PORTUGUESE OMBUDSMAN

REPORT TO THE ASSEMBLY OF THE REPUBLIC
2009

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TABLE OF CONTENTS

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

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

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

PROFESSIONAL CAREER

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

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

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

PUBLICATIONS AND SPEECHES

He has delivered various speeches and intervened in various seminars on topics of Tax Law, Financial Law and Financial Auditing in numerous Universities and Associations, in Portugal and abroad, and within the scope of International Organisations. He has published various opinion articles in leading daily and weekly newspapers. He co-authored and published the Procedural Code of Contributions and Taxes, with comments and notes, that is frequently referred to in case-law and legal doctrine; «Infracções fiscais: crimes e transgressões» (Fiscal infringements: crimes and transgressions) in the Cadernos de Ciência e Técnica Fiscal, no. 142; Various sentences and legal doctrine articles in the Case-law Compendium; «Infracções Fiscais – Não Aduaneiras» (Fiscal infringements – Excluding customs' duties), Almedina, 1990; «Código do Processo Tributário» (Tax Procedure Code), with comments and notes, Almedina, in co-authorship (4 editions); and A Criminalidade Transnacional na União Europeia – Um Ministério Público Europeu? (Cross-Border Criminality in the European Union – A European Public Prosecution Service?) Edições Almedina, S.A., Coimbra, June 2005. He has published various articles: «As Fundações e o Controlo Financeiro do Tribunal de Contas» (The Foundations and Financial Auditing of the Court of Auditors), in Memória, Year 1, no. 0, May 2003; «Financial Regime of Management and Auditing of Pre-Adhesion Aid – Portugal and Spain and the 10 recently-admitted Member States», speech integrated within the Summer Course organized by the General Foundation of the Complutense University, Madrid, in July 2003; «The Auditor's Independence», included in pp. 865-875 in the commemorative work of 170 years of the Hellenic Court of Auditors (1040 pages), Greek edition: «Transparency and independence in auditing. Studies in honour of the 170 years of the Hellenic Court of Auditors» (in Greek); «A Policy to Fight Financial Fraud in the European Union», pp. 151-183 in the work, Public Expenditure Control in Europe – Coordinating Audit Functions in the European Union, Part II (Towards Coordination Strategies), coordinated and edited by Prof. Milagros García Crespo, of the Faculty of Economic Sciences of the University of the Basque Country, Bilbao, Spain; «O Juiz» (The Judge), speech delivered in the ceremony in honour of Prof. António de Sousa Franco, pp. 45-56, In Memoriam Sousa Franco, by the Portugal Fiscal Association, Edições Almedina, SA, Coimbra, March 2005; «O Estado no Século XXI: Redefinição das suas Funções?» (The State in the XXI Century: Redefinition of its Functions?) text delivered in the Seminar (held on 19 October, 2004), published by INA - National Administration Institute, Oeiras, 2005.

OTHER POSITIONS

He was a member of the 1st National Management Board of the Trade-Union Association of the Portuguese Judicial Magistrates (1976/77); founder and member of the editorial committee of the magazine, Fronteira (1977/82). He led the Portuguese delegation in various Conferences of INTOSAI (International Organisation of Supreme Audit Institutions) — including the 52nd meeting of the Management Board of 11 October 2004, that took place during the XVIII INTOSAI Conference, that unanimously approved the Resolution, establishing Portuguese as an official language of the Organization —; of EUROSAI (European Organization of Supreme Audit Institutions); of EURORAI (European Organization of Regional Audit Institutions); of OLACEFS (Organization of Latin American and Caribbean Supreme Audit Institutions); and of the Courts of Auditors of the CPLP (Community of Official Portuguese-Speaking Countries).

President of the Inspection Commission of the Portuguese Diabetes Association.

Substitute member of the Anti-Corruption Council (July 2008/July 2009).

Member of the Supreme Council of Administrative and Fiscal Courts (2008/09).

DECORATIONS AND AWARDS

He was awarded the Minister José Maria Alkmim Court of Accounts Collar of Merit by the Minas Gerais Academy of Letters (Brazil); he was granted the Ruy Barbosa Medal (Rio de Janeiro, 1999; and Bahia, 2003); the Grand Collar of Merit of the Court of Auditors of the Union (Brasilia); the title of honorary member of ATRICON – Association of Members of the Courts of Auditors of Brazil; and the Grand Cross of the Military Order of Christ from the President of the Republic on 18 January 2006.

MESSAGE FROM THE OMBUDSMAN

Message from the Ombudsman

In compliance with the provisions established in article 23, no. 1 of the Ombudsman's Statute – Law no. 9/91, of 9 April – I have the honour to present to the Assembly of the Republic, the 2009 Annual Report of Activities.

In these opening lines, I would like to devote a few words to the complicated process that preceded my election and its respective consequences on the activity and operations of the Ombudsman's Office in 2009. I will also highlight my priorities for the first half of my mandate, as specified in the 2010 Plan, in order to pursue these goals.

A year of uncertainty[1]

2009 was an exceptional year in terms of the Ombudsman's operation. This was partly due to the fact that it was a year of transition - with a change of the person invested in this position – but above all resulted from the vicissitudes associated to the election procedure of the new Ombudsman.

The second mandate of the Ombudsman, Nascimento Rodrigues, ended in July 2008 and in accordance with the Ombudsman's Statute, the Ombudsman remained in functions in the interim period, until election of his successor. But the abnormally extended period of this substitution process - that soon proved to be a genuine political impasse - engulfed the institution in an undesirable climate of uncertainty, that lasted for around 12 months.

The prolongation of this situation inevitably affected the Ombudsman's Office during the first half of 2009.

The first impact was on the level of available Human Resources, given difficulties experienced in nominating staff to occupy various key vacancies. For example, the position of Secretary-General was left vacant from October 2008 onwards, since the Prime Minister was unwilling to nominate a substitute until the new Ombudsman was elected. The position of the Coordinator of Department 4, was also left vacant from June 2008 onwards. The assistants of the Ombudsmen's Cabinet - who had ended their duties in the meantime - were also not replaced.

This led to a progressive reduction in activities launched by the institution itself, e.g. implementation of inspections, investigations and inquests. As a result, the activity of the Ombudsman's Office was practically reduced to appraisal of complaints presented by citizens. This aspect, allied to a relative decline in the number of complaints that were opened until election of the new Ombudsman, meant that by the end of the first half 2009 there were only 1620 pending cases still open - one of the lowest level of pending cases in the history of the institution.

My election

The exceptional situation described above, culminated when the acting Ombudsman, Nascimento Rodrigues, delivered a letter to the Assembly of the Republic, on 3 June 2009, in which he communicated his intention to cease functions immediately, accompanied by termination of functions of the Deputy Ombudsman, Councillor Alberto Oliveira.

As a result, the Deputy Ombudsman, Jorge Noronha e Silveira, presided over the institution – overseeing its normal functioning. This situation lasted for several weeks until the necessary consensus was reached in the Assembly of the Republic - that enabled my election and investiture, on 15 July 2009, after a prior hearing in the Parliamentary Commission of Rights, Freedoms and Guarantees.

Restitution of normal functioning of the services of the Ombudsman's Office

The immediate tasks I faced, after commencing duties as the Ombudsman, were related to the need to choose the members of my Cabinet and fill existing vacancies in order to guarantee continuity of the activity of the Ombudsman's Office.

I reconfirmed the Deputy Ombudsman, Jorge Silveira, in his position - which thus made it possible to guarantee a certain degree of continuity, which is always desirable in times of change.

1 This text is based on a note drawn up by the Deputy Ombudsman, Jorge Silveira.

I nonetheless had to appoint the other Deputy Ombudsman, whose position had been left vacant. The functional complementarity between the Public Prosecution Service and the Ombudsman (articles 25, no. 3, 29, no. 6 and 35, no. 1 of the Ombudsman's Statute; rights of minors; rights of prisoners; administrative litigation associated to illegal acts of the public powers) made it advisable to establish a liaison process between these two institutions, capable of generating synergies. With the vital agreement of the Attorney General, a decision was made to nominate the Prosecutor of the Republic, Helena Vera-Cruz Pinto, to whom I delegated supervisory powers for all issues related to children, senior citizens and persons with disabilities, including the respective hotlines.

I pursued preparatory measures with the Government, in order to renew nomination of the Secretary-General. I reconfirmed the positions of five Coordinators of the Advisory Service's Departments and nominated a new Coordinator for Department 4. Subsequently, on the basis of a well-grounded proposal from each Department Coordinator, all but one of the service commissions of the advisers were renewed.

Audit by the Court of Auditors

As soon as I commenced functions, I was confronted with the results of an audit of the Ombudsman's Office, conducted by the Court of Auditors[2]. Amongst other aspects, this audit concluded that the nomination of 12 staff members, by invoking the law on ministerial cabinets (article 2 no. 3 of Decree-Law no. 262/88, of 23 July), had been illegal. I obviously respected the position taken by this sovereign body. This fact led to **non-renewal of the nomination of 12 staff members**, and also applied to the 4 staff-members of the Children's Messages and Senior Citizens' lines - thus determining their respective suspension. As a temporary solution, I decided to use the information line that internally re-routed calls to the competent services.

Aware of the important social relevance for underprivileged citizens, I decided to open competitions in order to full the positions occupied by other staff members and submitted a proposal to the Prime Minister to alter the organisational law of the Ombudsman's Office, in order to include a norm identical to that of the law of ministerial cabinets. I did my utmost to reactivate the aforementioned hotlines as quickly as possible, which only proved to be possible in October.

The need to alter the Organisational law of the Ombudsman's Office

Fifteen years after approval of the existing Organisational law of the Ombudsman's Office (Decree-Law no. 279/93, of 11 August, altered by Decree-Law no. 15/98, of 29 January and Decree-Law no. 195/2001, of 27 June), it became an urgent priority to revise this legal framework - in order to tailor the Ombudsman's support structure to the current realities and the requirements of his attributions, specifically those of his Cabinet, the position of the Deputy Ombudsman and the organizational structure of the Ombudsman's Office.

I therefore created a working group in order to prepare a draft revised version of the aforementioned legal diploma.

Modernization project of the ICT infrastructures

I found evidence of inefficiencies in the Ombudsman's Office's information systems. Given the Ombudsman's crucial role in society, in particular, via the dialogue between citizens and authorities, it was essential to modernise the Information and Communication Technologies infrastructures, the Information systems and the Applications used to support Work Procedures. A modernization project of the ICT infrastructures was therefore drawn up, in order to improve the organizational and management practises, thereby aligning the positioning of the Ombudsman's Office with the framework of the National Technology Plan[3]. As a result, a suitable amount for this investment was included in the Ombudsman's budget and was subsequently approved.

2 In the first half 2009, the Court of Auditors, carried out an audit of the 2007 management account of the Ombudsman's Office, inspecting the legality, regularity and suitable accounting of the associated operations. A recommendation was made to the Ombudsman's Office to continue its effort to improve the planning, management and control system, including activities plans and reports, communication between the computing modules of accounts and Human Resources, codification of inventory assets, economic classification of expenses and control of staff assiduity. The Court of Auditors also detected undue payments liable of generating the responsibility to reimburse the respective amounts. As a result, these amounts were restituted and the position taken by the Court of Auditors in relation to the illegality of 12 nominations of staff members of the Ombudsman's Cabinet was also respected. After submission of the Court of Auditors' Report to the representative of the Public Prosecution Service, the latter stated that there were no sanctionary liabilities.

3 An Action Plan was drawn up by Prof. José Tribolet, university professor of Information systems and a recognized authority in this field, entitled PROVE-JUS – 2.0

Dissemination and promotion of the Ombudsman's actions.

I launched the foundations for a Protocol with the National Association of Municipalities[4] in order to foster concerted and joint activity, so as to disseminate the Ombudsman's mission and attributions to the general public, thus reinforcing the defence of citizens' rights, freedoms and guarantees, especially in Portugal's inland regions - where access to information is more difficult. In view of their privileged position, given geographical proximity to local populations, my aim was to ensure that adhering municipalities would provide free use of computers to their respective residents, enabling access to the Ombudsman's site and the option to present electronic complaints via the form available for this purpose in the site. I also wanted the adhering municipalities to provide assistance for filling in the form, whenever such assistance was requested by the respective interested party.

I initiated diligent proceedings with the Minister of Education in order to pursue **initiatives intended to disseminate information about the Ombudsman and citizens' rights, freedoms and guarantees, in primary, middle - and secondary schools** - to be conducted by members of my staff.

I took part, and ensured my representation, in various events, at the national level, organized by civil society organizations - specifically representatives and defenders of the rights of citizen groups in vulnerable situations.

International Relations

I took part in various events organized by international organizations and equivalent institutions. I believe that such events constitute a privileged arena for exchanging ideas and experiences in favour of achieving greater and more articulated protection and promotion of the human rights, and achieve dissemination of the figure of the Ombudsman as the guarantor of such rights. In the XIV Conference and General Meeting of the Ibero-American Federation of Ombudsmen(FIO), held in Madrid, I was elected Deputy-President of the Organization.

The chapter dedicated to International Relations provides a more detailed description of the events in which I took part, or to which I sent a representative.

I also organised bilateral contacts in order to discuss questions and foster cooperation and resolution of problems of common interest, in particular with equivalent institutions in our neighbouring country, Spain, and the respective Spanish autonomous provinces.

I constituted a working group in order to draw up a Code of Good Administrative Conduct, to be presented to the Assembly of the Republic, replicating an identical initiative undertaken by the European Ombudsman, in relation to the Charter of Fundamental Rights of the European Union, approved by the Treaty of Lisbon[5]. O Provedor de Justiça,

The Ombudsman,

Alfredo José de Sousa

4 The Cooperation Protocol between the Ombudsman and the National Association of Portuguese Municipalities (ANMP), was signed on 19 March 2010.

5 The document was submitted to the President of the Assembly of the Republic on 19 April 2010.

THE OMBUDSMAN AND HIS STAFF-MEMBERS

Ombudsman, Deputy Ombudsmen and Department Coordinators

João Portugal Nuno Simões Elsa Dias Armanda Fonseca André Folque Miguel Coelho

Helena Vera-Cruz Pinto Jorge Silveira

Alfredo José de Sousa

DEPUTY OMBUDSMAN

Jorge Correia de Noronha e Silveira, born in Lisbon (02.07.1955)

Master's degree in Legal Sciences from the Faculty of Law of the University of Lisbon (1988). B.A. Hons. degree from the same Faculty (1978). Attorney registered at the Portuguese Bar Association since 1980. He has served as Deputy Ombudsman since September 2005. Professor at the Faculty of Law of Lisbon since 1978, having lectured in various disciplines in the area of Legal Sciences, in particular the General Theory of Civil Law, Penal Law, Civil Procedural Law and Penal Procedural Law. His contract as a university assistant professor was suspended between December 1988 and December 1999, while he exercised functions in Macau, and is also currently suspended, due to the functions he occupies in the Ombudsman's Office. Between 1980 and 1988 he worked as an attorney. His registration in the Portuguese Bar Association has been suspended since that time. Between 1981 and 1988 he lectured in the discipline of Penal Procedural Law in various private universities. Between December 1988 and December 1990 he lectured the discipline of Constitutional Law in the Law Course of the University of Oriental Asia (now known as the University of Macau). He exercised functions in the Macau Public Administration between December 1990 and July 1996, in the following positions (in chronological order): Assistant Coordinator of the Office for Legislative Modernization of the Macau Government, Adviser to the Cabinet of the Secretary for Justice of the Macau Government and Head of the same Cabinet. He served as Secretary for Justice of the Macau Government during the final years of the Portuguese Administration of that territory, during the mandate of the Vice-Governor, Vasco Rocha Vieira (between August 1996 and December 1999). He served as Deputy-President of the Portuguese Road Safety Prevention service between January 2001 and April 2003, nominated by the Portuguese Government, in accordance with the statutes of that association. He was hired between October 2001 and October 2002 by the Office of Auditing and Modernization of the Ministry of Justice, as a contracted consultant to provide specialized collaboration in the field of auditing of the system and quality of the Courts. He has published various legal works. He has been distinguished with the Order of Infante D. Henrique (Grand Cross).

Deputy Ombudsmen

DEPUTY OMBUDSMAN

Helena Cecília Alves Vera-Cruz Pinto, born in Luanda (14.11.1958).

B.A. Hons. degree in Law from the Faculty of Law of the University of Lisbon (1976/1981). She has served as Deputy Ombudsman since 1 September, 2009. Magistrate of the Public Prosecution Service, classified as a Prosecutor of the Republic. Served as the Auditor of Justice (from 28 September, 1983 to 4 September, 1984) and exercised functions as Assistant Prosecutor (25 October, 1985 to 17 September, 2000), in the Municipalities of Ponte da Barca, Santo Tirso, Barcelos, Porto, Barreiro and Almada. Member of the Almada Municipal Safety Council, designated by the District Attorney General of Lisbon. Elected by her peers, she was nominated a member of the Supreme Council of the Public Prosecution Service (C.S.M.P.) in February 2005 and, by means of an order issued on 22 March, 2006, after a deliberation of the C.S.M.P., she was nominated a full-time member of the aforementioned Council, always as a member of the Classification and Disciplinary Sections. On 6 March, 2008 she was assigned, internally, to the Attorney General's Office of the Lisbon District, in order to assist the General Prosecutor for the Lisbon District. In representation of the Attorney General's Office and within the scope of her professional training, she participated in various seminars, conferences, courses, training initiatives, conferences and congresses, covering various areas of the Law, with special focus on the topics of minors and family and criminal affairs. She addressed the Judicial Studies Centre in sessions on the topics of «Professional Deontology and Ethics» and «Management of Investigation in widespread criminality». On 13 December, 2006, she was designated to represent the Attorney General in the Working group in charge of preparation of the Draft Project for Revision of the Judicial System. Between 2006 and 2008 she was a member, within the framework of the C.S.M.P., of the working group that monitored the computerization procedure of the Public Prosecution Service, implemented by the Institute of Information Technologies in Justice, of the Ministry of Justice. From 22 November, 2007 to 5 December, 2007 and from 31 January, 2008 to 14 February, 2008, she was a member of two short-term technical missions to the Democratic Republic of S. Tomé and Príncipe in order to revise various legal diplomas, including the Penal Code and the Penal Procedure Code. As a result of an order issued on 16 March, 2009, by the Deputy-Attorney General of the Republic, in relation to implementation of the new Citius/MP/Penal/New Generation (Court management software) she was designated as the permanent interlocutor between the Attorney General's Office and the Ministry of Justice.

Department Coordinators

DEPARTMENT 1
Environment and natural resources, urban planning and housing, territorial planning and public works, leisure

Eduardo André Folque da Costa Ferreira — born in Lisbon (13 November, 1967). Master's degree in Legal-Political Sciences from the Faculty of Law of the University of Lisbon (2001). B.A. Hons degree in Law, from the same Faculty (1991). Since 21 October, 1993 he has served as coordinator of the Ombudsman's Office, via a service commission in Department 1 - that handles issues of the environment, natural resources, urban planning and housing, territorial planning and public works, leisure. He co-ordinated and participated in inspections, inquests and checks, also in the area of the Prison Services and of the Police Force (PSP) and of the Republican National Guard. He has taught at the Faculty of Law of the University of Lisbon, as monitor (1989/1992), assistant intern (1995/2001) and assistant of the Legal-Political Sciences Group (since 2001). Assistant of the Ombudsman's Cabinet (1992/1993). Author of various monographs and scientific articles on Constitutional Law, International Public Law, urban planning and environmental law. Intervention in post-graduate university courses, seminars, colloquia and professional training initiatives. Member of the Commission of Religious Freedom (since 2004), of the European Council of Environmental Law (since 2003), of the Scientific Society of the Catholic University of Portugal (since 2009) and of the Editorial Council of Constitutional Case-law (since 2003).

