of family relationships, being normal the confluence of a legitimate concern about a relative's health condition and the impossibility to collect this information in person, at the Hospital.

The Chart of Rights of the Internee Person, approved by the General Directorate of Health, recognized, ultimately, the possibility of providing truthful information by telephone, even without a certain proof of the caller's identity (Section 9, paragraph 5). If this extreme case was to be accepted, the normal situation, where the caller could be identified, should certainly be more worthy of consideration.

Several methods for certification of identity could alternatively be used, such as the existence of a secret code, provided to an internee's relative during admission or the registration of an authorized phone number.

Concerning the documentary proof of presence, the Ombudsman considered that this kind of document should always be issued to every person requiring it. It was not the Hospital role to address where the document or the underlying situation were to be considered or not as relevant, by third parties, like schools or employers.

Finally, the concept of special visitor was discussed. Being reserved to direct relatives, in the first degree, i.e. parents, sons and daughters, the wide variability of today's family relationships was underlined, the Ombudsman emphasizing that a broader definition should be established, in order to accommodate (in cases not designated by the patient), other concerned persons that, in each actual case, were able and willing to accept this status and the rights and obligations involved.

## *b) Remarks*

### **Case Q-0486/14**

**Entity addressed:** Regional Directorate of Lisbon, Tagus Valley and Alentejo of the Foreigners and Borders Service

**Date:** 2014/02/14

**Subject:** Dismissal of residence permit with visa waiver, based on the absence abroad motivated by renewal of passport

**Status:** Proposal accepted with issue of the permit requested

A foreign citizen, national of Nigeria, complained to the Ombudsman about the Foreigners and Borders Service's intention of rejecting his application for a grant of residence permit with visa waiver.

The request was based on a legal provision that allows to grant residence permits to those who, having lost their previous right of residence, have never since been absent from the national territory.

In this case, the applicant left only Portugal for a few days, on a single occasion, solely for the purpose of renewing his passport. The Embassy of Nigeria in Lisbon certified that no technical conditions were available to issue passports, therefore requiring the displacement abroad, as it happened.

The Ombudsman addressed the Foreigners and Borders Service emphasizing that any application for a residence permit grant requires the possession of a valid passport.

The displacement abroad was the only mean to meet this legal obligation. The grant of residence permits with visa waiver in the said conditions should not be limited to these nationals of countries with sufficient means in Portugal to locally issue passports.

The Ombudsman proposed to the entity concerned to deem the said absence as irrelevant. This proposal was accepted and the residence permit duly issued.



### **Case Q-2055/14**

**Entity addressed:** Local Health Unit Litoral Alentejano

**Date:** 2014/07/07

**Subject:** Compliance with the maximum waiting time for a colonoscopy

**Status:** The assumption of costs in the particular case was refused, asserting prior information to the user of the availability of alternatives paid by the NHS

It was claimed that a citizen, needing to undergo a colonoscopy, was simply informed, by the Local Health Unit Litoral Alentejano, of the predictable waiting time of six months, without the offer of possible alternatives.

The inquiry of the Ombudsman focused on the evaluation of the existence of such alternatives, the availability of this information to patients and the planned measures to prevent or minimize the constraints declared, in particular with regard to colonoscopies, but also about upper endoscopies or respiratory function tests.

The Local Health Unit recognised its failure to practice reasonable waiting times, however this problem being addressed, with the acquisition of another colonoscopy equipment and the adaptation of schedules of the existing human resources. Another gastroenterologist was due to being engaged, shortly.

Nevertheless, the Ombudsman stressed that, given the insufficient installed own capacity to meet, in due time, the needs of the population served, the Local Health Unit should ensure access to the required healthcare exam, using other hospital entities of the NHS or even external providers, by a suitable agreement. The user should be informed as soon as predictable excessive waiting time is detected, if possible in the very scheduling of the exam.

Although there is still no provision about maximum guaranteed response times to carry out diagnostic and therapeutic exams, the Ombudsman underlined that the readiness of access to healthcare is a right recognized by the Health Act.

The determination of what should be understood by reasonable waiting time, in circumstances where a maximum guaranteed response time has not been set, should be assessed, preferably, through the analysis of guidelines and clinical standards in use, as exemplified by the standard proposed by the General-Directorate of Health on the Opportunistic Screening of the Colon and Rectum Cancer, of March 31, 2014, especially after the respective approval.

The Ombudsman stated to the Hospital that adequate information on the expected waiting time, as well as the hypothetic referral procedures, should preferably be given in writing, for complete clarification of users and further monitoring, internal and external.

As it seemed that the complainant was only informed of the alternatives after he had required, at his own expense, the intervention of a private clinic, the Ombudsman suggested that the financial costs incurred by the user should be supported by the Local Health Unit.

