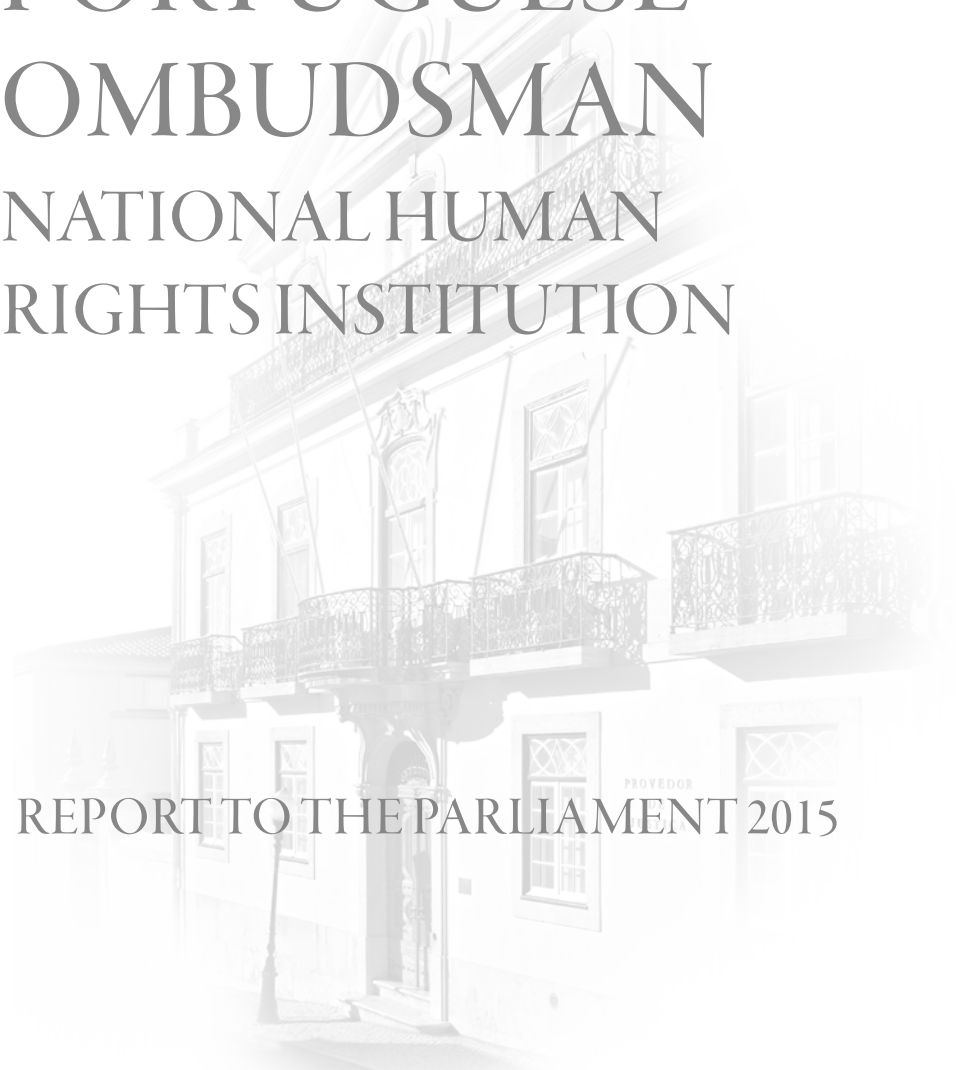
PORTUGUESE OMBUDSMAN

NATIONAL HUMAN RIGHTS INSTITUTION



REPORT TO THE PARLIAMENT 2015

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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 reveals the various dimensions in which this State body develops its activity 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 activities developed as the Portuguese National Human Rights Institution.

The activity regarding 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 presented in an autonomous report.

The Portuguese Ombudsman and his staff

PROVEDOR
DE
JUSTIÇA

1. The Ombudsman´s activity in the complaints procedures

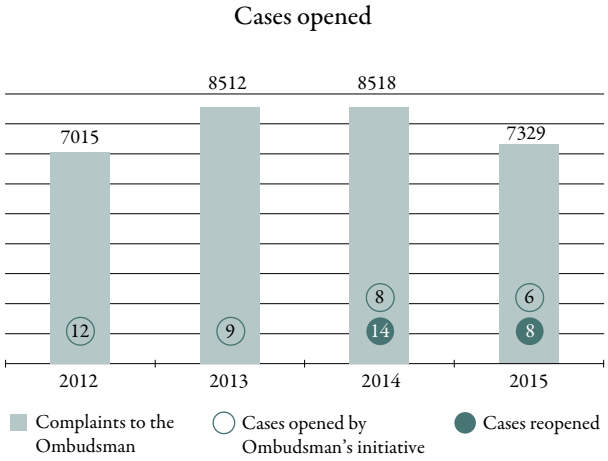
> Detail - interior of the Portuguese Ombudsman´s building

1. The Ombudsman´s activity in the complaints procedures

1.1. Statistics: brief notes

This chapter will present statistical data regarding the activity of the Portuguese Ombudsman in its classical function of handling complaints. The legal and constitutional outline of the mission of this State body is not restricted, however, to the consideration of communications from citizens; there are cases where the abuse of human rights justifies the intervention of the Ombudsman, which can, on its own initiative, determine the opening of procedures with the aim to investigate the harmful situations to those rights.

Graph I



In 2015 the Portuguese Ombudsman opened 7335 new cases. This represents a decrease of 14% when compared with the previous two years, but still higher than the number of procedures opened in 2012.

Out of the total of procedures opened in 2015, 7329 resulted from complaints addressed to the Portuguese Ombudsman and 6 were opened on its own initiative.

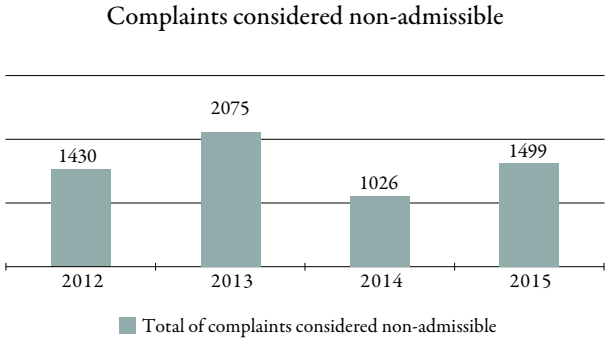
Graph II

Complaints dismissed

In 2015, the number of complaints dismissed did not follow, in proportional terms, the declining trend seen in regard to new procedures. In fact, while the number of complaints dismissed in 2015, is close to the one recorded in 2014, it should be noted the following: the total of new cases and complaints dismissed showed a reduction from 10333 - value observed in 2014 – to 9088 registered in 2015. This means that in the perspective of the percentage of dismissed complaints we observe a growth from 17.6% to 19.3% out of the total of complaints addressed to the Portuguese Ombudsman.

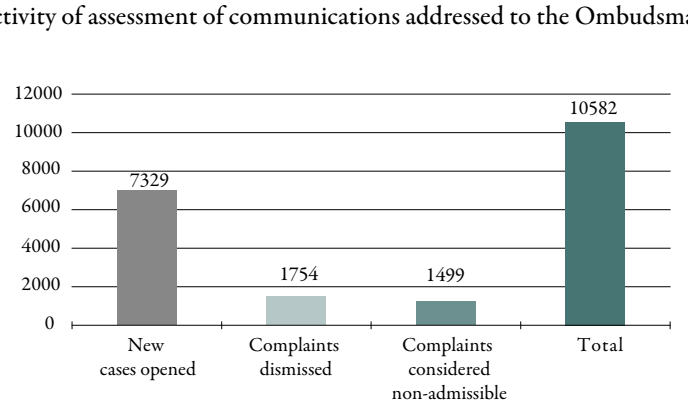
Complaints are dismissed in situations that deal with matters that are outside the scope of competence of the Ombudsman, when it is premature to intervene due to the lack of prior intervention of the hierarchically competent administrative authority. To these reasons are also added situations where the issue in question is under a legislative initiative or fundamentals added questions aimed thematic surrounded by legislative initiative that is following its normal course or has been, or is being, judicial consideration object. The preliminary dismissal of a complaint always demands an analysis of the issue and a contact with the complainant, in order to justify the decision.

Graph III



The evolution of the communications that can not be qualified as a complaint is more erratic in the multi-year period presented. In 2015 we can observe an increase over the year 2014, which corresponds to 31.6%. These communications, do not require an explicit reaction by the Ombudsman, Out of the 1499 communications, 116 were anonymous, a number close to the double registered in the previous year (74).

Graph IV



The graph above – introduced for the first time in the 2013 – shows the activity of the Ombudsman in its traditional functions. Any communication addressed to this State body is subjected to a preliminary analysis, which may or may not lead to the opening of a procedure. The analysis of the annual activity of the Ombudsman should not be limited

to the number of new procedures, but also it has to take in account the work done with the preliminary assessment of all communications. It is also important to mention that that subsequent communications that deal with matters already under investigation are incorporated in an opened procedure. In other words, an opened procedure may cover several complaints regarding the same subject.

Table 1

Number of first complainants

Natural persons	6949
Legal persons	380
Total of complainants	**7329**

The table above shows the legal nature of the first complainant in the new procedures opened in 2015. In 94.8% of the cases the complainant is a natural person – 57.6% men and 42.4% women. It is also worth to mention that 5.2% of the complainants are legal persons.

Graph V

Regarding the types of legal persons whose complaints led to a procedure the graph above shows the highest representation of companies (97), followed by the complaints from associations (71) or unions (71).

Table 2

Number of cases opened and reopened

Written complaint	2171
Oral / in person complaint	350
Electronic complaint	4808
Ombudsman's own initiative	6
Total of cases opened	**7335**
Cases reopened	7
Total of cases opened and reopened	**7342**

The use of electronic means of communication (encompassing e-mail and use the complaint form available on the website) constitutes preferable means of contact chosen by complainants. Still, the use of electronic means did not continued the growth observed in recent years (67% in 2014 to 65.6% in 2015). On the other hand the use of complaints submitted by letter registered an increase (28.3% in 2014 to 29.6% in 2015). Hence, 2171 procedures were opened based on a letter received, and 350 based on a verbal complaint. In the last decade the proportion of contact by electronic means increased from one-fifth to two-thirds.

There were seven reopened procedures that had originally been instructed before 2015.

As it is shown in the table above, in 2015, the volume of ongoing procedures amounted to 10 509, an amount that covers procedures opened in 2015, the ones carried over from previous years, and those that, having been opened before 2015 were reopened this year.

Table 3

Number of cases closed and reclosed

Cases closed from 2011	1
Cases closed from 2012	33
Cases closed from 2013	232
Cases closed from 2014	2075
Total of cases prior to 2015 closed	**2341**
Cases closed that were opened in 2015	4629
Cases reopened and reclosed in 2015	4
Total of cases closed and reclosed	**6974**

This table reflects the number of closed and reclosed procedures in 2015. It exceeds 66 percentage points, the procedures that were opened and closed in 2015. In turn, the procedures closed in 2015 that were carried over from previous years, represented 33.6%.

Table 4

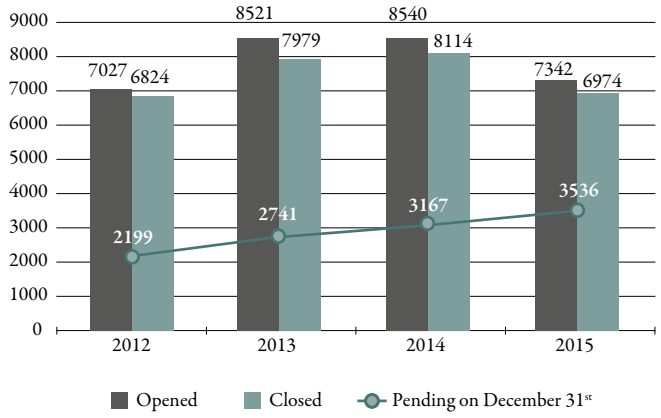
Number of cases pending on December 31st

Cases from 2011	2
Cases from 2012	31
Cases from 2013	140
Cases from 2014	652
Total of cases prior to 2015	**825**
Cases opened in 2015	2706
Cases reopened in 2015	5
Total of cases closed and reclosed	**3536**

From the table above, and comparing with the data of 2014, the following conclusions can be drawn: (i) the number of procedures opened in 2015 and pending on December 31st represent 36.9% of all procedures open in the same year; (ii) the procedures opened in 2014 and carried over to 2016 have been reduced by approximately ¼ of total opened procedures in 2014 and carried over to 2015; (iii) the number of opened procedures in 2012 and 2013 which were pending at the beginning of 2015 (64 and 372, respectively) underwent a decrease of more than 50% at the end of the same year (31 and 140, respectively).

Graph VI

Cases opened, closed and pending on December 31st



The number of procedures closed in 2015 fell 14% compared to 2014, a drop that matches the decrease in the number of opened. To fully understand this situation the data should be compared with the duration of the procedures.

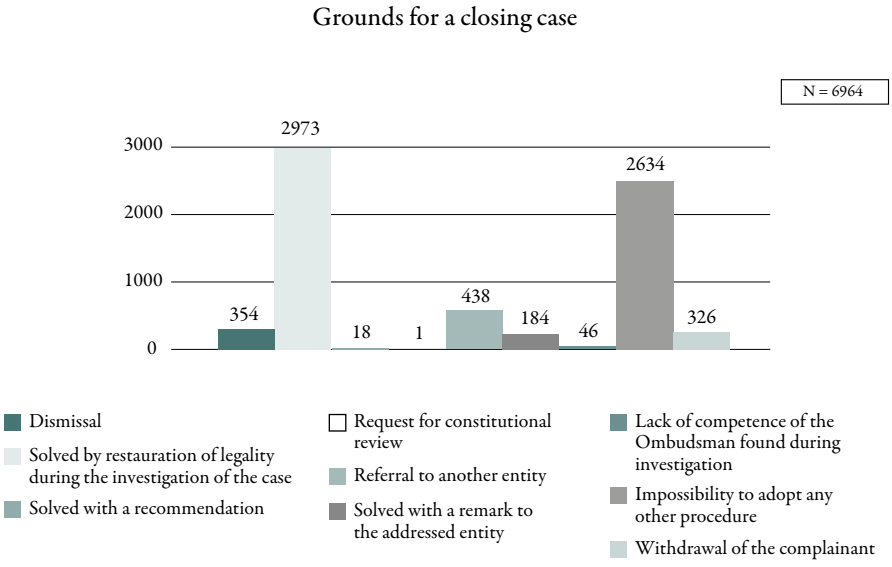
Table 5

Summary of cases assessment activity

Total of cases pending on December 31st 2014	3167
Total of cases opened (and reopened)	7342
Total of cases closed and reclosed	6974
Cases opened and closed in 2015	4629
Cases pending on December 31st 2015	**3536**

The table above presents movement of all ongoing procedures in 2015. Out of the 10 509 procedures dealt in 2015, 66.4% were closed or reclosed (6974). Having in consideration only procedures opened in 2015, 63.1% were closed in the same year (4629). It must be mentioned that one procedure was open, closed and reopened in 2015.

Graph VII

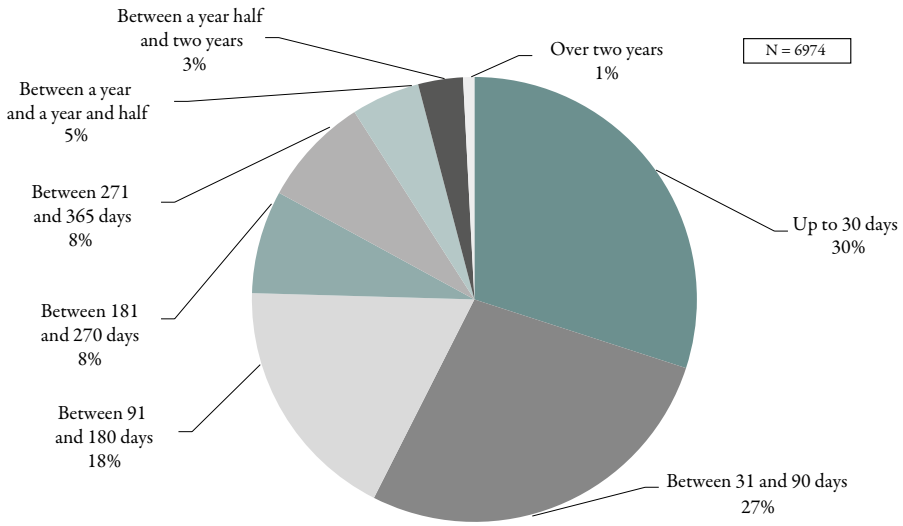


Despite the reduction seen in the number of closed procedures in the year 2015 (6964 as opposed to 8114 recorded in 2014), it is relevant the qualitative increase in the percentage of cases closed because the administration repaired the illegal or unjust situation (39.2% in 2014 to 42.6%). Conversely, there was a slight decrease in closed procedures on the grounds of dismissal of the complaint (38.6% in 2014 to 37.8% in 2015). In this regard, it is noted that in 18 cases the procedure ended with the issuance of recommendation (eight recommendations issued). Note also that the referenced case of a procedure that originated a review of constitutionality concerns one initiative taken in 2014.

The cases solved with a remark to the addressed entity decreased from 260 to 184, roughly keeping up their percentage (approximately 3%).

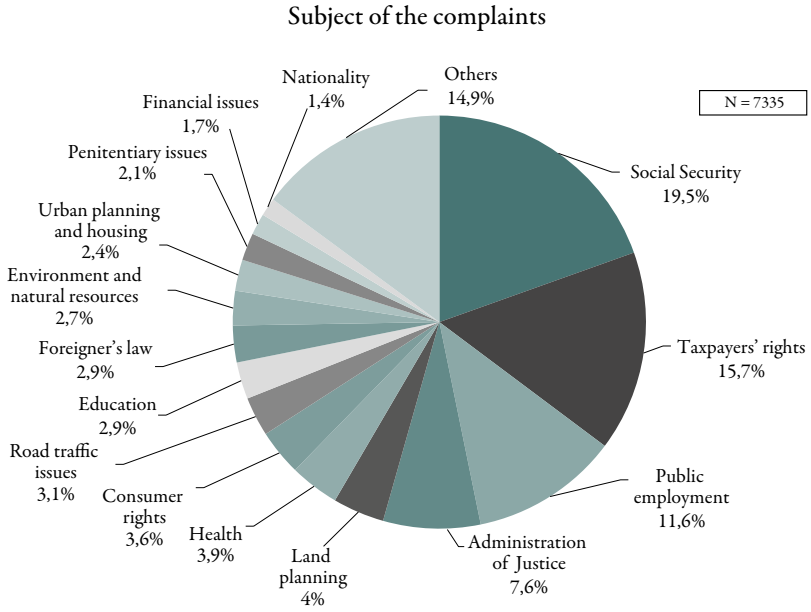
Graph VIII

Duration of cases closed in 2015



This chart indicates the duration of the cases closed in 2015, maintaining, broadly, the same pattern registered in previous years. However there is an accelerating trend, particularly noticeable in the procedures closed under 30 days (30% corresponding to 2092 procedures opened in 2015 against 26% or 2115 procedures closed in the same time in2014). It is important to mention that 91% procedures (6342) were closed in a year or less.

Graph IX



In 2015, 54.4% of the procedures relate to matters of social security, tax payers' rights, public employment and the administration of justice. Compared to the year 2014, there is, in 2015, a reversal in the relative positions of the procedures that dealt with matters concerning taxation and public employment relationship. Therefore it is not possible to attribute the decline in the number of procedures only to one particular subject.

The remaining relevant thematic areas are: consumers' rights (from 668 in 2014 to 263 in 2015) and road issues (from 449 in 2014 to 226 in 2015.

1.2. Promotion and protection of fundamental rights

1.2.1. Environmental, urban planning and cultural rights

Complaints and ex officio investigations

In 2015, 734 new cases were opened concerning environment, urban planning and culture. However, many complaints addressed to the Ombudsman have not given rise to investigations as they were immediately rejected (117) or were considered mere reflections, outbursts and personal opinions (130).

There was a decrease of 15.8% of complaints in comparison with the 850 procedures opened the previous year. The reduction in the number of cases can be explained by the lower number of complaints in respect of two issues: municipal control of new development operations, especially construction, and expropriation of land for public utility purposes. Both sectors of the administrative activity registered a severe decline, which is reflected in the number of complaints.

The Ombudsman opened two procedures on his own initiative. The first sought to systematize the most relevant issues of payed on-street parking and it was based on the experience collected by the investigation of complaints over the past years, the suggestions and recommendations addressed to some municipal bodies. The issue at stake was the imposition of fines and the removal of vehicles when the parking meters are out of order or the driver has difficulty in obtaining coins. Sometimes the complaints were related with the loss of the payment receipt inside the car, although the parking had been paid.

The Ombudsman considered that there are excessively different guidelines applied to car parking in each municipality. For example, there are no equivalent rules concerning time periods subject to tax payment, parking restrictions or road signs about areas reserved exclusively to local residents. All these situations lead to huge uncertainties when drivers circulate in other municipalities. Frequently, municipal regulations affect the rights of citizens and their daily lives, particularly in matters which are not regulated either by road contravention guidelines or by administrative law on the public domain. This also creates insecurity in the performance of enforcement agents and concessionary companies. Furthermore, even the locals have doubts about the need to pay for parking, although most municipalities exempt residents from the payment of parking taxes. But the requirements for the attribution of parking permits are often unclear.

The second *ex officio* procedure had to do with the obligation of building owners to establish connections to public water and sanitation supply system sand to pay the due fees even when such system were not working. On the one hand, the price to be paid was considered to be a tax and not a fee. However, municipalities have no competence to establish taxes. On the other hand, the drainage system in which wastewater is discharged into a waterway without appropriate treatment causes severe negative environmental effects.

As explained below, complaints lodged with the Ombudsman concerned different services within municipal administrations and central government.

In 2015, 547 complaints were filed against municipalities (74.2%). 67 against parish councils (9.1%), nearly twice as many as in the preceding year. This is also due to the strengthening of parishes' powers, which has brought these entities closer to citizens, mainly in Lisbon, pursuant to the administrative reorganization, approved by Law No. 56/2012, of 8 November, amended by Law No. 85/2015, of 7 August.

In 2015, the main entities against which complaints were filed were: the Lisbon City Council and companies partially controlled by it (120), the Portuguese Environment Agency (21), the state company *Infraestruturas de Portugal* (20) and the Regional Coordination and Development Commissions (18).

Improvement of legislation and regulatory framework

With the adoption of the Statute of the Roads of National Road Network, enshrined in Law No. 34/2015, of 27 April, compliance of the Ombudsman Recommendation no. 4 /B/2008, of 15 April was achieved. The situation that led to the Ombudsman's intervention was as follows: until the draft and the road project was approved (which, in some cases, could take decades) the owners did not receive any compensation, despite being unable to build on their land. The new law put an end to excessive and unnecessary sacrifice, which was imposed on the ownership of real estate, while preliminary studies for future national roads were carried out. However, a negative aspect still remains: the new law does not allow aggrieved parties to count the time before its entry into force, in order to achieve the five years under *non aedificandi* zone.

On another matter, most of the suggestions made in due time by the Ombudsman were incorporated into Decree-Law No. 203/2015, of 17 September, which amended the Legal Framework of Game and Recreational Spaces. Legislation was approved that took into account the Ombudsman´s suggestions about the shortcomings of the legislation that dealt with installation and maintenance of playgrounds. Thus, the amount of fines was revised, recognizing the existence of discrepancies. As an example, in the past, the lack of information was more severely punished than the faulty installation of equipment which, in principle, could more easily give cause to serious accidents.

Another concern reiterated by the Ombudsman has been the protection of the gamblers against themselves. As a consequence, measures have been promoted to help ensure that their gambling is moderate and responsible, so they do not spend their assets and the resources of their families.

In addition, Decree-Law No. 66/2015, of 29 April adopted measures for online gambling, according to the principles of accountability. Resolutions were adopted on information duties, betting limits and a mechanism that allows the gambler or the judicial authorities to determine the exclusion of individuals facing problems.

Still in the field of gambling activities, Decree No. 401/2015, of 9 November, put an end to the unwanted situation of poker tournaments held arbitrarily in casinos.

In the field of non-discrimination, the Secretary of State of Sports assumed the commitment to substantially reduce the difference in the prizes awarded by the State to the Olympians and to the Paralympians athletes.

Distribution by issue

The most significant issues dealt by this Thematic Unit were: land development (40.3%); environment and natural resources (27.1%); construction and housing (24.7%); leisure (4.8%) and cultural rights (3.1%).

Construction and housing

During 2015, real estate construction works suffered a significant reduction, also due to the decrease in the number of new construction operations.

The same can be said for issues relating to the conservation and rehabilitation of buildings, the decline having to do mainly with the decrease in tenants complaints.

Social housing issues continue to present very high levels in respect to waiting lists for allocation of housing or rehousing.

Environment and natural resources

Once again – as in 2014 –, noise pollution was the main cause for environmental complaints (51.8%). Bearing in mind the 103 complaints on this subject, the following noise sources were identified: cafes, bars, nightclubs, often installed in multifamily buildings with poor acoustic insulation conditions or concentrated in historic areas (38), trade and services (17), spectacles, comprising university festivals, camps or other outdoor events with amplified music (13), industrial activity (12), traffic (6), dogs (5), places of worship (4) and others (7).

Complaints concerning the protection of water were mostly about contamination of water lines or licensing of water extraction in breach of regulation on safety distances.

Forest issues had mostly to do with cleaning and firewood management on private land or cutting and pruning of public trees.

Complaints about air quality arise as a result of fear of industrial contamination and because of restrictions on car traffic in certain urban areas.

In the majority of cases complaints related to health referred to livestock units.

Land planning

Decree-Law No. 80/2015, of 14 May, that developed the Basic Law of Land, Planning and Urbanism (Law No. 31/2014, of 30 May) led to a significant rise in complaints about the review of the municipal masterplans, mostly approved in the 1990s.

Almost all of the fourteen complaints about territorial planning and management instruments were about reclassification of soil, in particular against placement of land

properties outside the urban perimeters, which decreases its value. This type of complaints has high legal complexity inasmuch as it involves the analysis of demographic elements, hydrogeological, biological or agronomic. It is true that these plans are characterized by the utmost administrative discretion as they involve a wide margin of discretion between different interests, both public and private.

Notwithstanding, based on information requested to municipal authorities and the coordination and regional development commissions the Ombudsman acts in two ways. On the one hand, analysing the fulfilment of the objective legal and regulatory determinations: compliance with the rules of procedure, in particular those protecting the rights to information and participation of stakeholders. On the other hand, checking the comprehensiveness of the studies and preparatory work, as well as the reasonableness of the choices that affect rights or legitimate interests.

But most of the complaints concerned the administration of urban roads by municipalities: installation of kiosks, terraces, fences, awnings and signs, on-street parking, conservation of pavements, trees, squares, avenues and public lighting.

Many other complaints, especially those in rural areas, are filed against the parish councils and town councils due to their inaction before the usurpation of public property.

Another cause for the Ombudsman intervention is, frequently, the execution of construction works in roads that are said to be public.

A final note regarding administrative constraints and easements, considering that many complaints were presented against public interest limitations on property rights. The landowners are subject to limitations emerging from the establishment of electricity distribution networks or communications networks, or, seldom, water supply networks or drainage and wastewater disposal systems.

Culture

There were few complaints about cultural rights, but it should be noted that they are delivered to the Ombudsman always based on extensive arguments.

Many associations, frequently organized on social networks, are concerned about the loss of architectural values in real estate, already listed or in the process of being listed. In most cases, the questions had to do with the compliance of the conditions imposed, such as the safeguarding of facades, interiors or certain decorative elements.

On the other hand, although the tender procedures for the attribution of financial support to cultural activities are presently submitted to more detailed regulation that provides greater guarantees of impartiality, there are still several gray areas that raise questions from interested parties.

Leisure

During 2015 legislative amendments were made following suggestions made by the Ombudsman on gambling activities, in particular, property and gambling,

In the field of betting, it is worth mentioning the complaints about social games, under concession of *Santa Casa da Misericórdia de Lisboa*, and especially the tenders for selection of agents and betting intermediaries.

On sports, the Ombudsman examined complaints concerning the exercise of public powers by the federations and also against public sports services, including complaints on delays in issuing licenses for sports coaches.

Cases closed

718 cases were closed:

23 cases were summarily dismissed and the complainants received detailed legal information in respect to their complaint (3.2%);

321 cases were favourably solved (44.7%);

Five cases were closed with a recommendation of the Ombudsman (0.7%);

24 cases were closed after the complainants being instructed to use appropriate means of resolution (3.3%);

Two, as it was concluded that the Ombudsman had no jurisdiction to deal with the request (0.3%);

22 cases were closed following a remark for the revision of administrative practices (3.1%);

247 cases were dismissed due to lack of substance (34.4%);

74 cases were closed due to complainants' withdrawal (10.3%).

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

As a preliminary observation, it should be noted that, since 2015, the issues regarding public contracts were no longer handled in this thematic unit, due to a new distribution

In 2015**,** 1570 new cases were opened concerning taxpayers', consumers' and economic operators' rights. Compared with 2014, there was a decrease of 222 cases.

1596 cases were closed in 2015, which 75% of them were opened in such year. 22% of the cases closed respect to cases opened in 2014 and 3% to previous years. This shows the ongoing efforts made by this State body to promote the speed in the investigation of cases in order to reduce the period between the registration of the complaint and its final decision.