DEPARTMENT 2
Economic and financial affairs, tax affairs, European funds, civil liability, betting, public contracting and consumer rights

Elsa Maria Henriques Dias — born in Alverca do Ribatejo (10.03.1966). B.A. Hons degree in Law from the Faculty of Law of the University of Lisbon (1988), postgraduate degree in European Studies from the same Faculty, and a postgraduate degree in Fiscal Management of Organizations, from the Higher Institute of Economics and Management (ISEG). She exercised functions as legal adviser to the Office of the Director of Finances of Lisbon (1989/1992) and worked as an attorney at the Legal and Litigation Office of Portuguese Railways (CP — Comboios de Portugal, E.P.E.) (1992/1993). Since 1993 she has worked in the Ombudsman's Office, in a service commission, where she began by exercising functions as an adviser to Department 2, and coordinated the Department between 1998 and 2000. Between 2001 and 2005, while continuing to provide advisory services to Department 2, she also served as an adviser in the Local Office of the Ombudsman's Office in the Autonomous Region of Madeira and coordinated the «Children's Messages» and «Senior Citizens» hotlines. In 2005 she was reconfirmed as coordinator of Department 2, that handles economic and financial affairs, tax affairs, European funds, civil liability, betting, public contracting and consumer rights, and currently exercises this position.

Department Coordinators

DEPARTMENT 3
Social affairs: work, social security and social housing

Nuno José Rodrigues Simões – born in Lisbon (28.08.1962). B.A. Hons degree in Law from the Faculty of Law of the University of Lisbon (1985). Courses and training initiatives in various areas of the Law, in particular, Work, Social Security and Health, including cross-border training on «Social Dialogue and European Collective Bargaining», administered by the Universities of Rome, Seville, Catholic University of Lisbon and the Democritus University of Thrace. Coordinator of the Ombudsman's Office in Department 3, that handles social affairs (work, social security and social housing), since 2000. Adviser to the Ombudsman (1996/2000), in the same area. Consultant to the Economic and Social Council (1992/1995), responsible for issues of social law: work, social security, employment, professional training and social concertation. Legal adviser to Partex - Companhia Portuguesa de Serviços, SA (1987/1992). Author of studies and monographs in the field of the social law and speaker and moderator in seminars and conferences.

DEPARTMENT 4
ADMINISTRATIVE ORGANIZATION AND PUBLIC EMPLOYMENT RELATIONSHIP, STATUS OF THE PERSONNEL OF THE ARMED FORCES AND OF THE SECURITY FORCES

Armanda Amélia Monteiro da Fonseca – born in Coimbra (20.07.1965). B.A. Hons degree in Law from the Faculty of Law of the University of Lisbon (1988). Inspector of the permanent staff of the Inspectorate-General of Health Activities, exercising functions as Coordinator of the Ombudsman's Office in Department 4 that handles issues of administrative organization and public employment relationship, status of the staff of the Armed Forces and of the Security Forces, since 3 August, 2009. In recent years, she has served as deputy director-general of the Directorate-General of Public Administration and Employment (April 2008/March 2009) and assistant to the Secretary of State for Public Administration (March 2006/April 2008). She has exercised functions in the Public Administration, in various services, as a senior technical official and, since 2001, with inspection functions. She exercised management functions in the Portuguese Roads Institute (February 2000/June 2001) and in the Justice Services Department of Macau (January 1997/July 1999). She coordinated the Working group of the Ministry of Justice, constituted within the framework of the Reform Programme of the Central Administration of the State (PRACE) (November 2005/March 2006), and she participated as a speaker in information and debate sessions, training initiatives and conferences on Reform of the Public Administration.

DEPARTMENT 5
Judicial affairs, immigration and nationality legislation, road safety and traffic, registry services and notary public services

Miguel Armada de Menezes Coelho – born in Lisbon (25.11.1966). B.A. Hons degree in Law from the Faculty of Law of the University of Lisbon (1990). He was an intern attorney and worked as an attorney, between 1991 and 1995, and currently has suspended his registration in the Bar Association. In 1991/1992 he was coordinator of the Legal Office of the Nature Protection League. Between 1993/1995 he worked as legal adviser to the Office of the Board of Directors of the Portuguese Post Office (CTT), with a fixed-term contract, and entered the company's permanent staff in 1995. He has currently been assigned to the Ombudsman's Office via a public interest assignment. He began functions in the Ombudsman's Office in 1993, as adviser to the Ombudsman's Cabinet, and specialist in Environmental issues. From 1995, he worked as an adviser in the area entrusted with handling cases related, amongst other issues, to the environment and urban planning. Between 1997 and 2004 he was the adviser in charge of the Local Office of the Ombudsman of the Autonomous Region of the Azores. From 2004 he was the head of the Project Unit, responsible for issues related to children, senior citizens, persons with disabilities and women, and also coordinated the functioning of the «Children's Messages» and «Senior Citizens» hotlines. Since May 2008 he has worked as coordinator of the Ombudsman's Office for Department 5 that handles judicial affairs, immigration, nationality, road safety and traffic and registry services and notary public services.

DEPARTMENT 6
Political-constitutional affairs, rights, freedoms and guarantees, prisons and other detention centres, activity of the Security Forces, health, education, culture and science, media and sport

João António Pereira Moital Domingues Portugal – born in Leiria (27.01.1965). B.A. Hons degree in Law from the Faculty of Law of Lisbon (major in Legal-Political Sciences). He attended, with a note of approval, the scholastic part of the Master's Degree in Law of the same Faculty. Coordinator of the Ombudsman's Office, in Department 6 that handles political-constitutional affairs, rights, freedoms and guarantees, prisons and other detention centres, activity of the Security Forces, health, education, culture and science, media and sport. He participated in the Inspection of the Prison System in 1996 and collaborated in drawing up the final report. He coordinated the organization and orientated the respective final report of the Inspections of the Prison System from 1998 to 2002. Representative of the Ombudsman in the Commission for Indemnification to the Family Members of the Victims of the collapsed bridge in Entre-os-Rios. Previously, he served as Assistant to the Ombudsman's Cabinet, substituting the Head of Cabinet, in the event of absences and impediments. Intern Assistant Professor at the Faculty of Law of Lisbon, where he lectured practical lessons in Constitutional Law and International Public Law.

AZORES (Local Office)

José Álvaro Amaral Afonso – born in Angra do Heroísmo (10.12.1964).

B.A. Hons degree in Law from the Faculty of Law of the University of Coimbra (1994). Adviser to the Ombudsman, since February 2004, he has exercised functions as Head of the Local Office of the Ombudsman of the Autonomous Region of the Azores, since April 2004. Trainer at the Public Administration Training Centre of the Azores, from 2001 to 2004. Director of Local Administration Services, in the Regional Directorate of Organization and Public Administration, from December 1998 to January 2004. Head of the Administrative and Financial Department of Lajes do Pico Municipal Council, from March 1997 to November 1998. He has worked for the Autonomous Regional Administration of the Azores, since October 1994.

MADEIRA (Local Office)

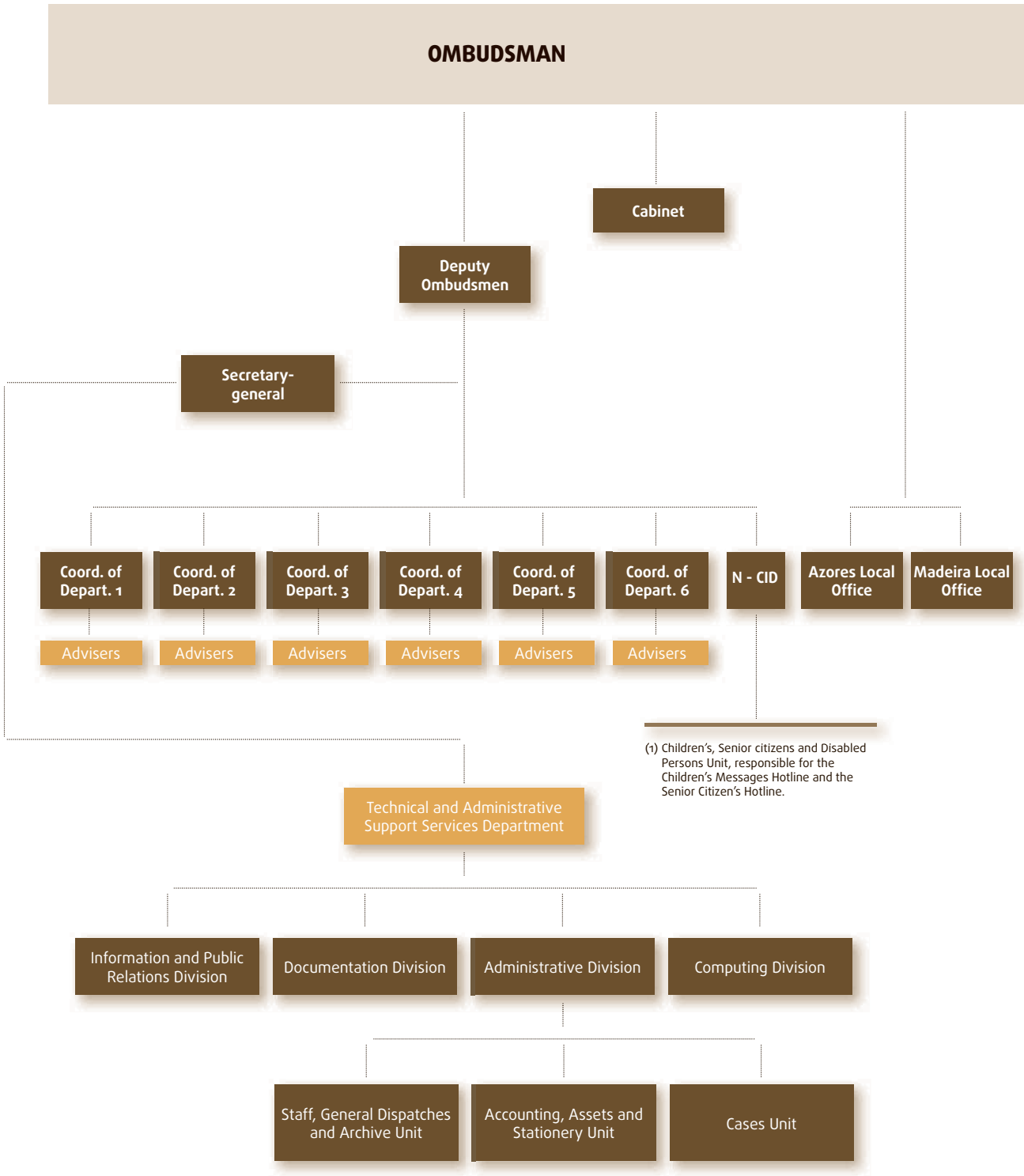
Duarte dos Santos Vaz Geraldes – born in Lisbon (9 December, 1977).

B.A. Hons degree in Law from the Catholic University of Portugal, Lisbon (2000). Master's degree in Law (Area of Legal-Political Sciences) from the Faculty of Law of the University of Lisbon (2005). Registered in the Bar Association (registration suspended from 1 October, 2005). Worked as an attorney in the legal firm «P.M.B.G.R. & Associados», and «C.S.B.A.» (Carlos de Sousa Brito & Associados). Assistant to the Ombudsman's Cabinet (October 2005/June 2006). Adviser to the Ombudsman since 19 June 2006, exercising functions as Head of the Ombudsman's Local Office in the Autonomous Region of Madeira.

Staff of the Ombudsman's Office

THE HEADQUARTERS OF THE OMBUDSMAN'S OFFICE

Organisational Chart



THE OMBUDSMAN'S MANDATE AND ACTIVITY

2.1. The Ombudsman's mandate and legal basis of his activity

The figure of the Ombudsman, directly inspired by the Swedish Ombudsman, set up in the early 19th century, was introduced in Portugal via Decree-Law no. 212/75, of 21 April. In 1976, the position of the Ombudsman was incorporated within the Portuguese Constitution, via article 24 of the Constitution, now article 23.

It was the responsibility of the Portuguese legislator to establish the respective Statute, via Law no. 81/77, of 22 November, that in the meantime has been revoked by Law no. 9/91, of 9 April, and subsequently altered by Laws no. 30/96 of 14 August and 52-A/2005 of 10 October.

In essence, the Constitution and the Law define the Ombudsman as a single person body of the State, irremovable, completely independent[1] and impartial in exercise of his functions, and endowed with parliamentary legitimacy.

The title-holder of the position is designated by the Assembly of the Republic, by a qualified two-thirds majority of MPs present, provided that this is higher than the absolute majority of MPs effectively in functions. The Ombudsman's mandate is four years, and may only be renewed once. His functions cannot terminate prior to the end of the period for which he has been designated, except in the cases specified in the law (articles 23, no. 3, and 163, paragraph i) of the Constitution and articles 5 to 7 of the Statute).

Furthermore, the Ombudsman is exempt from civil and criminal liability for the recommendations, comments or opinions that he issues or for the acts that he practices in exercise of his functions (article 8, no. 1 of the Statute).

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

At a subjective level, the scope of his activity covers, in particular, the services of the regional and local Public Central Administration, the Armed Forces, public institutes, public companies or majority publicly-owned companies or concessionaires of public services or of commercial exploitation of assets pertaining to the public domain (article 2, no. 1 of the Statute).

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

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

The Ombudsman's intervention is based upon the presentation of a complaint (articles 23, no. 1, of the Constitution and article 3 of the Statute). Nonetheless he may also intervene at his own initiative (articles 4 and 24, no. 1 of the Statute).

The Ombudsman's activity is independent of any acts of grace or legal remedies specified in the Constitution and in the laws (article 23, no. 2, of the Constitution and articles 4th and 21, no. 2 of the Statute).

For the pursuit of his functions, the law attributes broad powers to the Ombudsman – he may conduct investigations and enquiries as he deems necessary, make inspections[3] (article 21, no. 1, paragraphs a) and b)) and is entitled to order any civil servant or any official of any public body to be present at his Office (article 29, no. 5 of the Statute). Correspondingly, the bodies and agents of public, civil and military personnel bodies have a duty of cooperation, also defined in broad terms (article 23, no. 4, of the Constitution and articles 21 and 29 of the Statute). Given that this is a legal duty, non-compliance constitutes a crime of disobedience, liable for a disciplinary procedure (article 29, no. 6 of the Statute).

2.2. The right to present a complaint to the Ombudsman

Citizens' access to the Ombudsman is broad, direct and free of charge. All citizens are entitled to present complaints to the Ombudsman, regardless of their age, nation-

1 The constitutional revision of 1989, approved by Constitutional Law no. 1/89, of 8 July, clarified the Ombudsman's degree of independence (1st part of no. 3 of article 23, of the Constitution).

2 Legal precept introduced in the Ombudsman's Statute by means of Law no. 30/96, of 14 August.

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

ality[4] or residence. The complaint may be presented by citizens, either separately or jointly, and depend neither on the complainant's direct, personal and legitimate interest nor on any time limits. (article 24, no. 2 of the Statute). The complaints must concern illegal or unjust actions or omissions by public authorities, that the Ombudsman is responsible for redressing or preventing (article 23, no. 1, of the Constitution and article 3rd of the Statute).

The right to present a complaint to the Ombudsman is therefore also subject to several constraints and limitations, that should be explained in further detail.

A specific example is the regime governing complaints filed by military personnel to the Ombudsman, regulated in a special and autonomous manner by Law no. 19/95, of 13 July and by the Law of National Defence, approved by the Organisational law no. 1-B/2009, of 7 July (article 34). In accordance with these legal norms, military personnel, prior to presenting an individual complaint to the Ombudsman, must exhaust all other forms of hierarchical appeal and complaint within their respective chain of command. In 2009, the Ombudsman opened a case, at his own initiative, to appraise this issue, due to the fact that he disagreed with this regime, in light of the relevant constitutional precepts, above all article 270 of the Constitution. On the same topic, he made a recommendation in 2010 to the Assembly of the Republic, to eliminate negative discrimination against military personnel, which constitutes a barrier to pursuit of the Ombudsman's activity as the guarantor of justice, rights and freedoms of all citizens[5].

Public bodies or entities cannot however present complaints against other bodies or entities of the same nature. This is because the Ombudsman is a body intended to defend citizens against the exercise of public powers, against abuses practised by the Administration and other public powers, rather than a body designed to mediate institutional conflicts between these powers. On the contrary: a characteristic quality of his function and the powers conferred to him is to foster initiatives of concertation and mediation, in an attempt to find, in collaboration with the competent bodies and services, the most suitable solutions to protect citizens' legitimate interests and to improve administrative action (article 21, no. 1, paragraph c) of the Statute).

The Ombudsman is not bound by the complaint itself, nor by the exact terms in which it is formulated. He may, first and foremost, reject complaints that he objectively considers to be unsubstantiated; he may check facts and make recommendations beyond the terms of the request; or even, propose measures that stand in contrary to the interests of the complainants, given that he is a defender of both the legality and the justice of the activity of the public powers.

2.2.1. Admissibility of the complaint and the intervention powers of the Ombudsman

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

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

In relation to any complaint, the parameters determining the possibility of the Ombudsman's intervention include both the mission and competencies legally attributed to this body; and respect for the principle of separation of powers, consecrated in articles 2, 110, and 111, no. 1, of the Constitution; and also the purely recommendatory nature – rather than a decision-based nature - of his intervention.

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

There is also the possibility that the Ombudsman will conclude that the complainant has access to acts of grace or legal remedies, as specified in the law, and the complaint may therefore be forwarded to the competent body (article 32, no. 1 of the Statute).

If the complaint is neither preliminarily closed nor simply forwarded, a case will be opened (to be sequentially numbered) and the respective case will be opened by the Department of the Ombudsman's Office that has material competence in the issue in question.

In all circumstances, a response will be provided to anyone who contacts the Ombudsman.

The Ombudsman opens and resolves complaints via informal channels. In other words, the Ombudsman is not bound to rigorous procedural norms, nor to specific procedural norms in relation to the production of evidence (article 1, no. 1, and article 28, no. 1 of the Statute). Indeed, the Ombudsman frequently has recourse to telephone negotiations or organises meetings between the entities addressed and complainants, in order to foster consensus and conciliation of the interests involved, and thereby resolve or overcome the dispute.

4 Result of the constitutionally-established principle of equivalent treatment (article 15, no. 1, of the Constitution), the Ombudsman is an institution that is open to foreigners and stateless persons, regardless as to whether or not they have regularised their legal situation.

5 Recommendation no. 1/B/2010, of 3 February.

Another essential characteristic of the Ombudsman's activity is the speed with which complaints are processed. Suitable mechanisms and instruments are adopted in order to ensure that the Ombudsman may respond promptly to the question submitted to him - effectively and efficiently - and ensure its swift resolution.

The Ombudsman is a cooperating control body, that fosters prior hearings with the entities addressed, prior to taking any position on the issue or formulating any conclusions (article 34 of the Statute), listening to their arguments and permitting them to provide all necessary clarifications in order to achieve a satisfactory resolution of the question, wherein the relevant public interest will be weighed against the right claimed by the citizen.

After opening the case, the Ombudsman may conclude that the complaint is unfounded, due to lack of due grounds, in which case the case will be closed, and the complainant will be informed of the reasons underlying this decision, highlighting the justice and legality of the position assumed (article 31, paragraph b) of the Statute).

If the diligent proceedings associated to drawing up the case demonstrate that the complainant has a well-founded complaint, the case may still be closed - if the illegality or injustice has been redressed in the meantime (article 31, paragraph c) of the Statute).

In other cases, unless measures are adopted to restore legality or overcome the injustice cited in the complaint, the Ombudsman may make recommendations to correct the illegal or unjust act, or the irregular situation (articles 20, no. 1, paragraph a), and 38 of the Statute). In other situations, he may make suggestions or formulate proposals to the public powers, in order to restore the legality of the act against which the complaint has been filed. He may also, in less serious cases, of a one-off nature, simply issue a warning to the body or service against which the complaint has been filed or terminate the subject with the explanations provided, in which case the case will be closed (article 33 of the Statute).

In this context, he does not have any coercive power, or power to make impositions or annulments. The force of the Ombudsman's intervention fundamentally resides in the power of persuasion and that which has been called «magistrature d'influence», i.e. the Ombudsman's authority is moral and its effectiveness depends on being demonstrably impartial and non-partisan.

2.2.2. How to present a complaint to the Ombudsman

Complaints may be presented in writing or orally, identifying the identity and address of the complainant and, whenever possible, his signature. When presented orally, complaints are opened in the form of a record, which the complainant will sign, if he knows how to, and is capable of doing so (article 25, nos. 1 and 2 of the Statute).

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

In addition to the possibility of sending a complaint directly to the Ombudsman, they may also be sent to any official of the Public Prosecution Office, who shall immediately forward them to the Ombudsman. (Article 25, no. 3 of the Statute).