Finally, the Local Health Unit admitting the delay for a colonoscopy would be much shorter if the exam was required by its own gastroenterologists, with note of urgency, the Ombudsman warned this practice could only be qualified as legal if to similar clinical information, issued by prescribing physicians from the primary care units, was given the same treatment and prioritization.



**Case Q-7522/14****Entity addressed:** Municipality of Sintra**Date:** 2014/12/15**Subject:** Distribution of religious information in a public space without licensing**Status:** No objections from the addressee

A certain Church complained against the Municipal Police of Sintra, claiming to have been prevented from distributing brochures of religious nature in a public space, allegedly by violation of the Advertising, Other Uses of Public Space and Urban Furniture Regulation of this municipality, requiring in general terms a prior licensing for similar initiatives.

Article 3, paragraph 5 a), of the same Regulation excludes from its scope messages without commercial purposes, including political and trade union's issues, these being subject to the general law.

The Ombudsman considered that religious messages were also to be included in this exception, therefore excluding the application of this Regulation.

The non-commercial nature of religious propaganda was stressed to the Municipality, framing the whole situation under the right of everyone and every cult to «profess their religious belief, look for new believers, express and disseminate freely by the word, the image or by any other means, their thinking in religious matters» (Law of Religious Freedom).

The Municipality of Sintra was thus urged to adopt the necessary procedures to fully clarify the competent municipal services in this area, so that the distribution of religious information would not be subject to the same restraints enforced to commercial advertising.

### *5.6.2. Ombudsman's decisions non favourable to complainants*

**Case Q-1407/12****Entity addressed:** Parliament**Date:** 2014/09/15**Subject:** Interest applicable to tax debts during judicial procedures.

The amendment in paragraphs 2 and 3, of Article 44, of the General Tax Law by the 2012 State Budget Law was reported to the Ombudsman, claiming it to be unconstitutional.

The criticized solution eliminated the time limits previously established to the interest applicable to tax debts, when a judicial procedure is pending. The immediate enforcement of this rule to already pending procedures was also deemed as unconstitutional.

The Ombudsman decided not to seize the Constitutional Court, considering the principles of protection of legitimate expectations and legal certainty, contained in the rule of law principle.

Following the judgment of the Constitutional Court no. 6/2014, it was stressed there is not «“a right to non-frustration of legal expectations or maintenance of the legal regime in lasting legal relationships or relatively complex facts already partially realized” to conclude that the legislature is not prevented from changing the legal system affecting legal relations already established and that still exist at the time of issuing the new rules, being this a necessary consequence of the self-modifiability of laws (Ruling No. 287/90)», this statement being counter-checked with the provision of a “a primal objective of public policy that can justify the change.”

The need to address the “bottlenecks in the tax appeals system” was expressly included in the Memorandum of Understanding on Specific Economic Policy Conditionality, dated May 17, 2011, signed by Portugal within the context of the economic and financial assistance program. Among other measures, its paragraph 3.35 reads as follows: «ii. Applying interest charges on the outstanding debt over the whole appeal period using an interest rate above market levels. Impose a special statutory interest on non-compliance with a tax court decision».

This legal solution, addressed to the extending of the «statutory interests for the entire court proceeding» was also mentioned in the same document as one of the «extending statutory interests for the entire the court proceeding».

As a ground for establishing the challenged legal solution, the speedy improvement of the resolution of disputes between the administration and the taxpayer (also addressed by the introduction of arbitration in this field) ensured more effective and prompt collection of revenue.

The protection of the legally protected rights and interests of taxpayers was not considered to be affected, as the collection of an appropriate interest rate was deemed adequate to compensate the state for the late payment of a tribute.

The constitutionality of the immediate application of this rule to pending cases could be by nature verified, in each case, by an appeal to the Constitutional Court, in this way making inappropriate and irrelevant any initiative of the Ombudsman, in the field of the successive abstract control.



**Case Q-6172/14****Entity addressed:** Primary School Templars (Tomar)**Date:** 2014/12/17**Subject:** Alleged discrimination on class constitution of the 1st cycle of basic education composed exclusively of Roma children

In a primary school, the setting up of a class, exclusively integrated by Roma pupils, was deemed, in a complaint to the Ombudsman, as promoting segregation, affecting the right to equal opportunities and leading to exclusion.

The situation described was evaluated, with contacts held with the concerned School and the central services of the Ministry of Education and Science, focusing on the circumstances underlying the formation of this class and the criteria for pupils' selection.

The explanations and data received were sufficient to exclude the alleged intention of segregation.

This group of pupils gathered all situations of school failure, in many cases due to non-attendance, thus intending to concentrate and strengthen the educational intervention.

No other pupil, integrating other established classes, was under the same conditions.

On the other hand, the group in question did not exhaust all Roma children attending that School. About 25% of pupils were of this ethnic group, in a total of 33 children. As the class in question was formed by 14 children, which signified 19 other Roma children were duly integrated into other classes, under equal conditions, as required by Law.