As per 2014, the grounds for closing the cases are as follows:

- 829 (51.94%) cases were dismissed due to lack of substance;
- In 546 (34.21%) cases, the invoked illegality or unfairness has been remedied;
- In 119 (7.46%) cases, resolving the matter by other means turned out to be essential or more suitable, and therefore the complainants have been directed to the appropriate means;
- 43 (2.69%) cases were closed due to complainants' withdrawal;
- In 43 (2.69%) of them, new facts found during the investigation showed they were outside the scope of the Ombudsman's competence;
- In 15 (0.94%) cases, a remark to the body or competent service was made;
- In only 1 case (0.06%) it was decided a summary dismissal.

Beside these 1596 decisions, with communications to the complainants of the respective foundations, this thematic unit also elucidated 803 citizens whose communications, received and considered in 2015, did not gave rise to cases. They were classified as complaints considered non-admissible or complaints dismissed without further investigation(1).

541 cases were pending at the end of the year, 15 less than in 2014 (556).

Taxpayers' rights

The three main issues which the citizens taxpayers addressed in the complaints to the Ombudsman, *i.e.*, toll fees, tax enforcements and individual income tax, keep the same relative positions with respect to 2014.

Complaints about the individual income tax have always occupied a prominent place in the list of the most frequently themes that citizens address to the Ombudsman. This is natural considering of course that, as a direct tax, the individual income tax has a big impact on the lives of the respective taxable persons. In fact, such persons easily identify and quantify the weight that this tax has in the domestic economy, either during the month - through the withholding tax mechanism – or the annual tax assessments.

In 2015, the electronic invoice system and some aspects of the legislative amendments arising from the individual income tax reform motivated complaints with new issues. It is not yet, however, possible to make a complete analysis of the issues raised. This is mainly due to a certain delay of tax authorities in providing adequate answers to the questions raised. Therefore, the reply to a set of questions whose clarification or resolution affects the concrete situation of a large number of taxpayers was awaited at the end of 2015. This is the case of questions related with alleged divergences on the framework of food

(1) As previously referred, citizens' communications classified as non-admissible or dismissed without further investigation are foreseen respectively in articles 16 and 17 of the Ombudsman's Rule of Procedure.

and transportation expenses of public and private education students[2]. These investigations started in mid-2015 but were carried over 2016 due to the lack of replies by the tax authorities to the questions raised by the Ombudsman.

With respect to complaints about tax enforcements, the first reference to its increase, slight but steady, is foreseen in the Report to the Parliament 2005. In that year, however, the number of complaints did not justify the reference in the framework of matters addressed by this thematic unit, reason why they were included in the residual category «several» of the tax theme[3].

With the focus of tax authorities in a higher efficiency of the tax machine, regarding enforced recovery, the number of complaints on the matter increased significantly. In fact, in 2010 such number equalled the complaints on individual income tax[4] and even surpassed it between 2011 and 2015. It cannot be ignored the increase of complaints by citizens with debts to social security, which procedures are started and run by the respective Enforcement Sections.

In the Report to the Parliament 2014, the Ombudsman already highlighted his special concern regarding the type of problems revealed by the complaints and by the investigation procedures with the Social Security Enforcement Sections. However, in 2015 there was no progress in this respect. In fact, the problems already detected in previous years remain, namely the opening of enforcements when it is not sure whether the charges are effectively due as well as the delay on sending the actions contesting the enforcements to courts. It should also be noted that, whilst in 2014, the number of complaints regarding enforcements made by tax authorities was twice the number of enforcements made by social security, in 2015 the number is broadly the same for those two entities.

Finally and to conclude the list of the tree main tax themes revealed by the cases opened in 2015, toll fees was the one which involved a more frequently request to the Ombudsman's intervention, similarly to what happen in 2013 and 2014. It dates back to 2010 the registry of complaints on a theme that started to be discussed in such year: the charging of tolls in the then named «routes without cost to the user» (*SCUT*). The number and type of complaints showed differences over the years: between 2010 and 2013, the numbers gradually increased until 2012, decreasing in 2013[5]. On the other hand, the type of issues raised by citizen to the Ombudsman followed the evolution of this reality. In fact, if in 2010 it was mainly questioned the decision to impose charges on such routes, in 2011 were pointed out problems regarding the practical application of the regimes set up – and successively amended – to implement such a decision, as well as the

(2) The questions were raised to the Ombudsman not only by several citizens but also by parents' associations.

(3) See *Report to the Parliament 2005*, p. 238.

(4) Set in 116 complaints.

(5) 11 cases in 2010, 60 in 2011, 72 in 2012 and 53 in 2013.

allocation and operation of the system of positive discrimination and the fee reduction scheme which followed.

The large increase in complaints on this subject has been registered in 2014, with 271 persons who approached the Ombudsman. The issues then subject to complaints were mentioned in the Report to the Parliament of the year in question(6). In the first half of 2015, these remained current issues. However, in the second half, it must be added the problems regarding the entry into force, interpretation and application of the extraordinary scheme for settlement of debts arising from the non-payment of toll fees and related costs(7). Interventions in this area made it possible to obtain the extinction of infraction procedures, based on the invalidity of notifications for the payment of toll fees issued by motorway companies (as a rule, by inaccuracy of the shipping addresses of notifications). Many dismissed complaints have been, in turn, subject to detailed elucidations, namely about the reasons why the fee charged were effectively due and by providing information to ex-*SCUT* users who didn't know the exact features of the various payment systems of toll rates on these routes, especially but not limited to drivers of foreign-registered vehicles.

It was also recurring, in the second half of 2015, the elucidation about the motives why those who had already paid the toll rates due could not qualify, retroactively, for the extraordinary scheme approved by Law No. 51/2015, of 8 June. Besides approving such extraordinary scheme, this law also amended Law No. 25/2206, of 30 June. Therefore, it is expected that such changes end up helping the pacification of a situation which, since 2010, has created great instability in the relations between citizens, motorway companies and entities in charge of collecting the fees related to the use of these routes. As always, when legislative changes on matters often subject of complaints to the Ombudsman are made, this State body will continue to monitor carefully the effects of these changes in order to verify if an additional intervention is required.

In the context of complaints about taxation, it should also be highlighted the positive resolution of some problems related to tax benefits to people with disabilities, namely vehicle tax. In fact, the good collaboration of Directorate for excise duty and vehicle registration tax, which accepted to review a matter previously worthy of unfavourable decision, allowed to see recognized the validity of a medical disability certificate issued prior to the entry into force of the vehicle registration tax Code, for the purpose of accessing the benefit foreseen in respective article 54(8).

(6) See *Report to the Parliament* 2014, p. 36.

(7) Approved by Law No. 51/2015, of 8 June, known as «RERD for tolls».

(8) Exemption of vehicle registration tax in relation with «vehicles intended to the own use of persons with motor disability, over the age of 18 years, as well as to the use of persons with profound multi-disability, disabled persons who exclusively move in wheelchairs, visually impaired disabled persons, whatever their age, and Armed Forces disabled persons».

In another situation, it was envisaged that tax authorities consider the efforts made by the complainant to be present at the Medical Committee (started yet within the legal deadline to submit the tax claim, i.e., on January 7, 2014) as essential to make the request for such Medical Committee, in order to obtain the tax disability for 2012. This is so on the basis of the tax authorities' understanding that medical disability certificate may, in certain cases, for the purpose of paragraph 4, article 70, of the Tax Procedural Code, namely, when the respective request has been made within the deadline for the tax claim, be considered as supervening document. Our understanding deserved the agreement of the Porto Tax Directorate, resulting in a reimbursement of € 2795,71 to the complainant.

It was also obtained the favourable decision in another case, where it was sustained the reimbursement of the vehicle circulation tax and fine paid by the complainant for allegedly not having requested the exemption within the deadline. Considering that, in 2014, tax authorities granted the exemption to the complainant, regarding the vehicle in question, it was argued that such request was not essential to recognize the exemption for the year of 2015, on the basis of paragraph 5, article 5, of the vehicle circulation tax.

It was also obtained a good cooperation from the Tax Justice Directorate. In this situation, the Ombudsman sustained that the reference made to «review the tax act» enshrined in item c), paragraph 3, article 78, of the General Tax Law (Approved by Decree-Law No. 398/98, of 17 December), means the effective rectification of such tax act, by way of annulment, and respective reimbursement of the amount of tax unduly collected, not being enough the formal approval of the tax claim. For that reason, interest are due as from the following day of the end of a period of one year, to be counted since the presentation of the claim until the credit note issuance date for the reimbursement of the tax unduly collected. In this case, it is irrelevant that only around two months have elapsed between the date of the claim in question and the decision of its approval[9].

One final point to refer that, in 2015, two Ombudsman's own initiative cases were closed, one opened in 2012 (P-5/12) and the other in 2013 (P-8/13).

In the P-5/12 was monitored the general evaluation of urban real estate, launched in 2012. It was requested statistical data to the tax authorities, at different phases of the investigation[10]. The data analysis allowed concluding that the general evaluation was essentially a well succeeded process, not having generated special conflicts. In the evaluation were considered more than 5 million evaluation sheets, giving rise to around 5.25% of claims and to around 0.23% of second evaluation requests. These values are, in abstract, acceptable. The geographical distribution of claims, by district and autonomous region, has generally proved to be homogeneous. A comparison between real estate tax values of

(9) Case Q-213/14. See 6.2.1. below.

(10) The final data obtained portrayed the Real Estate Information System between November 30 and December 7, 2015.

urban real estate subject to the general evaluation shows that the respective total national tax value increased by an average of 124%. It was possible to conclude, briefly, that the end of the general evaluation of urban real estate allowed:

a) To show how the tax values were outdated, in most of cases without any relation with the fair market value;

b) To put an end to the distortions arising from the correction of tax values, by applying the inflation reliefs (paragraph 1, article 16, of Decree-Law No. 287/2003, of 12 November);

c) To put all urban real estate in the same evaluation system, enshrined in the municipal real estate tax code, thereby ensuring compliance with the principle of equal treatment; and

d) To stabilize the taxable basis of real estate static taxation, creating the conditions so that municipalities may approve lower tax rates without losing revenue.

In what respects case P-8/13, it should be remembered that it was opened to make an assessment of the tax system features suitable for alterations reflecting the needs and difficulties felt by taxpayers, over the past years, especially since the beginning of the economic and financial crisis.

Having acknowledged the creation of the Individual Income Tax Reform Commission and of its schedule, it was opted to include in this case the intervention that the Ombudsman made within the respective President[(11)]. Having exhausted the possibility of intervention with the publication and entry into force of the Individual Income Tax Reform at the beginning of 2015, the Ombudsman decided to end the investigations on the case. However, in due time may be considered a new intervention on some specific issues, regarding the reinforcement of taxpayers' rights.

Consumers' rights

The main issues motivating the major part of requests for the Ombudsman's intervention were: electricity and gas supply, electronic communications supply (phone, television and internet) and problems of users of public transports.

The investigations of cases regarding questions of electricity and gas supply and electronic communications supply occurred, as a rule, within the regulatory authorities for the respective sector, *i.e.*, Energy Services Regulatory Authority (*ERSE*) and National Communication Regulatory Authority (*ANACOM*). *ERSE* played, as a rule, a more active and effective role on the approach of complaints directed by consumers and therefore swifter on the cooperation with the Ombudsman in solving the problems. *ANACOM*, in its turn, notwithstanding the good institutional relation that it maintains for

(11) Of such intervention was made reference in the Report to the Parliament 2014, pp. 34, 92-95.

a long time with the Ombudsman, distances itself from the particular conflicts which motivated claims. Therefore, its intervention focuses on directing the citizens to alternative consumer dispute settlement schemes. Although it is acknowledged the usefulness of such referral, which the Ombudsman also often makes, it appears that the active search on settling the conflicts by a regulatory authority translates into better knowledge of the market it regulates and therefore on the perception of the operators' needs.

As in previous years, in 2015, issues related with the granting of the social tariff and with the interruption of essential public services supply were the most frequent. Regarding essential public services, notifications of amounts after the end of the limitation period have been renewed. Taking into account all the values and interests involved, the Ombudsman considers that such situations are to avoid. On one hand, it shows a non-timely and not quick intervention of the administration on collecting debts, contributing to build a less suitable practice. On the other hand, it implies a burden to the State itself since the enforcement procedure involves costs and the allocation of human resources. Also, in the vast majority of cases, such practice results in the enforced collection of debts after the end of the limitation period, to less informed citizens.

It should also be pointed out the decision of Rio Maior Municipality, which agreed to review the decision previously communicated to the complainant and repay him a certain amount, therefore accepting the Ombudsman's suggestion. It was at stake the repayment of the difference between the amount due for the water service supply and the enforced amount charged for alleged lack of payment. In fact, it was possible to confirm that the non-payment of the invoice was not imputable to the complainant but to a misconduct of the postal distributor (*CTT*) which did not deposit the invoice in the post box(12).

In another situation, since the first invoice of electricity supply debt was sent to an address different to that where the consumer established its residency, the Ombudsman's suggestion was accepted by the company supplying the service. Therefore, the supply company: a) deemed as undue the interruption of the supply arising from the non-payment of the invoice in question; b) deemed as undue the costs related to the interruption and the restoration; and, consequently, c) credited on the consumer's current account the amounts related to the mentioned costs; and, finally, d) sent her a cheque with the indemnity amount she requested to compensate the damages caused by the undue interruption of electricity supply.

It should also be outlined situations where is achieved an increase in the quality of the services supplied to citizens, besides solving the specific case. This happened in a case investigated within *Cartágua – Águas do Cartaxo, S.A.*, which accepted to make changes in the prior notice model for the suspension of services, due to late payment, in order to reach a better understanding by consumers.

(12) Situation analysed on Case Q-213/14. See 6.2.1. below.

Regarding questions raised by the users of public transports, they keep relating mainly to transport tickets, fines, withdrawal of lines and changing schedules, delays and problems with damages to luggage. This last problem is restricted to air transport.

On air transport, it turns out that, as in other situations involving complex regulatory matters and sometimes scattered by different regulatory instruments, users are not always aware of their rights. Examples were situations involving the compensation of passengers due to flight cancellation, where *TAP* has fulfilled its indemnity obligation, by issuing and sending travel vouchers to passengers, not challenged by them. This lead *TAP* to conclude that they were in accordance with the indemnity method. During the investigation of these cases, the Ombudsman pointed out to *TAP* that, according to the applicable Regulation, the compensation «shall be paid in cash, by electronic bank transfer, bank orders or bank cheques or, with the signed agreement of the passenger, in travel vouchers and/or other services».

The Ombudsman has sustained that if the legislator imposed a condition to air carriers (existence of a «signed agreement of the passenger»), so that they may pay the indemnity through voucher, they bear the burden to prove that such condition is met or requirement fulfilled, which legal demand aims to protect the passenger, ensuring that he/she decides with in-depth knowledge of the circumstances. It should be noted that all the cases where it was detected this procedure had a favourable decision(13).

It was completed, in 2015, the investigation of a case, opened in 2014, where it was analysed the situation that affected the users of public transports on March 4 (Carnival Tuesday). The complainants, passengers of several transport companies, disagreed with the latter decision of applying public holiday's schedules on Carnival Tuesday, arguing that such decision conflicted with their rights and interests. Namely, being civil servants and without being released from their functions, they felt special difficulties on the regular journey from home to work and vice-versa. After the hearing of the companies concerned and analysed the several aspects of the situation, the Ombudsman concluded that it was their responsibility to fulfill the external assumed obligations in the provision of services of general interest. This, despite the internal management that transport companies ought to carry out, from a labour perspective (irrespective of matching the Carnival Tuesday to a public holiday for the purpose of releasing workers). Notwithstanding the targeted companies have reasonably estimated a reduction on the number of passengers, this State body has still contacted them in order to establish if information was released to the respective users which enabled them to know in advance the planned restrictions for that day. The investigation showed that in most cases such restrictions were timely released on terminal and ticket offices as well as in the internet pages of the transport companies. In a few situations where companies recognized that they have not made such

(13) One of such situations was analysed in case Q-8066/14. See 6.2.1 below.

release – since, allegedly, applying the public holiday regime to the Carnival Tuesday was known by the majority of users – it was obtained the commitment that, in future cases, the release of information would be made in time.

Economic operators' rights

Complaints on economic and financial affairs, in relation to their number and typology, have not undergone a relevant change, but it should be noted a slight decrease. In fact, complaints of *BES*' small shareholders and of *BES*' commercial paper holders continue to be received, object of elucidation and referral already mentioned in the Report to the Parliament 2014, pointing out the recourse to judicial process as the most appropriate solution.

The complaints targeting insurance companies and private banks were dismissed without further investigation, not originating therefore the opening of cases. Nevertheless, this thematic unit elucidated all the complainants, explaining the reasons why the Ombudsman could not intervene, due to his legal and constitutional competences, directing them therefore to the respective regulatory or supervision authorities, or, where applicable, to the alternative means of resolving conflicts or the recourse to the courts.

It should also be noted that where the regulatory or supervision authority does not reply the complainant, or replying, communicates a position with which he/she disagrees, the complainant may resort to the Ombudsman. In this circumstance, the Ombudsman opens a case to hear the administrative entity in question, analyses its action, in view of the complainant's intervention request, and takes a final position.

In what respects banking issues, to the common problems as the charge of commissions, with the use of cards and with the allegedly undue communications to the Bank of Portugal's Central Credit Register, it must be added several complaints regarding housing credit. The latter includes penalties for late payment, increase in the spread and, in a great number, complaints on subsidized housing loans to disabled persons. In this regard, it is stressed the suggestion made by the Ombudsman to the Directorate General of Treasury and Finance, meanwhile accepted(14).

In another case, the Ombudsman concluded that there was no reasons to reproach Bank of Portugal. Following the complaint against the *Caixa Económica Montepio Geral* (hereinafter *Montepio Geral*), Bank of Portugal realized that *Montepio Geral*, by refusing a request under the regime of subsidized housing loan to disabled persons, did not breach any rules, either in terms of credit proposal analysis or in respect of pre-contractual information requirements. Notwithstanding the disagreement of the complainant with *Montepio Geral*'s refusal of credit as well as with the position taken by Bank of Portugal in

(14) Case Q-4895/15. See 6.2.1. below.

that such refusal was justified, the Ombudsman elucidated the complainant. In fact, this State body explained that it is not within the competences of Bank of Portugal imposing to *Montepio Geral* the acceptance of a credit risk higher than the one it defined as reasonable, in view of the results of the credit financial analysis, but solely confirming, as it did, whether the refusal did not have any arbitrary reason or negative discrimination, caused by the complainant's disability.

Still in the scope of economic and financial affairs, it should be noted that it was possible to obtain a favourable decision from the Directorate General of Reintegration and Prison Services, regarding an outstanding issue on differences about the payment of a relatively large amount (€ 26 072,51) to a company that sold and invoiced it merchandise. During the investigation of such case, opened in 2013, the debt was recognized and, lastly, the respective full payment made (in June 2015).

Other issues

Regarding funds and other support, the most frequent complaints are, as a general rule, presented by beneficiaries or applicants for aid in the domains of agriculture and employment. With respect to employment, several complaints were presented by applicants for own job creation, claiming the excessive length in the examination of the respective applications. It should be highlighted the greater number of complaints presented by citizens who were asked to repay the grants. Such requests were based on two main reasons: beneficiaries did not maintain, by the minimum period, the jobs created; or, beneficiaries did not respect the exclusive dedication regime to the supported project. It is noted that any of the invoked reasons constitutes, as a general rule, legitimate ground and unchallengeable in order to sustain the request of repaying the aid received.

In 2015, it was successfully completed the investigation of a case opened in the prior year, in which the Ombudsman defended before the Fisheries and Agriculture Financing Institute that the interest on late payment, following the cancellation of a contract for the grant of aid, were charged after the end of the limitation period. Referring to jurisprudence of the Administrative Supreme Court, under which interest on non-tax debt, even if collected through tax enforcement, have a limitation period of five years, the Ombudsman convinced Fisheries and Agriculture Financing Institute to change its initial position and to recognize that interest were charged after the end of the limitation period. The interest paid amounted to € 20 929,12.

In another case, it was also analysed actions relating to organic farming and integration production of the programme for rural development of Portugal (*PDR* 2020). The complainant questioned the solution considered in item d), article 3, of Ministerial Ordinance no. 25/2015, 9 of February, regarding the concept of technical assistance. In accordance with this rule, the qualified technicians to provide that assistance should

celebrate service contract with farmers' associations or cooperatives. It was also foreseen a financial increase in case beneficiaries use such technical assistance. The complainant disagreed with this legal solution by considering that it was arbitrary and it was likely to create distortions of competition since it would induce beneficiaries to prefer associated technicians over those carrying out an individual activity. On the investigations, the Fisheries and Agriculture Minister' Cabinet was heard. In view of the analysis of the detailed explanations received, the complainant was informed, namely, about the reasons which would have motivated the financial increase, *i.e.* the promotion of agricultural associations, including its connection to the technical assistance, as a structuring pillar of rural development. The clarifications made by the Ombudsman allowed to remove fears of any arbitrariness on the option taken by the Government, regarding the criteria for the purpose of recognizing the mentioned financial increase on aid under *PDR* 2020 and therefore the case was closed.

1.2.3. Social rights

As in previous years, in 2015, the Ombudsman received a large number of complaints about several issues concerning social rights. Some of the complaints reflect the financial, economic and social crisis and its strong negative impact over the last few years in Portugal. The violation of social rights, the delay in the allocation of social benefits or for its termination, the charging of not substantiated debts, the lack of timely and adequate information of the successive legislative changes, the legal insecurity and uncertainty, the effectiveness of social protection scheme are some of most common complaints made by citizens.

Following the complaints received, 1636 cases were opened in 2015. This represents a slight decrease in relation to the previous year (1848).

Nevertheless, complaints about social rights were 22.3% of all procedures opened in 2015. 1585 cases procedures were concluded, almost as many as those which were opened. Of these 1585, 1142 procedures have been completed in the same year, which means that 70% of procedures complaint opened in 2015 had an instruction in less than a year. This result - which shows the effort to achieve greater swiftness and efficiency - is particularly relevant, given the nature of the matters in question, stressing the effectiveness of the intervention of the Ombudsman in defending the rights of citizens.

Within the 1585 concluded cases in 2015, it is noted that: 923 (58.2%) have succeeded in repairing the illegality or injustice, following of the Ombudsman intervention; 540 (34.1%) were considered groundless, after instruction; in 72 (4.5%) the complainants were referred to other resolution means, with clarification to complainant of his/her rights; 38 (2.4%) were filed by withdrawal of the complaints; 11 (0.7%) were concluded

with remark or suggestion call, and one (0.1%) was summary closed through information provided to the claimants.

Regarding the subject of complaints received in 2015 concerning social security there are no significant changes compared to the previous year.

Anyway, there is an appreciable increase of complaints on issues relating to family benefits (prenatal care child benefit and child benefit to children and young people), unemployment benefit (especially for self-employed workers), old-age pensions, benefits in the event of death, solidarity benefits (insertion social income, solidarity supplement for the elderly and other subsidies within the scope of social action), as well as social security contributions and debts.

Among the most important Ombudsman interventions related to social security issues can be highlighted the expressive delay in the assignment of solidarity benefits. Following Ombudsman's remark in view of the adoption of urgent measures to solve de problem, the Social Security Institute (*Instituto da Segurança Social, I.P. – ISS, I.P.*) recognized the problem and acted in order to solve it.

Some problems regarding access of disabled persons to specfic social benefits have also been detected and reported to *ISS, I.P.*.. The cases identified by this State body were corrected and measures have been taken to avoid similar cases.

Delays of the National Pensions Centre (*Centro Nacional de Pensões*) were checked in allocation of pensions and to calculate the probable amount of early old-age pensions, as well as in sending forms to foreign social security institutions with whom Portugal is bound by instruments of international law and in translation of documents required. Furthermore, delays were detected in the access to parental benefits and unemployment benefits, as well as in the registration of foreign workers in the social security. Considering these situations, the Ombudsman also addressed a remark to *ISS, I.P.*..

There were also new complaints received about situations of lack of social protection regarding parenting and sickness benefits, concerning the teachers that transited from the civil servant social security system (*Caixa Geral de Aposentações, I.P. – CGA*) to the general social security system (*ISS, I.P.*). The Ombudsman urged the Government to legislate on this matter.

Another aspect concerns the insufficient coordination between the different social security services, regarding the notification of contribution debts for enforcement proceedings, as well as the unjustified delay in responses to complaints and in the refund of contributions that have been wrongly paid.

Regarding the complaints about social integration minimum income (*RSI*), problems concerning the recognition of the right to equal treatment for family members of European Union citizens and nationals were identified, as well as the need for greater clarity in the presentation of the facts in which the rejection decisions of this benefit are based. It was also noted the necessity to confer swiftness in the assignment and renewal of this

benefit. The Ombudsman made several suggestions regarding this subject, which were adopted by the Social Security Institute (*ISS, I.P.*).

Several complaints revealed weaknesses in the social security's information system applications or the delay in the correction of these applications with impact, namely, in the attribution of social benefits and in the collection of contributions.

In what concerns the issues related to social security contributions of the self-employed, many complaints were raised regarding: mistakes in qualifying and positioning of contributory base; errors in current accounts; irregularities in the notifications and amounts of the debts; excessive and unjustified delay in responses to complaints and refund of contributions that have been wrongly paid.

1.2.4. Workers' rights

In 2015, a reduction of the number of complaints submitted to the Ombudsman relating to labour and employment was registered, which however was not significant. When compared to 2014, there was a decrease in the overall number of opened cases from 1106 to 1021 (least than 7.7%). A more careful analysis leads us to conclude that the number of complaints concerning public employment has diminished (11.4%), whilst the number of complaints related to labour disputes between private parties, occupational training and unemployment have increased.

The number of cases closed in 2015 was 907, which corresponds to 88.8 % of the number of cases opened in the same period. Among the cases opened, the majority of the complaints concerns public employment disputes (848), followed by private labour disputes (104), employment and occupational training (60) and finally, public procurement, which gave origin to a very reduced number of cases: only nine.

Among the cases related to public employment, 253 out of the 848 plaintiffs were teachers in elementary and secondary public schools, a fact that does not surprise, since recent statistics reveal that teachers in public schools represent approximately 19.2% of all public servants. Therefore, teacher related issues dominate the majority of these cases centred on recruitment, career development, employment relationship and mobility.

The complaints of other public servants, generally considered, mainly arise from problems regarding public officials' selection procedures, remuneration, working conditions, such as the organization of work schedules, justification of absence and accidents at work and occupational disease.

Once again, in 2015, complaints related to selection and recruitment procedures led to the opening of a very significant number of cases (216). Some of these cases reveal non-compliances with legal framework in matter and, sometimes, they can constitute an

unjustified restriction of the fundamental rights of access to public employment and the freedom of choice of occupation.

The complainants also recurrently bring to the Ombudsman's attention problems that reveal that public employers seldom are as sensitive as they should be to the importance of reconciling work and family life. Obviously, the budgetary constraints and reduction of public expense which have been imposed over the last years had a significant impact on the shortage of staff – a problem this State body can not ignore. Nevertheless, it is not legitimate to deny workers their right to adequately conciliate work and family life, for instance, by systematically refusing to approve flexible or continuous work schedules, based only in a vague or abstract allegation of public interest in the refusal.

In what regards the case-solving methods, a good part of these cases were settled through informal means, such as telephone or email contacts. Among these, the cases where undue administrative action results of ignorance of the applicable legal regime (as happens sometimes on matters which are complex for public services without legal support or where this is difficult to obtain in a timely manner, as basic and secondary schools) deserve to be highlighted. For instance, the mere informal contact with a school and the clarification of the legal rules applicable had allowed to swiftly overcome the obstacles raised to a plaintiff, that intended to have access to relevant documents in a recruitment procedure – namely, to the applications of other opponents - which the school board mistakenly thought should not be disclosed.

Complaints related to delays in the conclusion of administrative procedures are also often resolved through informal means: the contacts established with the addressed entities often lead to the detection of purely bureaucratic obstacles or problems of organization, which may rapidly be corrected. *e.g.,* an accident at work whose recognition was dependent of documents that another public service failed to promptly send (Case Q-4086/15); or delays in issuing the necessary authorization for workers who were raised (before budgetary constraints have prohibited any salary increase) to start receiving the due remuneration (Cases Q-5594/15 and Q-7109/15). Through the conciliatory and informal intervention of the Ombudsman, it was still possible to obtain favourable decisions, in advantage of workers who had exceeded the limit of absences justified by illness, thus finding themselves in unpaid leave, deprived of any revenue, and who wanted to return to work (cases Q-2829/15 e Q-5728/15).

Other cases, however, require a more formal and substantiated intervention. In fact, in 2015, the Ombudsman intervened in various complex situations that involved a significant number of complainants, and resulted in the issuing of one recommendation and of written remarks or suggestions, also turned public (some if these cases are summarized *infra,* in § 6.4.).

The majority of the entities addressed (mostly public authorities) tends to cooperate with the Ombudsman – albeit some with some delay – sending the information that is

requested and considering the suggestions or recommendations headed to them. However, and despite collaborating with Ombudsman is a binding duty to all public entities, some of them show resistance in responding to the requests of this State body. Others, such as entities who are targeted in a great number of complaints (*v.g.*, those presented by teachers), reveal difficulties which the Ombudsman has tried to mitigate by proposing more efficient strategies of communication.