When a complaint is incorrectly submitted, its replacement will be ordered (article 25, no. 4 of the Statute).

2.3. Other intervention powers of the Ombudsman

As specified above, the Ombudsman acts, as a general rule, after complaints have been presented by citizens (article 23, no. 1, of the Constitution and article 3 of the Statute). Nonetheless he may also act on his own initiative (articles 4 and 24, no. 1 of the Statute), in response to facts that he becomes aware of by any other means, either via the media, or from alerts issued by a non-governmental organisations and reports from International Organisations, or from his sensitivity in diagnosing more problematic situations of national scope and also by the special acumen with which he analyses complaints and withdraws the common denominator that resides therein, classifying and analysing issues or questions that require more in-depth analysis[6]. The Ombudsman therefore has complete autonomy to act on his own initiative, investigate, inspect, denounce irregularities and recommend alterations, aimed at improving public services. In this context, the Ombudsman may guide his activity in order to prevent incorrect conduct by the public powers and instil an administrative culture, and also monitor the public authorities.

In this context, the Ombudsman has the following competencies:

- The Ombudsman may request that the Constitutional Court declare the unconstitutionality or illegality of any legal provisions, and also rule on cases of unconstitutionality due to a legislative omission (article 20, nos. 3 and 4 of the Statute, and articles 281, nos. 1 and 2, paragraph d), and 283, no. 1, of the Constitution);
- point out shortcomings in legislation, make recommendations concerning its interpretation, amend-

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

ment or revocation, or suggest the drafting of new legislation (article 20, no. 1, paragraph b) of the Statute);
- issue an opinion, after a request from the Assembly of the Republic, on any issue related to its activity; (article 20, no. 1, paragraph c) of the Statute);
- promote disclosure of the content and meaning of each of the fundamental rights and freedoms, as well as the purposes of the Ombudsman, means of action at his disposal and how to appeal to him; (article 20, no. 1, paragraph d) of the Statute);
- intervene, in accordance with applicable legislation, in the protection of collective or diffuse interests whenever a public entity is involved. (article 20, no. 1, paragraph and) of the Statute);
- be a member of the Council of State (article 20, no. 2 of the Statute).

2.4. Special projects – Creation of the Children's, Senior citizens and Disabled Persons Unit (NCID)

2.4.1. Restructuring of the Project unit via creation of the NCID

2009 was an atypical year, in terms of the Ombudsman's work in the field of children's, senior citizens', citizens with disabilities and women's rights.

On 16 July, the Project unit that had handled these questions since 2004, was suspended for administrative reasons. This obliged redistribution, across the different areas of the Ombudsman's Office, of all cases pending in the Unit, together with interruption of the functioning of the two specialised and free telephone hotlines that had hitherto been coordinated by the Unit – the Children's Messages Hotline (Children Rights' Hotline) and the Senior Citizen's Hotline (Senior Citizens' Hotline).

In the last quarter of 2009, a restructuring and reorganization plan for the unit was approved. This plan essentially involved substitution of the previous Project unit by a new Children's, Senior citizens and Disabled Persons Unit (NCID), reporting directly to the Deputy Ombudsman.

The Ombudsman considered that these three categories of potential complainants – children, senior citizens and citizens with disabilities – should continue to benefit from special attention within the scope of the Ombudsman's activity, specifically in view of the specially vulnerable character of such citizens; the need for specialized and multi-disciplinary knowledge for firm defence and promotion of their rights; and the objective to achieve close ties of cooperation with other governmental and non-governmental bodies that intervene in such issues.

The field of women's rights has constituted a very small proportion of the questions posed to the Ombudsman. It was therefore decided to remove this field from the framework of the Unit. The respective complaints will now be processed by the competent Department, in function of the issue identified in the complaint. Without prejudice to this option, centralised monitoring of these topics was maintained by the Deputy Ombudsman, in order to make it possible to identify any specific intervention needs.

In terms of the activities to be pursued by the NCID, the Plan stated the following:

- Guarantee, as hitherto achieved, the opening of cases and coordination of the specialised and free telephone hotlines;
- Set the foundations and foster the activity of promotion and divulgation of Children's, Senior citizens' and Disabled Persons' rights, together with the role of the Ombudsman in relation thereof;
- Guarantee the broadest possible participation in national events and presence in key international forums, together with cooperation with relevant national, foreign or international entities and organizations.

Following approval of this plan, the NCID was set up and the Children Rights' Hotline and Senior Citizens' Hotline were reactivated on 1 November 2009, resuming their regular functioning.

Below we present several statistics and information in relation to functioning of the Project unit and the NCID during 2009. Two key circumstances should be borne in mind when analysing this data:

- the statistics provided in relation to the handling of cases are restricted to the activity pursued by the Project unit up until 16 July 2009, when it was suspended;
- the statistics concerning the activity of the Telephone hotlines have a «blank» period, between 16 July and 31 October 2009, corresponding to the period of time when the respective activities were suspended. During this period, calls were handled by the other Departments of the Ombudsman's Office.

2.4.2. The activity of the Project unit and of the NCID

2.4.2.1. Children

Over recent years there has been a downward trend in the number of calls made to the Children Rights' Hotline, due to the multiplicity of other governmental and non-governmental entities and services that have been set up to defend and promote children's and young people's rights.

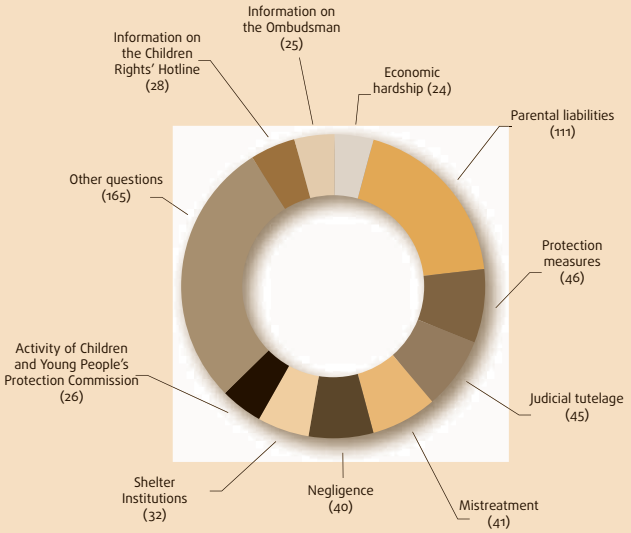
In 2009, in view of the shorter reference period and the inevitable impact of the suspension period on the overall statistics it is not possible to ascertain the precise evolution in the number of calls. The calls received and made were as follows:

Received	Carried Out	
	Users	Entities *
558	125	181

* This statistic includes both the entities identified in the complaints sent to the Children Rights' Hotline and the entities with which the technical experts of the Children Rights' Hotline sought collaboration.

In terms of the main requests and questions posed, the following thematic distribution was recorded:

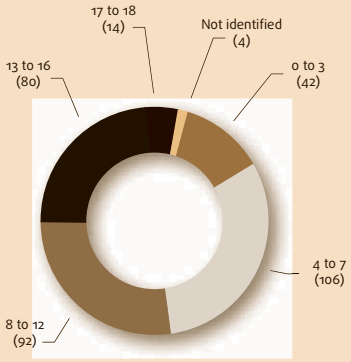
Issues - Children's Messages Hotline



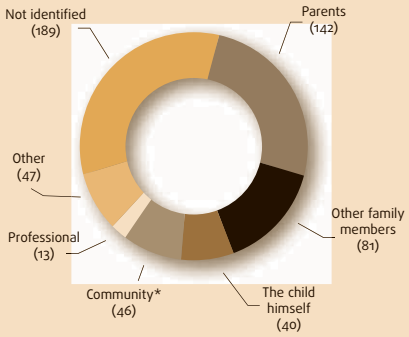
In terms of processing of calls received, in the first instance this involved the provision of information (188), followed by forwarding of complainants to the competent services (193) and, on certain occasion, by intermediation between services (16). In more complex cases, that could not be resolved immediately, the opening of a formal case was proposed (15). In other cases, interventions were suggested that could not be framed within a specific category (146).

It is also interesting to note several data identifying the main users and beneficiaries of the Children Rights' Hotline, such as the main age groups of the children in question, together with the relation between these children and the complainants:

Age of the Child



Relation between Complainant / Child



* neighbour, friend,...

Procedural activity

The 20 cases opened in the field of children's rights concerned the following questions:

- Shelter 4
- Exerciseofparentalliabilities 4
- Negligence 3
- Adoption 2
- School 2
- Mistreatment 1
- Sexualabuse 1
- Exposuretodomesticviolence 1
- Children'sRights 1
- Other 1

Promotion and dissemination

In 2009, the Children Rights' Hotline pursued a strategy of divulgation of its activity, that was launched in the second half of 2008. In this context, new leaflets continued to be distributed to several Portuguese parishes (main urban centres and district capitals of the Portuguese interior) and, with the collaboration of the Regional Health Directorates, posters were distributed to all Health Centres in Mainland Portugal and the Islands.

Representation and cooperation at the national level

In 2009, the Ombudsman designated one of the members of his Cabinet to join the National Children and Young People's Protection Commission, under the terms specified in article 2 of Decree-Law no. 98/98, of 18 April, thus securing representation in the Commission's meetings[7]

The NCID also guaranteed its presence in the «Thinking Together Forum – The Law to the Word of Honour and Participation», organised by the Crescer-Ser Association, held in Lisbon, on 26-27 November and in the commemorative event of the 50th anniversary of the Declaration of the Children's Rights and the 20th anniversary of the Convention of Children's Rights, held in the Assembly of the Republic, on 20 November.

International Relations

At the international level, the Ombudsman sent a representative to the Annual Conference of the European Network of Ombudsmen for Children (ENOC), of which it is a member. The event focused on the topic of «Superior Interest of the Child» and was held in Paris, between 23-25 November.

7 Meetings convened for 23 November and 17 December.

It is also worthwhile noting the participation of a technical official from the Children Rights' Hotline, for training purposes, in the Training Course on Human Rights Education with Children, organised by the Council of Europe in Helsinki between 3 - 5 December.

2.4.2.2. Senior citizens

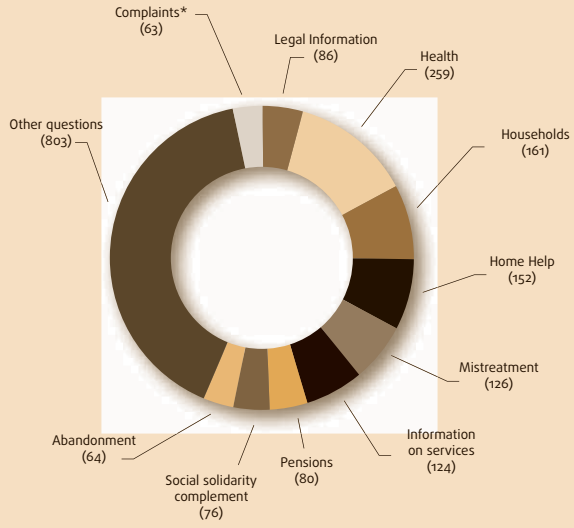
In recent years, a rising number of calls have been made to the Senior Citizens' Hotline. In 2009, the incomplete reference period and the necessary effects of the suspension period meant that it was impossible to draw precise conclusions on evolution in comparison with 2008. The following calls received and calls made were recorded:

Received	Carried Out	
	Users	Entities *
1992	557	704

* This statistic includes both the entities identified in the complaints sent to Senior Citizens' Hotline and the entities with which the technical experts of the Senior Citizens' Hotline sought collaboration.

In terms of the main requests and questions sent to the hotline, the following thematic distribution was recorded:

Issues - Senior Citizen's Hotline

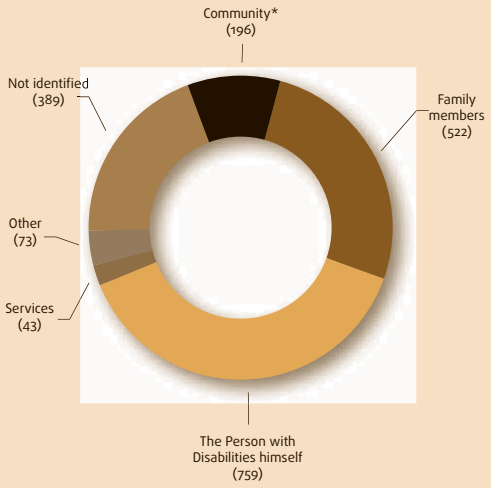


*Noise, housing,...

As with the Children Rights' Hotline, the Senior Citizens' Hotline also focused upon the provision of information (832), information and forwarding of complainants to the competent bodies (353) and to simple forwarding to these entities (291). On certain occasions, there was intermediation between services and the complainant (40). In more complex cases, that could not be resolved immediately, opening of a formal case was proposed (4). In other cases, interventions were suggested that could not be framed within a specific category (450).

In terms of the relationship between the senior citizens identified in the calls sent to Senior Citizens' Hotline and the authors of the calls, there was the following distribution:

Relationship between Complainant / Senior Citizen



* Neighbour, friend,...

Procedural Activity

The 28 cases opened in 2009 in the field of Senior citizens' rights focused specifically on the following questions:

- Households 14
- Senior citizens' rights 4
- Mistreatment 3
- Negligence 2
- Health 2
- Home help 1
- Other social benefits 1
- Other 1

2.4.2.3. Citizens with Disabilities

Procedural Activity

The 25 cases opened in 2009 on issues related to persons with disabilities focused specifically on the following questions:

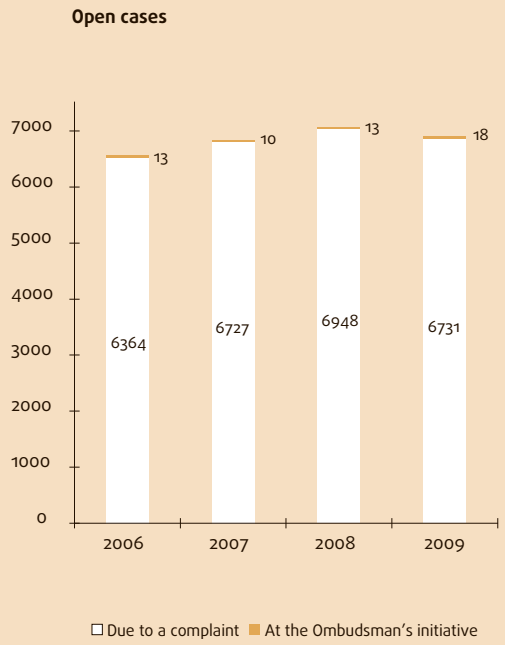
- Teaching and special educational needs 10
- Parking 5
- Health 3
- Employment 2
- Benefits 2
- Shelter Institutions 1
- Other 1

The Project unit participated in drawing up the Annual Report of the Ibero-American Federation of Ombudsmen (FIO), of which the Portuguese Ombudsman is a member, and which this year addressed the issue of the Law on Persons with Disabilities.

THE OMBUDSMAN´S PROCEDURAL ACTIVITY

3.1. Statistical commentary on the global data

Graph I



The number of cases organized in 2009 represented the second highest level ever recorded, after 2008. But unlike the situation in 2008, when the number of cases declined over the course of the year (45% of the total were recorded in the second half of the year), in 2009 the downward trend persisted in the first half of the year, but was followed by a significant increase in the second half of the year (55% of all cases).

Table 1 - Complainants in 2009

Natural persons	23 270
Corporate bodies	473
Total no. of Complainants	**23 743**

Unlike the situation recorded in 2008, presentation of the same question by around 12,000 people led to a significant increase in the number of complainants, apparently marginalizing the relative presence of corporate bodies. Notwithstanding this fact, there was a 22% drop in the number of complaints presented by corporate bodies in 2009, in comparison with 2008.

Table 2 - Number of open cases

Per written complaint	3514
Per verbal/in person complaint	691
Per electronic complaint	2526
At the initiative of the Ombudsman	18
Total no. of open cases	**6749**

There was a continued upward trend in the use of e-mails. In 2009, 38% of complaints were sent via e-mail - a 10% increase in comparison with 2008.

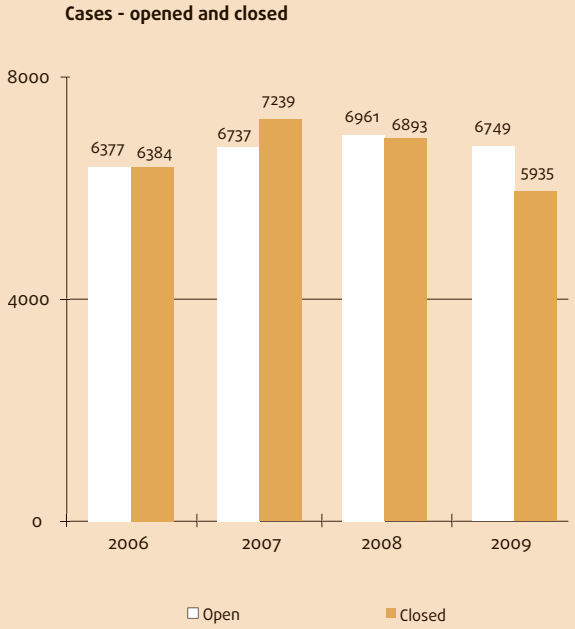
Table 3 - Number of cases closed

Principal cases forwarded prior to 2007	85
Principal cases forwarded from 2007	184
Principal cases forwarded from 2008	1090
Sum of cases prior to 2009	**1359**
Cases opened in 2009	4575
Total no. of cases closed in the year	**5935**
Total de processos arquivados no ano	**5935**

Table 4 - Number of pending cases as of 31 December

Principal cases forwarded prior to 2007	49
Principal cases forwarded from 2007	84
Principal cases forwarded from 2008	260
Sum of cases prior to 2009	**393**
Cases opened in 2009	2174
Total no. of pending cases	**2567**

Graph II



Due to the vicissitudes experienced during the year, including the evolution of the number of complaints recorded over the course of the year, a significant drop was verified in the number of cases closed, with a corresponding increase in the number of pending cases by the end of the year.

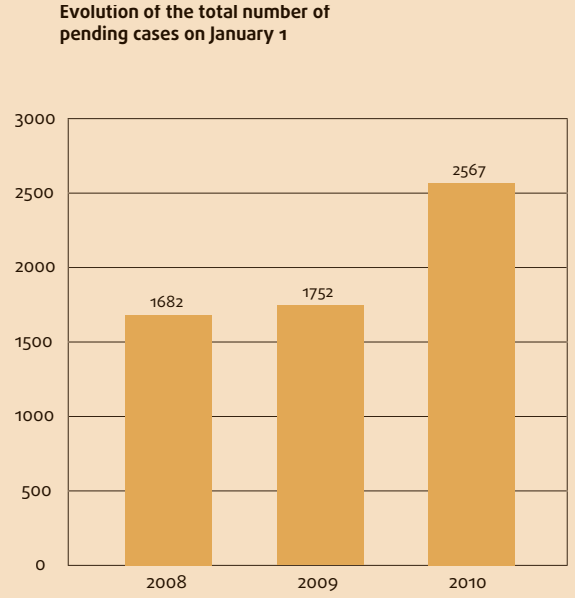
Table 5 – Summary of trends in cases

Total no. of cases forwarded from 2008	1753
Total no. of cases opened	6749
Total no. of cases closed	5935
Cases opened and closed in 2009	*4575
Pending cases as of 31 December	**2567**

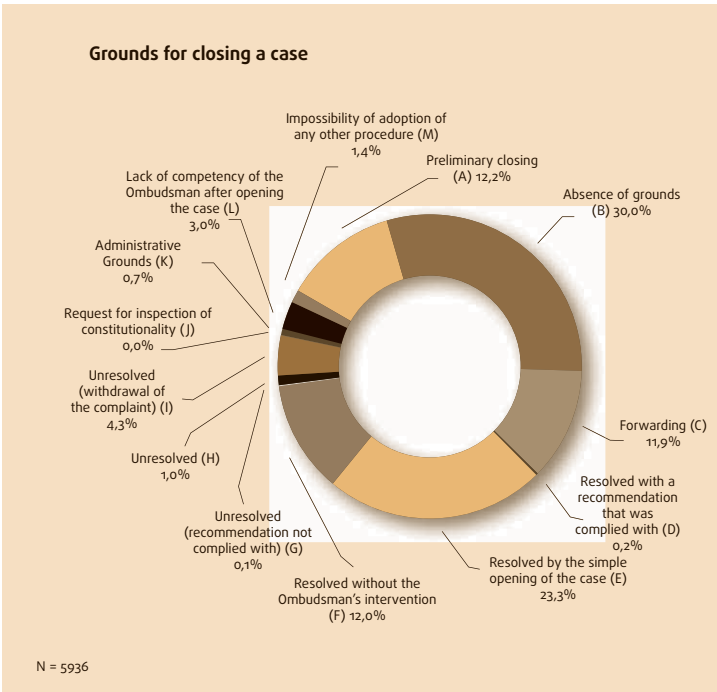
*Representing 67,7 % of the total number of cases opened

The indicator, that has been recorded for many years, of the number of cases closed in the same calendar year in which they were opened, recorded a significant drop, to levels similar to those recorded in 2006. Nonetheless this indicator was significantly higher than the level recorded at the time of the previous substitution of the Ombudsman. The fact, as stated above, that there was a major concentration of complaints filed in the second half of 2009, also implied a higher number of pending cases at the end of the calendar year, without this necessarily implying a greater time-frame for resolving pending cases. The relevance of this factor can only be suitably measured during the course of 2010.