There was also no restriction on the use of school facilities and equal access was provided to playground time and all other school activities.

The smaller size of this class and the specialized teacher allocated, with previous experience in similar cases, were flagged with positive appreciation, the Ombudsman's monitoring extending for the first few months of activities, with the acknowledgment of good results.

The School's Educational Project included measures to promote educational and social inclusion of pupils, leading to the integration of children of different ethnicities and social origins. An auxiliary worker of Roma ethnicity was hired, with the support of the local Municipality, to improve communication with families.

The Ombudsman concluded, however, that a more effective dialogue could have been established with the families of the children involved. It was thus proposed that, in future cases, increased contacts with the families, explaining the intended actions, should be emphasized as a priority requirement.



**Case Q-3266/14**

**Entity addressed:** *ADSE* [public entity managing healthcare insurance for civil servants]

**Date:** 2014/06/27

**Subject:** *ADSE* financing of healthcare provided abroad

The intervention of the Ombudsman was requested against a decision of *ADSE*, denying a request for reimbursement of health expenses incurred abroad, by a beneficiary who chose to undergo a certain treatment, not provided in Portugal.

The complainant requested that *ADSE* should pay him 25% of the total expenditure incurred with the use of dendritic cells for cancer immunotherapy, a therapy accessed in Germany. No medical prescription, signifying the clinical indication, was presented.

Under the legal regime that rules the operation of *ADSE* healthcare financing scheme, all costs concerning medical intervention made abroad, beyond the scope of the European Health Insurance Card or previously authorized (previously by form E112, currently form S2), can only be deemed relevant if following certain norms, contained in articles 31 to 34 of Decree-Law no. 118/83 of February 25, amended by Decree-Law No. 234/2005 of December 30.

In general terms, two situations could generate a reimbursement right for medical care endured abroad:

- i*) when motivated by the lack of technical means in Portugal for the required care;
- ii*) for any other reason.

In the first case, the reimbursement, of 98% of expenses incurred, is allowed when a specific medical certificate is obtained, certifying the underlying circumstances, and a reasoned decision of the *ADSE* exists, recognising this right. This was not the actual case.

The second situation, enforcing a residual reimbursement of 25%, did not stipulated substantive or formal requirements, giving a broader freedom of decision to *ADSE* to request information and decide as deemed justified.

The therapy accessed is classified as «Advanced Biological Drug Therapy», as confirmed by the National Authority of Medicines and Health Products (*Infarmed*).

The special regime about drugs, contained in the said Decree-Law no. 118/83, stated that the sharing of costs «in the acquisition of foreign drugs recognized as such by the relevant departments of the Ministry of Health can only be prescribed by the legally authorized bodies» including when they do not exist in the domestic market.

It was considered that it was not *ADSE* role to verify the safety, efficacy and quality of healthcare and medicines financed, this task being committed to other national authorities, with particular relevance to *Infarmed* and the General Directorate of Health.

The position of these two national entities, technically competent in this regard, was duly taken into consideration by *ADSE*, confirming there is no authorization for use of

the product concerned. Protective reasons of public health and safety of beneficiaries justified the remission, in the decision of *ADSE*, to the adopted guidelines on the framework to give to treatment with dendritic cells, by the aforementioned bodies, namely the General Directorate of Health Guidance No. 008/2013 of July 18, 2013, and the *Infarmed* document dated July 30, 2013, entitled «Clarification on Dendritic Cells for Autologous Immunotherapy of Cancer».

The understanding that, towards the residual reimbursement of 25% (therefore excluding the situations entailing a concrete clinical indication or certificated by the European Health Insurance Card and Form S2/E112), only healthcare recognised by the Portuguese competent authorities is admissible, was accepted by the Ombudsman.

The decision of *ADSE* was therefore considered as substantively adequate. The Ombudsman highlighted, from a formal point of view, the needed strengthening of the explanation of each decision's grounds, as well as improved legal clarity regarding access to cross-border healthcare by patient choice, and the integration of these general rules with those ruling the purchase of medical products abroad and the European regulations.

## *5.7. Office at the Autonomous Region of the Azores*

### *5.7.1. Ombudsman's decisions favorable to complainants*

#### *a) Suggestion*

**Case Q-1758/14**

**Entity addressed:** Hospital do Divino Espírito Santo de Ponta Delgada, EPE

**Date:** 2014/08/03

**Subject:** Health. Patient's right to be accompanied

**Status:** No answer until 2014.12.31

The Ombudsman agreed with the Hospital that in the case before him there was not a right of the patient to be accompanied that had to be protected. Notwithstanding, the Ombudsman suggested that a special attention had to be given to that issue, so that a right that has its origins in the health basic law shall not be voided.