1.2.5. Right to Justice and Security

In 2015, the complaints concerning the administration of Justice amounted to 558. The intervention of this State body has helped to solve problems that, in previous years, had originated many dozens of complaints. That is namely the case of the Ombudsman intervention with the Mobility and Transportation Institute (*IMT*) and the Portuguese Mint and Official Printing Office (*INCM*). The first case concerned the difficulties of the proprietaries that had sold their cars but still had their names inscribed in the car registry. This meant that they must still pay the Annual Vehicle Tax (*IUC*). The second case concerned the delays in issuing and renovating driver licenses, for which a procedure on the Ombudsman own recognition was filed.

The success of these interventions has allowed the reduction of 50% of complaints regarding the aforementioned issues. These circumstances and others added to signs of mild economic recovery and help explain the 1012 complaints filed, as summarized in the following table:

Table 6

Administration of Justice

Administration of Justice	558
Judicial delays	411
Judiciary	243
Prosecutors	20
Clerks	6
Enforcement officers	119
Experts	2
Insolvency administrators	9
Social security/ Santa Casa da Misericórdia de Lisboa	1
National Institute of Legal Medicine and Forensic Sciences	1
Justices of the peace	2

National injuction desk	1
Other judicial delays	7
Other problems of Justice	54
Protection of children and young people at risk	26
Special security programs	1
Protection to victims of crimes	7
Child maintenance	9
Criminal record and defaulters record	0
Court fees	3
Other administrative problems	8
Access to the law	58
Lawyers deontology	24
Enforcement officers deontology	1
Judicial organisation and infrastructure	0
International judicial cooperation	1
Judicial decisions	1
Other problems — Administration of Justice	8
Homeland internal security	55
Police actions	29
Police omissions	11
Weapons and explosives	10
Other internal security problems	5
Road safety	226
Traffic signs, road and transport planning	3
Road traffic offences	78
Driving licenses and schools	69
Other road safety issues	76
Registries and Notaries	80
Registries	36
Notary	11
Citizen card/Identity Card	24
Other Register and Notaries Problems	9
Other matters	93
Total cases opened in 2015	**1012**

To highlight some numbers, the quantitative expression of the Ombudsman intervention can be assessed having in mind the 411 complaints concerning judicial delays. From this total, 243 cases concerned judicial, administrative and fiscal courts. The Public Prosecutor Service was targeted in 20 cases. Enforcement Officers and Insolvency Administrators gave cause to 128 cases, less 30% than in 2014.

Complaints relating to lack of income, be it the delay in child maintenance payments, delays in obtaining legal aid or the State payments to the concerned lawyers, and those relating to the level of discharge of legal costs and other process expenses, have also diminished.

The *ISS, I.P.* was demanded 58 times. Citizens were complaining about delays in the decision of legal aid requests or the level of awarded legal aid. This represents a decrease of 36% of cases aimed at that target entity.

There were also fewer complaints regarding interventions with the *IMT*, on the areas abovementioned.

The National Road Safety Authority (ANSR) was the addressed entity in 54 cases. Citizens expressed their dissatisfaction about delays in issuing and renovating driver licenses and about traffic offences, especially in regard to the refund of amounts paid as security deposits and the delays in reviewing and deciding the procedures.

Internal security issues gave rise to 55 complaints, 29 of which (55%) were about police action and 11 about police omissions. There were only 10 complaints about guns and explosives, but it should be noted that that number is twice than the number of 2014.

The Public Security Police (*PSP*) was targeted in 43 cases. The National Republican Guard (*GNR*) in 25. The Judiciary Police in four, and, lastly, the municipal polices gave rise to two complaints. Therefore, some of the complaints aimed at police forces are not about policing actions or omissions, but have to do, for instance, with road safety issues.

The Institute of Registries and Notaries (*IRN, I.P.*) which is a «public institution that executes and monitors policies relating to registration, to ensure the provision of services to citizens and companies in the field of civil identification and civil registration, nationality, land, commercial, movable and legal persons (...) [and ensuring] regulation, control and supervision of the notarial activity[15]» was a target entity in 80 cases, regarding the application of Registry and Notary law.

In this specific area, this State body has dealt with requests for intervention that confront the advantages created by the new technologies, (namely the multiple functions of the citizen card), and the inherent risks to a full exercise of citizens fundamental rights, such as the right to privacy.

(15) https://www.portaldocidadao.pt/en/web/instituto-dos-registos-e-do-notariado/instituto-dos-registos-e-do-notariado, accessed in 2015/05/16.

Almost 14% of the 7335 cases opened in 2015 refer to the cases that were handled by the Right to Justice and Security Department: Of these, 6% were about judicial delays.

548 cases were carried over from previous years; this means that 1560 complaint procedures have been handled in 2015 regarding justice and security issues.

This department was also involved in 88 cases concerning Children, Senior Citizens and Disabled Persons. What had happened because of the close link between the exercise of the rights of these vulnerable groups and judicial issues (*v.g.* matters of parental responsibility, incapacity, disability).

Many times, in order to further elucidate the complainants, telephone contacts are made instead of traditional written communications; specially in cases which involve complex legal concepts and procedures. The Children, Senior Citizens and Disabled Persons Unit *(N-CID)* is part of the process, reaching the elderly and persons with disabilities, thus ensuring swift and informal communications. Notwithstanding an example of a more formal approach is mentioned in the chapter «Ombudsman's decisions in the promotion and protection of fundamental rights».

This being said one should note that 1048 files were closed in 2015:

In 449 cases it was possible to reinstate legality or repair the injustice;

The complainants were referred to the competent authorities in 76 cases, because the Ombudsman deemed that a judicial or administrative remedy was available, as especially provided by law, in accordance with § 1, article 32nd of the Ombudsman Statute.

Critical remarks to the body or the services involved were made in 20 cases;

The other cases were closed, given the conclusion that no illegality was at stake.

In 2015, 55% of the cases concerned the administration of Justice. Road safety matters demanded the Ombudsman intervention in 22% of the cases, 8% were about registry and notary issues; internal security, namely policing 5% of the cases.

Judicial delays, access to justice, lawyers and enforcement officers deontology and other specific matters are the main themes this unit handles under the general title «administrative problems of Justice». Understandably, 74% of the complaint procedures are about the administration of Justice

The enforcement agents work was ground for 199 complaints. This amount to less than 28% of case dealing with enforcement procedures and attachments, seizures or wage assignments associated with them.

Delays in the decision, and the decisions, of legal aid requests amounted to 10 % of the complaints. Delays in disciplinary procedures against lawyers were targeted in 24 cases.

Cases regarding children and youth at risk (26) and child maintenance payments through the Child Maintenance Guarantee Fund were also under the Ombudsman consideration. This intervention is especially relevant in situations where livelihood of an entire household is at stake or at least its ability to acquire essential goods such as food, clothing and school supplies for children.

The intervention of the Ombudsman is requested also when there is a delay in court procedures or when there is an unjustified delay in sentencing. That is the case with failure to discharge the duties inherent to a child arrangements order. Notwithstanding, the Ombudsman cannot interfere in any matters under judicial consideration, given that, as laid down by the Constitution, the courts are independent and subject only to the law and that court decisions are binding on all public and private entities and prevail over the decisions of any other authorities. In such cases the Ombudsman refers the plaintiffs under the general rules on Juvenile Civil Cases (Law No. 141/2015, of 8 September) to require that the competent court shall take the necessary steps to coercively obtain the arrears and charge the non-complying parent through fines and compensation to the child(ren), the non-offending parent, other caregiver or all of them. If the non-complying parent resides abroad Council Regulation (*EC*) No 4/2009**,** of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations applies. The Ombudsman interventions happen through the Directorate-General of Justice Administration (*DGAJ*).

Internal Security

As mentioned above, policing led to 40 cases from a total of 55 concerning police forces. Guns and explosives gave rise to 10 cases. Further considerations are made in the chapter concerning the Ombudsman´s decisions in the promotion and protection of fundamental rights.

Road Safety

Unless they filed a court action, vehicle owners who sold their car through verbal sales contract found themselves unable to remove their name from the car registry, if the new owner didn't register the car as his own. The ensuing problems, namely fiscal, entailed several interventions of the Ombudsman. A recommendation to Secretary of State of Transport and Communications on that subject was filled in 2012. (no. 6-B). Finally, from 2015, in accordance with Decree-Law No. 177/2014, of 15 December, it was enforced a special car registration system, and the subsequent possibility of apprehending vehicles.

Registries and notaries

In 2015, complaints about citizen card (24) and notary issues (11) were superseded by those concerning registries (36); delays in civil registry, land registry and problems in cadaster account for most of them.

Best practices and final assessment

The continued cooperation of the High Council of the Judiciary, the Fiscal and Administrative Courts and of the Public Prosecution Service must be emphasized.

Cooperation agreements with *ISS, I.P., IMT, I.P.* and *ANSR* remain in force, with good results as far as swiftness and informality are concerned. The *IRN, I.P.* must also be singled out in this context.

An example of best practices comes from a police force (*PSP*). The complainant argued that there was an error in the offence notice. Following the Ombudsman intervention to assess the situation, the officer involved immediately admitted his mistake, explained it apologized to the concerned citizen.

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 complaints received decreased by about 10% over the previous year, with a steeper decline in procedures concerning nationality (31% less). Conversely, it should be noted the resurgence, but for particular reasons explained below, of the complaints about entry and stay in Portugal of foreign nationals. The subjects with most significant growth in recent years - in particular education, health and prison issues - had an evolution similar to the general trend (respectively, less 11%, 14% and 14% than in 2014). The unconstitutionality issues were reduced by 38%.

931 procedures were concluded, distributed as follows:

a) In 382 cases (41%), with total or partial satisfaction of the plaintiff's claim (a slight proportional increase compared to previous years);

b) In 313 cases (34%), no ground was found for the complaint or it was concluded no other measures could be undertaken;

c) In 136 cases (15%), the plaintiff was addressed to the appropriate mean to defend the rights at stake, or explanations were given providing a more correct understanding of the case;

d) In 61 cases (7%), no other action deemed possible, a remark to the Administration was addressed, calling for a change in procedures;

e) In 10 cases (1%), the complainant withdrew the petition;

f) In 26 cases, the filing was immediate, providing explanations without the need of further inquiry;

g) In the remaining three cases, their assessment was concluded in the framework of a recommendation.

Several visits were conducted to prisons, health and education facilities.

Valuations of constitutionality

The number of complaints received, directly urging the Ombudsman to seize the Constitutional Court, after several years of strong increase, fell, by 38%, with particular emphasis on the almost disappearance of litigation, felt in previous years, concerning solutions adopted in the State Budget. In absolute numbers, the value registered in 2015 only exceeds the figure of 2011.

None of the cases examined during 2015 justified an initiative for the review of the constitutionality or legality of norms.

Three judgments of the Constitutional Court, responding to past initiatives of the Ombudsman, were publicized in 2015, in two cases upholding the claim. Thus, judgment of Constitutional Court No. 141/2015 declared with general binding force the unconstitutionality the norm of Law No. 13/2003**,** of 21st May, as amended by Decree-Law No. 133/2012**,** of 27 June, demanding, for Portuguese citizens, the completion of a minimum period of one year residence in Portugal to allow access to social integration wage. This decision was extended to the family members of the applicant.

Judgment of Constitutional Court No. 494/2015 declared unconstitutional, with general binding force, the norm of the General Law of Labour in Public Functions (Law No. 35/2014**,** of 20 June), conferring legitimacy to the Government to conclude collective agreements in which the public employer was a local body.

Finally, Judgement of Constitutional Court No. 576/2015 decided not to declare the unconstitutionality of the norm of Law No. 75/2014**,** of 12 September, determining wage reduction of the workers of companies in which public entities owned the majority but not whole capital.

In alternative to the seizure of the Constitutional Court, other modes of intervention were deemed as more adequate or proportionate. For instance, the assessment of minimum age limits for admission to police forces was again reiterated with the Ministries of Justice and Internal Affairs. The specific situation of several civil engineers, protected at European level by a statement of the Portuguese State, exempting them from the general frame of the Architecture Directive, but not enough protected at the domestic level, justified a recommendation to the Parliament.

Among the cases which no sufficient ground was found, the increase of the minimum number of years of service of Air Force aviators, from 8 to 12 years, was found within the limits of the Constitution.

Finally, despite qualified by the complainant as unconstitutional, the absence of regulation about the proper integration, as public servants, of teachers already with experience

was deemed as illegal by omission, promoting a remark to the Ministry of Education, drawing attention to the need to fulfill the duty to regulate this situation.

Nationality

The trend already observed in the last few years, of decrease in the number of complaints about issues relating to nationality, remained in 2015. To a maximum of 390 complaints registered in 2010, only 106 were received on the current year (reduction of 31% to the previous year).

Two factors contributed to this reduction: i) the almost complete disappearance of complaints relating to persons from the former Portuguese State of India (in 2010, 325 cases; in 2015, only 21 complaints) ii) and the decrease of the naturalization petitions and consequent administrative delay, following the same trend in immigration, on the last decade. In the latter case, complaints alleging excessive delay fell 17% and on substantive grounds 72%.

Almost ¼ of the total complaints dealt with substantive issues. Among these issues, the methodology of the Civil Registry Services to assess one of the naturalization general requirements, the legal residence in Portugal for six years, was subject to criticism. A foreign citizen, residing in Portugal from 2002, as certified by the Foreigners and Borders Service, was denied the naturalization, claiming the absence of proof of the effectiveness of that residence and invoking knowledge of absence of the concerned person, for some periods, from Portugal. The Ombudsman considered that, in the present case, the recorded absences had not exceeded the legally established time limits, not jeopardizing the validity of the residence permit. He stressed, likewise, that the residence requirement laid down by the Nationality Law could not demand the prohibition of any absence from the national territory during the period of 6 years in question. Only the Foreigners and Borders Service could evaluate and certify the fulfillment of this requirement. The Civil Registry Services accepted the conclusions defended by the Ombudsman.

Foreigner's Law

As stated above, the number of issues concerning the situation in Portugal of foreign citizens rose by 50% over the previous year, reaching more than 200 cases. This evolution is almost entirely due to the emergence of a significant number of complaints submitted by foreign nationals who wished to benefit from a residence permit to an investment activity («golden visa»). The procedural changes, endured in the last two years, were cause for further delay, thus justifying the appeal to the Ombudsman and the subsequent contact with the Foreigners and Borders Service.

The number of complaints relating to visa concession, either by delay or on substantive grounds, fell from 30 to 18. It was possible, thus, to overcome the situation, described in the previous report, about the functioning of the consular representation in Dakar. After a meeting with the central services of the Foreign Affairs Ministry, the vast majority of pending cases was solved.

In this matter, the full cooperation between the Ombudsman and the National Centres for Immigrant Support, under the High Commissioner for Migrations, kept as fruitful as in previous years, in the common goal of the defense of the rights of migrant citizens, falling within the framework of the existing agreement between those two public entities.

Education

The number of complaints about the public education system declined by around 10% compared to 2014, thus returning, in absolute numbers, to the level recorded in 2012. This decline is fully sensed on what concerns primary school, the number of complaints about preschool education being almost the same and, on the opposite, more complaints being received in the case of secondary and higher education.

Although its study has not been completed during 2015, the receipt of a complaint signed by a large group of parents, about the rules applicable to textbooks, its implementation and enforcement should be noted given the relevance of the matter to most of the families.

Complaints about preschool education focused, in particular, in the process of enrolment and securing a place at a certain facility. There were also concerns about providing support to children with special educational needs or their discrimination in access to leisure activities. The latter was seldom explained by the lack of specialized human resources, problem overcome after contacts with the responsible entity.

Concerning pupils in basic education, the more frequent issues were about facilities, particularly its safety and accessibility conditions, the enrolment process and the access to a vacancy in more disputed schools.

Regarding this last aspect, an error of interpretation of the relevant criteria was detected, unlawfully mistaking the previous enrolment on the same school with such background in the same group of schools (albeit in a different one than that now sought). This illegality was notified to the Government, underlining the need of further action to ensure nationwide uniform implementation of the set of criteria. The Government acted accordingly, on time to prepare school year 2015/2016.

In social terms, most of the issues raised concerned the fixing of school meals price above that resulting from the current legal framework. The majority of cases was solved, after contact with the respective municipality. In a specific case, about school transportation, a certain municipality granted to families half cost of the monthly pass, however

concentrated (in full) on the second part of the school year, thus concentrating the families burden on its first part. The Ombudsman suggested that such a solution created more difficulties in the management of the family budget, usually done on a monthly basis, in addition disregarding the financial effort that was required cumulatively at the start of the school year, with the acquisition of textbooks and other necessary materials. The system was changed accordingly, although only for the next school year.

The situation of children with special needs persisted as one of the issues more often targeted by complainers. The intervention of the Ombudsman consisted essentially in motivating further reflection and clarification of the criteria observed, sometimes resulting in the recognition of inaccuracies in the assessment made, with further reinforcement of therapies and other support provided.

In what concerns secondary education, it became more frequent to receive complaints about enrolment and securing a vacancy in a specific school, several times justified by the will of enrolling a certain course, facilitating, by its final national examination, the access to the desired superior education.

Informal approaches were used to better ensure communication between the administration and families concerned, either in the maximization of public resources providing courses sought but not initially offered, either in guaranteeing a smooth return to the normal class attendance of children in leave situation, as a consequence of conflict involving parents and teachers.

Regarding higher education, there was an increase in the number of complaints about evaluation, sensitive scientific and pedagogical dimensions underneath, as well, in a parallel issue, of situations concerning the recognition of diploma. The social issues, altogether with tuition fees, remained frequent.

In hinge situation between access to education and the right to health, the case of a youngster mentally ill who allegedly was not receiving basic education by inadequate support of the social private institution welcoming her, motivated a visit to the same, prompting the articulation of the said institution and the Ministries of Education and Science and Solidarity, Employment and Social Security. The delay in assuring support of special education teachers and the lack of informatics were designated as major flaws and duly overcome.

In 2015, seven schools were visited, thus almost doubling the number recorded in the previous year: two kindergarten, two schools of the 1st cycle of basic education, a school of the 2nd and 3rd cycles, a secondary school and the Military High School, in this case to check the adaptation towards a mixed school population.

Health

The number of complaints about health issues was reduced in 14%, although, in absolute figures, only lower than what was verified during the two previous years.

The primary care units were more frequently targeted by complaints, in general terms concerning the access conditions to an appointment and the lack of a designated general practitioner. The complaints concerning the articulation between primary care and hospital were half of those occurred in 2014. However, on several occasions, the Ombudsman stressed, both to health units and the regional coordinating structures, that the National Health Service should be treated as a whole, therefore no geographical boundaries, namely concerned with the patient's residence, limiting the use of any resource. This was the case, for example, in what concerned access to ophthalmology and otolaryngology care.

The number of complaints against actual care given at hospitals and other units was lower, in contrast the number against regulatory bodies increasing on the same subjects.

Several children, previously receiving cardiological care in a private hospital, according to a contract made with the National Health Service, were denied the continuation of such care at the same hospital, due to the revocation of that contract, by intervention of the Court of Auditors. Complex procedures, involving the reiteration of surgical procedures, being at stake, the Ombudsman observed to the Ministry of Health that ensuring the continuity of treatment by the same surgical team, could, in a given situation, be justified medically. The Government reply, restricted by the said court decision, proposed an inventory of pending situations, observing the solution proposed in the case of an immediate answer by the National Health System institutions.

Another action with the Ministry of Health regarded the viability of consecration, on equal terms, of the access of citizens to oral health care. The issues with financial basis, such as those related with the exemption from user fees, remained in very significant numbers, however 20% less than in 2014. In addition to the assessment of individual cases, overcoming difficulties and clarifying possible ways for each situation, the dialogue with the Ministry of Health remained, regarding the proposals contained in a recommendation of the Ombudsman, gradually, notwithstanding partially, implemented.

Another one of these proposals was accepted during 2015, excluding from the relevant income to the assessment of economic failure, of those «benefits for family expenses, expenses in the field of disability and family protection subsystem dependency and cash benefits of any nature granted under the social action subsystem.» (Decree No. 289-B/2015, of 17 September, and its amendment).

The number of complaints against public health subsystems also increased, with particular emphasis on the conditions for enrolment as beneficiaries, namely in the case of military personnel (*ADM*), but also on the civil servant subsystem (*ADSE*), in what concerns descendants over 18 years, especially for those not studying but with a severe disability .

Respecting the financial interest of the military subsystem and the freedom of choice and comfort of the concerned patient, a successful proposal was made to allow prosthetic users to choose at their own will the provider of the device, with a public expense limited to the amount found out by a transparent market consultation.

A set of observations was addressed to the Hospital of *Barreiro/Montijo* to improve the rights of users admitted to its psychiatric service, especially when subjected to physical restraint measures. Also in the context of mental illness, the constraints felt in the referral of patients by hospitals for units of the social sector were pointed out to the Central Administration of the Health System, (*ACSS, I.P.*).

Finally, a new instance of an issue already dealt with in 2009, about the refusal of a primary care unit to certify a breastfeeding situation, occurred. The doctor considered that this situation should not be prescribed. As before, the Ombudsman noted that the law does not require a prescription, but a simple certification of a fact. Therefore, if now doubt was cast about the occurrence of the fact, only strong ethical reasons existing against it, the certificate should be mandatorily issued. The primary care unit in question promptly upheld this position, internally disseminating the relevant information.

The issues related to the National Network of Integrated Continuous Care (*RNCCI*) have been gaining relief. In the year 2015, two interventions should be stressed, of more general nature. The first one addressed the inconsistency of excluding patients with specific respiratory needs of long-term units. The responsible entity concurred on the relevance of a future legislative amendment. The Ombudsman also underlined the need of overcoming the specific and detrimental access conditions, to *RNCCI* units, of beneficiaries of public health subsystems.

During 2015, visits were made to *Hospital Dr. José de Almeida* (*Cascais*) and the *Hospital of Barreiro/Montijo*.

Penitentiary Issues

The number of complaints received on this subject was almost identical to which was received in 2013, thus nullifying the increase occurred meanwhile, with a significant coincidence of thematic distribution, namely with regard to access to healthcare or transfer of premises, in the latter case often relating to problems with housing, personal safety or occupation. Despite the overcrowding, complaints directly related to housing and to acts of violence, whether at peer level or involving prison guards, were in lower figures. Similarly, there was a significant decrease in the number of complaints about security and discipline measures.

The complaints about transfer's requests continued to be negatively marked by the specific case of the Azoreans inmates. Albeit the available solution, of transfer from the mainland to *Terceira*, is only a partial one, for inmates originating from the other eight

islands, 2015 did not saw, in full, this nevertheless approach to family and social environment of origin.

A frequent cause for complaint in recent years, either by inmates, either by visitors, was the negative effects of strikes of prison personnel. In a concrete situation, in premises with major restrictions concerning contact with the outside world – the Prison of *Monsanto* – , its population was only made aware of a certain strike on the eve, thus making impossible to proper warning of visiting families or to reassure them about the impossibility of a phone contact. The explanation given stated that only at that time minimum services were known. However, the Ombudsman stressed to the warden that cautionary information could be advanced more precociously, not barring a more thorough one.

On an inquiry to the action taken by a National Health Service, in compliance to a court order for the search of illegal drugs, the Ombudsman concluded that doctors had surpassed the limits of that order. As the concerned hospital justified this by a verbal consent, made by patients in front of the surveillance personnel, the Ombudsman underlined the sensitivity of any intervention on persons deprived of freedom, warning the hospital to the need for a strict compliance with a court order content, which must be interpreted restrictively. Not considering other causes of justification, to obtain the consent of inmates, the Ombudsman suggested a written form, which should be obtained out of the reach of surveillance personnel.

In another situation, also with the intervention of the diplomatic representation of his country of origin, a foreign inmate claimed that the prison opposed to a visit by his daughter, living in a social care unit. The prison warden denied such opposition, claiming the refusal was due to this social care unit. The Ombudsman suggested to the prison to ask the competent court if there was any cause for refusal of the said visit. The court answering affirmatively, due to an adoption procedure under way, those facts were explained, both to the concerned parent and to his national embassy.

During 2015, besides the visits, with a different scope and methodology made in the framework of National Preventive Mechanism, eight visits occurred to prisons, with particular emphasis on the Lisbon Prison (three visits), the Prison Hospital and the Prisons of *Monsanto*, *Linhó*, *Tires* and *Vale de Judeus*.

Other Issues

Among the various issues addressed in this thematic unit, one should highlight, in statistical terms, the growth of complaints related to political and constitutional issues, mainly driven by the 2015 legislative elections. Among these issues, the juridical framework of the media assessment and coverage of the several candidacies, both within and outside the campaign period, was submitted to the Ombudsman. A proposal was addressed to the Parliament, submitting the need of a further densification of the existing

norms about the news coverage of election campaigns. The matter was satisfactorily settled by Law No. 72-A/2015, of 23 July.

Fulfilling several initiatives concerning the upholding of an administrative good behaviour code, Decree-Law No. 4/2015, of 17 January, which approved the new Administrative Procedural Code, has determined for the Government, in its Article 5, the task to draw up a «guide to good administrative practice».

With regard to the communication of the administrative bodies with citizens, a proposal was made to several entities – including the Regulatory Authority of Health (*ERS*), the Insurance and Pension Funds Supervisory Authority and the Agency for Administrative Modernisation, this one as manager of the Government Portal – for the improvement of the existing electronic forms, through the possibility of a certification of a certain message, with the automatic issuance of a receipt containing a reference indication for follow-up.

The Ombudsman also addressed a suggestion to the Civil Aviation Authority, improving its performance on certification of language skills.

Finally, as a result also of a previous intervention on this matter, the Ombudsman directed a reminder to the municipality of *Moita*, regarding the legal obligation to create the Youth City Council, unreplaceable by other alternative mechanisms, not provided by law.

1.2.7. Autonomous Regions

1.2.7.1. Office of the Autonomous Region of the Azores

On the year of the Institution 40th anniversary, the Ombudsman visited the Azores. Besides the institutional meetings with the regional representatives, he met with complainants who had requested the Ombudsman intervention in defense of their rights.

The activity of this office can be documented has follows:

Following complaint in 2015, 87 cases were opened. In comparison, in previous years, there were 82 (2011); 127 (2012); 70 (2013) and 93 (2014) complaints. 59 cases were closed. There are 86 cases carried over to 2016.

Regarding the cases closed, 15.3% were solved with the intervention of the Ombudsman; in 3% of the complaints the organs or services involved were cautioned regarding deficiencies or insufficiencies in its performance. The complainants were forwarded to other authorities in 14% of the cases, bearing in mind that there were remedies especially provided by law. 59% of the grievances were deemed unfounded or it was considered that no further useful measures could be adopted with a view to reaching an adequate solution. In for situations, citizens declared they didn't want to pursue the case.

Workers' rights amount to most of the complaints submitted (28%) — recruitment procedures, teachers careers; holiday entitlement, working hours, etc. Other relevant areas are judicial delays (22%); fiscal (16%) and social (9%) rights. Complaints regarding environmental issues, namely noise, and sanitation were also under investigation. A residual number of complaints had to do with prisoners' rights, education and health.

The complaints originated in seven of the nine islands of the Azores, with a growing number of complaints submitted by email.

1.2.7.2. Office at the Autonomous Region of Madeira

Statistics

In the activity of the local office in the year 2015 it should be noted the Ombudsman's visit to the Autonomous Region of *Madeira* in May, for the 40th anniversary celebrations relating to the creation of this Institution. The occasion also included a contact with local citizens and the presentation of compliments to the regional authorities.

In the year 2015 the Office at Autonomous Region of *Madeira* instructed 142 new procedures; to these 57 procedures from previous years were added, resulting in a total volume of 199 cases carried out in this period.

In 2015, the Office closed 135 procedures (in 59% of the cases it was possible to close complaints submitted in the year itself), and in about 50% the cases were satisfactorily ended after the Ombudsman's intervention.

The table below summarizes the number of procedures carried out and completed in 2015, as well as the amount carried forward to 2016:

Table 7

Cases carried out, completed and carried forward

Procedures carried out in 2015	199
New cases	142
From previous years	57
Procedures completed in 2015	135
From that year	86
From previous years	49
Carried away for 2016	64
From 2015	56
From previous years	8

Of the 135 closed procedures:

i) 64 were resolved following the Ombudsman's intervention;

ii) 2 correspond to procedures in which the Ombudsman made suggestions, awarned of the need for amendments to the entities addressed or identified irregularities in their performance;

iii) In 4 cases the complainants were referred to other especially competent entities;

iv) 9 cases resulted in withdrawal of the complaint;

v) 56 claims were dismissed, following the competent study of the case, or judging unable or useless the adoption of other measures.

The year 2015 has deepened the already identified tendency of the previous years, regarding the strengthening of Regional Autonomous Administration (43%) as the main interlocutor in complaints addressed to the Ombudsman, to the detriment of the role assumed by the Local Administration (31%). In this context, the municipality of *Funchal* has consolidated his predominance, gathering a majority of 39% in the complaints, followed by the municipality of *Machico* (14%). Concerning the Regional Government of *Madeira*, it should be highlighted the position held by the Regional Directorate for Tax Affairs and by the Regional Directorate of Public Estate with a percentage of 21% each in the complaints.

In the global context of the complaints brought before the Ombudsman, the traditional predominance of environmental and urban development cases remained solid (36%). The complaints concerning Justice and Security (18%) recovered the second place.