Graph III



Graph IV



Within the grounds registered for closing cases, there was a significant drop in the number of cases closed on a preliminary basis (around a 50% decrease), thereby implying a greater workload in opening cases and an increase in the average duration of pending cases.

The aggregate total number of cases which were preliminarily closed due to lack of grounds, has historically represented around 50% of cases opened (in 2008 it was 51,2%), but in 2009 was only 42,2%.

We can therefore conclude that, given the similar number of cases in comparison with 2008, there was a strong trend towards achieving conformity between the subject of the complaints and the scope of the Ombudsman's competency, while maintaining the proportion of cases in which the Ombudsman considered that the formulated objectives were unfounded.

1395 cases were resolved, with essential intervention from the Ombudsman, of which 12 involved a formal recommendation.

Table 6

A) Efficiency ratios of the Ombudsman's intervention

Study rate	(TPE – A – K) / TPE	**89%**
Resolution rate	(D+E+F+J) / [TPA – (A+B+C+K+L+M)]	**87%**
Success rate	(D+E+J) / [TPA – (A+B+C+F+K+L+M)]	**81%**

TPE – Total no. of cases opened

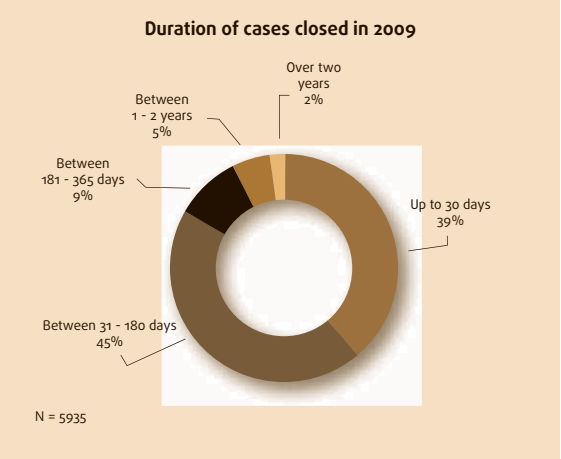
TPA – Total no. of cases closed

B) Evolution between 2005 and 2009

	2005	2006	2007	2008	2009
Study rate	89,2%	85,4%	81,1%	77,1%	88,7%
Resolution rate	84,4%	88,9%	89,2%	88,1%	86,8%
Success rate	82,7%	87,5%	88,1%	86,1%	81,3%

While the proportion of cases that were not suitably resolved decreased, there was also a slight decrease in the number of cases that were favourably resolved and an increase in the number of cases that were forwarded, thus maintaining the resolution rate and delivering a 5% decrease in the success rate. Nonetheless, the success rate remained above 80%, returning to a level similar to that recorded in 2005.

Graph V

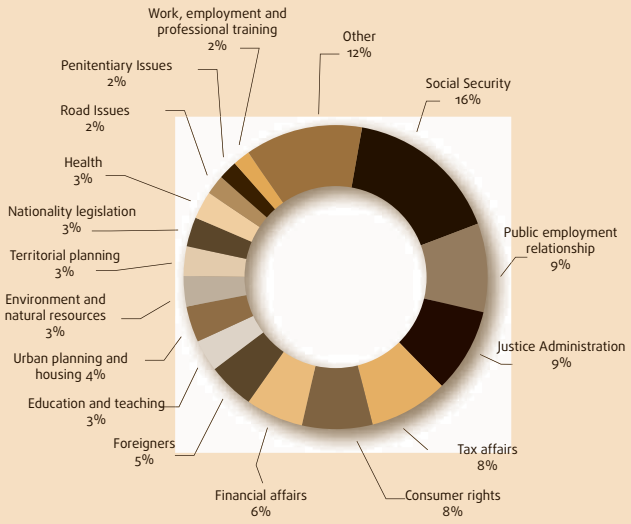


The data presented above demonstrate that 84% of the cases closed in 2009 lasted less than 6 months, wherein almost 40% of all cases were resolved in less than 1 month.

At the end of 2009, it is possible to calculate the percentage of cases opened in 2008 that received a final decision in less than 12 months. This amount, which was 92,8% in 2008, rose to 94,7% in 2009, the highest level since 2003, when this measure was first introduced.

Graph VI

Subjects of complaints

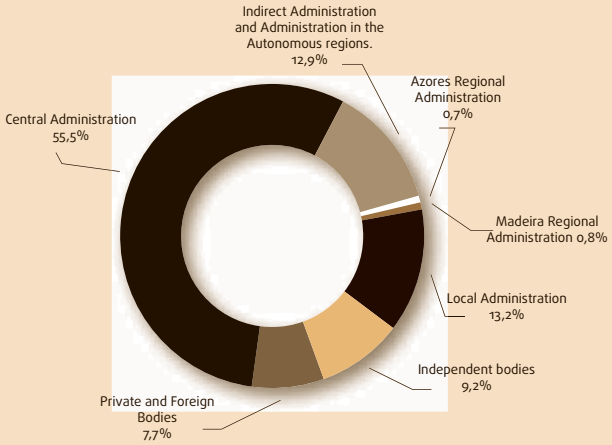


N = 6911

In terms of the subjects of complaints, there was a significant drop in the number of cases associated to Nationality issues, perhaps because several new complainants, who reside in the former Portuguese State of India, were aware of the recent approach to similar complaints. The most frequent subject of complaints was Social Security, which increased in both relative and absolute terms. There was also an increase in the number of complaints associated to judicial delays, exceeding the number of complaints associated to Tax affairs.

Graph VII

Entities identified in the complaints

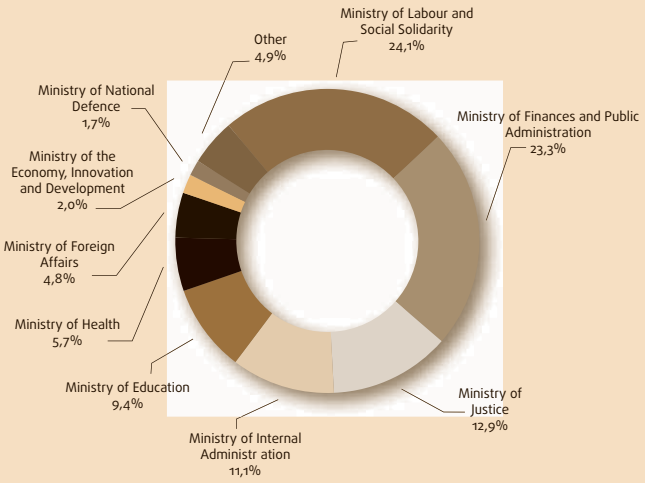


N = 6917

In 2009 there was a decrease in the number of complaints against the Central Administration, with an increase in the number of complaints against independent bodies, Local Administration, Indirect Administration and Administration in the Autonomous regions.

Graph VIII

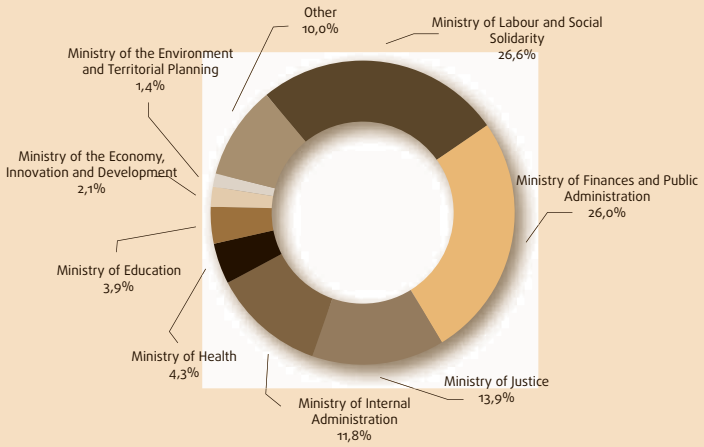
Distribution of complaints by Ministry



In 2009, the number of complaints concerning the Ministry of Justice fell by 50%, in comparison with 2008, due to a significant reduction of complaints regarding Nationality issues, as mentioned above. There was a switch of relative position between the Ministry of Labour and Social Solidarity and the Ministry of Finances and Public Administration. The Ministry of Agriculture, Rural Development and Fisheries disappeared from the list of ministries with the highest number of cases, replaced by the Ministry of the Economy, Innovation and Development.

Graph IX

Distribution of complaints by Ministry (excluding complaints on the public employment relationship)

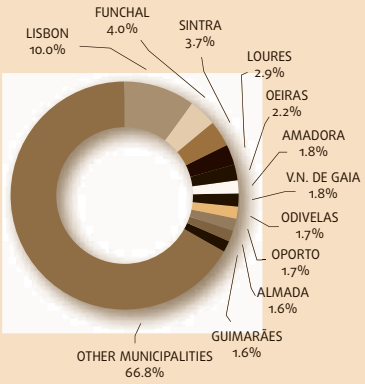


N = 6911

There was a slight increase in the proportion of cases associated to the public employment relationship, the majority of which, as usual, focused on the Central Administration and, to a lesser extent, on Local Administration. Also, as in previous years, the only relevant impact of the failure to consider these complaints was a lower level of complaints associated to the Ministry of Education and Ministry of Health, and the virtual disappearance of complaints associated to the Ministry of Foreign Affairs and Ministry of National Defence.

Graph X

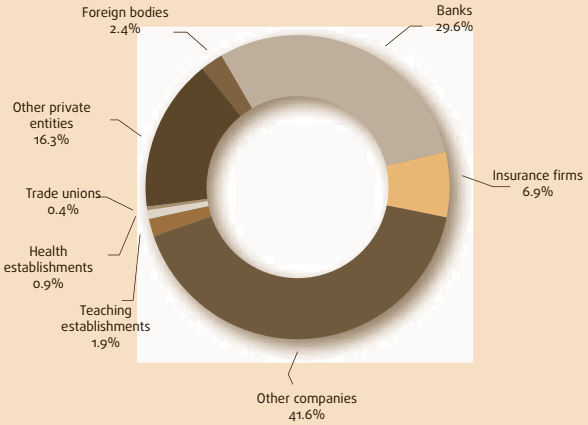
Distribution of complaints against municipalities



Amongst the municipalities with the highest number of complaints, it is important to note, in comparison with 2008, increases for Funchal, Sintra, Amadora, Loures and Oeiras, and decreases for Oporto, Almada and Cascais. Lisbon continued to be the municipality with the highest number of complaints, with around 10% of the total, as in 2008.

Graph XI

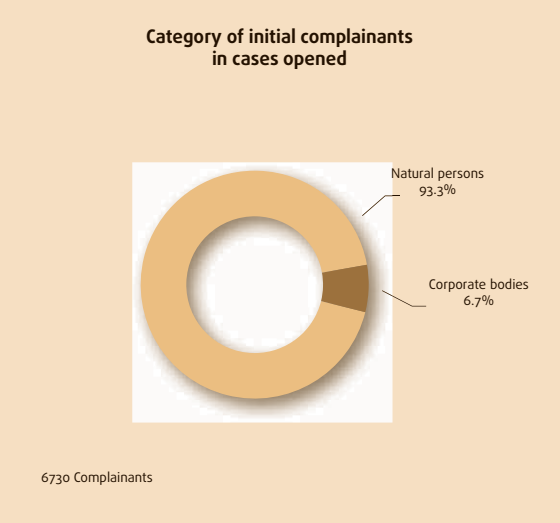
Complaints against private and foreign entities



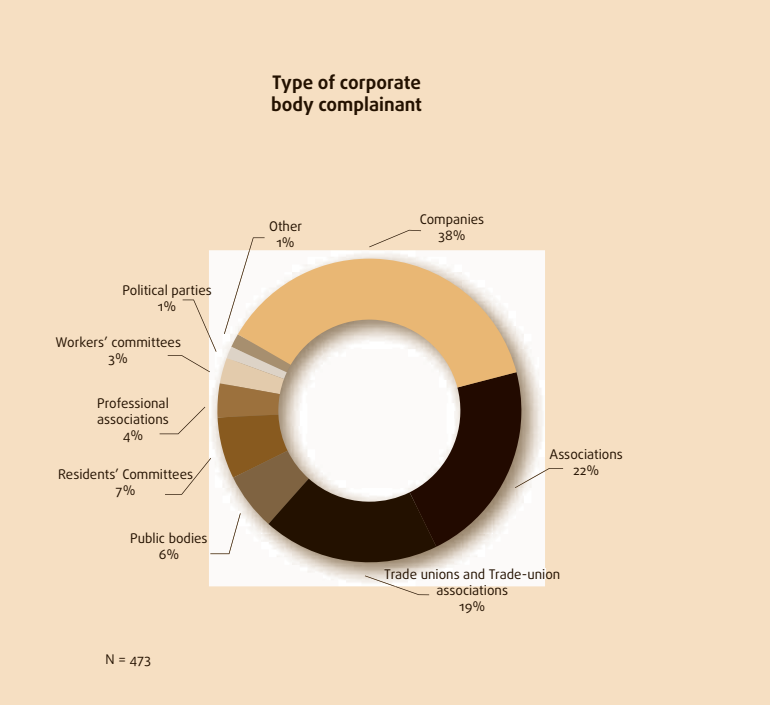
N = 534

There was a proportional decrease in the number of complaints that were preliminarily closed, and an increase in complaints filed against banking institutions and a decrease in the number of complaints filed against insurance firms.

Graph XII



Graph XIII



Discounting the effect of the widespread number of complaints associated to the same issue, as referred to above, there was a slight increase in the proportion of complaints presented by corporate bodies. In relation to the latter, there were notable modifications in the type of corporate bodies filing complaints - with a significant fall in the number of complaints presented by associations and a correlative increase in the number of complaints presented by companies or trade unions.

If one includes the data concerning the aforementioned concentration of complaints on the same issue, 2009 was the first year in which the number of female complainants exceeded the number of male complainants, to a large extent (61% of female complainants). Nonetheless, it would be unwise to attach too much importance to this statistic, given that if the data concerning the aforementioned concentration of complaints is eliminated, the proportion of female complainants falls by 20%.

A questionnaire was provided to complainants to which around 40% responded - as in 2008 - the vast majority of whom were individual complainants. As in 2008, 70% of those who responded to the questionnaire were presenting a complaint to the Ombudsman for the first time, wherein the proportion of persons presenting a complaint for the second time, amongst other indicators, was slightly lower (45%). Given the limitations of this form of questioning, it is possible to consider that this data is consolidated, corresponding to a long-term trend over time.

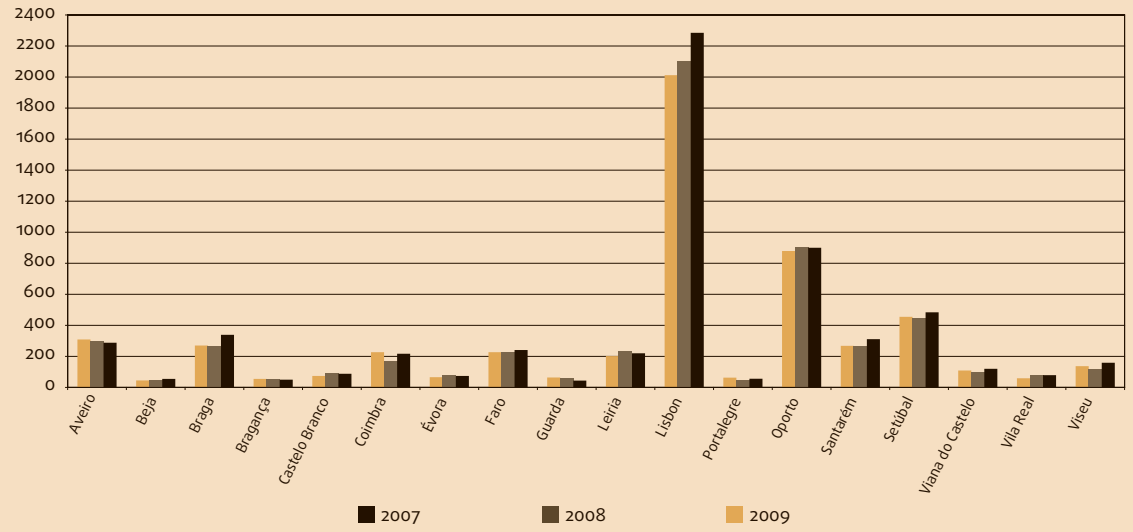
In terms of age range, the observation made in the previous Report remains valid, i.e. an almost two-thirds majority of complaints were made by persons aged between 30 and 59 years of age. Complainants in the age range between 18 and 29 years, fell from 7% to 5%, compensated by an increase in the age group close to retirement age, i.e. between 60 and 65 years (from 11% to 14%).

The declared qualifications are higher than those recorded in previous years. 38% of respondents indicated that they have higher education qualifications. Only 22% declared that their level of schooling was less than Secondary Education (compared to 37% in 2007 and 25% in 2008).

In terms of the professional situation of respondents, there was an increase in the number of unemployed complainants (9% of responses obtained, in line with the rising unemployment rate at the national level), the number of workers from the private sector (16%) and retired persons/pensioners (26%). By contrast, there were fewer responses in which the complainant stated that he had a public employment legal relationship (from 13% to 10%).

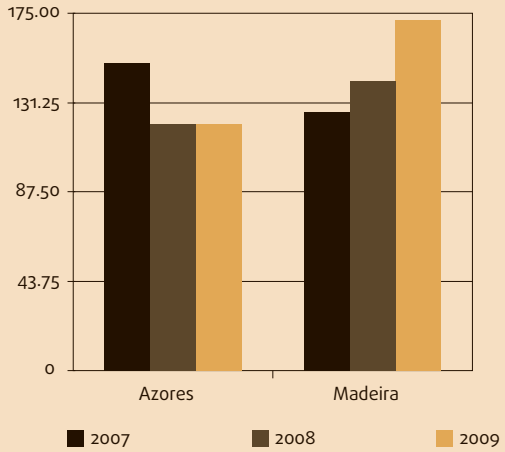
Graph XIV

No. of complaints by districts of the Portuguese mainland



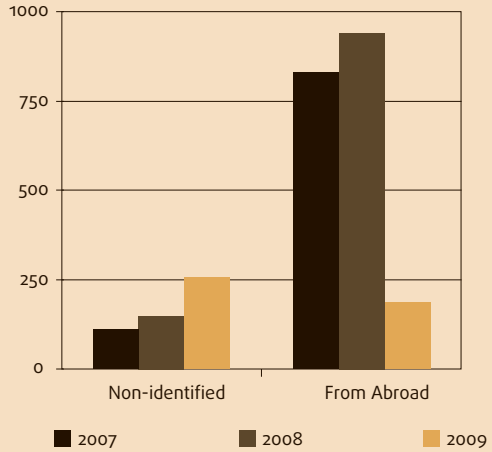
Graph XV

No. of complaints from the Autonomous Regions



Graph XVI

No. of complaints with non-identified origin and from abroad



In relation to the geographic distribution of complaints, in absolute terms, and in the mainland, there were increases in the districts of Lisbon, Braga, Coimbra, Faro, Portalegre, Santarém, Setúbal, Viana do Castelo and Viseu, with the same number of complaints from the Azores. Madeira demonstrated a strong and sustained increase (30 more cases than in 2008, representing a 21% increase).