#### *b) Remarks*

**Case Q-5069/12****Entity addressed:** Regional Directorate of Health**Data:** 2014/08/19**Subject:** Administrative Procedure. Book of Complaints**Status:** The Autonomous Regional Administration has issued an apology to the complainants

A complaint was made in the Book of Complaint of a Health Centre but no inquiries were made, though the facts, as outlined, could have had significant disciplinary consequences. Because the complaint to the Ombudsman was made too late, the limitation period for disciplinary action had already expired for most of them. Notwithstanding, the Ombudsman strongly cautioned the Regional Administration that the administrative performance had fallen short of minimum acceptable standards and asked for a formal apology to be issued.

**Cases P-0003/12; 4216/12; Q-1194/13; Q-1003/14****Entity addressed:** Municipality de Angra do Heroísmo**Data:** 2014/12/17**Subject:** Right to environment. Food and beverage establishment**Status:** The city council committed to bring to an end all «provisional licenses»

The Ombudsman addressed the question of illegal operation and excessive nocturnal noise of food and beverage establishment, some with a dancing space, on its own initiative and because of several complaints regarding that matter.

The legislation allows for very late business hours for this kind of establishment. But regulations apply, namely to illegal operation and excessive noise. The procedure ascertained that, on one hand, the city council had been permissive with illegal operation of that kind of business, even issuing «provisional licenses» not allowed by law. On the other hand, the city council did not have a sonometer, thus impeding the full application of the law concerning noise prevention.

The Ombudsman accepted in good faith the commitment of the City Council that no more «provisional licenses» would be issued. Notwithstanding, the Ombudsman underlined the importance of fast and effective misdemeanor proceedings as far as noise control and the said illegal operations are concerned.



**Case Q-7216/13****Entity addressed:** School Manuel de Arriaga**Data:** 2014/02/07**Subject:** Regulation concerning elementary and middle school students. Disciplinary measures**Status:** No answer until 2014.12.31

A student suffered a disciplinary measure with which the parents did not agree. No hierarchical appeal had been presented before the Regional Department of Education.

Having in mind the facts and the regulations concerning the issue, it was concluded that no illegal acts had been committed in the procedure.

But, though regulations state that it is within the principal's remit to suspend a student up to five days, that decision had to be followed by an educational activities plan, for which the student must also take responsibility, the parents also being heard for that matter.

Though mandatory under the said regulations, no such plan was made, determining the Ombudsman to caution the principal on that matter.

### *5.7.2. Ombudsman's decisions non favourable to complainants*

**Case Q-2222/14****Entity addressed:** Social Security Institut Azores, IP**Data:** 2014/08/05**Subject:** Social Security. Undue social security benefits

The complainant asked for the Ombudsman intervention because, though he recognized he had a debt to be paid to the Social Security services, he did not agree with the payment plan that had been envisaged. The investigation allowed for the conclusion that the complainant had received for some time not only a social benefit but also, at the same time, family and deficiency benefits. In order to fix the overpayment, the Social Security services devised a program for the gradual repayment of the debt (forty monthly installments). Anyhow, should the beneficiary persist on his refusal to pay, the debt would be offset by other credits he might come to have.

Given this, the Ombudsman closed this procedure drawing the complainant's attention on the reasonableness of the solution and to the fact that the law does not provide for debt forgiveness in this instance.



**Case Q-2664/14****Entity addressed:** Hospital do Santo Espírito de Angra do Heroísmo, EPE**Data:** 2014/09/24**Subject:** Health. Healthcare provisions. Waiting list

The complainant alleged that she had been waiting for vascular surgery for too long, in spite of medical indication.

The Hospital clarified that the patient was among the next 200 hundred patients to be operated in a 500 hundred waiting list. There are other priorities, namely patients with arterial disease.

In this context, at the Ombudsman request, the Hospital and the Health Department added that measures to reduce surgery waiting lists were under consideration.

In short: on one hand, the complainant's situation was signaled to the competent body; on the other hand, the surgery waiting lists problem demands political decisions that go beyond the Ombudsman scope of intervention.

The case was closed on those grounds.

**Case Q-4039/14****Entity addressed:** Municipality de Angra do Heroísmo**Data:** 2014/08/06**Subject:** Leisure. Camping. Appropriate procedure

For more than 30 years the complainants had been camping in a public terrain by the sea, belonging to the city council. Through the years the public authorities had built some equipment related to the camping activities, but now the campers had received an eviction order. Because the occupation of the grounds was public and peaceful and even supported by the owner of the land further clarifications were necessary. The city council recognized its previous decisions but reminded that a regional law dating from 2011 did not allow for parking lots at seaside areas to be used as camping lots, namely on ecological grounds. Furthermore, that camping site, seasonal by nature, had become permanent to some of its users, which was reproachable even for public health reasons — some «campers» had to be rehoused. Also, there is a proper and legal camping site in the vicinity. All the facts considered, the city council decided that the complainants would be allowed to stay at the legal camping site, for free, until the end of the 2014 summer.