1.3. Children, Senior Citizens and Disable Persons Unit (N-CID)

The Children, Senior Citizens and Disabled Persons Unit commonly referred to by the acronym (*N-CID*), is a structure of the Office of the Ombudsman specially dedicated to address issues that affect persons considered to be most vulnerable on account of their age, health condition or other characteristics. Thus, in order to respond to the specific needs of these citizens, the *N-CID* Unit comprises a multidisciplinary team.

In 2015 the Ombudsman implemented a new, integrated and more personalized approach to the citizen assistance service available to the public.

The personalized citizen assistance service includes face to face and general phone helpline assistance along with the functioning of a Children's Line, a Senior Citizen's Line and a Person with Disabilities' Line.

The integrated project put into place in 2015 lead to the restructuring of face to face/ telephone assistance and the reorganization of the telephone helpline services.

In addition to the assistance provided to citizens and due follow up on cases, the *N-CID* Unit also develops awareness raising activities and helps promoting the rights of Children, Senior Citizens and Disabled Persons within the community.

The creation of the three free helplines took into consideration that, according to the experience of the Office of the Ombudsman, informal and prompt contacts are, due to the sensitivity of the matters involved, the most effective way to provide help and information.

Notwithstanding, whenever the case so demands, a formal procedure can and will be initiated.

Throughout 2015, 4157 phone calls were received by the Children's free telephone Line, the Senior Citizen's free telephone Line and the Persons with Disabilities' free telephone Line.

1.3.1. Children's free telephone Line

The Children's Line received, in 2015, 671 telephone calls while in 2014 this Line received 701 telephone calls. In 2013 the same Line received 584 telephone calls.

Table 8

Telephone calls 2015 – Children's Line

Received calls	Placed calls
671	80*

* The number of placed calls includes the telephone calls placed to the complainants as well as the telephone calls placed to the entities identified in the complaints.

The work developed within the Children's free telephone Line continues to focus on providing information to the callers and forwarding the complainants to the competent entities depending on the issues presented.

Table 9

Main issues raised – Children's Line

Parental responsability issues	163
Education and school related problems	103
Neglect	88
Psychic and physical ill-treatment	65
Protection Commissions for Children and Youth and other services	25
Child Protection Committee	19
Exposure to deviant behaviours	17

Exposure to domestic violence	14
Health care	14
Social security	13
Welfare allowances	13
Risk behaviours (*v.g.*, addiction, begging)	12
Family conflicts	12
Economic and family needs	11
Abandonment	8
Bullying	7
Grandparent's visiting arrangements	5
Sexual abuse	5
Other issues (*v.g.*, court decisions delays, adoption, legal information, information on the ombudsman services	71
Total	**665**

1.3.2. Senior Citizen's free telephone Line

Over the last years, the Senior Citizen's free helpline received, on average, 2800 calls a year. The fact that the senior's citizen line is the only line with national scope dedicated to assist elders is regarded by the Ombudsman's Office as the main reason for such a high number of telephone calls.

In 2015, the Senior Citizen's Line received 2864 telephone calls.

The work of the Senior Citizen's Line continues to focus in providing information and forwarding the complainants, according to the cases presented, to the competent entities.

Table 10

Telephone calls 2015- Senior Citizen's Line

Received calls	Placed calls
2864	379*

* The number of placed calls includes the telephone calls placed to the complainants as well as those placed to the entities indicated in the complaints.

Table 11

Main issues raised – Senior Citizen's Line

Health	318
Support services (*v.g.* day care centers)	251
Residential care facilities for the elderly	196
Ill-treatment	160
Pensions	159
Social welfare	145
Public services	142
Material and financial abuse	131
Neglect	119
Dependency allowance and other supports to senior citizens	101
Family conflicts	101
Legal information	88
Other fundamental rights	85
Household	70
Isolation	53
Useful contacts	51
Conduct of public entities (social welfare, Police forces)	51
Abandonment	45
Noise	44
Economic deprivation	40
Information regarding the Ombudsman Office /Senior Citizen's free Line	40
Mental capacity legal actions	37
Other questions	386
Total	**2807**

Clearly reflecting the special vulnerability of the elders, the main issues of 2015's telephone calls regarded social protection (592) and ill-treatment (455). These calls include questions regarding social protection (145), support services (251) and residential care facilities for the elderly (196).

Health issues also motivated several calls, mainly regarding difficulties in being assisted in the public services.

There was a high number of calls concerning ill-treatment, material and financial abuse, neglect and abandonment within the family circle and care homes.

As already mentioned in previous reports, the analysis of the annual data gathered as well as the experience of the *N-CID* Unit allows the Ombudsman's Office to conclude that in specially serious situations; *v.g*. material and financial abuse, ill-treatment and mental health issues; competent entities show deep difficulties in effective intervention, particularly when the elders have no family or when there is lack of support from the elder's family.

Regarding the elder's right to self-determination, with all that its recognition entails in contemporary society, the experience of the *N-CID* Unit points to two safe conclusions:

- As a rule, the persons most likely to disrespect this right are close relatives and persons responsible for the residential care homes.
- Decisions of close relatives usually prevail over the elder person's will.

1.3.3. Citizen with Disabilities free helpline

After an experimental period of approximately two years, the Citizen with Disabilities free helpline began its activity in April 2013.

Since then, the Citizen with Disabilities free helpline has received an average of 600 calls each year.

In 2015 the number of calls received by this helpline was 622, representing a slight increase of 36 calls in comparison to 2014.

The work of the Citizen with Disabilities free helpline continues to focus in providing information (286) and forwarding the complainants (230), according to the cases presented, to the competent entities.

Table 12

Telephone calls 2015 -Citizen with Disabilities' free helpline

Received calls	Placed calls
622	100*

* The number of placed calls includes the telephone calls placed to the complainants as well as those placed to the entities indicated in the complaints.

Table 13

Main issues raised- Citizen with Disabilities free helpline

Family obligations	88
Social benefits	71
Rehabilitation and physical and mental health care	54
Support for the disabled	35
Public services	32
Tax benefits	31
Employment	29
Special regime for the acquisition of capital goods (houses and vehicles)	25
Assessment of disability	24
Special parking rights	21
Accessibility	20
Education	18
Parking	13
Discrimination and violation of rights	12
Neglect and ill-treatment	11
Centres of reference	10
Priority in attendance	10
Insurance	4
Others questions	107
Total	**615**

The largest number of calls regarded the matter of family obligations. The complainants want to be informed of their rights regarding their family members and how can they enforce them within the family.

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2. Commemorations of the Portuguese Ombusdman´s 40th anniversary

> *Commemorative coin and stamp of the 40th anniversary*

2. Commemorations of the Portuguese Ombusdman´s 40th anniversary

In 2015 was celebrated the 40th anniversary of the Portuguese Ombudsman institution.

40 years with the citizen was the motto of a set of events that, in a simple but particularly intense way, marked this milestone, contributing to the promotion and dissemination of the mission of this State body.

The initiatives organized by the Portuguese Ombudsman emphasized its openness and closeness to its fellow citizens, deepening the trust and unshakeable bond that unites and intensify the source of its action: *understand to provide*. The message diffusion was made through various ways in order to raise awareness and reflect on this State body mission. The ongoing promotion and the uncompromising defense of human and fundamental rights were allied to the culture, thought and training to comply with the Portuguese Ombudsman primordial task.

The institution' strength is also solidified by honouring its history and its memory.

For that reason and thanks to the generous support of the Engineer *António de Almeida* Foundation (*Fundação Engenheiro António de Almeida*), this State body has, since March 18th, an Oil Portrait Gallery of the previous Ombudsmen.

The democratic legitimacy, which is the basis of the parliamentary election of Portuguese Ombudsman was symbolically marked by an event, on April 21st, the Solemn Session to commemorate the 40th anniversary of the Portuguese Ombudsman, at the Portuguese Parliament. This event had the institutional participation of the Parliament's Vice-President, Mr. *Guilherme Silva*.

During the year 2015 were carried out several other initiatives, which are organized by: activities for institutional promotion, seminars, awareness-raising actions for human rights culture and cultural moments.

Activities for institutional promotion

On July 15th, associating to the anniversary of this State body, the *CTT - Correios de Portugal, S.A.* included in their philatelic plan for 2015, the issuance of a philatelic emission, formed by a stamp and paper pad of the 40 years of the Portuguese Ombudsman, designed by *João Machado*. With this initiative it was made permanent this State body landmark, through the symbol of the stamp has the Portuguese philatelic tradition.

The *Imprensa Nacional–Casa da Moeda S.A.* joined the anniversary with a commemorative coin collection entitled *40 years of the Portuguese Ombudsman*, by *José Guimarães*. The presentation session occurred on December 9th. Matching the artistic is the fact that this was the first multicolour coin to be made in Portugal.

The Portuguese Ombudsman signed a protocol with the *Escola Superior de Comunicação Social* to produce a short film about the history of this State body. The film was exhibited for the first time on April 21st at the Commemorative Solemn Session of the 40th anniversary of the Ombudsman, which took place in the Portuguese Parliament.

To fulfil the role of promoting human rights, the Portuguese Ombudsman developed also, an institutional campaign about its mission in the community, regarding the various areas of its intervention. That campaign was broadcast by public radio and television (*Antena 1 and RTP*). In the same way, the mission of this State body was also published in the press, in the newspapers *Expresso*, *Diário de Notícias* and *Jornal de Notícias* on April 21st.

Under this historical horizon, of the Portuguese Ombudsman institution, and to mark this singular moment, a new logo, posters and flyers were created specifically for the occasion, with informative content on the mission and scope. These promotional materials were distributed by the police forces (*GNR and PSP*), health facilities and schools.

It was also created an electronic page specially dedicated to the celebration of the 40 years of this State body, included in the main website *www.provedor-jus.pt*, to provide updated information of the several initiatives carried out along the year 2015.

This subject, the 40th anniversary of the Portuguese Ombudsman, was also addressed in the several interviews given to national and regional media.

Seminars

On April 21st, took place in the Parliament's Senate Room, the institutional seminar, entitled *The Ombudsman in the future - new challenges*.

Of this event took part *Jorge Sampaio*, the former President of the Republic; *Elisabet Fura*, the Sweden Ombudsman; *Paulo Tjipilica*, Angola's Ombudsman and Isabel Moreira, Member of Portuguese Parliament.

Another seminar was organized, held at the *Calouste Gulbenkian Foundation*, on October 14th, entitled *The contemporary thought and the human condition of the prisoner (or) the hidden bad conscience of the well-thinking*. This initiative was meant to promote a reflection regarding the prison system, not only in a legal perspective, but also aiming a contribution from other areas of the human knowledge. The reflection and discussion were enhanced by the experience, knowledge and expertise of *Alexandre Quintanilha, Ana Teresa Peixinho, Anselmo Borges, Catarina Resende de Oliveira, Isabel Babo Manuel Sobrinho Simoes, Maria Julieta Mendes Dias and Pio Abreu.* This event was held in partnership with the *Montepio Geral - Associação Mutualista* and the *Calouste Gulbenkian Foundation*.

Awareness-raising actions for the human rights culture

As the National Human Rights Institution and within the protocol established with the Ministry of Education, the Portuguese Ombudsman organized four awareness-raising sessions for human rights next to students from primary and secondary school. These initiatives took place throughout the year and were addressed to students of the 9th grade from *Sede do Agrupamento de Escolas Leal da Câmara*, in *Rio de Mouro* (March 9th), students from primary grades from the *Escola Básica e Secundária José Silvestre Ribeiro*, in *Idanha-a-Nova* (May 5th), students of the 9th and the 10th grade from *Agrupamento de Escolas Morgado Mateus*, in *Vila Real* (May 26th).

Likewise, the 40th anniversary of this State body it was also marked in the Autonomous Region of *Madeira* and Azores with awareness-raising sessions for human rights amongst students of the 12th grade from *Escola Secundária Jaime Moniz* in Funchal (May 19th) and students of the 10th grade from *Escola Secundária Antero de Quental*, in *Ponta Delgada* (May 27th). These initiatives had the cooperation of both regional governments.

This State body also participated in the *Parlamento Jovem* initiative, promoted by the Portuguese Parliament. This participation was made providing information materials concerning the intervention of the Portuguese Ombudsman.

Cultural moments

As a mean of dissemination of its mission, the Portuguese Ombudsman, in cooperation with the *Centro Português de Fotografia* and the *Olhares.com – Fotografia Online*, organized a photography contest entitled *40 years, 40 photographs, 40 photographers*. The competition took place between March 1st and May 31st, 2015 and ended with an exhibition of the 40 winning works. This photographic exhibition, was inaugurated on November 21st, and was on display in the Oporto old *Cadeia da Relação.*

In a partnership with the *Cinemateca Portuguesa*, this State body promoted the exhibition of two films focusing on human rights, followed by a discussion with a main guest and the audience.

The first, *Wild River* from the director *Elia Kazan*, was displayed on May 21st, having as main guest *Teresa Beleza* PhD. and the *Cinemateca Portuguesa* Assistant Director, *Rui Machado*, which contributed for a rich and lively debate. On July 15th was exhibited the movie *This land is mine* by the director *Jean Renoir*, also followed by a very rich discussion with *Ana Paula Costa e Silva* PhD. and the *Cinemateca Portuguesa* Assistant Director, *Rui Machado*.

The Portuguese Ombudsman also promoted the dissemination of its mission through other forms of cultural expression, with the promotion of three concerts. The first,

supported by *Idealmed*, took place on May 8th, at the *Thalia Theater* in Lisbon, interpreted by the Lisbon Metropolitan Orchestra.

On June 1st, the Portuguese Ombudsman associated the celebration of its 40th anniversary to the International Children's Day with a concert performed by the *Orquestra Geração de Vialonga*, in the auditorium of Orient Foundation in Lisbon. This event was organized in cooperation with the Orient Foundation. Finally, on November 6th, and with the support of *Caixa Geral de Depósitos* and Culturgest Foundation, the Portuguese Ombudsman organized a jazz concert by the singer *Maria João* and piano player *Mário Laginha*, at the *Grand Auditorium* of *Culturgest* in Lisbon.

This set of initiatives reflects the permanent openness and closeness, present in this State body relationship with its fellow citizens.

The celebration of the 40th anniversary of the Portuguese Ombudsman was the motto to reinforce the institutional openness to the community. They are, therefore, *40 years with the citizen*.

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3. The Ombudsman as a Nacional Human Rights Institution

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

3. The Ombudsman as a Nacional Human Rights Institution

3.1. Background

In 1946, the World War 2nd aftermath, the Economic and Social Council encouraged several United Nations Member States to develop human rights commissions at local level. This was fully stimulated, the creation of bodies of State with full autonomy and independence contrasting from the classic powers of State trilogy (legislative, executive and judicial), with an express mandate, although geographically limited for the dissemination and protection of the human rights. However, it was only in the 90's of the last century that the recognition and the establishment of the National Human Rights Institutions were signed. In order to do so, a work meeting on the subject *National Institutions for the Promotion and Protection of Human Rights*, took place in the French capital in 1991, which assumed a particular relevance. From this event came out the generally called *Paris Principles*, accepted by the United Nations (by the resolution of its General Assembly No. 48/134, dated 20th December 1993), which became the guidelines of those institutions.

In our country, the Ombudsman has always understood the definition of its mission, with a differentiator core, in comparison with the inspiring entity (the Swedish Ombudsman).

Alongside with its primary role, through informality, ensures justice and legal compliance of the public administration activity. This State body is designed to defend the citizens' rights, freedoms and essential guarantees.

The Portuguese Ombudsman holds, since 1999, the quality of National Human Rights Institution, duly accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights with the status 'A', which means that develops its activity in full compliance with these Principles.

The permanent promotion and uncompromising defense of human rights are present in the powers of this State body, first in opening procedures by its own initiative, verifying the means available to establish the facts (to make visits for inspection, research and listen to people in a private manner) and the decisions that it can take (the power to issue recommendations – particularly legislative recommendations – and the power, to raise unconstitutionality or illegality of certain norms next to the Constitutional Court). This implies that the Portuguese Ombudsman take particular attention to certain issues. The prison system, the migrants and other foreign citizens rights, and also the rights of the most vulnerable (children, the elderly and people with disabilities).

The Portuguese Ombudsman develops an ongoing effort to deepen a culture of respect for human dignity and rights, rejecting at the same time all actions that may violate it.

This part of the activity grants it a range of participation rights, particularly with the United Nations Human Rights Council and the Special Committees established by international legal instruments. The culture of respect human rights does not end internally; it expands, with equal intensity, for various organizations and entities, at universal or regional level.

3.2. Participation and dissemination activities towards the human rights promotion and protection

As in the past, the development of the Portuguese Ombudsman activity as the National Human Rights Institution, during the year 2015, spread into other initiatives with the purpose to promote and protect human rights.

Next is the list regarding the activities carried out:

- January 16th, issued a communication entitled *The Ombudsman's role on body damage situations*, delivered at the *Body damage' expert evaluation and repair in Portugal*, organized by the *Centro de Estudos de Pós-graduação em Medicina Legal* and by the Centre for Biomedical Law, as well by the *Associação Portuguesa de Avaliação do Dano Corporal*, in Coimbra.

It should be noted that the Ombudsman' activity is also fulfilled, by other occasions, such as, taking office ceremonies, solemn sessions, opening or closing certain events.

- January 17th, presided and moderated the *Medical Liability in Spain* conference table, in the *International Congress on Medical Liabilitty: Doctrine and Jurisprudence*, organized by the Centre for Biomedical Law, in Coimbra;
- April 9th, delivered a communication entitled *The Ombudsman in the 21st century*, at the Coimbra Rotary Club, in Coimbra;
- April 15th, delivered a communication entitled *Citizens' rights and guaranties towards the tax administration*, at the Tax Observatory, organized by the Portuguese Tax Association and by the newspaper *Diário Económico*, in Lisbon;
- April 21st, delivered a communication entitled *The Ombudsman in the future,* at the international seminar *The Ombudsman in the future - new challenges*, held at the Portuguese Parliament, in Lisbon;
- May 13th, visited a Portuguese citizen in *La Picota* prison, in Bogota;
- May 22nd: presided and moderated the *Language responsibility ascription logic* table at the *International Conference Mind and Responsibility. Philosophy, Science and Criminal Law* organized by the Criminal Law and Criminal Sciences Research Centre, in Lisbon.

• May 25th, delivered a communication entitled *Reflections (national and international level) on Missing and Sexually Exploited Children*, organized by the Child Support Institute, in Lisbon;

• June 10th, participated in the celebration of Portugal Day, Camões and the Portuguese Communities (*Dia de Portugal, de Camões e das Comunidades Portuguesas*), in *Lamego*;

• September 18th, delivered a communication entitled *Right to health protection: the Ombudsman experience*, at the *V Fórum da Entidade Reguladora da Saúde: Direitos dos Utentes e Regulação em Saúde,* in Oporto;

• October 14th, organized and moderated the Seminar *The contemporary thought and the human condition of the prisoner (or) the hidden bad conscience of the well thinking* at the *Calouste Gulbenkian* Foundation, in Lisbon.

• October 23rd, participated in the Closing Ceremony of the Angola's Public Prosecutor Judges Training Program, in Lisbon.

• November 3rd, participated in the *Tribute Conference to Amadeu Ferreira – Administrative infraction and market crimes* promoted by the *Comissão de Mercado de Valores Mobiliários*, in Lisbon.

• December 4th, delivered a communication entitled *The Ombudsman and the prison universe*, at the Congress *1975-2015: 40 anni di Ordinamento Penitenziario italiano*, held at the *Pavia Facoltà di Giurisprudenza*, in Italy;

• December 11th, issued a communication entitled *The migrant crisis – thoughts and concerns*, at the Diplomatic Culture Annual Conference, under the subject *Building Bridges of Peace and Reconciliation in Times of Greater Global Insecurity*, promoted by the *Institute for Cultural Diplomacy*, in Berlin.

The Deputy Ombudsmen participated in the following events:

• January 21st, issued a communication entitled *The child and their home: the children' shared custody after parental separation,* made at the *Encontros de Direito da Família panel,* on the subject *Children' families from divorced and remarried parents and their «home address»* , organized by the *Centro de Investigação de Direito Privado* and by the *Confederação Nacional das Associações de Família*, at the University of Lisbon, Law School;

• January 28th, participation at the European Data Protection Day, organized by the *Comissão Nacional de Proteção de Dados*, held at the Portuguese Parliament;

• January 29th, participation at the Ceremony to pay Homage to the activists Anti-apartheid, organized by the South Africa Embassy in Portugal, held in the Lisbon City Hall;

• February 6th, participation at the evocative session of the International Day of Zero Tolerance for Female Genital Mutilation, organized by the Secretary of State

for Parliamentary Issues and Equality, occurred at the University of Lisbon' Medical Sciences School – *São Francisco Xavier Hospital;*

• February 12th, participation in the youth volunteer action *Date with Fair Play* launch and the national campaign presentation against violence in dating «Who loves you does not harm you», held at the *Escola Secundária Eça de Queirós* auditorium, in Lisbon, organized by the Secretary of State for Parliamentary Issues and Equality and by the Secretary of State for Sport and Youth;

• March 10th, participation in the International Women's Day, organized by the Bar Association in its great hall.

• March 27th, participation at the conference organized under the launch of the *European Legislation Manual on asylum, immigration and borders,* promoted by the Immigration and Borders Service and by the European Union Agency for fundamental rights, at the University of Lisbon Law School;

• March 27th, participation in the opening session of the 22nd Congress of the Nacional Association of Portuguese Municipalities, at the *Tróia* Design Hotel;

• April 18th, issued a communication entitled *A new right, an old problem?*, at the opening session of the International Legal Meeting «Where's the right to housing?», organized by the *Instituto de Geografia e Ordenamento do Território* and by Habita Association, in Lisbon;

• May 5th, participation in the Plenary National Session for the Youth Parliament of Basic Education, organized by the Portuguese Parliament held at the Senate Room;

• May 12th, participation at the Opening Solemn Session of the 3rd Law Portuguese-Brazilian Colloquium, organized by the Brazilian Law Institute and by the *São Paulo* Lawyers Institute, at the University of Lisbon Law School;

• May 15th, participation in the opening session of the *4th International Conference Portugal and the Young – New paths, another hope*, organized by the Presidency of the Republic, at the *Champalimaud* Foundation, in Lisbon;

• May 26th, participation in the International Conference *Simplify and Improve the Law,* which took place in the Portuguese Parliament Senate Room, organized by the Work Group for the Legislative Consolidation;

• May 26th, participation in the Plenary National Session for the Youth Parliament (Secondary School), organized by the Portuguese Parliament held at the Senate Room;

• June 2nd, participation in the Conference *Local administrative entities within the Democratic Rule of Law,* occurred at Portuguese Parliament Senate Room, promoted by the National Association of local administrative entities (*Associação Nacional de Freguesias*);

• October 8th, participation in the launch of the *Portuguese Yearbook of International Law – 2013 edition*, which took place in the *Palácio das Necessidades*, organized by the Diplomatic Institute of the Foreign Affairs Ministry;

• October 29th, participation on the book launch entitled *The Portuguese participation in the United Nations Security Council – 2011-2012,* which took place in the *Palácio das Necessidades*, organized by the Diplomatic Institute of the Foreign Affairs Ministry;

• November 20th, participation in the 26th anniversary of the Convention on the Rights of the Child, in the Portuguese Parliament Senate Room, organized by the Forum on the Rights of Children and the Young;

• December 9th, participation in the Conference *Together against corruption,* organized by the Criminal Police, in Lisbon;

• December 10th, participation in the commemorative ceremony of the National Human Rights Day, organized by the Portuguese Parliament, in the Senate Room;

• December 10th, participation in the commemorative session of the 67th Anniversary of the Universal Declaration of Human Rights, organized by the Bar Association, in its great hall;

• December 11th, participation in the Colloquium *Judges today, under the celebration of the 40th anniversary of the Associação Sindical dos Juízes Portugueses*, at the Supreme Court of Justice.

Next are the participations and interventions made in several occasions by the Ombudsman Cabinet and its advisers:

• January 21st, participation in the *Family Law Meetings*, on the subject «The child and home: the children' shared custody after the parents separation», organized by the *Centro de Investigação de Direito Privado* and by the *Confederação Nacional das Associações de Família,* at the University of Lisbon Law School;

• January 29th and 30th, participation in the 1st Portuguese-Brazilian Congress *Parental Alienation - legal invisibilities,* organized by the Bar Association and by the Brazilian Institute of Family Law, in Lisbon;

• February 12th, participation in the *National Meeting of the Commissions for the protection of Children and Youth: a model of integrated governance,* organized by the National Commission for the Protection of Children and Youth at Risk, by the Forum for Integrated Governance (*Govint*) and by the *Calouste Gulbenkian* Foundation, in Lisbon;

• May 20th, evaluation training taught to the Criminal Police on the subject *Common look on the child – a commitment with meaning*, organized by the National Commission for the Protection of Children and Youth at Risk, the Social Security Institute, I.P., the Immigration and Borders Service, the Criminal Police, the Public Security Police, the Republican National Guard, and the Maritime Police, in Lisbon;

• June 4th and 5th, participation in the Evaluation National Meeting of the Commissions for the Protection of Children and Youth Activity in 2014, under the theme *Children's Human Rights and its achievement. Quality demands concerning prevention*

and repair of risk and danger situations, with the panel moderation «Prevention systemic projects. Contributions for preventive and reparative intervention quality», in *Ovar*;

• June 29th to July 3rd, participation in the Academy for National Human Rights Institutions, organized by the European Network of National Human Rights Institutions, in *Warsaw*;

• October 8th and 9th, participation in the training *Violence against elderly women in intimacy relations*, organized by the Social Intervention Study Centre, in Lisbon;

• October 12th, panel moderation *The non-autonomy* in the Conference *The elderly dependent between Law and Psychology*, organized by the *D. Pedro IV Foundation* and by the University of Lisbon Law School, in Lisbon;

• November 19th, intervention entitled *Children and Young Human Right to participate: From dream to reality*, issued at the seminar *Children and Young' Right to participate: visions and practices*, organized by the Association «Children floor/ground» and by the University of É*vora*, in É*vora*;

• November 19th and 20th, participation in the work meeting under the subject *Connecting to strengthen Fundamental Rights,* organized by the European Union Agency for Fundamental Rights, in *Wien*;

• November 25th, participation in the meeting «Directive (EU) n. 2015/1535 and Regulation (CE) n. 764/2008 – goals, implementation and consequences in the Internal Market», organized by the Portuguese Institute for Quality, I.P., in *Caparica*;

• November 26th, intervention entitled *Protect the elderly*, issued in the *17th Portuguese Congress of Social Gerontology*, in Lisbon;

• November 18th to December 21st, participation in the E-learning program *Virtual workshop on thematic reports*, organized by the University of *Alcalá, Madrid*.

It should be noted, that a Portuguese Ombudsman's Advisor participated in the *Fellowship Programme* in the National Institutions and Regional Mechanisms Section of the UN High Commissioner for Human Rights. This program was held in Geneva and lasted for one year (from August 1st, 2014 to July 31st, 2015).

As the National Human Rights Institution and therefore privileged interlocutor within several international organizations, the Portuguese Ombudsman made the following contributions:

• Questionnaire response for the United Nations High Commissioner for Human Rights on dangerous substances and waste;

• Questionnaire response for the European Union Agency for Fundamental Rights on the fundamental rights situation in the European Union from 2013 to 2014;

• Questionnaire response for the United Nations High Commissioner for Human Rights concerning participation equality in political and public issues;

• Report for the Human Rights Council Advisory Committee on the «vulture funds» activities and its impact on human rights;

• Questionnaire response for the United Nations High Commissioner for Human Rights on the right to social protection for people with disabilities;

• Questionnaire response for the United Nations High Commissioner for Human Rights on human rights and arbitrary deprivation of nationality;

• Questionnaire response for the United Nations High Commissioner for Human Rights on the right to a decent housing;

• Questionnaire response for the European Commission for the Efficiency of Justice (Council of Europe) to integrate the «European Legal Systems Report (period 2014-2016)»;

• Questionnaire response for the United Nations High Commissioner for Human Rights on prevention and fight against racism in sport;

• Questionnaire response for the United Nations High Commissioner for Human Rights on the right to participate in the decision-making process by people with disabilities;

• Input for the National Institute for Rehabilitation, *I.P.* annual report, about the communications received by this State body, concerning offender behaviors towards the people with disabilities rights (Law No. 46/2006, of 28 August);

• Questionnaire response for the United Nations High Commissioner for Human Rights on the right to decent housing for the homeless.

The need to promote a strong culture of respect for human rights is also anchored through the publication of brief notes on the Portuguese Ombudsman website. These messages were meant to repudiate certain offensive acts to the fundamental rights, as occurred with the terrorist attacks to the newspaper *Charlie Hebdo* (note published on January 9th), the humanitarian tragedy in the Mediterranean (note published on April 23rd) and later throughout Europe (note published on September 10th) and the commonly referred attacks of *Paris* (note published on November 16th).

This mean of communication allowed also, that this State body, would mark the following days: World Environment Day (June 5th), World Elder Abuse Awareness Day (June 16th), International Day in Support of Victims of Torture (June 26th), World Humanitarian Day (August 19th), International Day for the Remembrance of the Slave Trade and its Abolition (August 23rd), International Day of the Victims of Enforced Disappearances (August 30th), International Day of Peace (September 21st), International Day of Older Persons (October 1st), World Mental Health Day (October 10th), International Day for the Eradication of Poverty (October 17th), Universal Children's Day (November 20th), International Day for Abolition of Slavery (December 2nd), International Day of Persons

with Disabilities (December 3rd), Human Rights Day (December 10th) and International Migrants Day (December 18th).