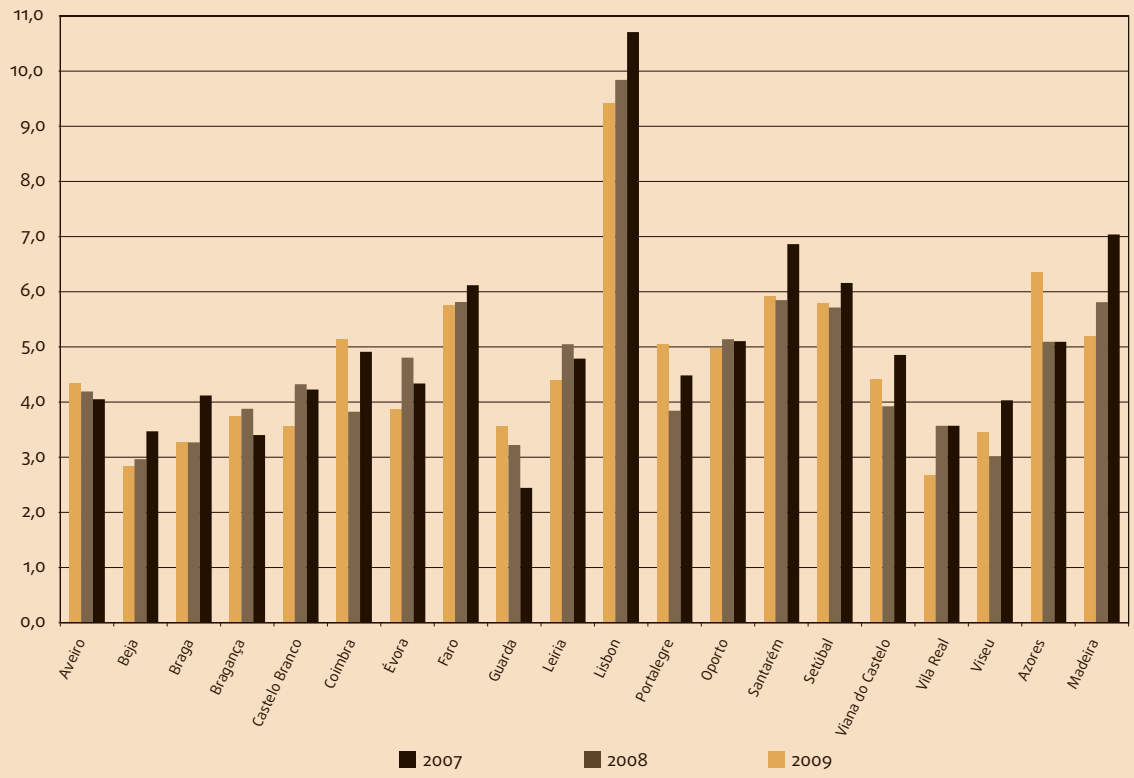
The increase in the number of complaints sent by e-mail implied an increase of cases with unidentified geographical origin. This trend is clearly visible in the number of complaints sent from abroad and the aforementioned reduction of complaints associated to Nationality issues, sent from India.

Table 7 - Complaints in function of the population
The five highest amounts

	2005	2006	2007	2008	2009
1 st	Lisboa	Lisboa	Lisboa	Lisboa	**Lisboa**
2 nd	Açores	Santarém	Açores	Santarém	**Madeira**
3 rd	Santarém	Açores	Santarém	Faro	**Santarém**
4 th	Setúbal	Évora	Setúbal	Madeira	**Setúbal**
5 th	Faro	Setúbal	Faro	Setúbal	**Faro**

Graph XVII

Complaints per 10 000 inhabitants: districts and Autonomous Regions



Comparing the origin of complaints that led to cases to be opened by administrative area with the respective resident population, the five administrative areas with the highest number of complaints recorded in 2008 persisted in 2009. The most notable factor was the increase in the number of complaints from the Autonomous Region of Madeira.

In relative terms, the highest increases were recorded in Lisbon, Santarém, Madeira, Coimbra and Braga, in the latter case returning to the level recorded in 2007. In the case of the latter district, this may signify a sustained correction of the traditionally low level of complaints sent from this district.

The greatest drops were recorded in the districts of Bragança, Évora and Guarda, but only in the latter case did this represent continuation of a trend.

3.2. The Ombudsman's Recommendations

In 2009 15 Recommendations were formulated, of which 9 concerned legislative alterations (Recommendations B). Below we indicate the main Departments involved and the entities addressed identified in these Recommendations (Mayors (7); Minister of State and Finances (2); University rectors (2).

Recommendations A

Rec. no. 1/A/2009 (Department 1)
Entity addressed: Santo Tirso Municipal Council
Subject: Environment. Noise.
Next step: Complied with.
http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec1A2009.pdf

Rec. no. 2/A/2009 (Department 2)
Entity addressed: Minister of State and Finances
Subject: Alteration of the form of remuneration of savings certificates.
Next step: Awaiting response (Reiterated)
http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec_2A2009.pdf

Rec. no. 3/A/2009 (Department 1)
Entity addressed: Fafe Municipal Council
Subject: Urban planning.
Next step: Complied with.
http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec3A2009(A1).pdf

Rec. no. 4/A/2009 (Department 6)
Entity addressed: DRELVT (Lisbon and Tagus Valley Regional Directorate of Education)
Subject: Contract of association.
Next step: No longer of utility
http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec_4A2009.pdf

Rec. no. 5/A/2009 (Department 6)
Entity addressed: Executive Board of the Pedro Nunes Secondary School with 3rd Cycle of Basic Education. Supplementary Mathematics lessons for Year 9.
Subject: Education. Evaluation. Discipline of Mathematics.
Next step: Complied with.
http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec5_A_2009(A6).pdf

Rec. no. 6/A/2009 (Department 1)
Entity addressed: Condeixa-a-Nova Municipal Council
Subject: Territorial planning.
Next step: Complied with.
http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec6A2009.pdf

Recommendations B

Rec. no. 1/B/2009 (Department 6)
Entity addressed: Secretary of State of Public Administration
Subject: Services provision contracts with the Public Administration.
Next step: Complied with.
http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec1B2009A6.pdf

Rec. no. 2/B/2009 (Department 6)
Entity addressed: Minister of State and Finances
Subject: Automobile civil liability insurance. Car accident. Total loss of the vehicle. Obligation to make an indemnity payment.
Next step: Complied with.
http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec2B2009.pdf

Rec. no. 3/B/2009 (Department 6)
Entity addressed: Rector of the University of Évora
Subject: Non-compliance with the deadline for payment of students' fees. Late-payment interest.
Next step: Complied with.
http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec3B2009.pdf

Rec. no. 4/B/2009 (Department 6)
Entity addressed: Santa Cruz Municipal Council
Subject: Regulation on propaganda.
Next step: No response.
http://www.provedor-jus.pt/restrito/rec_ficheiros/rec_4B09.pdf

Rec. no. 5/B/2009 (Department 6)
Entity addressed: Funchal Municipal Council
Subject: Regulation on propaganda.
Next step: Awaiting response.
http://www.provedor-jus.pt/restrito/rec_ficheiros/rec5B09.pdf

Rec. no. 6/B/2009 (Department 6)
Entity addressed: Câmara de Lobos Municipal Council
Subject: Regulation of advertising and other uses of public spaces.
Next step: No response.
http://www.provedor-jus.pt/restrito/rec_ficheiros/rec6B09.pdf

Rec. no. 7/B/2009 (Department 6)
Entity addressed: São Vicente Municipal Council
Subject: Municipal regulation on affixing and disseminating propaganda.
Next step: No response.
http://www.provedor-jus.pt/restrito/rec_ficheiros/rec7B09.pdf

Rec. no. 8/B/2009 (Department 6)
Entity addressed: Rector of the Technical University, Lisbon
Subject: Non-compliance with the deadline for payment of students' fees. Late-payment interest at the legal rate.
Next step: Complied with.
http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec_08B09.pdf

Rec. no. 9/B/2009 Reserved (Department 5)
Entity addressed: Minister of Justice
Subject: Requests for transcription of birth certificates from the State of India.
Next step: Information was received that this will be complied with.

In 2009, several entities addressed complied with the recommendations formulated in 2009 and in previous years.

In relation to the **15 Recommendations made in 2009**, 6 were complied with by the end of the year, and 1 was in the process of assuring compliance (i.e. 46% of Recommendations were complied with).

In relation to **Recommendations from previous years,** it is necessary to consider the Recommendations concerning cases that have diligent proceedings in course, and those concerning cases which have already been closed, that the Ombudsman decided to reiterate to the Government after the October General Election, due to their ongoing utility and relevance.

In relation to the former category, the situation at the end of 2009, was as follows:

Recommendations complied with
13/A/2008 – Mayor of Mafra (Department 1)
http://www.provedor-jus.pt/restrito/rec_ficheiros/13A2008.pdf

Recommendations not complied with:
4/B/2007 - Minister of State and Finances (Department 3)
http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec4B07.pdf

6/B/2008 – Minister of Finances and Public Administration (Department 1)
http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec6B08.pdf

8/B/2008 – Minister of National Defence (Department 3)
http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec8B08.pdf

11/A/2008 – Mayor of Cascais (Department 1)
http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec11A2008.pdf

In relation to the 12 reiterated Recommendations, the situation, at the end of 2009, was as follows:

Complied with – 1 Recommendation:
4/B/2008 – addressed to the Ministry of the Environment, Territorial Planning and Regional Development. (Department 1)

http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec4B08.pdf

Still to be complied with – 11 Recommendations:

1/B/2003 – Prime Minister (Department 6)
http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec1B03.pdf

3/B/2003 – Assembly of the Republic (Department 6)
http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec3B03.pdf

9/B/2005 – Assembly of the Republic (Department 6)
http://www.provedor-jus.pt/restrito/rec_ficheiros/rec9B05.pdf

1/B/2006 – Secretary of State of Education (UP)
http://www.provedor-jus.pt/restrito/rec_ficheiros/rec1B06.pdf

9/A/2006 – Mayor of Póvoa de Lanhoso (Department 4)
http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec9A06.pdf

6/B/2007 – Secretary of State of Territorial Planning and Cities (Department 1)
http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec6B07.pdf

7/B/2007 – Assembly of the Republic (Department 6)
http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec7B07.pdf

1/A/2008 – Secretary of State of Education and Secretary of State of Social Security (with inconclusive response) (UP)
http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec1A08.pdf

3/B/2008 – Minister of State and Finances (with inconclusive response) (UP)
http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec3B08.pdf

7/B/2008 – Secretary of State of Fiscal Issues (Department 2)
http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec7B08.pdf

12/A/2008 – Portuguese Insurance Institute (Department 5)
http://www.provedor-jus.pt/restrito/rec_ficheiros/rec12A08.pdf

3.3. Quantitative and qualitative analysis of complaints

3.3.1. Department 1 - Environment and natural resources, urban planning and housing, territorial planning and public works, leisure

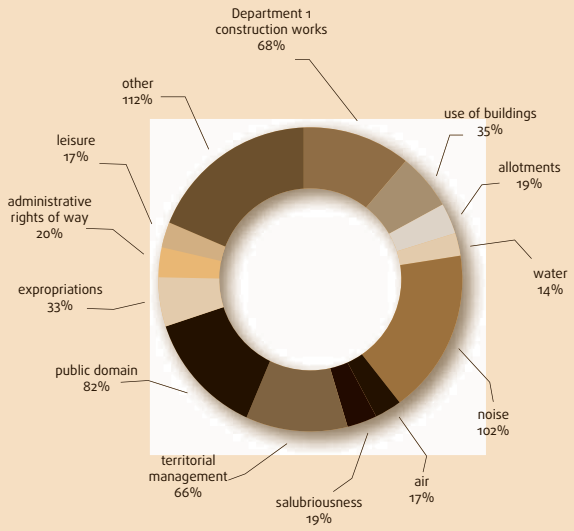
Over the course of the year, **604 new cases** were opened in this Department, corresponding to an increase in the number of complaints, in line with the trend observed in the other areas of the Ombudsman's intervention.

The Ombudsman continues to provide a unique contribution to the area of **complaints related to urban and environmental issues, territorial planning** and **protecting cultural heritage**, in which the bodies in question are the 278 municipalities of the Portuguese mainland and the multiple decentralised services of the State and its public institutes.

The main categories of complaints are associated to tolerance of **noisy activities** (102[1]), and **building works** (68[2]). In both categories, the complainant frequently invokes a breach of the law by third parties, which also represents, a breach of a simple direct and personal interest or right. By way of helping to ensure that legality is re-established, the Ombudsman aims to redress the rights or interests that have been disrespected and worsened by the inertia of the administrative policing authorities.

1 Noise is imputed to various sources, in the following order: restaurant and bar establishments, industrial units, performance venues and street entertainment.

2 The motivations include infringements of the General Regulation of Urban Buildings, approved by Decree-Law no. 38 382, of 7 August 1951, and municipal territorial plans, in terms of height and distances between urban buildings, whose norms, in addition to landscape objectives, safeguard minimum levels of ventilation and natural exposure to sunlight, together with protection of the intimacy of family life.



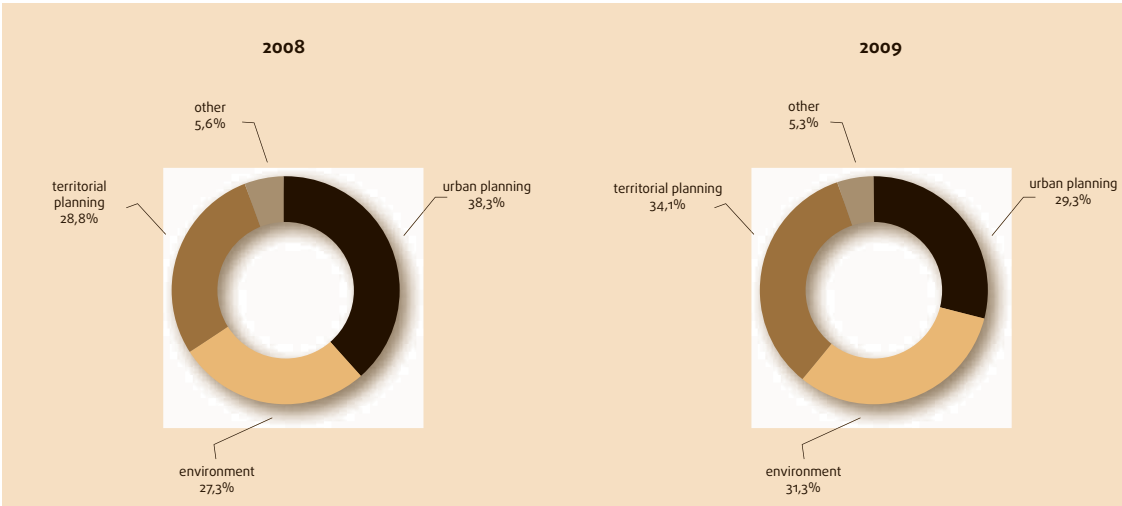
In 2009 there was a slight decrease in the relative weight of **urban planning-based complaints (from 38%, in 2008, to 29,3%)** and a substantial increase in **environmental complaints (from 27% to 31,3%)** and **territorial planning complaints (from 29% to 34,1%)**. Identification of the topic of **leisure (4,6%)** – that has recorded growing relative weight over recent years – should be viewed in consideration of the fact that leisure activities have assumed rising economic importance over recent years, associated to tourism, hunting, angling, water sports and recreational flying.

Although occasional improvements in application of the **General Regulation on Noise**[3] have been introduced and, on the other hand, publication of Law no. 31/2009, of 3 July, on the professional qualification of officials in charge of **urban-planning operations**, finally terminated application of Decree no. 73/73, of 28 February, that almost all commentators considered to be inadequate, many aspects continue to generate reservations and, as if often the case, stand far from the main focus of attention of legal doctrine and case-law.

Another positive aspect is that urban and environmental policing measures are more frequently adopted, either in the form of precautionary measures, e.g. suspension of noisy activities or embargoes on building works, or definitive prohibition, e.g. demolition, closure of establishments or summary eviction.

A cause for concern – given the respective trend – is the reference to several imperfections, dysfunctions and delays in the administrative system underpinning the **New Regime of Urban Renting**, as far as rent increases are concerned. Study of several complaints identified the need for special care in this regard. This seems to be an example of how computerization must continue to bear in mind that the complexity and variety of situations always exceeds expectations, and it is therefore essential to remember that it is people who justify these means, rather than their supposed infallibility.

Another concern is the constitution of administrative rights-of-way, in particular for transport and electricity distribution installations. The underlying business model of the concessionaires, based on a consumer relationship model, seems to reveal difficulties in guaranteeing landowners' rights and legitimate interests.



3 Approved by Decree-Law no. 9/2007, of 17 January.

The situation in the coastal zone is equally relevant, and originated a number of complaints, which although of fairly small proportions, reveal issues of undeniable gravity. The most representative situation is the accident that occurred in the beach in «Praia Maria Luísa», in Albufeira. As soon as a complaint was presented, the Ombudsman monitored the development of the measures adopted, even after public interest on the subject waned.

In June, several considerations were submitted to the Government on the **National Agricultural Reserve**, illustrated by the report of the inspection undertaken to the respective bodies: regional committees and the national committee. At the end of 2009, the Ministry of Agriculture, Rural Development and Fisheries was expected to issue a statement or embrace the regulations of the new regime published as a result of Decree-Law no. 73/2009, of 31 March.

There were two main impacts of the elections held in 2009, in particular the municipal elections held on 11 October, 2009. On the one hand many municipal executives, at the end of their mandates, adopted measures that had been suggested for a long time by the Ombudsman. Nonetheless, many of the Ombudsman's inspections were undermined, even after the newly elected local officials had taken office.

An additional obstacle to the inspections made by the Ombudsman's Office, has been the profusion of business structures linked to municipalities, thereby creating new difficulties in terms of identification of competencies, a phenomenon which until now has been restricted to the Central Administration.

Defence and **promotion of architectural and archaeological heritage** continues to have minimal expression in the complaints presented. Nonetheless, the ongoing cases are fairly relevant. A paradigmatic example is the case of the Church of Santo António de Campolide, whose confiscation by the State, on 8 October, 1910, means that this listed building has still not received the improvements and restoration works that are justified by its advanced state of degradation. Although the Directorate-General of the Treasury and Finances has lowered the proposed price in order to sell the church to the religious fraternity to which use of the building has been ceded, this outlook continues to imply an implicit recognition that the State will not restore the building or contribute towards its renovation. We have insisted on the need for restitution, free of charge, to the aforementioned religious fraternity, to the benefit of the parish of Santo António de Campolide.

A total of **three cases were opened at the Ombudsman's initiative**. These correspond to situations where consideration has been, and continues to be, made of the need for legislative improvements: **the legal regime on noise, safety of the domestic supply of bottled gas** and articulation between the control of the legitimacy of **urban planning operations** and property-based legal relations of condominium ownership.

The Ombudsman formulated **three recommendations:** one submitted to Condeixa-a-Nova Municipal Council, explaining that the municipal plans for defence of forestry areas, given that they had been created without consideration of territorial management instruments, could not directly impose construction restrictions. A second recommendation, submitted to Santo Tirso Municipal Council, concerning the unjust imputation of noise inspection expenses to complainants. Finally, the third recommendation was made to Fafe Municipal Council in order for it to reconsider the impediment on architects to assume technical management of all and any building works. **All three recommendations received a favourable response.**

On the other hand, it is important to register the favourable response, in 2009, to the **recommendations formulated in 2008**, in particular those submitted to the XVII Constitutional Government, concerning the so-called anticipation of expropriation effects on grounds of non-declared public interest, and the fragility of the guarantees of persons subject to administrative acts, given the multiple and differentiated normative framework of administrative rights of way. The current Minister of the Environment and Territorial Planning communicated her willingness to consider the meaning and ambit of Recommendation no. 4/B/2008 in the revision of the Law on Plots of Land, registered in the programme of the XVIII Government.