This information was passed on to the complainants and the case was closed.

## 5.8. Office at the Autonomous Region of the Madeira

### 5.8.1. Ombudsman 's decisions favorable to complainants

#### a) Suggestions

##### **Case Q-7352/13**

**Entity addressed:** President of the Regional Government of Madeira

**Date:** 2014.03.06

**Subject:** Nursing allocations

**Status:** The Regional Secretary for Social Affairs has expressed general agreement with the application of the criteria contained in the Recommendations Guideline

After completion of the hearing with the President of the Regional Government of Madeira at the Ombudsman's visit to the region in February 2014, the latter suggested the implementation of the criteria to set out in the Guide for the calculation of nursing allocations in the National Health System, drawn up in the year 2011 for the Working Group of the Ministry of health.



##### **Case Q-7362/13**

**Entity addressed:** President of the Regional Government of Madeira and Secretary of State for Infrastructure, Transport and Communications

**Date:** 2014/11/21

**Subject:** Issuing of digital tachograph driver cards in the autonomous region of Madeira

**Status:** Accepted

The Ombudsman organized a procedure following a complaint on the performance of regional services in the context of not issuing digital tachograph driver cards. This document constitutes a control device installed and used in vehicles transporting passengers or goods, registered in Portugal from May 1<sup>st</sup>, 2006.

Although there is a system of exemption for vehicles that circulate in Madeira, its residents need to obtain the tachograph for purposes of application for the realization of activities in foreign territories, particularly within the European Union.

In these cases, any resident had been forced to move to the Continent in order to satisfy its claim, in inequality with the other manifests nationals, for situations of similar nature.

Whereas the existence of an unjustified restriction to the fundamental right to free movement of workers, the Ombudsman held to use its steps along the target entities, suggesting a revision of Decree-Law no. 13449/2006, of June 27, in order to consecrate the possibility of submitting a request in the regions Autonomous, by defining the administrative procedures to be applied in such situations. It was also suggested the articulation between the Central and regional services in order to study the necessary mechanisms to overcome technical constraints diagnosed.

### *b) Remarks*

#### **Case Q-5919/14**

**Entity addressed:** Regional Secretary for Social Affairs

**Date:** 2014/11/17

**Subject:** Allocation of family doctor

**Status:** No objections on the part of the target entity

It was objected the procedure adopted by a Health Unit in the municipality of Ribeira Brava, which has deleted the registration of a beneficiary (and his mother) regarding the allocation of a family doctor. Under the terms of the complaint, the disputed decision was result of inadequate practices in terms of the irregular notification of the complainant.

It was concluded that the administrative act of exclusion infringed the duty to respect the principle *audi alteram partem*. The Ombudsman draw the attention to the imperative of compliance with the legal procedures in cases of identical nature, requiring the recognition of the right of those concerned to speak about the object of the procedure before the final decision.

Finally, the Ombudsman draw attention to the need to be considering the following mechanisms:

- to revoke the administrative act embodied in the decision to exclude the user from the list of attribution of a family doctor, noting that the renewal of the procedure will always involve the safeguard of the principle *audi alteram partem*;
- to review the performance established by the Regional Health Service (*SESARAM, EPE*), on the subject under analysis, standing for the right compliance of the guidelines issued by the Ministry of Health.



**Case Q-3740/14****Entity addressed:** Regional Secretary for Social Affairs**Date:** 2014/07/3**Subject:** Operational assistants in Health service functions. Work duration**Status:** suggestions in order to overcome the existant constraints were accepted

The Ombudsman 's intervention was requested concerning the problem of the normal working period for Operational Assistants who are part of the Regional Health Service of the Autonomous Region of Madeira (*SESARAM*).

The staff working period in the day shift would be between the 08:00 am and the 03:00 pm or 04:00 pm, and, on the same day, it would begin a new round, set between the 10:00 pm and the 08:00 am of the day following, in alleged disregard for the minimum rest period between scales, consecrated by the legislature, and to the detriment of the quality of the provision of health care to patients.

*SESARAM* defended that a group of 280 operating assistants had expressed themselves against the adoption of the proposed schedule, by petition, to the extent that there would be no transport available to professionals for the respective residence because of the late hour of the exit of the turn. Before the requested changes, the target entity decided to proceed to the drafting of the current period, with 468 operating assistants currently practicing the schedule described in the complaint. Still, from November 25, 2013, the nursing direction would have sought to ensure, in every week, the enjoyment of a rest and a weekly rest period, transmitting that is being processing a collective negotiation, with the objective to reduce the normal working period of 40 to 35 hours a week, which will overcome the current constraints.