The Portuguese Ombudsman activities, as the National Human Rights Institution, are materialized, through the development of the protocol signed with the Ministry of Education – development of human rights awareness actions for the school community, fulfilled on the mainland and in the Autonomous Regions – and a contribution to the website called «European Portal for Justice», in the section dedicated to the «Fundamental rights», included in the segment «Address to Court», which is being updated by the Directorate-General for Justice Policy.

The Portuguese Ombudsman promoted a training session for its advisers, entitled *The Administration' legislative power in the Administrative Procedure Code review*, occurred on February 28th, in Lisbon.

In its guest observer status, the Portuguese Ombudsman was represented in the National Human Rights Commission and its Working groups meetings, to develop of a set of indicators on Violence against Women, and another, on the Right to Adequate Housing. This State body was also represented in the Commission for the Protection of Children and Youth at Risk.

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4. International relations

> *Annual Congress and the 20th General Assembly of the Iberian-American Federation of the Ombudsman*

4. International relations

The activity of the Portuguese Ombudsman does not end on a national level, but rather spreads with equal intensity on an international degree. Therefore, the work developed by this State body in its international relations, as well as National Human Rights Institution, has a particular intensity, mainly in the human rights dimension.

The Portuguese Ombudsman belongs to a wide and diverse range of international organizations. Of those, stand out the ones created in the scope of influence of the United Nations, the Council of Europe, the European Union, the Community of Portuguese-Speaking Countries, and the Iberian-American space.

Regarding the activity developed next to the United Nations, it is important to mention that it is developed on different levels and organizations. The Portuguese Ombudsman co-operates in a very close way with the High Commissioner for Human Rights and the Human Rights Council. These two bodies, that in a universal plan promote and ensure the respect for human rights, have in each National Human Rights Institution, an important partner to collect data and to analyse the human rights situation worldwide. At the same time, the Portuguese Ombudsman participate providing information and giving its own inputs, to the assessments regularly carried out by the committees within the United Nations. In reference to this last aspect, is important to point out, the Portuguese Ombudsman intervention, concerning the national presentation, of the 8th and 9th reports regarding the accomplishment of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the 15th to 17th reports on the execution of the Convention on the Elimination of All Forms of Racial Discrimination (CERD).

The Portuguese Ombudsman is also a member of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), which under the scope of the United Nations, has the responsibility for the National Human Rights Institutions accreditation and re-accreditation.

Also in this geographic area, there is a close cooperation with the several conventional mechanisms and organizations that are under the sphere of the Council of Europe, the European Network of Ombudsmen and the European Union Agency for Fundamental Rights (FRA).

It is also relevant to underline the strong performance of this State body, on the promotion of the Ombudsmen Network, National Human Rights Commissions and other Human Rights Institutions of the Community of Portuguese-Speaking Countries.

The Portuguese Ombudsman intervention in the scope of the Portuguese Speaking-Countries is particularly relevant towards the defence and promotion of human rights. The initiatives in this geographical territory are one of the strategic areas of this State body.

These leading actions strengthen institutional links with countries with whom we share language, culture and history. In 2015, the Portuguese Ombudsman promoted the first meeting of the Network, occurred on 22nd April. In this meeting, chaired by the Timor-Leste Ombudsman, was discussed which objectives should be developed in order to intensify the cooperation between members. Because of that, this State body presented an agenda for 2016, to develop training activities and implement a thematic forum, share experiences and deepening knowledge on issues of common interest.

The participation of this State body in the Iberian-American Federation of Ombudsmen it is prominent. In this organization, the Portuguese Ombudsman is, since November 2013, one of the vice-chairs of its executive body (Rector Council). Alongside with this institutional work, it should be stressed the participation in the different Thematic Networks, which promote and protect the migrants' rights and combating human trafficking, promote and defend children's rights, promote and protect the women's rights and the network to reflect on human rights communication strategies.

At last, it is important to highlight the work accomplished by the Portuguese Ombudsman advisers in the *Twinning Project: Support to Establishment of Ombudsman Institution*. This project was promoted by the Spanish *Defensora del Pueblo* and the French *Defenseur des Droits* and had the intervention of this State body, on an institutional dimension and through the participation of experts, to address specific issues. For this purpose, the Portuguese Ombudsman received from October 5th to 9th, the Chief Ombudsman of Turkey and its delegation. During this time, were scheduled several workshops about the mission of this State body and made institutional visits to the Constitutional Court, to the Supreme Court, Supreme Administrative Court, to the National Commission for the Protection of Children and Youth at Risk and to the *Sintra* City Hall.

Under the same project, a Portuguese Ombudsman adviser, travel to Turkey on October 20th to 23rd, as an expert to participate in a training activity about *Local administration, environment and urban planning.* This project will continue in 2016. The Portuguese Ombudsman was received by his Turkish counterpart for an official visit and participated in a conference, under that same project. Various advisors went to Turkey, as experts to conduct training sessions.

In 2015, the Portuguese Ombudsman cooperated with several similar institutions, as well as with other entities which, despite having different nature, share the defense and promotion of human rights. In February 2nd to 11th, this State body received a delegation from the Cape Verde Ombudsman Cabinet to develop the cooperation between the two institutions. This visit, by the Cape Verde delegation included several actions, to promote the exchange of experiences and knowledge in the field of the defense and promotion of fundamental rights of citizens.

Still in the development of its international activities, the Portuguese Ombudsman was present or was represented in several meetings and events, such as:

• January 29th, received the United Nations Special Rapporteur on the Independence of Judges and Lawyers;

• February 26th, participation in the lecture «International relations knowledge democratization», by the Ambassador *Sérgio Moreira Lima*, President of the *Alexandre Gusmão* Foundation, at the CPLP headquarters auditorium, invited by the Ambassador *Murade Murargy*, CPLP Executive Secretary and by the Ambassador *José Roberto Pinto*, CPLP Brazilian permanent representative;

• March 1st to 3rd, participation in the Conference entitled *The CPT at 25: taking stock and moving forward,* regarding the European Committee for the Prevention of Torture (CPT) 25th anniversary. The conference occurred at the *Palais de l' Europe* and gathered experts and officers of 47 States which ratified the Convention, members, European National Preventive Mechanisms representatives and non-governmental organizations within this field of intervention;

• March 10th to 13th, participation at the 28th General Assembly of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). This event was promoted by the United Nations High Commissioner for Human Rights, and included various thematic sessions, in Geneva, Switzerland;

• April 24th, received a Lawyer Delegation from North Carolina;

• April 26th to 29th, participation at the 10th National Seminar of the European Network of Ombudsmen, which included several sessions, mainly about the people with disabilities rights, elderly people rights, national minorities rights, enforced returns supervision by air and about the network itself;

• May 10th to 12t, participation in the Rector Council of the Iberian-American Federation of Ombudsman (FIO) and in the *First Iberian-American Congress about Human Rights, Migrants and Human Trafficking*. This last event was promoted by FIO, by the Migrant and Human Trafficking Network, by the Colombian *Defensoria del Pueblo,* with the support of the German Agency for International Cooperation (GIZ). In this meeting was also discussed the Ombudsman's technical and political role regarding migrants human rights violations, particularly human trafficking, held in *Bogota*, *Colombia*;

• September 2nd, participation in the taking office by the *Valedora do Pobo de Galicia.* The ceremony was held at the *Galiza* Parliament *Pazo.* This trip was made under the institutional cooperation plan between Portugal and Spain.

• October 2nd, issued a communication entitled «The right to decent housing: present challenges, future horizons», in the 2nd International Congress of PRADPI-FIO-PROFIO, under the main subject «Ombudsman and vulnerable groups». The event occurred at the University of *Alcalá*, in *Madrid*, and gathered participants from FIO several countries;

• November 9th to 11th, participation in the 20th Ordinary General Assembly – where was elected the Vice-Chair, from within the Rector Council, for Region Europe – in the 20th Annual Congress, and in the FIO networks meetings. These events occurred at *Montevideu* and were organized by the Uruguayan *Defensoria del Pueblo,* by FIO, with the support of the German Agency for International Cooperation (GIZ). In a first moment, occurred the four networks meetings, namely: *Defensoria de Mujeres, Comunicadores, Niñez y Adolescencia y Migrantes y Trata de personas*;

• November 10th, communication entitled «Access to public information and transparency», at the 20th FIO Annual Congress, under the subject *Access to public information and transparency,* included in the third panel *Rol de las Defensorías del Pueblo y el acceso a la información publica, in Montevideu, Uruguay;*

• November 18th, meeting with the Representative for the Exchange and International Relations Office from the *Angola* Constitutional Court;

• December 2nd, meeting with representatives from the *European Network for Children Of Imprisoned Parents* organization.

It should be noted, that in the 2015 international activity, the Portuguese Ombudsman collaborated with various institutions and entities, by developing contributions, responses to questionnaires or requests for information, such as:

• Response to an information request from the Hungarian Ombudsman (*Commissioner for Fundamental Rights*), about Education Equal Opportunities in Portugal;

• Response to an information request from the Latvian Ombudsman about people with disabilities testimony (visual, hearing, expression an intellectual ability);

• Questionnaire response from *Nuffield Foundation - Consultation on Complaints Handling and Dispute Resolution;*

• Contribution for the *ICC Survey: Global knowledge management needs assessment*;

• Contribution, in English and in French, for the Mediterranean Association of Ombudsman Newsletter;

• Contribution for the Iberian-American Federation of Ombudsman, on the positions taken by the Portuguese Ombudsman, in the last three years, concerning the people with disabilities rights.

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5. Management and resources

> Outdoor space of the Ombudsman's building

5. Management and resources

5.1. Administrative and financial management

In the year of 2015, in which concerns the administrative and financial management, we proceeded to a set of adjustments to internal rules, in order to improve the service quality and the response time to external requests.

5.1.1. Financial resources

The budget of the Ombudsman had a slight increase in 2015 in order to respond to the costs arising from the activity of the National Preventive Mechanism. This increase also involved the costs of the various initiatives regarding the celebrations of the 40th anniversary of this State body.

Table 14

2015 Budget

Current expenses	€ 4 972 880,00
Investment costs	€ 47 000,00
Total	**€ 5 019 880,00**

5.1.2. Investment costs

In 2015, as in previous years, special attention was given to the maintenance of the building. Notwithstanding the works carried out have not represented a hefty expense, they were indispensable to the maintenance of the facilities of this State body.

In 2015, it was possible to achieve the entry into operation of a new computer system to manage procedures. It included the procedures for the assessment and treatment of complaints and other procedures related to the management areas to support the Ombudsman's activity. This new system, though was put into operation only in April 2015, has shown to be a very important tool for achieving the goals more quickly in the assessment and treatment of complaints. At the same time, it promoted a rational management of the resources that are affected to the support services of the Ombudsman.

5.1.3. Human resources

Human resources are, in any organization, one of its keystones. Therefore, focus on skills, despite the economic conditions, to boost its motivation, continued to be in this particular embodiment, one of the main objectives we intended to achieve. In this way we gave continuity to the joint work and cooperation between the various services of the Ombudsman.

Table 15

Existing staff in the Ombudsman's services (31st December 2015)

Ombudsman's cabinet and Deputy Ombudsmen	13*
Advisory legal services	46
Directorate of technical services and administrative support	43
Children's, senior citizens and disabled citizen's toll-free	2

* One of the elements of the Ombudsman's cabinet performs specialized functions in the N-CID (Children's, senior citizens and disabled citizen's).

With regard to the gender, the majority of workers and employees who exercise functions in this State body are women, as shown in the following table

Table 16

Gender

Male	25
Female	79

It should be noted that for the age group, the most representative remains, similarly to the previous year, between 45 and 49 years old, as shown in the table below.

Table 17

Age group

25-29	30-34	35-39	40-44	45-49	50-54	55-59	+60
1	3	17	14	33	16	11	9

It should also be noted that the predominant academic degree is the law degree, which is explained by the nature of the powers of this State body, as defined in Article no. 1 of the Statute of the Ombudsman.

A final note to mention that, in accordance with Article no. 28 of the Organic Law of the Ombudsman, the prevailing legal employment relationship is the service commission.

5.2. Public relations

In 2015 it was maintained a personalized and close assistance, either in person or by telephone, in order to:

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

5.2.1. Attendance and telephone assistance

Concerning the service activity performed by the Division of Information and Public Relations, we may say that its performance is characterized mainly by the presence service and the telephone service.

In 2015, were met 850 in person attendances, and of these, 401 were for the submission of complaints, 336 to provide information on procedures in education and, finally, 113 the provision of other information. Nevertheless, the full-face consultations be significant, there was a decrease, to which is not strange the increase use of electronic means to establish contact with this State body.

Table 18

Attendance 2014-2015 - variation

Year	Attendance in person			
	Information on cases	Other information	New complaints	Total
2014	466	119	565	1150
2015	336	113	401	850
Variation (%)	**-27,89%**	**-5,04%**	**-**	**-26,08%**

Regarding the telephone service, the calls made in 2015 were in a total of 5156. Of these, 4266 have resulted in the provision of information on procedures for instruction, 868 in providing other information, and finally, 22 in the complaint presentation. To the global decrease verified contributed mostly the reduction of the number of calls received to obtain information on procedures. This reduction is consistent with the statistics for open procedures in 2015.

Table 19

Telephone assistance (general number) 2014-2015 – variation

Year	Telephone assistance (general number)			
	Information on cases	Other information	New complaints	Total
2014	5205	848	34	6087
2015	4266	868	22	5156
Variation (%)	**-18,04%**	**+2,35%**	**-**	**-15,29%**

Table 20

Telephone assistance (toll-free line) 2014-2015 – variation

Year	Telephone assistance			
	Informação sobre procedimentos	Other information	New complaints	Total
2014	158	534	6	698
2015	114	431	4	549
Variation (%)	**-27,84%**	-	-	**-21,34%**

Table 21

Total of citizens assisted 2014-2015 - variation

Total of citizens assisted	
2014	7935
2015	6555
Variation (%)	**+17,39%**

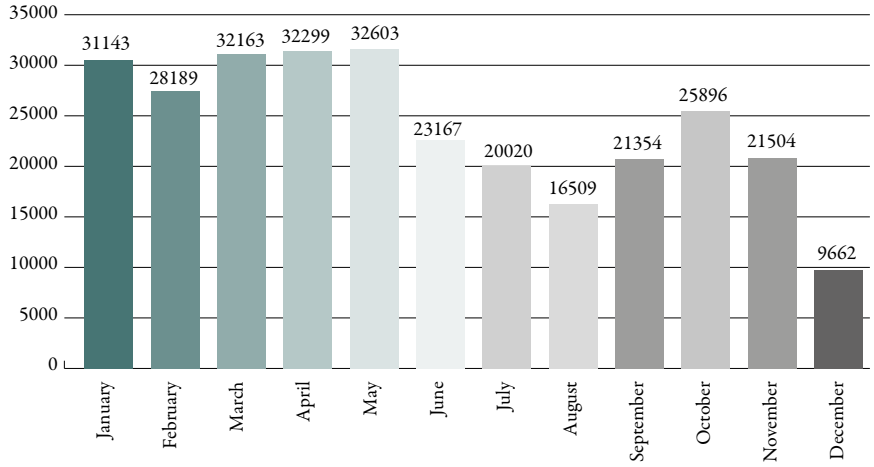
5.3. Monthly accesses to the Ombudsman's website

In a time when access, quick and instant, to the information is a distinctive note of our community, often we make use of software tools that enhance their disclosure. The website of the Ombudsman is, therefore, an important way of dissemination of institutional activity carried out by this organ of the State and, therefore, an object of a continuous updating and improving of its contents.

In the chart below are presented in quantitative terms, the monthly access to the website of the Ombudsman. In 2015, there were 294 509, which represents a significant increase over 70 319 accesses registered in 2014. It should be noted, finally, that the month of May represented the bigger number of accesses.

Graph X

Monthly accesses to the Ombudsman's website



6. Ombudsman´s decisions in the promotion and protection of fundamental rights

> Detail – garden stairway of the Portuguese Ombudsman´s bulding

6. Ombudsman´s decisions in the promotion and protection of fundamental rights

6.1. Environmental, urban planning and cultural rights

6.1.1. Ombudsman´s decisions favourable to complainants

a) Recommendations

Recommendation 2/A/15
Case Q-6085/12
Entity addressed: Mayor of *Lamego*
Date: 2015/04/16
Subject: Public domain. Parking restrictions. Resident parking permit. Municipal tax
Status: Not accepted

A complaint was filed against the excessive amount of the monthly tax charged by the *Lamego* Municipality for the resident parking permit (€ 60).

The Ombudsman concluded that the tax amount did not comply with the principles of economic equivalence, proportionality and fair distribution of public burdens. In addition, the amount was determined to encourage the use of a car-park facility operated by a company partially owned by the municipality. Especially for this last reason, the decision that approved the monthly tax should be deemed invalid for misuse of powers.

The legal and economic justification of the tax was considered inadequate.

The Ombudsman recommended the revision of the tax towards its reduction and the clarification of its legal and economic justification.

Recommendation 3/A/2015
Case Q-1081/14
Entity addressed: Mayor of Lisbon
Date: 2015/06/15
Subject: Urbanism. Urban planning. Laws in time. Dynamic references in territorial management instruments
Status: Partially accepted

The complaint was filed against the terms of a demolition and building license on an area of 11,000 m2.

The Ombudsman recommended the Municipality of Lisbon to declare null the administrative licensing process due to the infringement of the current Lisbon Master Plan: the municipality simultaneously applied provisions from both the former and the current Lisbon Master Plan.

Moreover, the demolition license did not fulfil the requirements established in the *Madragoa* Urbanization Plan.

Recommendation 4/A/2015
Case: Q-4066/13
Entity addressed: Mayor of Lisbon
Date: 2015/06/06
Subject: Urbanism. Critical area of urban rehabilitation and conversion. Acquisition of property. Expropriation. Compensation. Delay
Status: Accepted

In those properties were carried out demolition works and constructions, for the public purpose of renovation of the zone, without previous notification of the owners. Consequently, they couldn't claim timely their rights. Other legal formalities were not complied, namely the attempt of a friendly acquisition or the launch of an expropriation procedure.

Although the owners were not in possession of their properties, the Lisbon Municipality continued to notify them to pay annually the local property tax.

The Ombudsman concluded that there was an excessive and unacceptable delay in the conclusion of this procedure and recommended the Mayor of Lisbon to take up the necessary measures, with priority, to transfer the ownership of the property, and to proceed with the payment of the compensation to the owners. The Mayor of Lisbon informed the Ombudsman that he would act accordingly.

Recommendation 6/A/2015
Case Q-873/13
Entity addressed: Minister of State and Finances
Date: 2015/08/17
Subject: Public domain. Road. Jurisdiction unknown. Unitary state. Maintenance duties.
Status: Reply's delay extended

The complaint was filed by a car owner because of an accident in a public road lacking maintenance works. All the involved authorities denied the responsibility. Finally, no entity assumed the jurisdiction of the road.

Based on the principle of unitary state, the Ombudsman recommended the Minister of State and Finances to assume both the responsibility for the accident and the jurisdiction of the road.

Recommendation 7/A/2015
Case Q-2534/14
Entity addressed: Regional Directorate of Agriculture and Fisheries of Center
Date: 2015/09/07
Subject: Land development. National Agricultural Reserve. Land classification. Nonagricultural use. Prior communication. Tax
Status: Accepted

A complaint was filed against the imposition of a tax for the prior communication to a non-agricultural use of a land included in the National Agricultural Reserve. It was concluded that there was no legal support to impose such tax.

b) Suggestions

Case Q-3298/15
Entity addressed: Mayor of Lisbon
Date: 2015/08/27
Subject: Public road. Private use. Audio-visual productions. Residents. Restrictions. Principle of proportionality
Status: Accepted

A complaint was filed due to problems that were caused by the filming of a Portuguese soap opera. The resident's cars were towed by the city police without previous notice. The municipality has drawn up a code of good practice to avoid such problems.

Case Q-1477/15
Entity addressed: *Campolide* City Council President
Date: 2015/07/13
Subject: Public road. Pedestrian walks. Popular consultation. Absolute lack of competence
Status: Waiting for the decision

A complaint was filed against the procedure of popular consultation to determine if the residents in the *Campolide* neighborhood would like to replace the traditional paving.

The Ombudsman concluded that the questions asked in the consultation were tendentious and that the procedure did not fulfil the requirements established in the Local Referendum Law. Furthermore the city council had no legal competence to replace the paving.

Case Q-8453/14
Entity addressed: General Directorate for the Maritime Authority
Date: 2015/06/05
Subject: Land development. Coastal zone. Beach facilities
Status: Accepted

A complaint was filed against a public procedure to choose the responsible for operating and managing several beach facilities, including restaurants.

The operating license was systematically granted to a company that had the right to explore another place in the beach. However, that place did not have enough dimension to support those facilities.

Therefore, the company was illegally authorized to occupy another place without previous public procedure.

c) Remarks

Case Q-5211/13
Entity addressed: Mayor of *Figueira de Castelo Rodrigo*
Date: 2015/04/29
Subject: Cut of trees. Private property. Compensation
Status: Accepted

The Ombudsman received a complaint against the new Mayor *of Figueira de Castelo Rodrigo* that refused to pay a compensation for the cut of a dozen trees, near a public road, without the permission of the land owner.

The current office holders decided to compensate the damages through the planting of different tree species, but the owner invoked that the former executive had accepted to pay a monetary compensation. The Municipality was reminded that, on behalf of institutional continuity, the commitments undertook by the previous executive should be fulfilled.

Case Q-625/15
Entity addressed: *EMEL* – Lisbon's Mobility and Parking Municipal Company
Date: 2015/10/16
Subject: Public domain. Area of limited duration car parking. Reserved parking places for drivers with reduced mobility. Improper use
Status: The entity didn't reveal any objection

The Ombudsman appreciated a complaint filed against the municipal company by a driver with reduced mobility that was forced to park his car in an improper place because reserved parking places for drivers with reduced mobility were unduly occupied by regular vehicles.

In spite of the illegality of the complainer's conduct and although there were no strong arguments to recommend the refund of the fine, the Ombudsman warned the municipal company to the need of granting an increased supervision of the compliance with road legislation referring to reserved parking places for drivers with reduced mobility in order to avoid similar cases.

It is not reasonable that a citizen with reduced mobility, considering the vulnerability of his situation, shall bear the burden of others drivers infringement of road legislation.

If any other driver could and should only use regular parking places, even if compelled to walk for a considerable distance that does not seem to be demandable for drivers with reduced mobility.

Case Q-2580/14
Entity addressed: Lisbon Municipality
Date: 2015/05/22
Subject: Green areas. Trees. Damages. Responsibility
Status: Partially accepted

A complaint was lodged against Lisbon Municipality presented by the owner of a vehicle that was damaged by a falling tree when it was parked in the street near a listed building.

Weather conditions in the day of the accident may have contributed to the fall of the tree.

However, it was also found that the municipal services did not prune the tree properly, even though the meteorological services predicted strong winds.

At the end of the process instruction, the Lisbon Municipality expressed to the Ombudsman its willingness to adopt new rules of conduct, providing adequate solutions for future similar cases.

6.1.2. Ombudsman´s decisions non favourable to complainants

Case Q-7228/14
Entity addressed: Lisbon Port Authority
Date: 2015/04/28
Subject: Culture. Cultural enjoyment

A complaint was lodged to the Ombudsman against the Administration of the Port of Lisbon, for allegedly depriving the public enjoyment of paintings listed as cultural heritage.

Those paintings were, in fact, wall panels painted in the Maritime Stations of *Alcântara* and of *Rocha do Conde de Óbidos*, both in Lisbon.

The Ombudsman concluded that the listing of a property does not require permanent or uninterrupted access by the public.

The Portuguese Ombudsman concluded that passenger flows can justify visits for security reasons. Once free guided tour services are available, by prior appointment with two working days in advance, it was considered quite reasonable.

This prior appointment not only allows better organization but also makes it possible to conciliate the tours with the day-to-day working activities.

No reason was found to criticize the solution that had been reached. Furthermore, the number of visitors has been above 2000 per year, including school groups.

Case Q-5490/15
Entity addressed: Mayor of *Constância*
Date: 2015/12/21
Subject: Municipal plan

A complaint was lodged to the Ombudsman against *Constância* Municipality, opposing to the review of the municipal masterplan. The complainants believed that the rules about the locality of *Pereira* did not meet the population's expectations.

No legal basis was found by the Ombudsman to recommend the land reclassification.

The Ombudsman should make recommendations only if he understands that a fair and lawful solution can be reached, but always without invading the decision-making sphere or the autonomy of action of the public entities.

Municipal powers in respect of land development imply a significant margin of discretion that may not be submitted to the Ombudsman appreciation.

6.2. Taxpayers', consumers' and economic operators' rights

6.2.1. Ombudsman's decisions favourable to complainants

a) Suggestions

Case P-4895/15
Entity addressed: Directorate General of Treasury and Finance
Date: 2015/08/27
Subject: Financial issues. Banking. Subsidized housing loans. Disabled person
Sequence: The suggestion was expressly accepted

An oncologic patient requested the Ombudsman's intervention in the scope of the conversion of a housing loan, obtained within a private credit institution, under the general scheme, to the special scheme of disabled persons. It was mainly at stake which fulfilments the medical disability multipurpose certificate should met in order to appraise the request for the alteration of the housing loan in a valid and fairly manner. Namely, whether the field of such certificate regarding the review and re-evaluation processes of the disability degree should be filled in case of the first disability evaluation of the borrower, in a situation such as the one at issue.

Being the Directorate General of Treasury and Finance, under Law No. 64/2014, of 26 August, competent to check compliance with the requirements in the granting of subsidies by the State in the scope of such special credit scheme, the Ombudsman requested such entity that the situation claimed was investigated, and if confirmed, that the necessary measures to correct it were taken.

The Directorate General of Treasury and Finance immediately shared the Ombudsman's concerns and, after hearing Directorate General of Health, established the following understanding: for the purpose of item a), no. 1, article 8, of Law No. 64/2014, of 26 August, where it is not at stake any re-evaluation of the borrower disability, the field of the medical disability multipurpose certificate referring to no. 7, article 4, of Decree-Law No. 202/96, of 23 October, is not applicable and therefore does not need to be filled.

The referred entity has also informed that it wrote a set of answers to frequently asked questions (FAQ's) on the new special scheme of housing loans for disabled persons, established by Law No. 64/2014, of 26 August, which after being validated by the Government, would be released within all credit institutions, namely through the Portuguese Banking Association.

Case Q-213/14
Entity addressed: *Setúbal* Tax Directorate
Date: 2015/04/14
Subject: Tax. Interest
Sequence: Suggestion accepted following acceptance of Ombudsman's position by the Directorate of Tax Justice

It was claimed the delay on the execution of a decision dated February 2nd 2011, which approved a claim regarding the assessment of Municipal Tax on Real Estate Transfer and consequently on the delay of the unduly tax charged repayment, amounting to € 400,00.

The Directorate in charge of the Municipal Tax on Real Estate Transfer concluded that the delay was due to a computer problem and asked for the intervention of tax authorities' computer department, which allowed creating a credit on 3rd May 2014 and making the repayment on 10 May 2014.

The Ombudsman has also questioned the Tax Office of *Seixal* 2 about the taxpayer's right to interest on late repayment. The reply was given by the *Setúbal* Tax Directorate which informed that interest were not due since the requirements were not met, namely the period of one year foreseen in item c), no. 3, article 43, of the General Tax Law, was not exceeded once the claim made on 6 December 2010 was decided on 2nd February 2011.

Considering that item c), no. 3, article 43, of the General Tax Law, establishes that «When the review of the tax assessment on the initiative of the taxpayer takes place more than a year after it was requested, unless the delay is not attributable to the tax administration.», it was requested to the Director of the *Setúbal* Tax Directorate to reconsider her decision. In fact:

a) the expressions «review the tax act» and «decision review» must not be confused, since that would leave to tax authorities' free will the moment at which the request of the taxpayers would be considered. Taxpayers could therefore be deprived, indefinitely, of the amounts unduly charged and which the tax authorities recognized as due;

b) the review of the tax assessment, realized through the issue of the credit note, occurs after the recognition of the right to the review, *i.e.* at the moment the tax payer's request is decided, being made the order which recognizes the right to review the challenged assessment;

c) the referred position contradicts the jurisprudence of the Administrative Supreme Court, as well as the tax authorities' consolidated understanding.

Called upon to decide on the issue by the *Setúbal* Tax Directorate, the Directorate of Tax Justice followed the Ombudsman's position, holding that it is in line with the jurisprudence of the Administrative Supreme Court, with the most relevant doctrine and with the tax authorities' understanding. In fact, the tax is only fully reviewed with the credit note processing, being generally accepted that one year is a reasonable period for the tax authorities to decide the request review and implement the decision, when favourable to the taxpayer.

Therefore, accompanying the Ombudsman, the Directorate of Tax Justice confirmed that interest were due, under the above referred rule, to be counted from 7 December 2011 until 3 May 2014.

Case Q-1875/15
Entity addressed: Municipality of *Rio Maior*
Date: 2015/05/12
Subject: Consumption. Water. Invoicing
Sequence: Suggestion accepted by the addressed entity

The intervention of the Ombudsman was requested before the Municipality of *Rio Maior*, for having enforced the collection of an invoice issued in the scope of a water supply contract without previously submitting such invoice to voluntary payment, causing the payment of undue charges arising from the tax enforcement.