The Ombudsman constantly intervenes before the public authorities in order to ensure a response to complaints that are considered to be well founded. The results, sometimes after many years of persistence, continue to constitute an important source of motivation.

In this context it is worthwhile noting **three examples**. The first concerns the unusual situation, of a **set of acoustic barriers imposed by the Portuguese Railways Infrastructure Manager, REFER, EPE**, against the wishes of a village in Garvão, in the municipality of Ourique. The local people have strong memories of sudden flooding and consider that the barriers constitute a serious impediment to the evacuation of residents. In the third year of the Ombudsman's intervention in relation to various local and central authorities, a contract job has been put up for public tender that will make it possible to adjust the presence of the barriers to Civil Protection needs. The second example concerns the **restitution of the sanitation tax that was unduly charged**, obtained after nine years of complaints made to Aveiro Municipal Services. This situation proved to be extremely complex, in light of the facts and the corresponding legislation, it was important to extend, until the ultimate consequences, reconstitution of the preceding facts, which to a large extent was due to the continued persistence of the Ombudsman. Finally, it is worth noting the **eviction of an extremely noisy industrial support unit** that Lousada Municipal Council finally enforced after 11 years of complaints from neighbours.

It is also worth noting that, in several cases, although the positions adopted by the Ombudsman before the administrative authorities were not accepted, they were subsequently assumed by the courts, after the complainants, who had been forwarded to litigious procedures, filed legal action[4].

3.3.1.1. Summary of several interventions by the Ombudsman

Cases: P-16/03 and R-1675/09(A1)
Entity addressed: Minister of the Agriculture, Rural Development and Fisheries
Subject: Territorial planning. Special Territorial Regimes. National Agricultural Reserve. Non-agricultural uses.

Summary:

On the basis of the inspection report of the bodies and services of the National Agricultural Reserve and in view of the need to enact regulation that will develop the new legal regime, a series of reflections were submitted to the Minister of the Agriculture, Rural Development and Fisheries, designed for him to reflect upon, all related to the perspective of containing the reduction of the number of plots of land classified for agricultural use and the exceptional norms that should be applied as such.

A note of concern was issued regarding the lack of knowledge of the progressive non-agricultural use of a set of plots of land that, in 1975, corresponded to around 12% of the territory of mainland Portugal. Between 2000 and 2003, the Ombudsman estimates that housing has been built in around 10,000 hectares of land classified within the National Agricultural Reserve (which does not include, as a consequence, use for public works, golf courses, mines, etc.).

The Ombudsman is concerned in relation to the legality of the favourable opinions for non-agricultural use, since the negative opinions are subject to hierarchical appeal or litigious impugnation by the interested parties.

Special attention should be placed on the evidence filed by non-farmers asking exceptional permission to build own housing on grounds of extreme need, since this may correspond to fraud against the law and create illicit enrichment.

The inspection report described opinions that qualified extreme need at the margin of economic and social criteria and other aspects – thus allowing the construction of buildings that are incompatible with the scarce earnings invoked by the interested party.

On the other hand, the report focused on the pernicious ambiguity between invocation of the public interest and of the general or collective interest, leading to the loss of plots of land that are especially fertile in favour of hotel developments, dance halls, industrial units and large-scale commercial surfaces:

«We hope that the provisions established in article 22, no. 1, paragraph f), by admitting industrial and commercial establishments that are complementary to agricultural use – and, as such, qualified in Decree-Law no. 209/2008, of 29 October – observe increased attention in relation to the need to sacrifice classified plots of land».

Furthermore the report reiterated the urgent need to accelerate land registration and increase cartography, in view of the past losses that have resulted from the incipient nature of registration and cartography: incorrect classification of plots of land with less aptitude, while excluding alluvial flood plains.

Finally, reservations have been formulated in relation to the less thoughtful manner in which the new regime has permitted enlargement of urban perimeters, in detriment to the terrains of the National Agricultural Reserve.

Regulation of the new legal regime of the National Agricultural Reserve, considering the national imperative upon which it is based, should prevail «over municipal definitions of public interest, which are necessarily fragmented and oriented towards local growth strategies».

For further details, consult the link.
http://www.provedor-jus.pt/recomendafich_result.php?ID_recomendacoes=446&&documento=Parecer

Case: R-3574/08 (A1)
Entity addressed: Pombal Municipal Council
Subject: Urban planning. Conservation of buildings. Urban renting. Public interest.

Summary:

Alongside other similar complaints presented against various municipalities, a tenant complained that Pombal Municipal Council refrained from obliging the property owner to enforce extraordinary conservation works in a building at risk, and furthermore refrained from specifying the necessary works.

In effect, Pombal Municipal Council considered that this was purely a private conflict, thereby relegating public interest in the safety, salubriousness and aesthetics of buildings.

It was also pointed out to Pombal Municipal Council that administrative discretionary power, which includes the possibility of coercive enforcement, may not be restricted to judgement of financial opportunity, and makes it necessary to understand motivations of prudent action.

In conclusion, the right of tenants to substitute property owners of deteriorated urban buildings in order to perform extraordinary conservation works, does not exempt munici-

4 This question can be elucidated by two judgements published in 2009: Judgement of the Supreme Administrative Court (STA), 1st Sub-Chamber, of 24.04.2008 (abstention from municipal eviction of a goat-farming establishment, despite contagious spreading of brucellosis to neighbours – proc. R4358/96) and Judgement of the Supreme Court of Justice (STJ), of 4.12.2008 (abstention from municipal eviction of a barbecue establishment because it was considered to be compatible with a trade license – proc. R4717/00).

pal authorities from exercising their powers to oblige property owners, apply sanctions and, when necessary, coercively enforce orders, at the property owners' expenses.

Pombal Municipal Council responded to the complaint, and summoned the property-owner to carry out specified conservation works, drew up an administrative offence proceeding and considered the possibility of substituting itself as the property owner.

For further details, consult the link.

http://www.provedor-jus.pt/recomendafich_result.php?ID_recomendacoes=447&&document=Anotation

Case: R-5935/07 (A1)
Entity addressed: Cascais Municipal Council
Subject: Urban planning. Construction works. Demolition. Legalization. Legally-bound power.

Summary:

After Cascais Municipal Council refused to order the demolition of a specific building work that had been neither licensed nor legalised, given that it was impossible to exclude, in absolute terms, the possibility that it might satisfy legal and regulatory requirements on safety, salubriousness and aesthetics, the municipal authorities were informed that the building's situation could not remain undefined.

In effect, after a long period of time, the interested party had never expressed its willingness to commence the legalization procedure of the work.

The Ombudsman informed the Municipal Council that – within the heterogeneous case-law of the Supreme Administrative Court on the legally-bound or discretionary nature of the power of demolition – it is not sufficient to be aware of the external features of the construction work in order to impede its demolition, it is necessary to be familiar with the engineering projects, in particular the structures and stability projects, which is not possible unless the interested party starts the legalisation procedure.

As a consequence, if there is a lack of complete certainty that the construction work stands in conformity with all legal and regulatory requirements, Mayors should enforce demolition of clandestine works, after expiry of a reasonable deadline conceded to the interested party to legalise the work.

In order to prevent the demolition of clandestine works, it is not sufficient to acknowledge that urban planning parameters and coefficients enable its legalization.

If the interested party, who has the obligation to prove the legality of the work, abstains from providing for legalization, the Municipal Council will ignore the question of who is responsible for the structures and stability project and for exact compliance of these projects.

For further details, consult the link.

http://www.provedor-jus.pt/recomendafich_result.php?ID_recomendacoes=448&&document=Opinion

Case: R-358/07 (A1)
Entity addressed: Fafe Municipal Council
Subject: Urban planning. Construction works. Technical management. Professional qualifications.

Summary:

A recommendation was made to Fafe Municipal Council - on the penalty of standing in breach of the law - that it should not impede architects from assuming technical management of construction works, except in cases involving special complexity of structures.

Technical management of works is not restricted solely to engineers, except exceptionally, on grounds that, in general, fall within the concept of the specific acts of architects.

Recommendation complied with.

For further details, consult the link.

http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec3A2009(A1).pdf

Case: R-5392/08 (A1)
Entity addressed: Condeixa-a-Nova Municipal Council
Subject: Territorial planning. Territorial management instruments. Regulations. Municipal plans to defend forestry zones. Application. External effectiveness.

Summary:

Municipal plans to defend forestry zones against forest fires are neither directly nor immediately binding for persons subject to these administrative rules.

A recommendation was made to Condeixa-a-Nova Municipal Council to revoke a negative prior information concerning an allotment operation, due to direct and immediate application of the municipal plan to defend forestry zones against forest fires.

In effect, these instruments - that stand at the margin of typical territorial management instruments and are not even published officially - cannot prevail, without further consideration, over municipal territorial plans, even to the point of altering the classification and qualification of plots of land.

The conclusions of the Recommendation were complied with.

For further details, consult the link.

http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec6A2009.pdf

3.3.2. Department 2 - Economic and financial affairs, tax affairs, European funds, civil liability, betting, public contracting and consumer rights

2009 confirmed the trend recorded over recent years in relation to the rising number of cases processed by this Department of the Ombudsman's Office. 1179 cases

were submitted - an all-time high - representing an increase of 139 cases compared to 2008.

The following table demonstrates the relative importance of each thematic area (and sub-area) in this Department, in terms of the total number of open cases in 2009 - highlighting the problems that are most frequently subject to a complaint.

The core issues remain unaltered in terms of the evolution/percentage of cases received on each subject by this Department, in comparison with 2008. **Tax affairs**, **consumer rights** and **financial issues** represented 85% of the universe of cases opened in this area in 2009 (compared to 87% in 2008). There was nonetheless a considerable rise in the number of complaints on financial issues (rising from 10,1% to 16,8%) and a modest increase of complaints on consumer rights (rising from 18,8% to 22,1%).

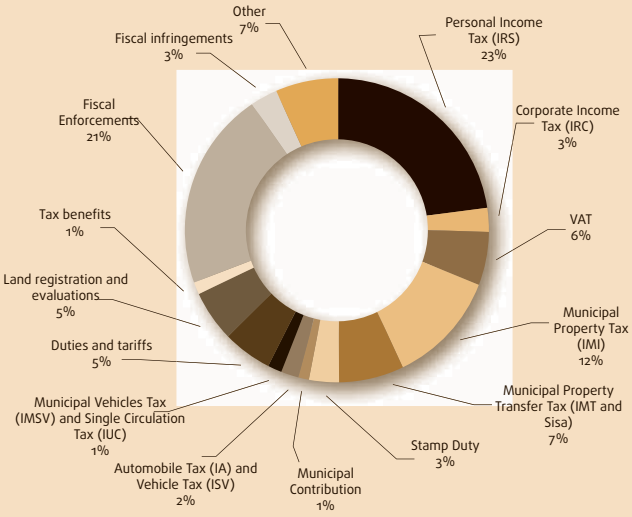
It is also important to note the different sub-topics included within each of the three main topics identified above, as shown in the following three graphs:

ISSUES	NO. OF CASES OPENED
1. ECONOMIC ISSUES	**39**
1.1. Trade	11
1.2. Competition	5
1.3. Other Economic Activities /Professions	12
1.4. Various	11
2. FINANCIAL ISSUES	**198**
2.1. Banking community	166
2.2. Insurance	18
2.3. Capital market	8
2.4 Various	6
3. TAX AFFAIRS	**545**
3.1. Personal Income Tax (IRS)	125
3.2. Corporate Income Tax (IRC)	14
3.3. VAT	31
3.4. Municipal Property Tax (IMI)	65
3.5. Municipal Property Transfer Tax (IMT and Sisa)	37
3.6. Stamp Duty	17
3.7. Inheritance and Donation Tax	1
3.8. Municipal Contribution	6
3.9. Automobile Tax and Vehicle Tax	10
3.10. Municipal Vehicle Tax and Single Circulation Tax	8
3.11. Customs duties	3
3.12. Duties and tariffs	28
3.13. Land registration and evaluations	29
3.14. Tax benefits	7
3.15. Complaints, impugnations and appeals	2
3.16. Fiscal enforcements	115
3.17. Fiscal infringements	16
3.18. Miscellaneous	31

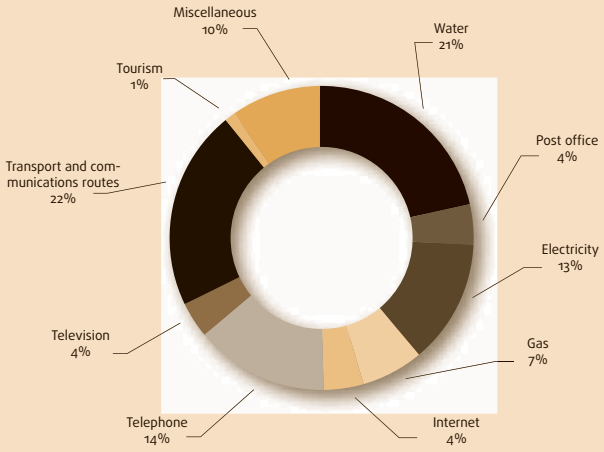
ISSUES	NO. OF CASES OPENED
4. EUROPEAN AND NATIONAL FUNDS	**64**
4.1. Employment	12
4.2. Agriculture	31
4.3. Education and Professional training	2
4.4. Companies	5
4.5. Miscellaneous	14
5. CIVIL LIABILITY	**58**
5.1. For provision of public services	17
5.2. For exercise of administrative activity	2
5.3. For miscarriage of correspondence/baggage	12
5.4. For accidents	20
5.5. Miscellaneous	7
6. BETTING	**2**
7. PUBLIC CONTRACTING	**13**
7.1. Public tenders	12
7.2. Miscellaneous	1
8. CONSUMER RIGHTS	**260**
8.1. Water	56
8.2. Post office	11
8.3. Electricity	34
8.4. Gas	17
8.5. Internet	11
8.6. Advertising	2
8.7. Telephone	37
8.8. Television	10
8.9. Transport and communication routes.	56
8.10. Tourism	3
8.11. Miscellaneous	23
TOTAL	**1179**

Department 2

Tax affairs



Consumer rights



An «old tradition» was revived in 2009: cases related to **Personal Income Tax (IRS)** (questioning the application of norms on tax incidence, personal tax allowances, problems of settlement and reimbursement, etc.) constituted the leading category of tax-related complaints. In 2008, exceptionally, the most frequent type of complaint was related to **fiscal enforcement** but, after consolidation of several procedures of the tax administration, in drawing up enforcement proceedings and alteration of several other procedures in this framework (on several occasions after the Ombudsman's interventions), problems related to fiscal enforcement stabilized, with a slight decrease in the number of complaints on this issue.

Questions related to **Municipal Property Tax (IMI)** and the **Municipal Property Transfer Tax (IMT)** are the next most frequent type of complaint (see graph on consumer rights).

Problems submitted to the Ombudsman by users of public transport and communication routes (mainly motorways) were the most frequent in 2009, in the **category of consumer rights issues**, followed by questions related to users of the essential **public water supply service**. In 2008, these were also the two most important sub-issues in the topic of consumer rights, although their relative importance inverted in 2009.

The most evident increase in complaints was related to **provision of the telephone service**[1]. This fact is not however a cause for major concern for the Ombudsman, in light of the excellent collaboration provided by PT Communications, S.A. to the Ombudsman, which has made it possible to resolve the vast majority of problems submitted by citizens, swiftly and informally.

The same is true for cases related to provision of the public **electricity supply** service (see the graph on Financial issues).

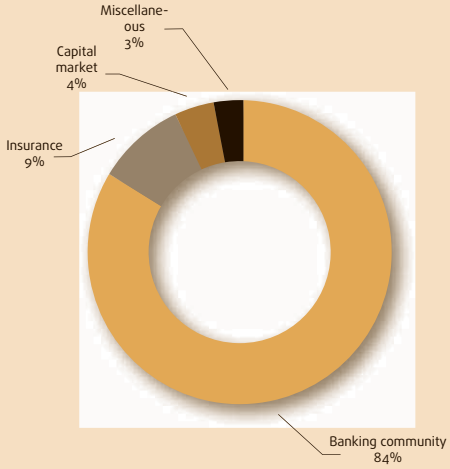
In 2009, as seen above, the area of financial issues represented its highest-ever percentage, in relative terms, in this thematic group. The above Graph highlights the Banking issues that led the highest number of citizens to complain to the Ombudsman.

It is important to state that 84% of the cases opened on Banking issues resulted from 166 complaints, which, as a general rule, concerned the activities or omissions of the Bank of Portugal - as the supervisory authority for the sector - and of the Caixa Geral de Depósitos, SA.[2]

1 Fixed telephone service provided by PT Communications, S.A., given that mobile phone operators and other fixed telephone service operators are of a private nature and do not have any special responsibility to provide the telecommunications universal service, for which PT is the concessionaire, and wherein, on these grounds, its activity is subject to supervision by the Ombudsman.

2 No complaint against private credit institutions was included in the numbers presented, given that, due to their private status, they stand outside the framework of the Ombudsman's intervention and complaints received in relation to their activity are preliminarily closed, and not therefore distributed to the Departments.

Financial issues



3.3.2.1. Summary of several interventions by the Ombudsman

Case: R-6522/07 (A2)
Entity addressed: Minister of State and Finances
Subject: Financial issues. Special low-interest mortgage credit for housing. Calculation of earnings of freelance workers.

Summary:

Over 50 complaints were presented to the Ombudsman from beneficiaries of special low-interest mortgage credit for housing, because they had been included in a lower allowance category than that which they had previously held, or even excluded from the entitlement to receive any bonus allowance, without any alteration in their earnings or composition of their family household that could justify such a change.

After processing these complaints, it was possible to ascertain that this had taken place because of the new interpretation of the concept of «gross income» of freelance workers, implemented as a result of Administrative Rule nº 827-A/2007, of 31 July, for the purposes of attribution of bonus allowances, which proved to cause unjustifiable damage to the interests of these beneficiaries.

In effect, as a result of this alteration, the concept of commercial or industrial, professional gross income not only includes earnings, but also expenses incurred in exercise of professional or business activity (e.g.: acquisition of work instruments, payment of salaries and rents, acquisition of raw materials, acquisition of goods intended for resale).

The current Ombudsman, in the wake of efforts pursued by his predecessor, reiterated to the Minister of State and Finances the need to consider adoption of an earnings calculation formula - for the purposes of determination of the right to attribution of these bonus allowances - which also, but not necessarily, would be similar to that established in the regime for access to the «Porta 65» Programme (Renting by young people), or by Decree-Law no. 245/2008, of 12 December, that defines the relevant annual income to be considered in relation to the activities of freelance workers, for the purposes of setting the amount of social security benefits.

In response, the Minister of State and Finances informed the Ombudsman, on 18 September, 2009, and summarizing his response herein, that the Government was aware of the need to find a solution that would minimise the problem that had arisen, and is currently considering/preparing a legislative initiative in order to establish the definition of relevant annual income in the field of the activities of the freelance workers, for the purposes of attribution of bonus allowance classes.

Notwithstanding this response, the case was opened in order to acquire greater knowledge of the details of the legislative alteration in question, together with the specified date for its entry into force. A response to these questions was still pending at the end of 2009.

Cases: R-838/08 (A2); R-3084/08 (A2) and R-386/08 (A2)
Entity addressed: Minister of State and Finances
Subject: Financial issues. Alteration of the form of remuneration of savings certificates.

Summary:

The Ombudsman received numerous complaints from private individuals who had subscribed to savings certificates and considered that their interests had been undermined by publication of Administrative Rule no. 73-B/2008, of 23 January, that altered the form of remuneration of these securities. Until that time the respective remuneration was determined by the formula «0,80 x TBA» (TBA=annual base rate), as defined by Administrative Rule no. 743-A/2006, of 31 July. This had now been changed to only «0,60 x TBA» (TBA=annual base rate).

After drawing up the case, Recommendation no. 2/A/2009, of 20 January, was sent to the Minister of State and Finances, stating the following:

a) For B series savings certificates that were within their legal guarantee periods on the date of entry into force of Administrative Rule no. 73-B/2008, of 23 January, the interest rates that holders had been entitled to up until the end of that guarantee period should be maintained;

b) A clarification should be provided concerning the precise guarantee period referred to in article 8 of Decree-Law no. 172-B/86, of 30 June.