Notwithstanding the explanations provided, the Ombudsman issued a warning to the Regional Government, since it was verified the violation of the legal system that determines, to the worker, a minimum rest period of 11 consecutive hours between two consecutive working daily periods (paragraph 1, of article 138, of Law no. 59/2008, of September 11).

**Case Q-7352/13****Entity addressed:** Regional Secretary for Social Affairs**Date:** 2014/07/18**Subject:** Nursing allocations**Status:** Accepted

The Ombudsman opened a procedure following a complaint challenging the allocation nursing system established so far in the Inpatient unit of the Hospital «João de Almada», municipality of Funchal.

It was referred that the quality of the provision of health care was not assured, since in the afternoon shifts, each nurse would be responsible for about 30 patients, while at night, that proportion would raise to 50. On the other hand, the compliance with the principle of accountability of these professionals wouldn't be heeded, in the face of a context with risks to the respective performance.

Regarding the above, the Ombudsman directed his attention to the Regional Secretary for Social Affairs, reiterating the need to apply to the region the legal regime of the Normative Circular no. 1/2006, of January 12, of the Secretariat-General of the Ministry of health. Indeed, such Normative proposed rules of management of the nursing staff in hospital care by establishing a systematic reference to the adequacy of the human resources to the type of relocation needs found, in line with a general principle of quality health care to patients.

Also, the Ombudsman underlined the need to trigger the mechanisms intended for the regulatory problems of the affectation of the nursing staff in long-term care units of the autonomous region of Madeira, in line with the principle set out by the vectors of the Normative Circular No. 1/2006, of January 12, and by integrating the criteria proposed in the recommendations for the calculation of the sum of Nurses in the NHS.

### *5.8.2. Ombudsman's decisions non favourable to complainants*

**Case Q-7769/13**

**Date:** 2014/10/20

**Entity addressed:** General Directorate for Reintegration and Prison Services

**Subject:** allowance allocation

The Ombudsman's intervention was requested, regarding the allowance allocation to the prison officers born in Madeira or to its residents, as established by the Regulatory Decree No. 15/88, of March 31. Although legislation originally predicted only this assignment provision to non-residents in prisons of the autonomous regions, in practice, and until September of the year 2000, the processing of these amounts was verified independently of their place of birth or residence.

It was concluded that the presumption of the referred allocation remained applicable and that the new staff regulations of the prison guard corps provided for the assignment of the right, under the terms and conditions laid down by the implementing decree.

Additional steps were taken by the target entity, to ascertain the existence of situations of injustice between officials of the General Directorate. The response received pointed to the coexistence of two different current regimes, in terms of allocation of compensatory supplements, as a result of the merge of the department services from the extinct General Directorate General for Prison Services and the General Directorate for Social Reintegration.

Notwithstanding the above, the target entity reported that the compensatory supplements are being reviewed, in order to resolve any situations of injustice which have been expressed by the workers.



#### **Case Q-1580/14**

**Entity addressed:** Regional Health Service of the Autonomous Region of Madeira

**Date:** 2014/04/24

**Subject:** Normal period of work of employees with individual work contracts concluded under the labour code (Law No. 68/2013, of August 29)

The apparently illegal procedure adopted by the Health Service of the autonomous region of Madeira, embodied in the irregular application of Law No. 68/2013, of August 29, which extended the normal period of work to 40 hours per week for employees who are part of the Regional Health Service of the autonomous region of Madeira, was contested.

Following the hearing of the target entity, it was found that, pursuant to article 35 of the annex to the Regional Legislative Decree No. 9/2003/M, of May 27 (Regional Health Service), the staff then to admit would have to be governed by the General rules applicable to the contract of employment, and the Regional Service should be part in the negotiation of collective labour regulation instruments. In turn, article 39 established a transitional regime applicable to individual contracts of employment, determining subparagraph a), of paragraph 1, that, until the effective conclusion of the collective labour procedures, the categories, careers and remuneration levels of the staff, similar to those provided for in the law for people under public law would be implemented.

With the publication of the Regional Legislative Decree No. 12/2012/M, of July 2 (approved the statutes of the Health Service of the Autonomous Region of Madeira, EPE) the previous regime in force was revoked. Article 30 of annex I of this diploma establishes that the service workers are abided to the regime of employment contract, according to the labour code and labour legislation.

The present legal framework aimed, therefore, to establish an equality between public and private schemes, leaving also of the interim regulations listed above. The Law No.

68/2013, of August 29, came to set up that the normal working period for workers in public functions would be 8 hours per day, equivalent to 40 hours per week, with effect from September 28, 2013. The Normative Circular No. 29/2013/HRD-URT of September 18, of the Central Authority of the Health system, applies to employees with a public link. In fact, the period of 40 hours a week was already working as a rule for those workers with a contract of employment, with the exception of employment contracts concluded under the labour code, with 35 hours per week. Therefore, from the publication of Law No. 68/2013, of August 29, the two schemes began to coexist, relating to the general period of work (40 hours) concerned.