The user of the essential public service paid the outstanding debt and respective charges to prevent the continuation of the tax enforcement. However, he claimed the repayment of the amount not corresponding to the invoiced service. The claim was not accepted on the grounds that the lack of invoice delivery, timely issued and sent by the Municipality, was due to an error of the postal distributor.

In fact, sent in the scope of an agreement entered into between the Municipality of *Rio Maior* and *CTT*, under which the standard normal national mail delivery was three days, the invoice was returned to the Municipality due to the sole fault of the distributor.

Being the user totally unrelated with the distributor error, it was suggested the Municipality of *Rio Maior* to reconsider the issue. Indeed, the error prevented the demand for payment foreseen on no. 3, article 10 of Law No. 23/96, of 26 July, as amended by Law No. 12/2008, of 26 February, under which requiring payment of the service supply for services supplied is communicated with a minimum notice of 10 business days in relation to the deadline established. The referred demand for payment makes the payment due.

In fact, as referred by the regulatory authority, «eventual errors or delays on sending the invoices, even if caused by the operator contracted to send the mail, are responsibility of the managing entity, in what respects the user, since the mail delivery is contracted by the managing entity» and therefore «it rests with the managing entity and not with the users, acting before the postal services and require the punctual compliance of the agreed service»[(16)].

Agreeing with this understanding, the Municipality of *Rio Maior* has promptly offered to repay the amount charged in the tax enforcement and which exceeded the invoice amount.

(16) *Aleixo, Cristina; Andrade, Isabel; Igreja, Marlene; Mesquita, Amélia; Ribeiro, Pedro; Rosário, Luísa e Santos, Carla* (*Departamento de Análise Jurídica da ERSAR*), *Relação das Entidades Gestoras com os Utilizadores dos Serviços de Águas e Resíduos*, *Lisboa: Entidade Reguladora dos Serviços de Águas e Resíduos, 2012*, p. 58.

Since it was also noted that the debt certificate, on the basis of the tax enforcement, referred to a revoked tax procedural code, the Ombudsman called the attention of the Municipality of *Rio Maior* to the need for correcting the model in use.

b) Remarks

Q-8337/14
Entity addressed: Portuguese Securities Market Commission
Date: 2015/05/08
Subject: Financial issues. Securities. Public acquisition offering. Right to compulsory sale granted to the holder of the remaining shares
Sequence: The suggestion was expressly accepted by the addressed entity

The Ombudsman received a complaint where the Portuguese Securities Market Commission (*CMVM*) was questioned, in the scope of a certain public acquisition offering, namely with regard to the functioning of compulsory sale foreseen in article 196 of the Securities Code.

CMVM sustained that the compulsory sale could only be exercised following a specific public acquisition offering (*OPA*) where a certain result at the level of the dominant company's voting rights is achieved. This is so since the objective of protecting minority shareholders, only in substantial concentration of entitlement to voting rights should prevail over the freedom that the dominant shareholder enjoys.

Thus, the requirements to exercise that right should be evaluated when the results of the *OPA* are available, *i.e.*, when it is possible to determine the shareholders owning remaining shares, in accordance with no. 1, article 196 of the Securities Code, and therefore those who acquired shares after the bid could not benefit from such protection.

The Ombudsman considered such position legally defensible, being the complaint dismissed due to lack of substance. However, the Ombudsman called the attention of *CMVM*, which has the task of supervising and regulating capital market, on the need to clarify the above referred rule in the scope of a forthcoming amendment of Securities Code, so that there may be no doubt on the requirements for the purpose of recognizing the right to compulsory sale of remaining shares following new *OPA*'s.

CMVM favourably accepted this understanding and informed the Ombudsman that the suggested clarification was included in the amendment proposal of the code which was about to be presented to the Government.

Q-1943/14
Entity addressed: Directorate of Individual Income Tax
Date: 2015/11/04
Subject: Tax. Individual Income Tax. Tax relevant disability. *Ex officio* review request
Sequence: No objections of the addressed entity

The complainant requested the analysis of the Director of the Directorate of Individual Income Tax's decision, taken on 30 January 2014, which partially accepted the ex officio review request under article 78 of the General Tax Law, *i.e.*, the taxable income was decreased but the tax allowances were not accepted since deemed excluded from no. 4 of the referred article (they do not integrate the concept of taxable income).

The tax law, including at the level of Individual Income Tax, foresees some tax benefits aiming the social inclusion of disable persons.

The Individual Income Tax Code qualifies disabled persons as those with a degree of permanent disability, duly supported by a medical certificate of multipurpose disability issued in accordance with the applicable legislation, equal to or exceeding 60%.

The benefits are mainly the following:

- tax exemption of 10% for income up to a limit of € 2500,00, from employment, self-employment and pensions;

- tax allowances foreseen in article 87 of the Individual Income Tax Code.

On the other hand, with the release of a new National Table of Disabilities (Decree-Law No. 352/2007, of 23 October) and of Decree-Law No. 291/2009, of 12 October, which amended Decree-Law 202/96, of 23 October (evaluation regime of disabled persons), a set of questions were raised concerning the demonstration of the tax relevant disability, some of them as a result of complaints to the Ombudsman.

Thus, taking into account the questions addressed by the Ombudsman to the tax authorities, the State Secretary for Tax Affairs issued the Order no. 187/2012/XIX, 28 of March, aiming to clarify the procedures to be adopted by the tax authorities by virtue of the amendment made to article 4, of Decree-Law No. 202/96, by Decree-Law No. 291/2009. Such order is included in the circular no. 20.161, 11 May 2012, of the Directorate of Individual Income Tax.

It arises from the Information underlying the above referred decision of the Director of the Directorate of Individual Income Tax, namely the following: *(i)* it was issued on 2nd March 2007 a medical certificate of multipurpose disability granting the complainant a definitive disability of 63%; *(ii)* the complainant mentioned such disability on the income tax return delivered in 17 May 2011; *(iii)* following the divergence enquiry, tax authorities understood that the medical certificate was not such as to confer the disability for the year 2010, under binding rule [...], decided by the General Director of taxes in 4 November 2008; *(iv)* the complainant was submitted to a new Medical Committee in

7 October 2011, being issued a new medical certificate of multipurpose disability granting the complainant a permanent disability of 61%.

The Ombudsman sent a first letter to the Director of the Directorate of Individual Income Tax asking to consider revoking the decision taken in 30 January 2014, therefore fully accepting the claim, under no. 1, article 78, of the General Tax Law. This would correct a situation of manifest injustice.

In fact, it was communicated to the referred director that it were the tax authorities which disallowed the medical certificate of multipurpose disability issued in 2 March 2007 for the purpose of demonstrating the disability regarding the year 2010, leading the complainant to submit a substitution return and be present to a new Medical Committee.

As recognized by the Directorate of Individual Income Tax on the circular no. 20 161, 11 May 2012, in the respective no. 1,

> «Medical certificate of multipurpose disability issued under Decree-Law No. 202/96, of 23 October (amended and republished by Decree-Law No. 291/2009, of 12 October) are still valid as long as they certify definitive disabilities, i.e., which cannot be re-evaluated.»

Therefore, it was concluded in the referred letter that tax authorities have not only wrongly started divergence enquiries but also unnecessarily drove the complainant to be submitted to a new Medical Committee, which, it should be mentioned, granted her a global permanent disability and definitive of 61%, in 7 October 2011.

The Directorate of Individual Income Tax replied referring that: *(i)* there was not error attributable to the local services since they acted with the instructions of superiors; *(ii)* the request of the complainant was analysed as an exceptional request for the review of the taxable income, foreseen on no. 4, article 78, of the General Tax Law (request with the initiative of the taxpayer); *(iii)* the tax allowances cannot be reviewed since they do not integrate the concept of taxable income; and *(iv)* this decision was taken in identical procedures, therefore safeguarding the principles of legality, good faith and equality.

A new letter was sent to the Director of the Directorate of Individual Income Tax reaffirming the need to correct the situation, since tax authorities took a decision based on an understanding that later realized was not correct. Notwithstanding, that entity did not repair the injustice, invoking mostly formal arguments (moved away from no. 1, article 78 and considered that the request under no. 4, of the same article, does not include tax allowances).

Tax authorities should have timely released instructions, following the publication of Decree-Law No. 291/2009, of 12 October, thus avoiding the damage suffered by the complainant.

Q-8066/14
Entity addressed: Portuguese airline (*TAP*)
Date: 2015/04/01
Subject: Consumption. Transport. Cancellation of flight. Means of applying a right to compensation
Sequence: No objections of the addressed entity

Ombudsman's intervention was requested due to a flight not complying with the scheduled time of departure, which lead to a missed connection and an arrival to the final destination with a delay beyond three hours, irrespective of the alternative transport made available (road transport), refused by the family in question, who rented a vehicle for that purpose and who is will to be compensated for the respective expense.

In accordance with the relevant legislation(17), compensation recognized in case of flight cancellation is not foreseen for delays, where only assistance is required, ranging from meals to accommodation. Only a delay beyond five hours originates the reimbursement or re-routing.

In this regard, the Community jurisprudence(18) deems as cancellation, for the purpose of applying the same compensation scheme, a loss of time equal to or in excess of three hours. Such jurisprudence is considered on the preparation of an eventual review of the relevant legislation – outlined in a press release of the European Commission dated 15 May 2014, on a report released in the same day regarding the need to strengthen enforcement of air passenger rights.

TAP has been following this jurisprudence since mid-2014, which applied on the specific situation, recognizing the right to compensation, along with the route not used, through the travel agency which brokered the contract.

The complainant's claim seeking compensation for expenses with the leased vehicle lacked substance. In fact, since the re-routing was refused, it was respected the alternative to the reimbursement. On top of that, the compensation requested would be absorbed by the nature and purpose of the assumed compensation, which, anyway, was far above the expense in question.

However, it was noted that *TAP* confronted the affected citizens with the remittance of travel vouchers (usable on *TAP*'s services corresponding to the due compensation), as

(17) Regulation (EC) No. 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights.

(18) Judgement of the Court of Justice of the European Union, delivered on 19 November 2009, in Joined Cases C-402/07 and C-432/07, available in http://curia.europa.eu/juris/document/document.jsf?text=&docid=73703&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=702944

given fact, similarly to what this State body perceived on the investigations of two other cases, regarding flight cancellations (Q-7259/14 and Q-8059/14).

Under applicable legislation, compensation shall be paid in cash, by electronic bank transfer, bank orders or bank cheques or, «with the signed agreement of the passenger», in travel vouchers and/or other services.

Questioned on these situations, the addressed entity replied that «*TAP* was not contacted by Passengers informing that they do not accept travel vouchers».

The Ombudsman outlined that a lack of expression of disagreement is not legally relevant. The silence of passenger should not be deemed as an acceptance, since the legislator does not admit tacit consent. It seems that the spirit of the law, based on its wording («signed»), aims to ensure the previous and full passenger information, regarding his/her rights.

In fact, *TAP* is dependent upon signed agreement of the passenger, legal form required so that vouchers, as alternative to cash, take on effective compensatory nature.

The early remittance of vouchers, without further ado, appears a lack of information on the right to cash, allowing the formation of the passenger erroneous belief that is being favoured, or that the compensation is reduced to that method of payment (vouchers/services).

Being doubtful the sufficiency of a voucher's acceptance written confirmation, when information on the alternative has been omitted, it not acceptable its simple remittance which does not mention the need of an agreement.

It is not the passenger who bears the burden of initiative when confronted with a prompt availability of vouchers/services, even if at a later stage he/her receives a written confirmation request. In fact, since the legislator imposed air carriers the condition so that they may compensate through voucher/services, they are the ones who bear the burden that such requirement has been met.

If there is cause for any doubt on the passenger real desire, regarding his/her written declaration, it is also the air carrier who bears the burden that supplied him/her with sufficient information. Thus, the declared will of the passenger would correspond to his/her real desire, when formally agreeing.

This side-tracked and conditioned compensation (vouchers/services), when chosen by the passenger – which also corresponds to a prerogative of the air carrier on promoting it – should not become an obstacle to the full knowledge and implementation of the passengers' rights with respect to the main route (cash) whereby the compensation should be paid.

Following this remark, *TAP* resolved the matter in a good manner (also in the scope of the above referred cases). In fact, in the absence of legal requirement making the alternative viable, *TAP* paid the compensation in cash.

Notwithstanding, and since several cases were detected – those who came to our notice, which may not correspond to the true scale of events - the remark was formalized, with the aim of preventing future cases.

In the scope of the good cooperation with *TAP*, it informed us that implemented alert measures within the respective team, regarding this general issue.

6.2.2. Ombudsman's decisions non favourable to complainants

Q-4074/14
Entity addressed: Tax authorities
Date: 2015/02/06
Subject: Tax. Individual Income Tax. Increase on tax burden. Health insurance for civil servants (*ADSE*)

A citizen addressed the Ombudsman challenging the individual income tax assessment, based on his calculations. He took the view that as pensioner of Civil Servants Pension Fund, a deduction to *ADSE* should not apply.

It arises from the complaint that the total pensions value received by the complainant and his wife amounted to € 41 275,00, to which should be added € 1 571,06 of a deemed «supplementary pension» that he would earn. This supplementary pension was not subject to withholding tax, including the extraordinary surcharge.

The withholding tax was identical to the complainant and to his wife (€ 2 466,00) and there was no evidence that Civil Servants Pension Fund withheld a higher amount of tax than the one he declared.

The extraordinary surcharge withheld, in the amount of € 359,00 thus resulted in a total withholding of € 718 added by an amount of € 20,30 corresponding, as it seemed, to the income increase we named «supplementary pension».

Having concluded that the assessment was correct, the complainant was elucidated on the remaining doubts of the assessment.

Regarding *ADSE*'s deductions, a brief background was made in order to fully clarify the question. In 2006, the rate of 1.5%, applying only to actively civil servants, became also applicable to the value of retirement pensions (1%) when their amount was equal or higher than the amount corresponding to one and a half the minimum wage.

As from 31 July 2013 the rate of 2.25% became applicable to all beneficiaries. It was only set an exemption limit to the retirement which value did not exceed the minimum wage. In January 2014 it was updated to 2.5%.

In February 2015, the deduction was 3.5% and was levied on the base wage of actively beneficiaries and on the retirement pensions, except on those pensions equal or lower than the minimum wage, which are exempt of deduction to *ADSE*.

Being the complainant elucidated, the case was closed due to lack of substance.

Q-1595/14
Entity addressed: Tax Authorities
Date: 2015/04/01
Subject: Tax. Tax Benefits. Exemption of Real Estate Tax for real estate of low-income taxpayers with low property value

It was analysed a complaint related with the exemption of real estate tax over urban buildings used for the personal and permanent residence of the owner and of his/her respective household, of low-income taxpayers, foreseen in article 48 of the Tax Benefits Code. It was concluded that the benefit in question, with underlying social concerns, is based on two main assumptions: the household's annual total gross amount and the household's total tax property value of all urban and rural real estate.

It was communicated to the complainant that the household's annual total gross amount cannot exceed € 15 295,00 and the household's total tax property value of all urban and rural real estate cannot exceed € 66 500,00 (amendments made by Law No. 82-B/2014, of 31st December, which approved the State Budget for 2015, with effect from 1 January 2015).

Another amendment introduced by the State Budget Law for 2015, is related to the automatic effects of the exemption. Hence, no. 4 of article 48 of the Tax benefits Code foresees that the exemption is automatic, being tax authorities responsible to annually grant the exemption *ex officio*.

Therefore, as long as the above referred assumptions are annually met, the exemption is ex officio granted, without the need of any initiative by the taxpayers.

It was also transmitted to the complainant that despite the Ombudsman's concern in the tax burden increase, namely over real estate, since it respects to tax political option, its definition lies with the Parliament and with the Government, within the framework of separation of powers constitutionally guaranteed. However, if justified, the Ombudsman may seek to raise awareness to the need of legislative amendments aiming fairness in taxation.

Q-6234/15
Entity addressed: Tax authorities
Date: 2015/11/13
Subject: Social tariff for energy. Ministerial Ordinance no. 278-C/2014. Appendix II. Declaration by tax authorities

A citizen directed a complaint to the Ombudsman challenging the non-issuance by tax authorities of a declaration aimed at documenting an application for the social tariff for energy, notwithstanding his efforts developed since 1st January 2015, including a final attempt made in 1 June 2015, the latter date indicated by tax authorities as a starting point to the intended issuance.

The complainant concluded that «Appendix II, referred by item a), no. 7, article 2, of Ministerial Ordinance no. 278-C/2014» was not complied with and intended that tax authorities ceased its «inertia (...) on issuing such declaration» and that was deemed responsible «by the difference (repayment)» within «citizens, who, since the entering into force of the legislation, sought such declaration and did not obtain it and who should be benefitting from those social tariffs».

The referred Ministerial Ordinance rules the procedures and other necessary conditions for the granting, appliance and keeping of the social tariff in question, which was created by Decree-Law No. 138-A/2010[19]. Under such decree-law, beneficiaries of certain social benefits[20] and those who earn an amount lower than the maximum considered[21], are entitled to the tariff.

In fact, no. 2, article 6 of the mentioned Ministerial Ordinance foresees that electronic means – regarding confirmation by the operators of the situation of customers – should be made available by tax authorities and social security by 31st May 2015.

Based on information gathered with tax authorities, it emerged that preparatory measures to implement such means were already underway. The criteria of such means have proved to be complex, also taking into account the need for close synchronization between the entities involved, namely for the purpose of the protocol to be entered into between tax authorities, institutes of social security and computing and the Directorate General for Energy and Geology, the latter belonging to the Ministry of Environment, Physical Planning and Energy (where meetings were being held on the matter).

(19) Amended by Decree-Law No. 172/2014, of 14 November.

(20) Solidarity supplement for the elderly, social integration income, unemployment benefit, child allowance, disability pension and old-age pension.

(21) In 2015, corresponding to € 5280,00/year. The annual maximum income is added by 50% for each additional member who lives in the tax residency.

Nevertheless, such constraints only concerned the communications between those entities (especially between the operators and the tax authorities or the social security). In this regard, while the electronic means were not available, those entities should ensure the communications in writing and by equivalent means (according to no. 1, article 7, of the Ministerial Ordinance). For that purpose, human resources would have to be allocated, in contrast with the envisaged automatic procedure.

Those wishing to benefit from the social tariff, earning annual income lower than the limit laid down, as it would be the case, were not and are not damaged by such constraints – but still striving for a document to be issued by tax authorities. In fact, the Ministerial Ordinance ensured an alternative solution, after it has entered into force.

Through a transitional arrangement, no. 2, article 7, of the Ministerial Ordinance stipulates that:

> «Implementation of models and procedures (...) shall not prevent granting the social tariff (...). It should be admitted, if necessary and provisionally, (...) and when it is at stake evidencing an annual maximum income lower that the limit laid down (...), a statement by the client, issued on honour, indicating that the conditions set out to be beneficiary are met (...), in accordance with the model foreseen in appendix III».

Meanwhile, by virtue of the amendments made by Ministerial Ordinance no. 237/2015, of 12 August, the legislator extended the material and temporal scope of this rule, ensuring that it would be in force «until the envisaged electronic means are made available». This measure is based precisely on the «delay on the implementation of the models and procedures, namely the implementation of electronic systems envisaged» and on the «concern (...) of ensuring that (...) an obstacle to the normal implementation will not be created», aiming a «simplification (...) allowing easily access to the benefit by economic vulnerable clients» (preamble).

The «Statement by the client, issued on honour» was foreseen to provisionally replace the procedure related to both modalities of requesting the social tariff. One, where the client requests the benefit to the operator and verification (within tax authorities and social security) that the requirements are met, in which case he/she should authorize access to data; the other, where the client opts to initially document the request with the declaration issued by tax authorities or social security, according respectively to the models foreseen in Appendix I or II of the referred Ministerial Ordinance.

The complaint respected to this second modality, which is advantageous. In fact, with the delivery of the documented request – already including the declaration issued by tax authorities or social security – the maximum 5-day term for the discount to be requested by the trader to the operator immediately starts. The latter should reflect the discount after the following invoicing cycle.

The benefit is a greater speed, since two previous phases are eliminated, *i.e.*, one where the trader makes the confirmation request (without term) and the other where tax authorities or social security reply (up to 5 business days). This benefit was also ensured by the provisional rules.

It was also transmitted to the Complainant that the provisional rule of «Statement by the client, issued under his honour», *besides being normally published in the Official Gazette, was also clarified by ERSE* (Energy Services Regulatory Authority) and released by traders.

6.3. Social rights

6.3.1. Ombudsman's decisions favourable to complainants

a) Suggestions

Case: Q- 6196/14
Entity addressed: Secretaries of State for Social Security and Public Administration
Date: 2015/08/17
Subject: Enforcement of Law No. 11/2014, of 6 March. Lack of safeguard clause. Application of the sustainability factor
Status: The Ombudsman expects an answer from the Government. Recently, the Ombudsman urged the new Secretary of State for Social Security to legislate on this matter

The Ombudsman received several complaints about the drastic decrease of the convergent social protection scheme pension's value. This is due to the enforcement of Law No. 11/2014, of 6 March and also as a result of the application of the sustainability factor established by Decree-Law No. 167-E/2013, of 13 December.

Significant delays regarding the conclusion of the retirement requests presented in the Civil Servants Social Security System (*Caixa Geral de Aposentações, I.P., - CGA*) worsened that situation.

Therefore, the new law was applied to those requests which remained unresolved.

Considering the situation's severity, the Ombudsman suggested the Government to adopt a legislative measure in order to solve that situation.

Cases Q-5347/13, Q-6221/13, Q-6551/13 e Q-6569/13
Entity Addressed: Social Security Institute (*Instituto de Segurança Social, I.P.*)
Date: 2015/06/25
Subject: Constraints observed in the Social Integration Minimum Income assessment procedure
Status: The suggestions were adopted by the entity addressed. Therefore, the Social Security Institute board issued technical guidelines to the services in order to standardize procedures in the Social Integration Minimum Income assessment

This constrains were detected in several complaints presented to the Ombudsman and were about the following several issues:

1) Minimum residence periods required to citizens from third countries;

2) The social worker's role in the assessment procedure, especially, in the calculation of family incomes and their changes during the allocation period;

3) The need to speed up the renewal procedure of Social Integration Minimum Income.

Case Q- 5123/14
Entity addressed: Social Security Institute (*Instituto da Segurança Social, I.P.*)
Date: 2015/03/16
Subject: Parental allowance. Transition between social protection schemes. Enforcement of Decree-Law No. 117/2006, of 20 June. Lack of law enforcement. Unjustified litigation
Status: The suggestions were accepted and the Ombudsman has not only been informed that the parental allowance was calculated correctly and that the legal action was ended but also that the Social Security Institute issued technical guidelines to standardize procedures

The Ombudsman received a teacher's complaint – who had transited between social protection schemes (from convergent social protection scheme to general social security scheme) –, about the parental allowance value, which was lower than she expected, taking into account that she had always payed her social security contributions.

The complaint was justified because the Social Security Institute didn't considered the contributions payed by the complainant to the convergent social protection scheme, to calculate the parental allowance value, but had just considered the contributions payed to general social security scheme.

The Ombudsman advised the Social Security Institute to enforce Decree-Law No. 117/2006, of 20 June and, also, the Joint Service Order No1/DGO/DGAEP/DGSS/2007 (*Circular Conjunta* n.º 1/DGO/DGAEP/DGSS/2007) which provides measures to solve this kind of situation.

Case Q-1501/15
Entity addressed: Social Security Institute (*Instituto da Segurança Social, I.P.*)
Date: 2015/04/14
Subject: Access to disability protection benefits and improper notification for refund of social benefits
Status: The Ombudsman´s suggestion was accepted, the case was solved and were issued guidelines to social security services towards harmonization of procedures on this subject, through the dissemination of technical guidance circular No. 10/2015, of 21st April

The Ombudsman received a complaint referring the lack of coordination between some services of de Social Security Institute (District Centre of Social Security and National Pensions Centre).

Due to inaccurate information provide by both entities concerned, and also to the lack of coordination between them, the disabled citizen lost the social pension of invalidity that had been assigned to him and was improperly applied for the return of the amounts received to that title.

b) Remarks

Case Q-5360/14
Entity addressed: Social Security Institute (*Instituto da Segurança Social, I.P.*)
Date: 2015/03/18
Subject: Request for recovery of unemployment benefit paid unduly after the age of 65
Status: Social Security Institute followed the Ombudsman remark. The recovery orders issued were withdrawn. Wrongful deductions were reimbursed

The Ombudsman received a complaint regarding undue unemployment benefits paid to a complainant after the age of 65.

According to the unemployment benefits system established in Decree-Law No. 220/2006, of 3rd November [(article 55 (1) (c)], entitlement to unemployment benefit

ceases when the beneficiary reaches the age of 65, and the conditions for old-age pension are satisfied.

Without having been informed that he should have required the old-age pension, the beneficiary completed the age of 65 during the period for which was granted the unemployment benefit and continued receiving that benefit.

The Ombudsman did not agree with this position and suggested the adoption of new procedures. The suggestion was accepted and the debt issued was cancelled.

Case Q-5363/14, Q-6193/15 and Q-0523/15
Entity addressed: Social Security Institute (*Instituto da Segurança Social, I.P.*)
Date: 2015/04/15
Subject: Delay on the assessment of requests for pre-born allowance, family allowance for children and young people and re-evaluation of the level of revenues
Status: The warning was accepted by adopting a contingency solution that involved a redistribution of the pending processes across the district centres to which guidelines were issued in order to prioritise the pending processes

Since the Ombudsman received several complaints concerning significant delays in processing the requests for family allowances (superior to 8 months), which were initially limited to district centre of *Porto*, the Ombudsman decided to draw the attention of the Chairman of the Board of Directors of the Social Security Institute. Requests for pre-born allowance and family allowance for children and young people were the issues at stake as well as the requests re-evaluation of the level of revenues.

The number of complaints received[(22)] should be, in itself, reason for concern, so much so that it indicates a general delay of the social security services granting allowances to the beneficiaries that really need them and foremost are entitled to receive them in due time.[(23)]

These delays are particularly important considering the impact of the aforementioned allowances on people's life, notably in the current economic and social context, and considering the requesting beneficiaries and the right holders are included in a universe of

(22) 60 complaints were received between January 2014 and April 2015 and were resolved as a result of the intervention of Sate bodies.

(23) It was noted in separate document that some beneficiaries complained to the Ombudsman claiming their respective requests were still waiting for a final decision.

low income households – therefore more vulnerable – or households suddenly facing a decrease of revenues that prompted a request for re-evaluation of the level of revenues.

On the other hand, the complaints demonstrated that filing of supporting documents of the requests for the aforementioned social allowances was concluded without giving requesting party the possibility to pronounce about the draft decision (preliminary hearing) or to know the final decision (*maxime* denial), which represented a clear breach of the principles that all bodies of Public Administration must rely on such hearing interested parties, decision principle, pronouncement, information and notification as per Administrative Procedural Code and, in particular for social security services, pursuant to the Social Security Framework Law.

This omission or lack of essential formality was particularly relevant as it represented a breach of the legitimate interests of the beneficiaries, lowering their respective guarantees, mainly in case of requests for re-evaluation of the level of revenues. In fact such an omission may be misleading for the interested party in the sense that it may prevent them from renovating their requests in due time and, consequently, prevent them from obtaining the recognition of their right to reposition on the level of revenues corresponding to the effective revenues of their respective household.

In this sense, one could only conclude that the delay in assessing and deciding the requests for access to family allowances represented a serious problem, with relevant social impact, affecting a considerable number of households and, therefore, which was critical to clarify and resolve urgently.

This concern of the Ombudsman is in line with the most recent position of the Government in the context of family protection and birth policies.

As a matter of fact, the families need, especially in a crisis context as today, security and certainty on the protection of their children, being social allowances a critical support for the family responsibilities of most vulnerable households.

The delay in access to the aforementioned allowances put in jeopardy the protection of the families and, in particular, the children and young people, raising unfair and detrimental effects for them.

Pursuant to the Social Security Framework Law (Law No. 4/2007, of 16 January), the State is responsible for guaranteeing the good administration and management of the public system of social security (art. 24, no. 1) and, in that sense, citizens trust that Administration abide by the general principles of the social security system, notably the primacy of public responsibility (art. 14), efficacy (art. 19) [24] and information (art. 22).

(24) The efficacy principle consists of granting in due time the allowances legally provided in order to prevent and repair appropriately the eventualities and promote decent standards of living.

Bearing the above in mind, it was issued a warning in order to adopt, as soon as possible, swift and efficient measures and procedures aiming at resolving the delays and granting in due time the allowances people are entitled to.

Additionally, the following information was required:

a) Number of requests pending on 30/03/2015, distributed per social allowance (pre-born allowance, family allowance and re-evaluation of the level of revenues) and per district centre.

b) Information about the oldest request pending, distributed per social allowance (pre-born allowance, family allowance and re-evaluation of the level of revenues) and per district centre.

c) Clarification and update on the requests of each the identified beneficiaries that allegedly were still pending a decision.

Cases Q-0429/15; Q-0977/15; Q-1140/15; Q-1141/15; Q-2927/15
Entity addressed: Social Security Institute (*Instituto da Segurança Social, I.P.*)
Date: 2015/10/08
Subject: Contributory base of the self-employed workers who restarted their own account activity
Status: The Ombudsman remark was not accepted but a new intervention is under consideration

Several complaints were submitted to the Ombudsman by self-employed workers because the Social Security Institute did not accept their requests for reduction of the contribution base on the date they restarted their own account activity.

