

The Portuguese Ombudsman

The 2017 Forest Fires – Compensation Process

(Update November 2018)

Deaths

In June and October 2017, devastating forest fires broke out in mainland Portugal, affecting mostly the districts of Leiria, Coimbra, Viseu and Aveiro, located centre and north of the country.

In these tragedies, hundreds lost their life or got injured, some seriously.

On the 27th October 2017, the Council of Ministers assumed responsibility for the payment of compensation for the deaths and established a non-judicial mechanism for the purpose of determining and paying, in a prompt and simplified process, compensation due to the relatives of the fatal victims (Council of Ministers Resolution 157-C/2017).

The definition of the criteria, deadlines and procedures according to which the right to compensation would be enforced was entrusted to a Council composed of three renowned jurists: one appointed by the Superior Council of Judges, one appointed by the Council of Rectors of Portuguese Universities and the third indicated by the association of families and heirs of the victims that lost their life. The criteria for compensation were published in *Diário da República*, on November 30, by Order No. 10496-A / 2017.

The determination of the compensation amount to be paid to families and heirs of fatal victims was committed to the Ombudsman.

This task involved a joint effort from all the departments of the institution, including the legal staff, the administrative services, the team of secretaries and the free toll lines. Promptly, the Ombudsman created a telephone free line, an electronic address exclusively dedicated to support the applicants and a frequently asked questions list on the institution website.

Public clarification sessions in the municipalities most affected by the fires were held in order to clarify procedures and answer questions. A meeting with municipal councils took place and it is fair to acknowledge their sound cooperation in the whole process, namely through providing information and assistance in filling the requests as well as referring them to the Ombudsman.

The Ombudsman, guided by the principles of universality and equality and seeking a fair and adequate outcome that would take into consideration the absolutely dramatic circumstances of the fires, decided:

- to fix at 80.000 euros (eighty thousand euros) the compensation for loss of life;
- to set at 70.000 euros (seventy thousand euros) the base value for compensating the suffering before the loss of life, to be increased in the case of relatives who shared the circumstances of the death and agony;
- these amounts would be paid to the compensation's rights holders collectively;
- to set at 40.000 euros (forty thousand euros) the base value for compensation of the pain of loss damage for spouses/partners, parents and children; this value was to be increased when the family member accompanied the victim at the time of the event and a another increase was applied in the case of minors whose parents were both killed in the fire or a mother or father who had lost a minor child;
- to set the base value, in the absence of the above family members, at 20.000 euros (twenty thousand euros) for grandparents or siblings who lived with the

deceased and to fix the base value of 10.000 euros (ten thousand euros) for compensation of siblings or nephews;

- in both cases, an increase would be used when the applicant was with the deceased at the time of the event, which was higher if it was a minor.
- the material damages would be compensated according with the criteria established by the Council;
- the payment of non-material damages, and eventually patrimonial damages, would be made individually to each applicant.

The first requests for compensation arrived on 14th December 2017 and the deadline for submitting them was 15th February 2018.

The applications were processed by two teams, each one composed of 3 staff members (coordinators of the institution's thematic units) that held regular meetings in order to guarantee the coherence of the proposals.

Overall, the Ombudsman received 309 requests. Only 9 were dismissed. The remaining 300 gave rise to compensation proposals that have all been accepted. The requests concerned 115 fatal victims and the global amount of compensations paid amounted to 31 million euros.

Serious Injuries

On 28th November 2017, the Government assumed the responsibility for paying compensations to the persons that suffered serious injuries in the course of the forest fires (Council of Ministers Resolution 179/2017).

The definition of the criteria for compensations was established by the same Council that determined the criteria for the loss of life damages, now assisted by the

President of the National Institute of Legal Medicine and Forensic Sciences. The Council also defined the deadlines and procedures to follow.

Again, the calculation of the compensations amount was handed over to the Ombudsman and the procedure established was the following:

- the Ombudsman received the request and made a preliminary assessment;
- requests accepted were sent to the National Institute of Forensic Medicine and Forensic Science;
- the National Institute of Forensic Medicine and Forensic Science carried out medical and legal analysis and drew up an evaluation report that was referred to the Ombudsman;
- the Ombudsman, on the basis of such report, presented the applicant a proposal for compensation;
- if the proposal was accepted, it was sent to the Government for payment.

New public clarification sessions were held in the municipalities where fires occurred and, once again, cooperation of municipal councils proved to be of the utmost importance.

In August 2018, the Ombudsman decided to proceed with an interim payment to the victims of the fires who, after a clinical evaluation, were classified as "seriously injured" by the National Institute of Forensic Medicine and Forensic Sciences.

The Ombudsman considered, in view of the high number of requests, the complexity of the assessment of each case and the different types of damages to be compensated, that the best way to conciliate (i) the minimization of damages, (ii) possible procedural delays and (iii) the need to guarantee adequate, fair and equitable treatment was through the mentioned interim payment.

Of the 195 requests received, 188 were admitted and forwarded to the National Institute of Forensic Medicine and Forensic Science. Of these, 66 victims were classified as seriously injured. 30 cases are still pending from the Institute evaluation.

The Ombudsman paid up interim compensations to all 66 cases considered to be of serious injuries, in a total amount of approximately 2.400.000 euros (two million and four hundred million euros). Such payment corresponded to the results of the clinical evaluation pursuant to the three criteria with already established base value, namely (i) biological damage, (ii) pain and (iii) aesthetic damage.

The task of calculating the compensation provided the Ombudsman with a transversal view of the challenges that affect the daily lives of the Portuguese, especially those living in interior areas of the country. The fires affected young and old, men and women, rich and poor. The stories behind each situation revealed cases of domestic violence, alcoholism, but also showed examples of humanity and solidarity.