The procedure was closed, considering that there was no actionable evidence of a legal warning to the entity concerned.



**Case Q-3913/14**

**Entity addressed:** Regional Directorate for Tax Affairs

**Subject:** Public Maritime Domain. Property ownership

**Date:** 2014/12/29

Intervention of the Ombudsman with the Regional Directorate for Tax Affairs, in relation to an apparent omission of measures on the supporting certificate emission of ownership of urban property, described in the land registry and entered in the array. According to the complaint, the local finances could not produce the internal file reconstitution.

As a result of the efforts with the target entity, it was found that the building in question was in the possession of the complainant through a scripture officially registered in the notary. According to the local finances, the concerned document would be a sufficient evidence of the ownership of the building.

Conferring to the information transmitted to the party concerned, the Ombudsman considered that the claim was unfounded.







## *6. Publications, conferences and articles*

> Detail – garden of the Portuguese Ombudsman's building

## ***6. Publications, conferences and articles***

### ***Relatório do Provedor de Justiça à Assembleia da República, 2013***

[http://www.provedor-jus.pt/site/public/archive/doc/Relatorio\\_2013.pdf](http://www.provedor-jus.pt/site/public/archive/doc/Relatorio_2013.pdf)

### ***Relatório do Provedor de Justiça à Assembleia da República, 2013***

#### ***Anexo: Tomadas de posição***

[http://www.provedor-jus.pt/site/public/archive/doc/Anexo\\_Relatorio\\_2013.pdf](http://www.provedor-jus.pt/site/public/archive/doc/Anexo_Relatorio_2013.pdf)

### ***Crianças e jovens em situação de acolhimento na Região Autónoma da Madeira.***

#### ***Relatório de Acompanhamento, 2014***

[http://www.provedor-jus.pt/site/public/archive/doc/Crianças\\_jovens\\_acolhimento\\_RAM\\_Relatorio\\_Acompanhamento\\_2014\\_.pdf](http://www.provedor-jus.pt/site/public/archive/doc/Crianças_jovens_acolhimento_RAM_Relatorio_Acompanhamento_2014_.pdf)

### ***O Provedor de Justiça, os Direitos Fundamentais e o Direito Penal Atual***

Jornadas de Direito Penal

Vilamoura, 2014-03-21

[http://www.provedor-jus.pt/site/public/archive/doc/O\\_Provedor\\_de\\_Justica\\_os\\_Direitos\\_Fundamentais\\_e\\_o\\_Direito\\_Penal\\_Atual\\_0.pdf](http://www.provedor-jus.pt/site/public/archive/doc/O_Provedor_de_Justica_os_Direitos_Fundamentais_e_o_Direito_Penal_Atual_0.pdf)

### ***O Provedor de Justiça e a promoção e defesa dos Direitos Humanos dos cidadãos em uma perspectiva de presente e de futuro***

Conferência Internacional *The law of the future and the future of law in the era of the international and intergenerational crisis/Que direitos para o futuro e que futuro para o Direito na era da crise internacional e intergeracional*

Lisboa, 2014-06-19

[http://www.provedor-jus.pt/site/public/archive/doc/Lisboa\\_19de\\_Junho-O\\_Provedor\\_de\\_Justica\\_e\\_a\\_promocao\\_e\\_defesa\\_dos\\_Dir.pdf](http://www.provedor-jus.pt/site/public/archive/doc/Lisboa_19de_Junho-O_Provedor_de_Justica_e_a_promocao_e_defesa_dos_Dir.pdf)

### ***The Ombudsman and Civil Society: The Ombudsman defending the citizen***

8.ª Assembleia Geral da Associação de *Ombudsman* do Mediterrâneo (AOM)

Tirana, 2014-06-27

<http://www.provedor-jus.pt/site/public/archive/doc/Albania.pdf>

### ***The Specific Role of the Ombudsman in Promoting Human Rights under International Law***

*The Montenegro Symposium on International Law & Human Rights An Interdisciplinary Analysis of the Role of International Law in Promoting Human Rights*

Centinje, 2014-07-09

[http://www.provedor-jus.pt/site/public/archive/doc/Conferencia\\_Montenegro\\_20714\\_r.pdf](http://www.provedor-jus.pt/site/public/archive/doc/Conferencia_Montenegro_20714_r.pdf)

### ***Direitos fundamentais na prática do Provedor de Justiça***

Conferência Tribunais e Direitos Humanos: Direitos fundamentais na jurisprudência do STJ e na prática da Provedoria