The Ombudsman sent a remark to the Institute to correct the interpretation of the law made by social security services so that the self-employed workers can have their contributory base reduced (or increased) on the date they restart their activity.

6.3.2. Ombudsman's decisions non favourable to complainants

Cases Q-6851/13; Q-1718/14
Entity addressed: Social Security Institute (*Instituto da Segurança Social, I.P.*)
Date: 2015/03/26
Subject: Self-employed worker. Unemployment benefits. Foreign contracting entity. Contributory base

The complainant was a self-employed worker who provided her services exclusively to a foreign company which ceased contract with her. For that reason she requested unemployment benefits. In fact, according to the Portuguese law, when 80% or more of the income of a self-employed result of services rendered to a single entity, this entity has to pay a contribution of 5% for the worker to receive unemployment benefits.

However, the complainant's request was rejected because social security computer program could not identify and register foreign contracting entities.

Although the Ombudsman intervened with the General Directorate for Social Security and the Social Security Institute in order to solve the computer problem, the complainant could not receive the unemployment benefits because she did not fulfill other legal requirements.

The complainant also questioned her contributory base in November 2011 and claimed it had to be reduced. After having addressed to the social security services and tax services, the Ombudsman concluded that her complaint was unfounded because her contributory base was calculated according to her declared income.

The complainant was duly informed of the complaint's lack of grounds.

Case Q-7297/14
Entity addressed: Social Security Institute (*Instituto da Segurança Social, I.P.*)
Data: 2015/12/03
Subject: Migrant worker's unemployment benefits. Time-limit for exportation of unemployment benefits

The Ombudsman received a complaint from a worker who was receiving unemployment benefits in Portugal and went to Spain seeking for work, exporting her unemployment benefits to that country.

The exportation right expired on 2014/08/26 (after being renewed on the 2014/05/26) and the U015 form filed by Portuguese social security services expressly stated that: «New date for expiration of exportation right - 2014/08/26».

On 25/08/2014 the complainant returned to Portugal, but only on 2014/08/27 presented herself before Portuguese Social Security and employment services.

The benefits were terminated since the period allowed for absence from the national territory / exportation unemployment benefits were exceeded.

In fact, Portuguese social security services considered that the complainant should have presented herself before Portuguese employment services until 2014/08/26 (*inclusive*), in accordance with article 64 of Regulation (EC) No. 883/2004 of the European

Parliament and of the Council, of 29 April and in article [...] 14 of Decree No. 8-B/2007, of 3rd January.

Case Q- 1651/15
Entity addressed: Social Security Institute *(Instituto da Segurança Social, I.P. – ISS, IP)* and Civil Servants Social Security System (*Caixa Geral de Aposentações, I.P., - CGA*)
Date: 2015/12/29
Subject: Unified retirement pension

The Ombudsman received a complaint from a teacher of private and cooperative education because her unified retirement request was refused.

These teachers are covered by a mixed social protection scheme provided for in Decree-Law No. 321/88, of 21st December. They pay social contributions for the *CGA* to have access for mediate benefits (old age and invalidity) and also for the General Social Security Scheme for immediate benefits (unemployment, illness, parenting, etc.).

For this reason, when the complainant lost her job and, therefore, her registration in *CGA*, she received unemployment benefits from the General Social Security Scheme, which are legally identical to remuneration records.

However, in spite of that, the warranty period (remuneration records during 60 months) demanded by Decree-Law No. 361/98, of 18 December, to have access to unified retirement through that Social Security Scheme was not considered filled.

So, the unified retirement procedure was sent to *CGA*, since the claimant had cashed for more than 60 months for this scheme.

Nevertheless, despite the existence of 60 months remuneration records to *CGA*, the claimant has no right to early retirement, that is legally reserved to active subscribers of that entity, and had to wait for the 65 years old to achieve retirement, pursuant to art. 37-A and art. 40 of Decree-Law No. 498/72, of 9 December.

6.4. Workers' rights

6.4.1. Ombudsman's decisions favourable to complainants

a) Recommendation

Recommendation No. 5/A/2015
Case Q-7604/14
Entity addressed: Social Security Institute (*Instituto de Segurança Social, I.P.)*
Date: 2015/07/17
Subject: Staff rationalization process
Status: Not accepted

The Ombudsman has recommended that the decisions adopted by the Social Security Institute (*SSI*) in the context of a staff rationalization process, which determined that a large number of workers should be requalified, should be revoked.

Upon hearing the *SSI*, it was possible to conclude that the determination of the number of workers considered necessary, and of those considered redundant, was not sufficiently substantiated, as law demanded (article 251. of the General Law of Labour in Public Functions).

In particular in the light of the rules applicable to cases of transmission of establishment or economic unity enshrined in EU law (Council Directive 2001/23/CE), it was advocated that there was no reason for not granting the maintenance of the jobs assigned to the *SSI* workers, who performed their duties in establishments (such as nurseries, kindergartens and nursing homes) which were placed under the responsibility of private institutions of social solidarity and of the Holy House of Mercy of Lisbon.

Finally, the Ombudsman deemed not to have been respected the right of participation of unions, legally enshrined (article 338. of the General Law of Labour in Public Functions), since the workers' representatives were summoned to participate on such short notice, that any intervention in this context was rendered virtually ineffective.

b) Suggestions

Cases Q-5178/13 and Q-27/14
Entity addressed: Minister of Finance
Date: 2015/01/22
Subject: Legal discipline on the recovery of amounts unduly paid to employees of the Public Administration
Status: The addressee committed to promote part of the suggested legal amendments

The Ombudsman proposed several amendments to the legal framework of the restitution of amounts unlawfully or mistakenly awarded by public employers to their employees, contained in the legal act that disciplines the financial administration of the State (Decree-Law No. 155/1992).

Regarding the scope of the applicable rules, the Ombudsman sustained that there was no reason for it to include only the employees under public law contracts, since the employees under private law contracts face the same problems, and in both cases the general interest in the recovery of public funds is at issue.

Secondly, fundamental constitutional principles, such as the principles of legal certainty, good faith and protection of legitimate expectations, restrict the possibility of revoking administrative decisions after too long since they were adopted, even when those decisions were based on a misconception of the relevant facts or rules applicable. Since in 2015 a new Administrative Procedure Code entered into force, containing new rules on the revocation of administrative decisions, these should prevail over the rules of the Decree-Law No. 155/1992.

In third place, the recovery of the unduly paid sums is frequently carried out by deducting the parcels of the due amounts from the employee's stipend. Limits on the percentage of salary that may be deduced should, therefore, be set, and clearly, in order to ensure that the fundamental right to a minimum income is not violated. Procedural guarantees, such as the right to be heard before the decision is taken and to be fully informed of its motivation, should also be safeguarded.

Case Q-6573/13 *et al*.
Entity addressed: Employment and Occupational Training Institute (*Instituto do Emprego e Formação Profissional, I.P.)*
Date: 2015/11/26
Subject: Procedures and decisions that affect the unemployed who do not receive unemployment benefits
Status: The addressee committed to promote the amendment of the relevant regulations

Since many significant public measures focus on long-term unemployment, registration in employment and occupational centres is relevant, even if one does not have (or no longer has) the right to receive unemployment benefits. In fact, consecutive inscription in an employment and occupational training centre for a considerable period of time is frequently required by public entities as proof of long-term unemployment.

Be that as it may, the legal act on protection of the unemployed (Decree-Law No. 220/2006) does not address the special situation of the unemployed users of those centres, who do not benefit from any kind of unemployment compensation. The Employment and Occupational Training Institute has therefore been creating and applying its own regulations to these particular registrations.

After hearing the Institute, the Ombudsman concluded that these regulations are seldom clearly explained to the unemployed and do not fully comply with legal and constitutional demands regarding the right to participate in administrative decisions, as well as to be notified of their content and motivation. Considering the relevance of the registration for those unemployed, whenever an employment centre decides that it must be cancelled, as justified as that decision may be, it must be substantiated, communicated and those concerned must be granted the right to challenge such a decision.

Therefore, the Ombudsman suggested that the practices and regulations adopted by the all the local centres of the Institute should be uniform and accordingly amended.

Cases Q-5558/15 and Q-5902/15
Entity addressed: General Directorate for School Administration
Date: 2015/11/10 and 23
Subject: Administrative sanctions applied in the context of recruitment procedures. Maternity protection
Status: No conclusive response yet given by the addressee

A significant number of elementary and secondary school teachers complained to the Ombudsman against sanctionatory decisions adopted in the context of a mass recruitment procedure conducted in 2015. Large-scale teacher recruitment procedures are yearly promoted with the support of a computer platform, through which candidates apply and applications are automatically organized. In this particular procedure, the verification of the documents which support the applications was thought to be made only after the candidates were convoked to present themselves at the schools to which they have been selected. It was only in this moment that many candidates became aware that they made mistakes when fulfilling the application forms, so there were declarations and facts that could not be attested.

In these situations, the Administration not only revoked the decision to hire the candidates, but also imposed a very severe sanction: candidates should be forbidden to apply to any other recruitment procedure promoted by the Ministry of Education in that school year.

The complaints submitted to the Ombudsman led to conclude that in most cases, the teachers had no intention to deceive – mistakes or a misguided interpretation of the criteria explained the untruthful declarations in the applications, that the candidates were not given the opportunity to amend in any moment of the procedure.

The Ombudsman argued that such sanctions were illicitly imposed as they violated the fundamental right to defend oneself in a sanctionatory procedure; the right of access to work and public functions; the right to be notified of the content and motivation of the decisions in which one is concerned; and several fundamental principles that constraint the sanctionatory powers of the Public Administration. Furthermore, these decisions lacked legal support and could not be justified merely with the fact that the recruitment procedure was automatically run through electronic means and involved a too large number of candidates.

In one particular case, the Ombudsman found especially justifiable the lack of initiative of one candidate – that should have accepted a proposal through the computer platform – but was hindered by the lack of a proper internet connection; and could not pursue it elsewhere because a risky pregnancy made any dislocation unadvisable. In light of the fundamental principle of equality and the relevance of maternity protection, it was argued that the Administration should recognize this as a situation of just impediment and refrain from holding the teacher responsible for not inserting the data on schedule.

Suggestions were made in view of the reparation of these situations, found to be unjust.

c) Remarks

Cases Q-4430/14, Q-4669/14 and Q-5202/14
Entity addressed: Northern Region's Health Administration *(Administração Regional de Saúde do Norte, I.P.)*
Date: 2015/12/14
Subject: General and family resident physicians – workplace and remuneration
Status: No objections from the entity addressed

After analysing several complaints presented by resident doctors, as well as the legal discipline applicable to the allocation of junior doctors during residency, the Ombudsman drew the Administration's attention to the fact that resident doctors could not be obliged to work in other health units, than the ones where they completed their residency. In addition, the contract celebrated as residents remains valid and effective after concluding the internship, so before being hired as junior assistant physicians, they can not be assigned to do the work of an assistant physician, while receiving the wage of a resident doctor. Although the difficulties felt in fulfilling the needs of every health unit

were taken in due consideration by the Ombudsman, remarks were made in order to stress that legality must nevertheless prevail.

Case Q-5639/14 and others
Entity addressed: Minister of Education and Science
Date: 2015/07/16
Subject: Program of rescissions by mutual agreement with teachers
Status: No objections from the entity addressed

The program of rescission of employment contracts by mutual agreement, applicable to the teachers of basic and secondary public schools, was ruled by Ordinance no. 332-A/2013, and created the expectation that all the teachers that filled the requirements established by the ordinance would be allowed to celebrate a rescission agreement. However, that proved not to be possible, so the Administration had to elect the teachers according to additional objective criteria, which were not explicitly included in the ordinance. The teachers, who after all would not be called to celebrate the rescission agreement, received in September 2014 a simple email stating the program was closed and they were not to rescind their employment contract.

At first, the Ombudsman warned that these teachers had the right to be fully informed of the reasons why they were excluded. However, the Administration later stated that the program was not concluded, and some teachers could still be convoked to sign the rescission agreements.

In light of this information, the Ombudsman drew the attention of the Administration to the fact that these teachers had been waiting for a definitive and substantiated decision for more than one year, and that this problem should be resolved before the beginning of the new school year, in September 2015.

Case Q-7201/14
Entity addressed: Institute for Educative Evaluation (*Instituto de Avaliação Educativa, I.P.)*
Date: 2015/12/29
Subject: Recruitment procedure. Nationality and qualifications
Status: The Institute committed to abide by the Ombudsman's remarks in future procedures

A Bulgarian citizen residing in Portugal, and working under a public employment contract, reacted against the decision to not admit her to a selection and recruitment procedure, on the grounds that the she did not have Portuguese nationality and she did not have a degree in Public Administration.

Upon hearing the Institute, the Ombudsman claimed that the decision challenged by the complainant was null since it violated the constitutional right of foreigners and stateless persons to enjoy the same rights and be subject to the same duties as Portuguese citizens; and the fundamental freedom of movement of workers, enshrined in EU law. Moreover, the right of access to public functions must not be restricted in such a way as to exclude a candidate *in limine*, because he does not have a specific degree, as identified by the recruiting entity, or because the entity refuses to acknowledge equivalent qualifications to those specified.

6.4.2. Ombudsman's decisions non favourable to complainants

Case Q-944/15
Entity addressed: Mobility and Transports Institute *(Instituto da Mobilidade e dos Transportes, I.P.)*
Date: 2015/04/24
Subject: Devolution of amounts unduly received as stipend

Following careful appreciation of a complaint filed by workers with directing powers in the Institute, the Ombudsman concluded that the decision, that they aspired would be declared unlawful, should be considered valid and fairly adopted. Since 2007, the Institute had been calculating the stipends of the complainants in accordance with an internal ordinance that was later found illegal and ineffective. The devolution of the amounts paid in excess to the department directors between 2010 and 2011 was then demanded by the Institute. Complainants claimed that they had received those amounts in good faith and that this decision violated their legitimate expectations. However, it became clear that the complainants were, since 2010, fully aware that the ordinance was not valid and that they were being paid much more than was due, in general, to public department directors. As such, the principles of legal certainty, good-faith, fairness and protection of legitimate expectations were not at issue, and no other grounds were found for the Ombudsman to intervene.

Cases Q-1031/15, Q-1192/15 and Q-1433/15
Entities addressed: Central Region's Health Administration *(Administração Regional de Saúde do Centro, I.P.)*, National Institute for Medical Emergency *(Instituto Nacional de Emergência Médica, I.P.)*, Tax and Customs Authority *(Autoridade Tributária e Aduaneira)*
Date: 2015/10/20
Subject: Inexistent conflict of interest declaration

Workers of all the super cited entities addressed the Ombudsman complaining against the fact that their employers demanded a declaration to the absence of any conflict of interest, signed by the plaintiffs.

This type of declarations, according to the General Law of Labour in Public Functions, usually must be signed whenever workers ask for the necessary authorization to accumulate the exercise of private activities, with their work as public servants. However, the Council for Prevention of Corruption had recommended that public employers should adopt measures, such as the criticized one, in order to more effectively control the existence of possible conflicts of interest in the exercise of public functions. Moreover, the General Law of Labour in Public Functions gives employers the necessary legal powers to demand this kind of declarations, even when workers do not request an authorization to accumulate private with public functions, since keeping control on non-authorized accumulation is actually among the employers' responsibilities.

Therefore, the Ombudsman could not intervene as requested by the complainants.

Case Q-1499/15
Entity addressed: Minister of Education and Science
Date: 2015/03/27
Subject: Recruitment and selection procedure. Disabled quota

The Ombudsman received a complaint claiming that in a recruitment procedure reserved to workers, already employed under a public employment permanent contract, the addressed entity did not comply with the disabled quota established by law.

In fact, the Ombudsman has repeatedly urged public employers to abide by the rules on recruitment of disabled people. However, public entities are not obliged to comply with such rules when the procedures are aimed to recruit workers who already have a public employment bond. Positive discrimination measures are justified, and must be adopted, in order to guarantee that, whenever work posts are created, disabled people

have equal opportunities of access to the labour market – which is not at stake when no new job opportunity is created and the disabled person is already employed, under a permanent work contract.

6.5. Right to justice and security

6.5.1. Ombudsman´s decisions favourable to complainants

a) Recommendations

Recommendation no. 1/A/15
Case Q-1553/12, and others
Entity Addressed: Internal Administration Minister
Subject: Police Forces. Report. Receipt
Status: Accepted

The Ombudsman has recommended that whenever citizens present themselves in a police station (*PSP* and *GNR*) to report a situation, a receipt of the complaint containing all the relevant information provided to police forces should be handed over to them, either a copy of the written account provided by the accuser, or the transcript of the oral statement.

If an accusation has been filed, the police officer in charge delivers a receipt with the following information: identification of the police station, number of police case, or Individual Number of Identification of Criminal Procedure (*NUIPC*) — whichever is applicable — date and the information the accuser has been given.

Alternatively, police forces can provide, pending judicial permit, a single or certified copy of the account, as delivered. For that end, fees have to be paid.

But the Ombudsman successfully argued that an administrative procedure is also in place, and administrative rules provide that the interested parties should get a receipt, namely in the form of a copy of the document or of the accusation as delivered (see: Code on Administrative Procedure; law on access to administrative documents (Law No. 46/2007, of 24 August) and Law No. 135/99, of 22 April, as amended by Law No. 73/2014, of 13 May, on administrative modernization).

That is to say this document is different from the «certification of complaint» (*certificado de denúncia*) issued by the Public Prosecutor at the complainants request (§ 6, article 247 of the Penal Procedure Code).

The feasibility of such procedure is illuminated by the fact that whenever in domestic violence cases accusers get a copy of the police report or of the account as delivered).

That is to say that whenever police forces refuse to deliver a copy of the accusation, citizens don't have a proof attesting the accusation as delivered. And, as seen before, there are no reasonable arguments to support that procedure. The receipt in the form prescribed by Administrative law is a complainants basic right of citizenship.

Recommendation no. 1/B/15
Case Q-6601/12
Entity addressed: Minister of Economy
Subject: Disabled parking permit (Blue Badges). Persons with vision impairment
Status: Accepted

The Ombudsman has recommended that persons with permanent vision impairment (certified degree of deficiency above 95%) should also be included among the beneficiaries of Blue Badges.

In fact, Decree-Law No. 301/203, of 10 December, contemplates a *strict sensu* concept of «reduced mobility»: parking permits are allotted in cases of motor deficiency and in cases of severe multiple deficiency including motor deficiency.

But EU regulations and Constitutional standards demand another approach[25].

It should also be noted that the said decree-law invoked the EU recommendation.

That is to say that the Portuguese legislator had not fully implemented the EU recommendation, in contradiction with the equal treatment principle.

b) Suggestions

Case Q-966/15
Entity addressed: Minister of Justice
Date: 2015/02/16
Subject: Citizen Card. Identity Card. Reproduction without consent
Status: The recipient did not raise objections

(25) See: § d of articles 9 and articles 13 and 71 of the Portuguese Constitution; § d of article 3 of the Basic Law on the legal system for prevention, habilitation, rehabilitation and participation of persons with disability and the National Plan for the Promotion of Accessibility and others; see also: Recommendation no. 98/376/EC, of the Council and Regulation (EC) no. 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air

The complainant argued that several public entities were demanding a copy of Citizen Cards or Identity Cards whenever administrative procedures were taking place. The same happened with private companies.

But the law prohibits such actions.

In 2003, the Ombudsman had already underlined that such requirements were not in accordance with legal statutes. In sequence, guidelines were implemented by the General Directorate for Public Administration.

The laws on the matter are clear; some companies (*e.g. Portugal Telecom*) have put in place an alternative system).

Nonetheless, non-compliance is the actual rule.

In view of these circumstances, changes should be considered, not only laws are to be abided by at all times, but also because the current widespread use of Citizen Cards allows for other solutions.

The weighing process should consider: as far as the banking system is concerned, citizens must bear in mind that special rules apply (Law No. 25/2008, of 5 June); systems interoperability in Public Administration allow for a single presentation of documents (§6, article 22, of Law No. 135/99, of 22 April, as amended by Law No. 73/2014, of 13 May); but it should also be considered that the rule in question has been suggested by the Portuguese Data Protection Authority.

Given this background, the Ombudsman reminded that, if the legislator would not change the rule in question, enforcement mechanisms had to be put in place in order to protect citizens. The Government informed that changes to Citizen Card legislation were under consideration.

Case Q-2680/14
Entity addressed: *ANA, Aeroportos de Portugal*
Date: 2015/02/16
Subject: Safety control. Hand luggage
Status: The recipient did not raise objections

The citizen who addressed the Ombudsman argued that, during airport safety controls, a security staff had opened the hand luggage and placed all liquids containers in one plastic bag without his permission. Besides that, inappropriate comments on those items were made.

The Ombudsman intervention initially aimed at the training available to civil staff in charge of security control.

ANA, Aeroportos de Portugal clarified that training is provided for under the National Civil Aviation Security Training Programme.

This allowed for the conclusion that the situation at hand did not have to do with absence of training but with interpersonal relationship between passenger and security staff.

The necessary and legal security procedures happen in a context where personal rights to privacy and human dignity are at stake.

That is why the Ombudsman reminded *ANA* that staff handling security controls and engaging with passengers should be especially careful in that respect.

Case Q-1943/15
Entity addressed: National Director of Immigration and Border Services (*SEF*)
Date: 2015/06/26
Subject: Unaccompanied minors. Permit to travel
Status: The recipient did not raise objections

A minor left Portugal to another country within Schengen Agreement States without a legally certified permit to travel, issued by the holder of parental responsibility.

SEF declined responsibility, given the Schengen rules.

But the Ombudsman suggested that a written guidance should be issued by *SEF* so that control in these situations is put under airlines supervision.

Case Q-4040/13 and others
Entity addressed: Minister of Justice
Date: 2015/01/24
Subject: Citizen card. Secrecy of Identity of Adoptive parents. Full Adoption
Status: The recipient did not raise objections

The Ombudsman was pleased to know that the Citizen Card legal regimen was to be amended, as there had been a consistent intervention of this State body regarding the protection of secrecy of identity of adoptive parents in all cases of full adoption. The fact that a new civil identity number shall be issued on those situations was applauded. But the Ombudsman suggested that such a change was also important in what concerns

fiscal, National Health System and Social Security Numbers (see § 2 article 16 of Law No. 7/2007, of 5 February, as amended by Law No. 91/2015, of 12 August).

Case Q-5147/15
Entity addressed: President of the Social Security Institute (*ISS*)
Date: 2015/11/19
Subject: Civil Sponsorship procedure
Status: The recipient did not raise objections

The *ISS* President was cautioned because the investigation carried out by the Ombudsman led to the conclusions that the *ISS* District Centres did not articulate themselves adequately, and that the quality of information made available to the interested parties should be improved, bearing in mind the protection of the children best interests.

Case Q-3552/15
Entity addressed: Station Commander. Public Safety Police (*PSP*)
Date: 2015/07/30
Subject: Road traffic offence. Notice. Error
Status: Approved

Following a complaint, the Ombudsman investigation seemed to allow the conclusion that a road traffic offence notice contained an error. Upon hearing the targeted entity, this State body was told that indeed there had been a mistake and that the concerned police officer had recognized it and promptly contacted the complainant and offered its apologies.

6.5.2. Ombudsman´s decisions non favourable to complainants

Case Q-6898/15
Entity addressed: Auxiliaries of Justice Monitoring Commission (*Comissão de Acompanhamento dos Auxiliares de Justiça — CAAJ*)
Date: 2015/11/25
Subject: Right to information. Complaint against enforcement officer

At first, the complainant argued that CAAJ had declined to answer a request for information. But, then, the same citizen filed a formal complaint against an enforcement officer, asking for the Ombudsman intervention.

Nonetheless, this State body concluded that *CAAJ* was within its right, given that the law does not award the commission the power to give legal advice.

The same must be said about the Ombudsman remit as far as the disciplinary action against the enforcement officer is concerned. In fact, it is within *CAAJ* powers to exercise disciplinary action in these cases.

That is to say that legality principle defines the boundaries of the Ombudsman intervention as well as that of other State bodies.

Case Q-5533/15
Entity addressed: Civil Registry Office
Date: 2015/09/28
Subject: List of admissible first names

The Institute of Registries and Notaries (*IRN*) publicizes a list of first names that have undergone a consultation procedure in order to assess its admissibility under Portuguese registration law. Therefore, the list is not exhaustive and is regularly updated.

In the case under the Ombudsman consideration, the complainant argued that the endearing and familial first name she had chosen for her son was not accepted, even though other members of the same family had been thus named.

The rules on name composition are inserted in the Civil Registry Code (article 103).

When doubts arise about the chosen first name and it is not included in the abovementioned list, the registrar's doubts must be put under the *IRN* President consideration. Meanwhile, the child can be given a listed name, and if the intended name is accepted, parents have six months to make the change. Whenever civil registration acts are not voluntary they are free of charge, even if the general rule is that there must be a correspondence between registry acts and its effective cost.

Obviously, the fact that the name under consideration was previously given to a child, doesn't preclude doubts about is acceptance, if it is not a listed name.

In short, legal procedure had been followed, and equality principle had not been infringed.

Case Q- 1043/15
Entity addressed: National Road Safety Authority (*ANSR*)
Date: 2015/10/16
Subject: Expired driving license. Ancillary order of disqualification from driving

The complainant, that had a provisional license, was disqualified from driving, allegedly as a result of an ancillary sanction following a driving offence procedure.

To comply with the ancillary sanction, the driving license was sent to competent authority.

Notwithstanding, he applied for the judicial review of the administrative decision and therefore asked for the driving license to be returned.

But *ANSR* argued that when the complainant voluntarily delivered the document, he agreed with the administrative decision, therefore waiving his right. Also, it must be said that the rules concerning provisional licenses determine the driving license forfeiture if serious offences take place (§ 3, article 130 of the Highway Code).

6.6. Rights, freedoms and guarantees; health, education, and constitutionality

6.6.1. Ombudsman´s decisions favourable to complainants

a) Recommendation

Recommendation no. 2/B/2015
Case Q-3252/15
Entity addressed: The President of the Parliament
Date: 2015/11/27
Subject: Law No. 31/2009, of 3rd July 2009. Qualification of the authors of architectural projects. Acquired rights
Status: No reply received until 31st December

Several complaints were addressed to the Portuguese Ombudsman against a rule contained in the law establishing the professional qualification required for technicians responsible for projects in the field of architecture (Law No. 31/2009, of 3th July 2009, as last amended by Law No. 40/2015, of 1st July 2015). According to the contested rule (Article 10(2)), architectural projects shall be drawn up by architects with a valid registration at the Architects Association, a later difficulty arising for civil engineers who began their university studies no later than 1987/1988 and obtained one of the four diplomas in

civil engineering from specific Portuguese universities, as listed in Annex VI of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 (likewise listed in Article 11 of the earlier Council Directive 85/384/EEC, of 10 June 1985 on the mutual recognition of diplomas, certificates and other evidence of formal qualifications in architecture, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services). In fact, the abovementioned Directives (transposed to the Portuguese legal order as well), besides establishing the principle of automatic recognition, applicable to certain professions (namely, to the architect) on the basis of coordination of the minimum training conditions, recognised acquired rights specific to architects even where those minimum requirements were not satisfied (see Article 49 of Directive 2005/36/EC). As for the later, evidence of certain formal qualifications of architects, awarded by a Member State and attesting a course of training which began no later than a certain reference academic year (as listed and referred in Annex VI of Directive 2005/36/EC), permits to those who hold the respective certificates access to and pursuit of the professional activities of an architect in the other Member States.

In this framework, and in the situation complained about, those civil engineers affected were therefore denied a right in Portugal (i.e., the country where they obtained their university diploma) that, by the intervention of the Portuguese State itself, was recognised in the European area.

Pursuant to the Portuguese Ombudsman's view, the inclusion in the Directives concerned of the four university diplomas in civil engineering awarded by four specific Portuguese universities, and relating to higher education studies which began no later than the academic year of 1988/1999, has to be understood upon the presupposition that the very same formal qualifications qualify for the pursuit of the professional activities of an architect also in the national territory. This is the approach that better matches the principle of mutual trust among the Member States, upon which the system of professional qualifications recognition within the European Union (EU) is built upon. Accordingly, the denial by various Portuguese authorities of the acquired rights of those civil engineers to draw up architectural projects amounts to a *venire contra factum proprio*. Moreover, it generates for the Portuguese civil engineers affected a situation of reverse discrimination (*discrimination à rebours*), which occurs whenever a Member State provides for worse treatment of its own citizens than other EU citizens. As for those public entities applying the law concerned that accepted that a violation of the principle of equality was occurring, the issue should ultimately be address by the courts.

As a result, considering that a uniform application of Article 10(2) of Law No. 31/2009 was lacking, in prejudice of the legal order coherence and, consequently, of the rights of a restrict circle of civil engineers, the Portuguese Ombudsman recommended to Parliament to take the necessary steps to recognise those same professional qualifications in national territory.

b) Suggestions

Case Q-2112/15
Entity addressed: National Civil Aviation Authority
Date: 2015/06/23
Subject: Aviation licenses. Portuguese language proficiency certification
Status: Specific known cases corrected; ongoing adoption of new regulations

A complaint was lodged about the conditions applied by the Portuguese Civil Aviation Authority concerning Portuguese language proficiency.