For further details, consult the link.

http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec_2A2009.pdf

Case: R-3015/09 (A2)
Entity addressed: Institute of Housing and Urban Rehabilitation
Subject: European and national funds. «Porta 65»-Young People Programme. Non-renewal of support. Debt-to-Income ratio. Maternity allowance.

Summary:

A complaint was presented after rejection of a request for renewal of financial support, formulated within the framework of the «Porta 65» Young People programme, on grounds of insufficient earnings stated in the annual earnings declaration that the complainant had presented with reference to 2008, in which the beneficiary had received a maternity allowance.

Indeed, although the amount paid to the beneficiary was identical to that which would have been earned in a normal working regime, the fact that these earnings are not covered by any tax incidence norm in terms of Personal Income Tax (IRS), meant that they were not included in the annual tax return presented in 2009, attached to the application.

As the Institute of Housing and Urban Rehabilitation (IHRU) subsequently clarified, for the purposes of concession/renewal of financial support, calculation of the earnings of the candidate/beneficiary only considers taxable earnings in the categories A, B and H, i.e. excludes all other earnings – e.g. maternity allowances - which are not subject to taxation.

This fact implied, in the specific case in hand, that the maximum permitted debt-to-income ratio of 60% - stipulated in applicable legislation - was exceeded, given that payment of the rent due on the property, implied excessive allocation of this expense within the family household's monthly income.

Given the understanding that this legal solution stands in conflict with constitutionally-enshrined rights, such as equal treatment for citizens and the need for protection of maternity rights, the Ombudsman drew attention to the need to alter this programme's legal regime, in order to permit other means of proof of candidates' earnings, in addition to their annual Personal Income Tax (IRS) return and stock exchange evidential documents.

This orientation was received by the Secretary of State for Territorial planning and Cities and will be consecrated, amongst other alterations, in the legal diploma that will revise the legal regime of the «Porta 65» Young People programme, as a result of which consideration will be made, for the purposes of gross monthly income, of the candidate's social benefits, e.g. maternity allowance, in order to make it possible to consider all earnings received by the candidates for the purposes of complying with the legal requirement of the debt-to-income ratio.

3.3.2.2. Sample cases that illustrate best practises

Case: R-1383/09 (A2)
Entity addressed: CARRIS – Companhia de Carris de Ferro de Lisboa, S.A. and others
Subject: Consumer rights. Transport. Guarantee period of Lisboa Viva cards also applying to substitution cards.

Summary:

The contacts made by the Ombudsman with CARRIS and OTLIS (Transport Operators of the Lisbon Region) made it possible to ensure that the established guarantee period for new Lisboa Viva cards would also be extended to substitution cards, in the event of a technical fault.

Under the terms of applicable legislation on the sale of consumer goods and respective consumer guarantees, a 2-year guarantee period is guaranteed for Lisboa Viva cards.

However, in cases in which such cards needed to be substituted as a result of technical faults, the start of the guarantee period for the new substitute cards was backdated to the date of issue of the original cards that they substituted.

This situation naturally implied a shorter guarantee period for the substitution cards, with consequent losses for public transport users, who are thereby obliged to bear the inherent charges associated to the acquisition of a new card at an earlier date.

The Ombudsman therefore drew the transport operators' attention to the fact that Decree-Law no. 84/2008, of 21 May, clarified that substitute goods, i.e. those which substitute goods that have presented non-conformities in the framework of the respective guarantee period, benefit from a new guarantee period counted from the date of their delivery.

As a result, OTLIS communicated that, from 1 December 2009, a new 2-year guarantee period would be granted from the delivery date of the substitute Lisboa Viva card. This situation constitutes an undeniable improvement in the guarantees provided to the consumers covered by this measure.

Diligent proceedings were then pursued in relation to TIP – Oporto Intermodal Transports, for the purposes of consideration of application of an identical solution for the cards used in the collective transport systems of the Oporto region.

Case: R-2014/09 (A2)
Entity addressed: INDAQUA Matosinhos – Gestão de Água de Matosinhos, S.A.
Subject: Consumer rights. Water. Billing. Interruption of water supply. Prior notice. Onus of proof.

Summary:

A complaint was received in the Ombudsman's Office against INDAQUA Matosinhos – Gestão de Água de Matosinhos, S.A., concessionaire of the water supply service in the municipality of Matosinhos, due to alleged suspension of supply of the service without prior notice.

Under the terms of the provisions established in article 5 of Law no. 23/96, of 26 July, that established several mechanisms in the legal framework intended to protect users of essential public services - such as the water supply service – the service can only be suspended after the user has been warned, in writing, with minimum prior notice of 10 days in relation to the date on which the service is to be suspended, wherein the management body, in addition to providing a justification for the grounds of suspension, must include information in the notice concerning the means available to the user to avoid disconnection of the service and for subsequent resumption of the service.

After being questioned by the Ombudsman, the entity addressed clarified that in this specific case, suspension of the service was due to a delay by the user, to whom prior notice had been sent by standard mail.

It was then emphasized that, in accordance with the provisions established in no. 1 of article 11 of Law no. 23/96, in the wording given by Law no. 12/2008, of 26 February, the service provider is responsible for proving all facts related to compliance with its obligations and development of diligent proceedings arising from provision of the services specified within that legal diploma. In this context, the management body admitted that it did not have sufficient elements for this purpose.

Hence, in order to avoid repetition of identical situations, INDAQUA decided to send the prior notice of suspension by registered mail, and also restitute to the complainant the amount that he had already paid for resumption of the water supply.

Given that a favourable result has been obtained for the complainant and for INDAQUA's other clients, by rapid and informal means, and INDAQUA was convinced of the need to adapt its procedures, related to issuing a prior notice for suspension, to the more stringent requirements of Law no. 23/96, it was decided to close the case.

3.3.3. Department 3 - Social affairs: work, social security and social housing

1100 cases were distributed to this Department[1]. **Social Security** is the largest single group with 89% of the total, Labour legislation is the second-largest group of complaints, representing 9% of the total, and finally, complaints related to **Social Housing** correspond to 2%.

Within the aggregate total of **Social Security** complaints, 61% were related to social security regimes, 25% concerned the social protection regimes of State employees and 3% concerned work accidents and professional illnesses.

The following table, provides a breakdown of the main issues for which complaints were presented (Social Security):

			2008	2009
SOCIAL SECURITY 2009 (89%) 2008 (91%)	Social Security Regimes 2009 (61%) 2008 (68%)	Old age, invalidity and survival pensions	38%	34%
		Unemployment, sickness and parental benefits	19%	23%
		Social security registration, contributions and debts	24%	21%
		Insertion social income, Social action and legal aid	9%	12%
		Family Benefits (e.g. family allowance)	6%	5%
		Social establishments and other services	4%	6%
	Civil Service Social protection regimes 2009 (25%) 2008 (29%)	Retirement due to old age	69%	65%
		Retirement due to invalidity	7%	7%
		Registration, quotas, debts, Counting of time of service	16%	19%
		Death benefits	4%	5%
		Other pensions (price of blood, relevant services, etc.) and other benefits	4%	4%

The breakdown of **Social Security**-related complaints is broadly unaltered in comparison with 2008, maintaining practically the same relative weight of each sub-issue. It is nonetheless important to emphasize a slight increase of complaints in relation to immediate social benefits, unemployment benefits and sickness benefits and citizenship social protection benefits (in particular social action and insertion social income). On the other hand, there was a slight increase in the number of complaints about senior citizens' social establishments (above all in relation to private homes in an alleged irregular situation). Finally, the largest category of complaints continued to be associated to long-term benefits (old age and invalidity pensions) and problems related to registration, contributions/quotas and debts, whether in terms of the general social security regime, or in terms of the social protection regime for State employees.

Social Security

In regard to Social Security complaints (in the broad sense of the term), the intervention of the Ombudsman's Office focused on: **errors and delays in the attribution of social benefits; lack of grounds for rejection decisions**, termination or suspension of benefits; errors in registration of remuneration and **calculation of career activity that contributes towards time of service** (relevant for access and calculation of benefits); incorrect imputation of contributions owed and coercive payment; **delays in restitution of unduly paid contributions;** deficiencies in application of the social security computing system; **absence of a statement**, or insufficient or inadequate information provided to the interested parties; **absence of social action technical officials** in several district centres of the Institute of Social Security, IP; **operating conditions of senior citizens' social establishments**; problems related to the articulation between the services of the Institute

1 This number includes cases redistributed to this Department after they had been drawn up.

of Social Security, IP – either between district centres or with the National Pensions Centre, or between these and the central services of the Institute in question – and, also, problems of articulation between the **Institute of Social Security, IP,** the Institute of Computing, IP, the Institute of Financial Management of Social Security, IP and the Civil Servants Pension Scheme, IP (in the latter case, within the framework of unified pensions, in which there must be joint and obligatory intervention by the National Pensions Centre and the Civil Servants Pension Scheme); **classification delays of disabled persons in the Armed Forces.**

Labour Legislation

The field of Labour Legislation, that encompasses labour, employment and professional training issues, recorded a slight increase in relation to the previous year (6% in 2008), above all due to complaints in relation to **actions or omissions of the Work Conditions Authority, and delays of the Institute of Employment and Professional Training, IP** for issue and revalidation of trainers' Teaching Aptitude Certificates (CAP).

In terms of complaints in this field (also considering those related to employment and professional training), the intervention of the Ombudsman's Office was specifically related to: breach of workers' rights and of the rights and guarantees of workers' representation structures (workers' committees and trade-union associations), by employers[2]; omissions in the issue of a statement and delays in implementation of inspections or in drawing up cases for labour-related administrative offences by the Work Conditions Authority; a delay by the Institute of Employment and Professional Training, IP either in terms of the issue and revalidation of trainers' Teaching Aptitude Certificates (CAP), or in the definition of a regulatory framework for registration, cancellation, suspension and re-registration in job centres.

Social Housing

In the field of Social Housing, the interventions of the Ombudsman's Office were based essentially on complaints related to lack of suitable housing for **family households in an alleged situation of economic and social vulnerability: delays by the local authorities** (or by municipal management companies responsible for municipal councils' real estate assets) **in appraisal of requests** for attribution of social housing dwellings or rejections of such requests. Attribution of social housing dwellings is limited from the outset by the availability of such dwellings and evaluation and ranking of priorities (in accordance with specific criteria, in particular: the number of members included within the applicant family household; whether or not there are minors, senior citizens or disabled persons in the family household; total earnings generated by the members of the family household). In such cases, the Ombudsman's Office will consult the entities addressed, aiming to guarantee that the situations for which complaints have been filed are duly evaluated and ranked by the respective local authorities, in accordance with the priority arising from the gravity of the specific cases in question. Several situations for which complaints have been filed are thereby clarified or resolved or, at least, are signalled for the purposes of re-appraisal in the future, in the event that suitable social housing dwellings become available. Several successful interventions by the Ombudsman's Office should be noted, above all in cases of family households with minors suffering from serious chronic illnesses, for whom the salubriousness of the housing is a pre-requisite for their health and survival.

In terms of the entities most frequently cited within the total complaints distributed to the Department, the main entities continued to be the Institute of Social Security, IP (53%), encompassing in particular, the district centres (27%)[3] and the National Pensions Centre (19%). The other main entities against which complaints were filed were: the Civil Servants Pension Scheme, IP (23%), the Ministry of Finances and Public Administration (4%), the Institute of Employment and Professional Training, IP (4%), the Ministry of Labour and Social Solidarity (3%), the Ministry of National Defence (3%), the Work Conditions Authority (3%) and the Institute of Financial Management of Social Security, IP (2%).

In 2009 **two legislative recommendations were reiterated**:

a) Recommendation no. 4/B/2007, addressed to the Secretary of State Adjunct and of the Budget, which focused on two distinct questions: termination of the attribution of the Lifelong Benefit (specified in Decree-Law no. 134/79, of 18 May) by the Civil Servants Pension Scheme, IP; and relevance of the time of service provided in the former Public Administration of the Overseas Territories in the scope of the unified pension, through alteration of Decree-Law no. 361/98, of 18 September[4];

2 Considering, on the one hand, that the Ombudsman cannot intervene, as a general rule, in relation to private entities (e.g. private sector employers), and, on the other hand, there is a supervisory authority in the Portuguese legal framework that has special responsibility for evaluation and inspection of compliance with Labour legislation – Work Conditions Authority (ACT) – the Ombudsman's Office takes special care to initially forward complainants to that body, in order to ensure that it may and should exercise its competencies in this field and, where appropriate, open labour-related administrative offence proceedings that prove to be necessary. The Ombudsman's Office is reserved the right to make a subsequent appraisal of any eventual unjustified delay in the activity/intervention of the ACT or in the event that the complainant does not agree with the position adopted by the latter in relation to the subject of the complaint. Notwithstanding this fact, the Ombudsman's Office will always denounce directly to the ACT the most serious situations detected in complaints received and subsequently monitor the treatment given to them by this entity, evaluating the respective final decisions.

3 The district centres that received the highest number of complaints were Lisbon, Oporto, Setúbal, Faro and Aveiro (in that order).

4 For further details, consult the link: http://www.provedor-jus.pt/restrito/rec_ficheiros/R4111_06.pdf

b) Recommendation no. 8/B/2008, addressed to the Minister of National Defence concerning the problem of counting the period of imposed registered leave, for the purposes of retirement or pensions[5].

On the other hand, Administrative Recommendation no. 7/A/2008[6] was accepted by the Secretary of State of Education, aimed at correcting the procedures of the Ministry of Education's Services in application of the regime of accidents in service (Decree-Law no. 503/99, of 20 November) and qualification of the specific case cited in the complaint as an accident in service.

In 2009, **two cases** were also opened in this **Department, at the Ombudsman's initiative**:

a) One case aimed to resolve a **legal loophole that generated a lack of social protection for unemployed persons** who, between the date of termination of their employment contract and presentation of the request for unemployment benefit are confronted with a situation of illness (temporary incapacity for work), given that, under these circumstances, they are barred access from both unemployment benefit and sickness benefit. A hearing was conducted with the Secretary of State for Social Security, and we await a response[7].

b) In the other case, the issue in question was the competency of the Work Conditions Authority (ACT) to inspect compliance of labour norms by public bodies (in this case public business entities and public institutes) when the labour contracts established with the respective workers are governed by the Labour Code and complementary legislation. A hearing was conducted with the Inspectorate-General for Work, and we await a response.

It is important to note that a large proportion of complaints submitted to this Department involved rapidly evolving social situations, thus requiring, *a fortiori*, swift handling in order to ensure that the desired useful effect and the social right in question is duly and promptly guaranteed. In effect, in relation to complaints on access to unemployment, parental or sickness benefits, to family allowance, to insertion social income, to the social complement for senior citizens, old age or invalidity pensions (in particular, social pensions) or the situation of elderly people, it is easy to understand that this involves situations of social emergency that are often linked to the immediate economic subsistence of the complainants and respective family households. As a result, emphasis is placed, whenever possible, on drawing up cases informally - through recourse to rapid means of consulting the entities addressed (e.g. telephone contact, fax and e-mail). This activity has been possible, in particular, with technical officials who serve as interlocutors in the district centres of the Institute of Social Security, IP, in the National Pensions Centre and in the Civil Servants Pension Scheme, - i.e. in the entities that receive the highest number of complaints distributed to this Advisory Services Department.

Informal drawing up of cases avoids the inherent delays associated to exchanging correspondence, which is often unfruitful. Or, in the event that formal consultation of the Administration is justified, or it is necessary to formulate a suggestion, observation or recommendation, prior informal contacts make it possible to retrieve suitable elements in order for the Ombudsman to take a position.

Many of the complainants' objectives were satisfied in this manner. Or, in other cases, after concluding that there were insufficient grounds for the complaint, informal contacts make it possible to ensure that clarification to the complainant is swift and well-founded, thereby ensuring a pacific solution, in the majority of situations, for the relationship between citizens (complainants) and the Administration. Explanation is also a key characteristic of this Department's intervention. When confronted with the diversity and complexity of the set of norms associated to the attribution of social benefits and the administrative procedures of services, many citizens (above all those with a lower level of education) feel unprotected, mistrustful and angered, because they don't understand the reason for rejection or termination of a specific social benefit or the refusal of any other form of social support. In these cases, after drawing up the case and checking the regularity and legality of the decision of the services in question, the Ombudsman's Office takes special care to explain the grounds underlying the decision and the applicable legal regime or, when appropriate, will forward the complainant towards any other suitable social response for this issue.

On the other hand, drawing up the cases cannot be restricted to providing a clarification and resolution of the specific and individual situation of the complainant. When appropriate, the Administration is contacted in order to ensure that an identical procedure is adopted in other similar situations to that of the complainant (e.g. adoption of technical guidelines by the Institute of Social Security, IP in order to harmonise and standardise procedures in the respective district centres). Or, in other cases, the Ombudsman, if he considers that an alteration to the law is just and appropriate, will suggest or recommend to the Government the adoption of legislative measures to this effect, in order to achieve better protection of specific social rights. In effect, by virtue of the wide array of complaints submitted to it, the Ombudsman achieves a privileged viewpoint, which enables him

5 For further details,, consult the link:
http://www.provedor-jus.pt/restrito/rec_ficheiros/R565_08.pdf

6 For further details, consult the link.
www.provedor-jus.pt/restrito/rec_ficheiros/Rec7A08.pdf

7 Question processed within the scope of the case P04/09. For further details, consult the link:
http://www.provedor-jus.pt/restrito/rec_ficheiros/P04_09.pdfres.

to pursue an activity that goes far beyond the simple treatment of individual and specific cases, and his intervention may foster fine-tuning of the law or administrative procedures.

3.3.3.1. Summary of several interventions by the Ombudsman

Case: P-04/09 (A3)
Entity addressed: Secretary of State for Social Security
Subject: Lack of social protection in cases in which there is a situation of sickness in the time between termination of the employment contract and presentation of the request for attribution of unemployment benefits. Suggestion of a legislative measure.

Summary:

1. The present case was based upon a complaint submitted by a citizen who immediately fell ill after termination of his employment contract and, thus prior to having the opportunity to request the unemployment benefit to which he was entitled was confronted, due to established legislation, with a situation of complete lack of social protection, given that he was denied access to sickness benefit, on the one hand, and access to unemployment benefit on the other.
2. Attribution of sickness benefit is reserved to cases in which there is loss of remuneration as a result of sickness that temporarily impedes the beneficiary from working (article 1, no. 2 of Decree-Law no. 28/2004, of 4 February), which is not the case when the beneficiary is already unemployed on the date when the sickness commences.
3. On the other hand, given that the beneficiary is in a situation of temporary incapacity for work on grounds of sickness, he cannot register in the respective job centre and request, during this period, unemployment benefit, given that while he is ill he does not have capacity and availability for work (articles 2, no. 1 and 11, no. 1 of Decree-Law no. 220/2006, of 3 November).
4. The complaint revealed a legal loophole, capable of generating situations of complete absence of social protection.
5. The Ombudsman decided that this situation of absence of social protection, in addition to being unjust and unjustified, is absolutely unacceptable from the perspective of the Constitution and the Foundation Law of the Social Security System, and therefore he sent an official letter to the Secretary of State for Social Security[8], requesting adoption of a suitable legislative measure in order to protect against such situations.

Case: R-1093/09 (A3)
Entity addressed: Secretary of State for Social Security
Subject: Alteration to Decree-Law no. 176/2003, of 2 August, in order to enable beneficiaries of family allowances for children and young people, to exercise salaried work, within certain reasonable deadlines (as in other regimes of social protection regimes available for foreigners). Suggestion of a legislative alteration.