Lisboa, 2014-07-11

[http://www.provedor-jus.pt/site/public/archive/doc/CEJ\\_A\\_defesa\\_dos\\_direitos\\_fundamentais\\_na\\_pratica\\_do\\_Provedor\\_de\\_Justica.pdf](http://www.provedor-jus.pt/site/public/archive/doc/CEJ_A_defesa_dos_direitos_fundamentais_na_pratica_do_Provedor_de_Justica.pdf)

### ***El TEDH - una tutela supranacional de los derechos humanos***

Congresso Internacional da Federação Iberoamericana de *Ombudsman*

Cidade do México, 2014-10-02

<http://www.provedor-jus.pt/site/public/archive/doc/17102014ElTEDH-unatutelasupranacionaldelosderechoshumanos-ProvedorAdjunto.pdf>

### ***Carta a uma ou a um jovem Magistrado***

Conferência Inaugural proferida na sessão solene de abertura do 31.º Curso de Formação de Magistrados e do 3.º Curso Normal de Formação de Magistrados para os Tribunais Administrativos e Fiscais

Lisboa, 2014-10-08

[http://www.provedor-jus.pt/site/public/archive/doc/Carta\\_a\\_uma\\_ou\\_a\\_um\\_jovem\\_Magistrado.pdf](http://www.provedor-jus.pt/site/public/archive/doc/Carta_a_uma_ou_a_um_jovem_Magistrado.pdf)

### ***O Trabalho e a Justiça Social***

II Conferência Luso-Espanhola de Direito do Trabalho

Lisboa, 2014-10-28

[http://www.provedor-jus.pt/site/public/archive/doc/Conferencia\\_Trabalho\\_e\\_Justica.pdf](http://www.provedor-jus.pt/site/public/archive/doc/Conferencia_Trabalho_e_Justica.pdf)

### ***Comunicação social e Direitos Fundamentais. Um círculo virtuoso?***

XX Aniversário da Licenciatura em Jornalismo

Coimbra, 2014-10-31

[http://www.provedor-jus.pt/site/public/archive/doc/Comunicacao\\_Social\\_311014VF.pdf](http://www.provedor-jus.pt/site/public/archive/doc/Comunicacao_Social_311014VF.pdf)

### ***Transparência Fiscal - Qual a sua importância no quadro contemporâneo de uma Economia e de uma Sociedade em Crise?***

Comemorações do 10.º Aniversário do Tribunal Central Administrativo Sul

Lisboa, 2014-11-04

[http://www.provedor-jus.pt/site/public/archive/doc/Conferencia\\_transparencia\\_fiscal.pdf](http://www.provedor-jus.pt/site/public/archive/doc/Conferencia_transparencia_fiscal.pdf)

### ***Razões de uma razão (IV)***

Artigo do Provedor de Justiça, publicado no *Diário de Notícias*, de 31 de janeiro de 2014, p. 55.

[http://www.provedor-jus.pt/site/public/archive/doc/31\\_01\\_2014\\_DN\\_RazoesdeumarazaoIVp55.pdf](http://www.provedor-jus.pt/site/public/archive/doc/31_01_2014_DN_RazoesdeumarazaoIVp55.pdf)

### ***Razões de uma razão (V)***

Artigo do Provedor de Justiça, publicado no *Diário de Notícias*, de 3 de junho de 2014, p. 47.

[http://www.provedor-jus.pt/site/public/archive/doc/03\\_06\\_2014\\_DiariodeNoticias\\_Artigo\\_do\\_Provedor\\_de\\_Justica-Razoes\\_de\\_uma\\_razao\\_V\\_pag47.pdf](http://www.provedor-jus.pt/site/public/archive/doc/03_06_2014_DiariodeNoticias_Artigo_do_Provedor_de_Justica-Razoes_de_uma_razao_V_pag47.pdf)

### ***Razões de uma razão (VI)***

Artigo do Provedor de Justiça, publicado no *Diário de Notícias*, de 8 de setembro de 2014, pp. 6 e 7.

[http://www.provedor-jus.pt/site/public/archive/doc/08\\_09\\_2014\\_DN\\_Razoes\\_de\\_uma\\_razao\\_VI\\_pags\\_6e7.pdf](http://www.provedor-jus.pt/site/public/archive/doc/08_09_2014_DN_Razoes_de_uma_razao_VI_pags_6e7.pdf)

### ***Razões de uma razão (VII)***

Artigo do Provedor de Justiça, publicado no *Diário de Notícias*, de 10 de novembro de 2014, pp. 6 e 7.

[http://www.provedor-jus.pt/site/public/archive/doc/10\\_11\\_2014\\_DN\\_Artigo\\_Razoes\\_de\\_uma\\_razao\\_VII\\_pags\\_6\\_e\\_7.pdf](http://www.provedor-jus.pt/site/public/archive/doc/10_11_2014_DN_Artigo_Razoes_de_uma_razao_VII_pags_6_e_7.pdf)





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> Detail – Tilework present at the Portuguese Ombudsman's building

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