After hearing the concerned entity, it was concluded that granting of the maximum level was automatically made to those petitioners born in Portugal or in one of the Portuguese speaking countries. The same criterion was not extended to Portuguese citizens, if they were so by naturalization, regardless of any specific assessment of their actual knowledge of the language.

The first part of the described situation was justified by the fact that pilot courses on these countries were taught in Portuguese, the respective approval only being possible with fluency in Portuguese.

To this statement, the Ombudsman replied that, if so, the relevant fact would be the frequency of a certain teaching institution and course (held in Portuguese), regardless of the pilot's nationality.

The relevant EU regulations were explicit in commanding a proper evaluation, therefore rejecting a presumption-based mechanism.

The Ombudsman endorsed the need, in such an important matter concerning an activity that endangers human lives, to properly assess real language knowledge, not relying in unsubstantiated presumptions.

For instance, it was possible to someone to born a Portuguese citizen without later acquiring sufficient language skills; symmetrically, the Portuguese Nationality Law denies the said quality, in general terms, for those born in Portugal from foreign parents, thus being possible for someone, always living in Portugal, to only acquire nationality by naturalization.

In the broader plan of the Lusophone countries, it was stressed that, albeit Portuguese being the official language, several regions were more prone to local languages or those from neighbouring countries.

Case Q-5479/15
Entity addressed: Directing Council of the Institute of Social Security, *I.P.*
Date: 2015/10/16
Subject: Support Product Assignment System.
Status: Response pending on December 31

For the benefit of a specific case, the understanding of the Social Security Institute (*ISS*) about the subjective application of the system of access to finance support products (*SAPA*), defined by Decree-Law No. 93/2009, of 16 April, was subjected to further analysis.

SAPA was created with the primary aim of making a more effective, efficient and less bureaucratic financing system, for technical support and technology enhancement of those persons with disabilities, considering the essentiality of such products to promote their autonomy and, moreover, to improve their quality of life, as proclaimed in the Basic Regime of Prevention, Habilitation, Rehabilitation and Participation of Persons with Disabilities, adopted by Law No. 38/2004, of 18 August.

The District Centres of the *ISS* are, within the *SAPA*, the donors of support products prescribed by health centers or specialized centers. Under applicable law and internal administrative regulations, access by the individuals concerned to support products financed by *ISS* depends on the fulfilment of three main conditions: one material, one formal and another of instrumental nature.

The material condition lies in the quality of the recipient as a person with disability, definitive or temporary; the formal condition regards the proper administrative procedure. However, although the material and formal conditions are met, the award of a certain support product can only be granted if it is considered, through a case by case analysis, an instrument able to prevent, compensate, mitigate or neutralize functional limitations that the candidate specifically features.

The Ombudsman concluded that, besides these conditions, *ISS* additionally made the requirement that applicants should mandatorily bear a degree of disability equal to or greater than 60%, except for those beneficiaries of a specific pension by dependency of a third person.

This demand was deemed as doubtful on grounds of legality and proportionality.

It was stressed to *ISS* that the establishment of further mandatory requirements should be made by law.

On a more substantive ground, tested and proven in particular cases brought to the attention of the Ombudsman, it was possible to find persons clearly benefitting from specific support products (and even having their life depending on that) without reaching the required threshold of disability, measured according to the established rules.

Therefore, the Ombudsman deemed as invalid the said requirement, urging ISS to eliminate it in granting access to *SAPA* for persons with disabilities, with adequate flexibility of the evidence required for establishing the right to receive the support product in question.

Case Q-1/15
Entity addressed: National Institute of Medical Emergency, *I.P.*
Date: 2015/11/20
Subject: Image Registration for relief operations
Status: No reply received until December 31st

Upon an actual occurrence, the Ombudsman was addressed by citizens in disagreement with the presence of a television team accompanying an emergency ambulance crew, in the framework of the Integrated System for Medical Emergencies, coordinated by the National Institute of Medical Emergency (*INEM*).

On that occasion and according to the allegations made, the arrival of the *INEM* crew to an heart-failure situation was accompanied by TV cameras and artificial lighting, circumstances that aggravated the natural anxiety felt by close relatives of the patient, claiming their attempts to sought immediate stop of the image taking were unsuccessful.

As long as *INEM* argued that the incident did not affect readiness, zeal and efficiency employed by emergency technicians involved, and even accepting as good the reply sent to the complainant, the Ombudsman deemed as relevant to point out several improvement opportunities, relating to two aspects, both with a general purpose and scope.

In the first place, it was not possible to accept *INEM* as not responsible, also, for the behaviour of the TV crew, as its presence was only due to an agreement made with that public entity.

On the other hand, it was considered necessary to improve the conditions under the necessary authorizations were granted by patients or close relatives. In this regard, the need of prior authorization, even before any filming operation or such as lighting begins, was stressed. The possible increase of anxiety level and discomfort to the patient was also raised as a cause for concern.

The Ombudsman proposed, as a general rule, that any filming could only start after a first evaluation of the medical team and a further consent of the patient or someone legally apt to do so.

Therefore, the adoption of the following rules of action was proposed:

1 - Recognition and clarification of the supervisory powers of the authorities concerned, given an hypothetical reprehensible conduct perpetrated by media professionals allowed to follow *INEM* teams;

2 - Reinforcement of the conditions of image collection, in particular, restricting it to a prior consent of the patient;

3 - Previous assessment of patient's condition and his/her capacity to consent;

4 - Permission of the TV crew's presence on scene only after the said procedures were held.

c) Remarks

Case Q-2463/14
Entity addressed: Minister of Agriculture, Sea, Environment and Planning
Date: 2015/02/25
Subject: Health subsystem for *IFAP* workers. Article 9 of Decree-Law No. 19/2013, of 6 February
Status: Accepted

A legal gap was noted in the framework outlined by Article 9 of Decree-Law No. 19/2013, of 6 February, modifying the rules applicable to the personnel of the Financial Institute for Agriculture and Fisheries (*IFAP*), and relating to the admissibility of their enrolment in a health public subsystem.

The issue at stake aroused from the transition of labour rules of the concerned workers, previously covered by the Collective Agreement for the Banking Sector and, thus, by the specific health insurance and support provided.

The reading of Article 9 of Decree-Law No. 19/2013, of 6 February, lead to the conclusion that for retirees already enjoying this condition on the publication of this legal text, they could continue enrolled in the banking sector health support system, until December 31, 2017. On this date, the persons concerned could choose, during 60 days, to enroll as *ADSE* beneficiaries (civil servants health subsystem). The same solution was given to those retiring until the end of 2017.

Finally, for *IFAP* workers in active duty in 2013, the right to maintain the quality of beneficiary of the banking sector health support system was recognized, with the right to choose *ADSE* instead until the end of February 2013.

No provision was made concerning these workers only retiring after the end of 2017. They would therefore loose, at that time, the quality of beneficiary of the banking sector system, not acquiring that of the *ADSE*.

This omission was clearly perceived as involuntary, in a clear yet inexplicable disadvantage of this group of workers.

The Ombudsman drew the Government's attention to the need to promote a legislative clarification, bridging the detected gap and thus achieving the explicit consecration of a right to choose for *ADSE* for all beneficiaries at their retirement.

Case Q-5221/14
Entity addressed: Secretary of State for Basic and Secondary Education
Date: 2015/04/21
Subject: Priorities in school enrolment (basic education)
Status: Accepted, by approval of Normative Order No. 7-B/2015, of 7 May

The set of priorities for enrolment or renewal, at basic education level, established in Article 10 of Order No. 5048-B/2013, of 12 April, clearly distinguished, as 3rd priority those pupils already enrolled, in the previous year, on the same school, from those, placed as 7th priority, fulfilling the same condition but in a different school, albeit belonging to the same group of schools than the one now desired.

During the 2014 enrolment process, the Ombudsman found than several schools, especially in the Lisbon area, mistakenly confounded both criteria.

The setting up of these criteria was a result of a previous Ombudsman intervention, concerning those children already enrolled in a certain school.

After concluding that these conducts were result of a guideline issued by the Lisbon regional directorate of the Ministry of Education, the Government was seized by the Ombudsman, underlining the need of a nationwide common criteria, and the wrongfulness of confusing two distinct priorities, explicitly stated as so by the applicable norms.

Case Q-2155/15
Entity addressed: *Hospital of Barreiro-Montijo*
Date: 2015/08/25
Subject: Use of mechanical restraint measures in the Psychiatric Service
Status: Remark accepted

A complaint was lodged about the conditions a patient endured, while interned in the psychiatric service of the *Hospital Barreiro/Montijo*. In addition to alleged excessive use of restraint measures, the absence of stimuli to the patient and the lack of forwarding

to a more suitable long-term care unit, as deemed fit for his condition, were at stake. The complaint was illustrated by some pictures, showing the patient with both arms tied to the bed, even though with some mobility.

Following a first hearing of the hospital concerned, with a follow-up visit, two aspects were qualified as fundamental for a proper conclusion. These were the conditions of use of restraint measures, in this case and in general, and the forwarding of mentally ill persons, from an acute support unit to a long-term facility.

Concerning the restraint measures, the findings obtained included the unclear nature of the medical intervention, before and during the enforcement of such measures, and the absence of a proper register, easily available for a suitable effective evaluation and control.

The Ombudsman found necessary to remind the existing guidelines, issued by the Directorate-General of Health.

In what concerned the lack of suitable accommodation in another type of health unit, the Ombudsman found that, in any case, there was an excessive delay, an inadequate articulation within the system being strongly suspected. This situation and the need to reinforce the network functioning conditions in general terms were pointed out to the Health System Central Administration.

The Ombudsman proposed:

i) a more clear definition of criteria for the use of restraint measures, especially in the psychiatry service, particularly through the adoption of a specific internal procedure, according to the Directorate General of Health guidelines on the matter;

ii) the effective adoption of an autonomous register, recording episodes of restraint measures;

iii) immediate medical control of the application of such measures, preferably before it but in any case within a short notice, surpassing the mere implicit confirmation by daily consultation of the individual clinical process;

iv) to ensure constant monitoring of patients with mental disorders subject to restraint measures.

6.6.2. Ombudsman´s decisions non favourable to complainants

Case Q-2523/15
Entity addressed: Ministry of Health
Date: 2015/07/07
Subject: Public cost coverage of *Prevenar* vaccine

Order No. 5786/2015, of June 1, established a new reimbursement system, covering the cost of the *Prevenar* vaccine (intended to prevent pneumococcal Infections). The

gratuitousness of vaccination in question applied only to children born from 1 January 2015.

A complaint was lodged, alleging this time limit was discriminatory against children born before that date, promoting the existence of a differentiated regime, thus violating the principle of equality. The complainant wished to receive the same public funding for a child born at the end of 2014.

The inclusion of *Prevenar* vaccine in the National Immunization Program and, accordingly, the determination of the total contribution by the National Health Service, is a benefit which falls within the regulatory framework of the health protection rights (enshrined in Article 64 of the Constitution). Thus, the gratuitousness of a certain vaccination scheme can be described as a more thorough entrenchment of this typical social right.

Social rights, unlike the designated freedoms (recognized to persons, only for being, or having certain qualities or because they are in certain situations or inserted into certain groups or social formations, demanding automatically respect and protection by the state) are configured as rights to state benefits, involving, as well, a prognosis of priority setting, policy options, on the channelling of available resources.

The complainant was instructed about the true meaning of the principle of equality, not considering the setting of a time limit, also for financial purposes as arbitrary or based on subjective criteria. It was stressed that a limited retroactivity was enforced, benefitting children born in the six months prior to the enactment of this order.

Although a prohibition of restrictive retroactive laws of fundamental rights exists, there is no constitutional provision stating any general obligation of retroactivity of a decision amplifying the latitude of these same rights.

Case Q-544/15
Entity addressed: Ministry of Foreign Affairs
Date: 2015/09/18
Subject: Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. Acceptance of the Russian Federation's accession

After a specific case, whose resolution was hampered for this reason, a complaint was lodged against the Portuguese State, for failing to accept the accession of the Russian Federation to the 1980 Hague Convention on the Civil Aspects of International Child Abduction, not allowing its entry into force between the two states.

The answer provided by the Ombudsman was negative, after a study of European Law, notably on matters of division of competences between the European Union, for one part, and each country belonging to it, as regards the implementation of the said 1980 Hague Convention.

Thus, on 21 December 2011, the European Commission considered that the Union had exclusive competence in the field of International Child Abduction, proposing to the EU Council a set of decisions upon declarations of acceptance by the Member States, in the interest of the Union, of the accession to the 1980 Hague Convention of several third-party states, among whom, precisely, the Russian Federation.

However, the Council did not adopt these proposals, since, sharing a different conclusion, the majority of the Member States considered that it had no legal obligation to adopt these proposals, on the ground that the Union had not exclusive competence over this matter.

In this context and to overcome the stalemate, the European Commission submitted his issue to the European Court of Justice for an opinion (under paragraph 11 of Article 218 of the Treaty on the Functioning of the European Union) , following which, on 14 October 2014, was delivered Opinion 1/13.

This procedure was intended to avoid legal complications created by Member States undertaking international commitments by themselves, albeit not having, under UE law, the legislative powers necessary to implement these same commitments.

The conclusion of the Court was that «the exclusive competence of the European Union encompasses the acceptance of the accession of a third State to the Convention on the civil aspects of international child abduction concluded in The Hague on 25 October 1980.»

Therefore, the Portuguese State was not deemed for any illicit omission, its acceptance of the Russian Federation's accession to the Hague Convention of 1980 being dependent, as clarified by the European Court of Justice, of a prior decision of the Union.

Following this conclusion, the Portuguese Ombudsman referred the complainant to the European Council and, afterwards and in the case of failure, to the European Ombudsman.

Case Q-7709/14
Entity addressed: Minister of National Defence
Date: 2015/03/11
Subject: Minimum duration of service of Air Force pilots

Decree-Law No. 310/2007, of 11 September modified paragraph 2a. of Article 170 of the Statute of the Military of the Armed Forces, approved by Decree-Law No. 236/99, of 25 June, thus increasing from 8 to 12 years the minimum period of effective service for Air Force pilots.

This time-increased obligation was made applicable to those pilots entering into ranks after the entry into force of Decree-Law No. 310/2007. The complaints received proposed that this solution should be deemed as unconstitutional, for being applicable to those pilots who were then already enrolled in the Air Force Academy.

This allegation was studied under existing constitutional jurisprudence, especially concerning principles of legal certainty and confidence protection, as manifestations of the rule of law.

The Constitutional Court had already considered that there is no right to a non-frustration of legal expectations or the maintenance of a legal regime in relationships lasting or regarding complex factual situations, concluding that the legislature is not prevented from changing the legal system affecting legal relations already established and still subsisting at the time it issued the new rules.

The key to a forbidden behaviour was to ascertain if a reliable investment of confidence in a particular legal regime could not be opposed by a serious public interest, in order to deem the change as justifiable.

Assessment should be properly made of the following aspects: the merit and objective dignity of the confidence a certain citizen deposited towards the previous legislative framework; the seriousness of the public interest justifying the legislative amendment; the relevance of the individuals interests and the intensity of their loss; and in addition, the latitude that must be allowed for the legislator - democratic - in a state of law.

The very specific nature of military higher education - that the Air Force Academy is an integral part - aimed, by nature, to meet the needs of the Armed Forces, was also underlined. Thus, the high cost of the investment made in a pilot training is not insignificant to public finances, undoubtedly an expectation of permanence being present.

This means that students, when they make the choice to join the Air Force Academy (in addition, with a number of advantages, such as a monthly allowance, housing, food, uniforms and no tuition fees), they do it with the knowledge of that purpose and cannot, moreover, at a level of general and abstract consideration, invoke another alternative, ethically reprehensible, conduct that would only restrain their choice upon the purpose of obtaining a professional qualification.

The solution at stake was deemed necessary, by the preamble to Decree-Law No. 310/2007, by the steady decrease of the pilot figures, thus increasing the reduction of the operational capacity of the flight squadrons.

The Ombudsman concluded no initiative, in abstract terms, was justified, no barrier existing for individuals concerned to claim otherwise, in a due process, also with the possibility to seize, in concrete terms, the Constitutional Court.

6.7. Office of the Autonomous Region of the Azores

6.7.1. Ombudsman´s decisions favourable to complainants

a) Remark

Case Q-5008/15
Targeted Entity: Municipal Council of *Praia da Vitória*
Date: 2015/08/26
Subject: Noise. Traditional festivities. Makeshift discotheque. Special Noise License
Status: On the thanking note to this organ of the State, the complaints signalled the council's commitment to work with the concerned parish council so that a new space could be found in time for the following year festivities

The grievance related to the licensing of a makeshift discotheque near a residential area. The business hours extended to 4 am., from 29th August to the 5th September.

Having been heard, the Municipal Council argued that the discotheque was at a reasonable distance from the residential area and that several conditions had been set in the special noise license. Those conditions largely corresponding to the 2012 Ombudsman report on noise(26), this organ of the State none the less cautioned the Municipal Council about the need to monitor the compliance with the conditions laid down in the permit.

6.7.2. Ombudsman´s decisions non favourable to complainants

Case Q-5462/15
Targeted Entity: Ministry of Economy
Date: 2015/09/24
Subject: Equality principle. Air transports. Social Mobility Allowance

The rationale of the Social Mobility Allowance has to do with the understanding that the inhabitants of the Azores must benefit from positive discrimination measures as far

(26) It can be found at http://www.provedor-jus.pt/?idc=83&idi=15247

as the cost of air transports are concerned, because of the distance to the Mainland and because of the emerging costs relating to such distance, that is to say on the grounds of social and territorial cohesion objectives laid down in the Portuguese Constitution.

The concerned legal rules determine that such an allowance requires that the beneficiaries have resided in the Autonomous Region for, at least, 183 days. The complainants understanding was that such a requirement was contrary to an equal treatment rule between residents, therefore breaching equality principles.

But, besides that being criteria used on other situations, namely in national and international tax rules, the requisite has to do with the stability and predictability of the situations that justify the aforementioned allowance, in a context of scarce resources management by public entities.

Case Q-6016/15
Targeted Entity: Municipal Council of *Povoação*
Date: 2015/10/15
Subject: Environment. Municipal fee for accessing the *Lagoa das Sete Cidades*

The complainant deemed illegal the collection of a fee to grant access to the *Lagoa das Sete Cidades* area. In fact, it was argued, it is a space in the public domain and no service is rendered; furthermore, the locals are exempted of payment thus breaching equality principles.

The fee was set following an agreement with the Regional Government which transferred the management of the popular area of *Furnas* Valley where a dish («*cozido das Furnas*») is prepared by lowering the pot in a hot spring heated by volcanic steam.

The Ombudsman intervention aimed at explaining that bearing in mind the powers of local authorities, both environmental and fiscal (including the power to exempt fees on defined grounds), and also the interest of environment protection, either by regulating or by rationalizing the use of natural resources, which are well established in several laws and regulations, there is no illegality in such decision.

Case Q-6017/15
Targeted Entity: Regional Secretariat for Education and Culture
Date: 2015/10/15
Subject: Teaching position. Short-term teaching contract. Termination compensation

The complainant following a short-term contract to teach in a school in the Azores rescinded such agreement in order to teach in another school in the Mainland.

The Azorean school put in place the penalty provided by law in such cases.

The complainant argued that there had been no time to give notice in advance; that the regimen of career time counting was better under Ministry of Education rules; and that with the new contract he could be closer to his elderly parents. Besides that, the amount of the penalty was excessive. These arguments should be enough to meet the cogent reasons provided by law to exempt teachers from the abovementioned penalty. Anyhow, the different national and regional legal regimes amounted to a breach of equality principles.

Were there cogent reasons in this case? Such are private or particular reasons strong enough to determine the public employer to roll back the public interest it has to provide for in accordance by statutes in force.

The investigation reached the following conclusions: the statutes and the notice of recruitment define clearly the conditions under which the Autonomous Region of the Azores is hiring short-term contract teachers.

The amount of the penalty is defined by law, and it must be understood in the light of the need to ensure the stability of the teaching staff.

Though the Autonomous Region cannot prevent short-term contracts it can adopt the mechanisms preventing its multiplication.

It is within the Autonomous Region remit to legislate in the aforesaid matters, given the ends and interest the Constitution and the Political and Administrative Statute have deferred to it. To that end, establishing deterrent and punitive measures to ensure the *pacta sunt servanda* principle is within its remit, that matter not being under the partially exclusive legislative competence of the Assembly of the Republic regarding the bases of the regime governing, and the scope of, the public service.

6.8. Office at the autonomous Region of the Madeira

6.8.1. Ombudsman´s decisions favorable to complainants

a) Remarks

Case Q-5140/13
Entity addressed: Municipality of Funchal
Date: 2015/09/29
Subject: Illegal construction
Status: The entity didn't reveal any objection

The Ombudsman organized a procedure following a complaint about the unconformity of administrative authorizations issued by municipality of *Funchal* [subparagraph (a) of article 68 of Decree-Law No. 555/99, of 16 December].

Considering the illegality, the courts have determined to forfeiture of the licensing, in the context of judgment of the South Central Administrative Court of 17 may 2012.

Following the judicial statement, it was found that the municipality of Funchal kept unchanged the illegal context mentioned above.

Article 93 of Decree-Law No. 555/99, of 16 December, stablishes that any urban operations is subject to administrative monitoring, at any time, regardless of their subject to prior licensing for such monitoring to ensure compliance of those operations with legislative and statutory provisions.

It was concluded that the adoption of all the necessary mechanisms to urbanistic legality reintegration was to be performed by the *Funchal* Municipal Council, under waiver of jurisdiction's penalty.

Case Q-1831/14
Entity addressed: Municipality of *Funchal*
Date: 2015/02/17
Subject: Decree-Law No. 276/2001, of 17 October. Official Animal shelter. Municipal Veterinarian

Following a complaint to the Ombudsman, it was verified the Decree-Law No. 276/2001, of 17 October, compliance, in accordance with the European Convention for the protection of pet animals, approved by Decree No. 13/93, of 13 April.

The paragraph 1 of article 19 of this diploma determines that it is up to local authorities the collection, capture and compulsive slaughter of pets, whenever this appears as indispensable, especially for reasons of public health, security and tranquility of people and other animals, and, even, security of goods. The collected animals should be housed in official collection centres, and monitored by the municipal veterinarian.

Om its turn, paragraph 2 of article 2 of Decree-Law No. 116/98, of 5 May (approving the General principles of the municipal veterinarian career) defines the municipal veterinarian main tasks, qualifying the municipal veterinary as sanitary authority.

Finally, Decree-Law No. 313/2003, of 17 December, introduced the registration and licensing of dogs and cats regime, as well as the arrest discipline (*SICAFE*), local authorities having competence to ensure appropriate compliance and regular surveillance.

The procedure conducted with the municipality of Funchal made it possible to conclude that the entity addressed was not duly prepared in order to guarantee the liaison with the local health authority.

On the other hand, lacking of municipal regulation of the local official animal shelter was evident.

In view of the above, the Ombudsman addressed a remark to the Municipal City Council of *Funchal*, urging it to adopt measures in order to:

i) Create the Veterinarian position on the permanent staff of the municipality, being envisaged the possibility of an inter-municipal arrangement that would allow for the existence of a shared veterinarian.

ii) Assess the existence of municipal regulatory standards regarding the official animal shelter, as well as the creation of two semi-circular cells for animals isolation and quarantine.

b) Suggestions

Case Q-6684/14
Entity addressed: Municipality of *Ponta do Sol*
Date: 2015/12/22
Subject: Healthiness
Status: Accepted

Complaint addressed to the Ombudsman by local inhabitants, in the municipality of *Ponta do Sol*, following patrimonial damages caused by deficient functioning of an inspection pit constructed by the council, in order to enable the correct rainwater excess.

It was concluded the need to improve the water drainage conditions, particularly with the construction of a retention box, as well as with the construction of an additional inspection pit at the entrance of the compound.

It was agreed that the new intervention was taking place near the residence of one of the complainants, in order to complete the domestic water process and to reduce the water concentration levels in periods of severe rainfall.

Case Q-7619/14
Entity addressed: Municipality of *Ponta do Sol*
Date: 2015/12/22
Subject: Loud noise
Status: Accepted

Ombudsman's intervention following a complaint raising the apparent omission of action on the part of the municipality of *Ponta do Sol* in order to contain the noise attributed to the exploitation of commercial establishments located in the historic center of the city.

This activity caused a discomfort situation, especially during the night period.

It was agreed to reduce the opening hours defined for the esplanades (from 02h00 am to 00h00 am), outside the establishments, located on the ground floor of one of the complainants building

The measure described above shall be in place for a period of about 180 days, after which the context of discomfort will be again appreciated, with eventual consideration of realization of acoustic measurement test for gauging the conformation of the noise levels produced by the establishments.

6.8.2. Ombudsman´s decisions non favorable to complainants

Case Q-7442/14
Entity addressed: Regional Secretary of Education and Human Resources
Date: 2015/01/28
Subject: Task contract renewal. Regional Legislative Decree No. 7/2014/M, of 25 July

It was requested the intervention of the Ombudsman with the Regional Secretary of the Education and Human Resources, challenging the non-renewal of fixed-term task contract detained by the complainant while working in a childhood establishment in the municipality of *Ribeira Brava*.

The complainant alleged the noncompliance provision contained in paragraph 3 of article 42 of the Regional Legislative Decree No. 7/2014/M, of 25 July.

The addressed entity defended that the teaching recruitment and selection process of basic and secondary education was regulated by paragraph 1 of article 35 of Regional Legislative Decree No. 7/2014/M, of 25 July, determining that the unfilled temporary needs by career teachers imply the staffing of candidates holding teaching professional qualification upon the conclusion of a fixed-term employment contract.

Since this contracts have a minimum and maximum length from 30 days to one school year, respectively, the annual contract renewal depends on the existence of a vacancy (annual and complete schedule, in the same group of recruitment), and the cumulative filling of the requirements listed in paragraph 7 of article 8 of that diploma.

The claim made by the petitioner being disavowed, she was informed that, in identical situations, some case law defend that the workers can hold a renewal of the contract expectation, at least up to the limit of the length legally provided for, with possible entitlement to compensation on its expiration date (cf. in this sense the judgment of North Central Administrative Court of 29 May 2014, case No. 03400/BEPRT 11.7, in http://www.dgsi.pt).

Case Q-5285/15
Entity addressed: Regional Civil Protection Services. *Madeira* Voluntary Firemen Humanitarian Association
Date: 2015/10/26
Subject: Professional Career of Fireman. Career Development

It was required the Ombudsman's intervention with the *Madeira* Voluntary Firemen Humanitarian Association.

The complainant was an affiliated firefighter since 1th March 1992, on the 3rd class category. However, he argued that the professional framework should now be reviewed in the light of Decree-Law No. 241/2007, of 21st June, adapted to the Autonomous Region of *Madeira* by Regional Legislative Decree No. 21/2010/M, of 20 August.

The entity addressed informed that, at the date of admission as firefighter, the complainant had celebrated an individual contract, being considered as a dependent worker, under the terms established by the Law No. 7/2009, of 12 February, which approves the job code.

The petitioner is not inserted on the Fireman Official career, but on the Volunteer Firefighter one, since he does not have a specific course taught by the National School of Firemen, in addition to the qualifications requirements set out by the legislator (cf. paragraph 2 of article 13 of the Regional Legislative Decree No. 21/2010/M, of 20 August).

Still, paragraph 3 of article 13 of the Regional Legislative Decree No. 21/2010/M, of 20 August, provides that the candidates cannot reveal any physical or mental disability, for the admission to be granted, in both careers. And paragraph 4 of the same article indicates that the age of the elements to join the official career firefighter is between 20 and 45 years.

Regarding the first requirement, it was found that the applicant should suffer of a permanent incapacity to work, in the order of 25%, according to medical reports; the complainant has been subjected to surgical interventions as a result of working accidents. Therefore, the petitioner would not be able to exercise physical efforts in any kind.

By failing to meet the legal requirements in accessing the official career of firefighter, it was concluded that the petitioner belongs to Firefighter's general career, according to articles 35 *et seq*. of Decree-Law No. 241/2007, of 21st June, with rules introduced by Decree No. 363/2012, of 12 January.

Case Q-3085/15
Entity addressed: Regional Directorate for Tax Affairs
Date: 2015/06/30
Subject: Taxation of chargeable gains relating to previous years. 2014 *IRS* liquidation

The complainant required the Ombudsman's intervention before the Regional Directorate for Tax Affairs raising some irregularities in 2014 *IRS* liquidation procedure.

The complainant was in retirement situation, having been awarded in early 2014, with a monthly pension worth € 318,00. Once the application for retirement reported the year 2009, she received retro gains in the amount of € 15 000,00.

When tax assessment was declared, she eventually was notified to pay about € 2200,00, in result of joint taxation, in 2014.

The entity addressed said that the taxpayer declared those amounts during the year 2014, as article 11, paragraph 3, and article 74 of the *IRS* code (*CIRS*). Likewise, she declared the chargeable gains relating to previous years, in accordance with the Social Security Institute information.

Nonetheless, the fact that the income statement was correctly filed, following the applicable legal procedures, this question has been a frequent object of attention on the part of Ombudsman, who addressed a Recommendation to the Secretary of State for Fiscal Affairs (Recommendation No. 7/B/2008, of 26 June), in view of a legislative change required to put an end to the blatant injustices generated by the mentioned system, without success.

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> *Detail – Tilework present at the Portuguese Ombudsman´s building*

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