Summary:

1. A complaint was received in the Ombudsman's Office submitted by the mother of a person who receives a family allowance, who disagreed with suspension of payment of this social benefit on the grounds that her daughter exercises a salaried activity, on a part-time basis, while attending Higher Education.
2. Article 11, no. 1, paragraph b), of Decree-Law no. 176/2008, of 2 August, establishes that the condition for attribution of the family allowance is «non- exercise of employed activity» by the beneficiaries, and article 22, no. 1, adds that the right to the family allowance is suspended «if the condition of attribution specified in paragraph b) of no. 1 of article 11 is no longer verified».
3. It can thereby be concluded that the prevailing regime is conceived in absolute terms, as a result of which any salaried work exercised by the young person (even if minimal), implies automatic loss of the family allowance, unlike the situation found in the legal frameworks of other countries.
4. In terms of comparative Law, it was verified that current Portuguese legislation does not have any parallel to the current legal framework prevailing in Spain, France and Germany, given that the latter enable accumulation of the family allowance with exercise of salaried professional activity up to specific salary limits.
5. On the other hand, fiscal legislation continues to consider as «dependents» - children, adopted children, stepchildren and persons of majority age, aged 25 years or under, that were formerly subject to tutelage by the parents - who earn less than the national minimum wage annually [see article 13, no. 4, paragraph b) of the CIRS].
6. As a result, the Ombudsman suggested to the Secretary of State for Social Security an alteration to Decree-Law no. 176/2003, of 2 August, in order to permit, within certain reasonable limits, the exercise of salaried work by beneficiaries of family allowance[9]. This suggestion was welcomed and the Ombudsman was informed that the issue was being studied in order to be enacted in legislation.

8 For further details, consult the link: http://www.provedor-jus.pt/restrito/rec_ficheiros/P04_09.pdf

9 For further details, consult the link: http://www.provedor-jus.pt/restrito/rec_ficheiros/R1093_09.pdf

Department 3

Case: R-2155/09(A3)
Entities addressed: Institute of Social Security, I.P. and the Secretary of State for Social Security
Subject: Disability allowance. Application of Decree-Law no. 133-B/97, of 30 May, and Decree-Law no. 176/2003, of 2 August, for persons covered by social protection regimes that do not contemplate the eventual existence of family expenses. Regulation of family protection for eventual expenses related to disability and dependency.

Summary:

1. Through appraisal of the complaint, it was verified that the services of the Institute of Social Security, I.P. are carrying out an incorrect interpretation and legal application of Decree-Law no. 133-B/97, of 30 May, and Decree-Law no. 176/2003, of 2 August, by refusing disability allowance for freelance workers that are covered by the obligatory benefits scheme, together with persons covered by other social protection regimes that do not include within their material framework the possibility of eventual family expenses.
2. The legislator cannot intend to negatively discriminate against children and young people in a situation of disability when their progenitors or the applicants of the family allowance to which they are entitled, are not covered by a benefit scheme that contemplates family expenses, inclusively because Decree-Law no. 176/2003, of 2 August, has already autonomised the family benefits specified therein (family allowance and funeral benefit) in relation to the non-contributional and contributional regimes and thus widened its personal scope of attribution to all citizens resident in national territory.
3. In fact, disability allowance is not an autonomous benefit, it is a bonus allowance associated to the family allowance, and therefore should be attributed to all those entitled thereof, provided that they comply with the specific requirements specified for this purpose in Decree-Law no. 133-B/97, of 30 May, i.e. in article 7 and 21 (aged under 24 years and suffer from a disability with specific characteristics, defined therein).
4. The position of the Ombudsman's Office and the respective grounds were transmitted to the Management Board of the Institute of Social Security, I.P., in order to reappraise the specific situation of the complaint, and to issue a technical guideline to be sent to the respective services.
5. It was verified, in the meantime, that for the other benefits specified in Decree-Law no. 133-B/97, of 30 May, negative discrimination continued because the interpretation made by the services is correct, even though this contradicts the Foundation Law of Social Security, and the current structure and financing of the social security system and the regimes and norms that have been approved within this framework.
6. It was thereby demonstrated that it is urgent to provide a new legal framework for the entire protection system of eventual expenses in the field of disabilities and dependency, in accordance with the current organization of the social security system and its respective financing. The Ombudsman therefore sent an official letter to the Secretary of State for Social Security, suggesting the adoption of a suitable legislative measure[10]. We await a response.

Case: R-1026/08(A3)
Entities addressed: Civil Servants Pension Scheme, I.P. and Secretary of State Adjunct and of the Budget
Subject: Article 43 of the Statute of the Pension Scheme. Delay of the Civil Servants Pension Scheme (CGA) in attribution of pensions. Damage caused to pensioners' interests. Alteration to articles 39 and 43 of the Statute of the Pension Scheme by Decree-Law no. 238/2009, of 16 September, following the Ombudsman's intervention

Summary:

1. Various complaints were received in relation to the effects deriving from application of article 43, no. 1, paragraph a), of the Statute of the Pension Scheme (EA) – with the wording given by article 2 of the Law no. 57/2007, of 31 August – which establishes that the retirement regime will be set on the basis of prevailing legislation and the situation that exists on the date on which the retirement request is received by the Civil Servants Pension Scheme (CGA)).
2. The issue at stake was the harm caused by the significant delay of the Civil Servants Pension Scheme (CGA) – around 8 months – in processing each retirement case. This delay resulted in penalization of pensions, given that the new wording of article 43 of the Pension Scheme (EA) does not make it possible to reflect, in calculation of the respective pensions, the time of service between the date of presentation of the request and the date on which the Civil Servants Pension Scheme (CGA) issues its retirement order.
3. This question was particularly important in the case of civil servants requesting early retirement, i.e. those making a request that already involved a penalization in terms of age, and who were therefore not indifferent to whether or not time of service would be counted.
4. As a result, the Ombudsman consulted the Secretary of State Adjunct and of the Budget in order to adopt measures to reinforce the staff of the Civil Servants

10 For further details, consult the link: http://www.provedor-jus.pt/restrito/rec_ficheiros/R2155_09.pdf

Pension Scheme (CGA) assigned to processing retirement requests, and also adopt a legislative measure that would bring the regime in question closer to that of the general social security regime, in order to avoid the aforementioned losses[11].

5. This suggestion was welcomed, and Decree-Law no. 238/2009, of September 16 was published, that altered articles 39 and 43 of the Pension Scheme (EA), establishing procedural adjustments in relation to the submission of retirement requests and determined official revision, with effects backdated to 1 January 2008, of all pensions attributed in the interim period by the Civil Servants Pension Scheme (CGA), integrating within the respective recalculation the period of time of service between the date on which the retirement request was received by the Civil Servants Pension Scheme (CGA) and the date of issuing the retirement order.

Case: R-1142/09 (A3)
Entity addressed: TAP
Subject: Refusal of attribution of a productivity bonus in relation to 2007 (distributed in 2008) to workers because, in that year, they had been absent for more than 180 days on maternity leave or on leave of absence due to the gravity of clinical risk. Comment.

Summary:

1. The present case was based on a complaint submitted by a group of workers of the Portuguese airline, TAP, who had been denied attribution of a productivity bonus in relation to 2007 (distributed in 2008) because, in that year, they had been absent for more than 180 days as a result of maternity leave or leave of absence due to the gravity of clinical risk.
2. TAP based its position on the fact that the conditions for attribution of the productivity bonus in question – including minimum service of 180 days in the year for which the bonus was provided – had been specified in the respective collective employment regulation instrument
3. TAP also considered that the bonus in question is directly related to the company's results, on the one hand, and the effective participation/contribution of the beneficiaries of the bonus in obtaining these results, on the other, and therefore this does not involve any form of discrimination on the basis of gender.
4. CITE – the Commission for Equality at Work and Employment, was asked to make a statement on this issue. CITE concluded that the workers in question were entitled to the monetary bonus distributed in function of the results for the 2007 financial year. A recommendation was made to TAP to act in conformity.
5. The Work Conditions Authority (ACT) made an identical statement, and drew up an administrative offence proceeding, due to infringement of article 23, no. 1 of the Labour Code (2003), combined with article 32, no. 2, paragraph a) of the RCT (Law no. 35/2004).
6. Although based upon grounds that did not entirely coincide with those presented by CITE and ACT, the Ombudsman considered that TAP had acted incorrectly, and concluded that this constituted a breach of the law – article 31, no. 4, of the Labour Code – i.e. counting absences due to maternity leave for the purposes of (non) attribution of the bonus in question. As a result, it sent a comment to this effect to the Board of Directors of TAP[12], criticizing the company's actions in the case under appraisal and exhorting TAP to rectify the situation and pay the corresponding bonus to the workers in question.

11 For further details, consult the link: http://www.provedor-jus.pt/restrito/rec_ficheiros/R1026_08.pdf

12 For further details, consult the link: http://www.provedor-jus.pt/restrito/rec_ficheiros/R1142_09.pdf

3.3.4. Department 4 - Issues of administrative organization and public employment relationship, status of the staff of the Armed Forces and of the Security Forces

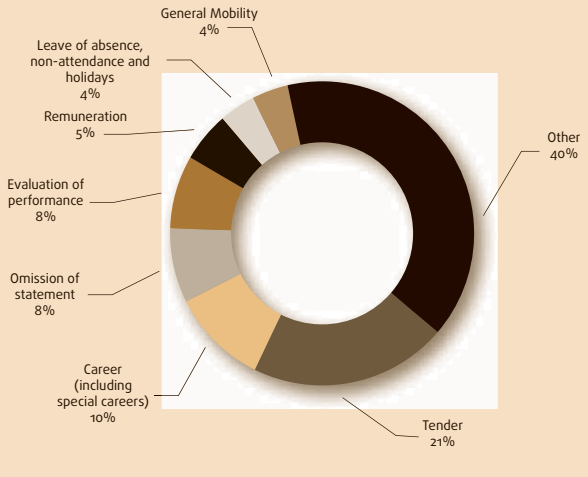
The **number of cases** of the Ombudsman's Office in this thematic group recorded **a slight increase, in 2009, in comparison with 2008 (3,7%),** with 721 cases distributed to Department.[1]

This increase, however, is not very significant, inclusively because 2009 constituted a turning point in the Portuguese Public Administration, with the entry into force, on 1 January 2009, of key legal diplomas such as Law no. 12-A/2008, of 27 February (LVCR), that establishes the regimes for the legal employment relationship, careers and remuneration of workers who exercise public duties (the majority of the provisions in this law only entered into force on 1 January 2009), and Law no. 59/2008, of 11 September (RCTFP), that approved the regime of employment contracts for persons fulfilling public functions. 2009 was also a transition year for civil servants: transition to the new regime of employment contracts for persons fulfilling public functions (that covers all workers who are not integrated in careers involving the exercise of sovereign functions or special powers of authority and who previously assumed the capacity as a civil servant or agent and were contracted in a regime of an individual employment contract, i.e. the vast majority) and, for many, transition to new general careers (from senior technical official, assistant technical official and assistant operational official).

Notwithstanding this context, we can affirm, on the basis of the number of complaints and their itemized breakdown by issues, that the procedural activity in this thematic group did not record major alterations when compared with previous years (except for 2007, which was an atypical year – see Reports to the Assembly of the Republic 2007 and 2008).

Indeed, we verified that, as in previous years, the highest number of complaints were associated to competitions (20,9%) and careers (10,4%) or corresponded to omissions in terms of making statements (8%), with few cases that raised questions related to the new regimes (legal employment relationship, careers or remuneration). Also, 2009 confirmed the previous trend (already noted in the 2008 Report) of an increase of the number of complaints related to the Integrated System of Management and Evaluation of Performance in the Public Administration (in 2009, 7,9% of all complaints, compared to 5,9% in 2008).

Subject of complaints



N = 721

a) Competitions

Having analysed complaints related to competitions, compared to previous years, we concluded that these pose **the same legal questions, often going against the grain of Case-law that has been built up over various years,** indicating absence of improvements in the manner in which the Public Administration guarantees the processing of competition procedures for the recruitment of workers and revealing less attention to the principles underlying the right to a just selection procedure.

Some of the key problems detected, in particular, given their greater predominance over recent years, include **adoption of admission requirements that have no legal basis**. The eligibility requirements that can be used for entry to a competition and the requirements established for the constitution of the legal public employment relationship are only those established in the law (see article 8 of the law establishing the regimes for the legal employment relationship, careers and remuneration of workers who exercise public duties (LVCR) and article 25, no. 1, of Administrative Rule no. 83-A/2009, of 22 January, that regulates the processing of competition procedures). In effect, the right of access to a job position in the Public Administration (whether corresponding to a basic level or access category), is a fundamental right, constitutionally enshrined within the category of rights, freedoms and guarantees, and therefore subject to the reservation of a restricted parliamentary law (articles 18, no. 2, and 165, no. 1, paragraph b), of the Constitution of the Portuguese Republic)[2]. **The creation of competition admission requirements and requirements for the constitution of a legal relation-**

1 This number includes cases redistributed to the Department while drawing up cases.

2 See the judgement of the Constitutional Court no. 53/88, of 08-03-1988, case no. 21/86, and the judgement of the Constitutional Court no. 683/99, of 21-12-1999, case 42/98.

ship, by means of an administrative regulation or act, is therefore constitutionally and legally prohibited[3].

On certain occasions, it is also found that the Administration does not separate these requirements from instrumental proof of compliance with eligibility requirements, and often establishes the requirement to establish a specific document as an eligibility requirement, at the periphery of the legal framework – even when this is only relevant in terms of ranking and selection.

It should also be noted that, on other occasions, the Administration establishes **document requirements that stand in breach of the law** (article 32 of the Law no. 135/99, of 22 April, in the wording given by Decree-Law no. 29/2000, of 13 March) and applies procedural norms that go against the grain of their legal duties (arising from article 10 of the Administrative Procedure Code (CPA) and which specifically forms the basis for article 28 of Administrative Rule no. 83-A/2009) interpreting them «in accordance with the principle of "in dubio pro actione"» (i.e. when in doubt, rule in favour of the action – the principle of favouring the case)[4].

The cases in which these questions arose include, for example, cases nos. R2536/09, R2537/09, R3817/09, R3930/09 and R5287/09.

b) Careers

Within the multiplicity of questions covered by the issue of careers, the key questions posed in 2009 concerned the transition to new careers and alterations of salary positioning, together with those related to updating salary supplements. Many of these complaints, however, are motivated by lack of knowledge, amongst workers, of the new applicable regimes, and were therefore finally closed due to lack of grounds.

These questions included complaints from workers who exercised functions included within the functional content of another career, distinct from that in which they are integrated, and also intended to be reclassified or even reconverted, while ignoring the fact that the law on the regimes for the legal employment relationship, careers and remuneration of workers who exercise public duties (LVCR) does not foresee any mechanism enabling definitive integration of a worker in a different career, that is equivalent to the professional reclassification specified in Decree-Law no. 497/99, of 19 November, revoked by the latter (see articles 59 to 61, 63, 116, paragraph b-a), and 118, no. 7 of the LVCR.

It has always been noted however that mobility between careers through a competition procedure has now been made more flexible. Indeed, the legal framework for public employment is no longer based upon a career system, and workers are now recruited in function of the need to fill specific job positions. As a consequence, anyone can apply to a competition procedure, even when pertaining to a different career, if they hold the necessary minimum level of qualifications and, when this is appropriate, qualification in the training area corresponding to the degree of functional complexity and category characterizing the job positions. The possibility is also admitted that an application may be made by someone who, while not holding the necessary qualifications, considers that he has the necessary and sufficient professional experience and training in order to substitute that qualification (see specifically, articles 4 to 7 and 50 to 52, all of the LVCR).

Also in relation to the question of careers, complaints were presented that raise questions of interpretation and, or, application of new regimes: e.g. cases of transition to new careers of workers of public institutes who have a legal employment relationship with the civil service and exercise functions in a regime of an individual employment contract or that, regardless of the nature of the previous legal employment relationship, exercise management duties in a regime of a service commission; and transition to the category of technical assistant (of the career with the same designation) of the main assistant specialists of the special career of support for investigation and inspection, of the Border and Immigration Service (SEF).

c) Omissions of statement

It is also important, in the present Report, to highlight the **high number of complaints** (recorded over recent years) **that may be generically aggregated under the subject «omission of statement»,** understood herein as including breach of the Administration's simple duty to provide information or a response to private individuals, but also a breach of the duty to make a decision (in the administrative procedure).

Specifically in relation to non-compliance with the duty to make an administrative decision, this often results from misunderstanding of its foundations by the Administration, wherein the latter, seeking protection from the presumption of tacit rejection (also called a negative tacit act), also attempts to impose a «discretionarity of silence»[5]. Nonetheless, and regardless of the legal debates concerning the existence and legal nature of a negative tacit act, legal doctrine and case-law agree that silence of the Administration, when there is a duty to issue a decision, constitutes an illegal omission.

3 See the Judgement of the 1st settlement Chamber of the CA of the TCA South of 11-10-2006, case no. 12917/03, and Judgement of the 2nd Chamber of the CA of the TCA South of 25-06-2009, case no. 05060/09, Judgement of the 2nd Administrative Litigation Sub-Chamber of the Supreme Administrative Court (STA) of 12-07-2005, case no. 0876/03, and Judgement of the 1st Chamber of the Constitutional Court no. 209/94, of 2 March 1994, case no. 31/91.

4 See the Judgement of the 1st Administrative Litigation Settlement Chamber of the Administrative Litigation Court/South of 05-05-2005, case no. 05374/01, and Judgement of the Supreme Administrative Court (STA) of the 1st Administrative Litigation Sub-Chamber of 30-04-98, case no. 041027.

5 Sérvulo Correia, «O incumprimento do dever de decidir» (Non-compliance with the duty to make a decision), in Cadernos de Justiça Administrativo, no. 54, Nov./Dec. 2005, p. 6 and p. 8.

Although the issue has not motivated a high number of complaints, it is also important to note - given their continuity, social relevance and gravity[6] (inclusively because in several cases, they constitute situations of precarious employment) –complaints related to **use by the Public Administration of other legal forms in order to incorrectly classify work relations**. In fact, complaints arise, in most cases, at the time of termination of functions or, as also takes place, are formulated by third parties; which can be explained by the fragility of these work relations. Situations of precarious employment include use by the Public Administration of insertion employment contracts and temporary work agreements, together with signature of service provision contracts or fixed-term employment contracts that fail to respect prevailing legislation.

Amongst the complaints related to application of the new regimes, there were two questions of interpretation and/or, application of the law on the regime of employment contracts for persons fulfilling public functions (RCTFP): the first resulting from the lack of specification of the continuous workday timetable, that to a large extent has been superseded, by the collective agreement on general careers; and the second deriving from article 185, no. 3 of the RCTFP, that specifies justification of absences due to the need to provide family assistance, motivated by the need for ambulatory treatment, without stating anything in relation to implementation of doctor's consultations and complementary diagnosis exams.

There was also an increased number of complaints in 2009 related to **non-compliance with norms on the protection of parental rights**, several generated within the framework of application of the previous legal diploma (protection of maternity and paternity) but which have extended over time, others already created within the framework of application of the new legal diplomas that foster protection of parental rights.

It was noted that the Public Administration has failed to respect the regime for protection of parental rights, thereby denying use of the corresponding right and creating barriers that are not permitted by law. This situation was noted in particular, in 2009, within the Security Forces.

The majority of cases of the Ombudsman's Office in issues related to «administrative organization and the public employment relationship» involved complaints against acts and omissions of services of the direct administration of the State (78,7%), in particular, amongst others, the services of the Ministry of Education (cited in 33% of complaints).

Furthermore this finding has also been noted in previous reports, and may have various causes, including the fact that the Ministry of Education is the biggest single employer within the Public Administration[7] and is also influenced by the weight of «circulatory rights», and successive alterations to the regimes applying to teaching staff[8].

In 2009, due to the fact that they involved various complainants, in addition to complaints on issues of the statute of the teaching career – e.g. performance evaluation transition to the new salary statute introduced in 2007, it is important to highlight the following complaints: (1) c**omplaints related to the competition for nursery school educational staff and primary-, middle- and secondary school teachers** for the academic year 2009–2010[9]; (2) complaints from teachers who, after requesting payment of overtime from the educational administration for the provision of teaching services in substitution of other teachers (substitution lessons), did not immediately obtain a response to their request.

3.3.4.1. Summary of several interventions by the Ombudsman

Case: R-2184/09 (A4)
Entity addressed: Sophia de Mello Breyner Schools Grouping
Subject: Competition for a fixed-term contract. Legal rules and principles. Non-validity of the competition. Derived invalidity of the origin of the contract.

Summary:

1. A complaint was presented to the Ombudsman by one of the candidates to the competition opened, on 08-04-2009, for a fixed-term contract of an assistant technical officer, in order to exercise functions in the New Opportunities Centre of the Sophia de Mello Breyner EB 2/3 school».
2. The following key problems were detected: i) absence of predetermined criteria; ii) failure to organize a prior hearing in either the admission stage or in the selection state; iii) failure to convene the candidates under the legally-required terms for an interview in order to evaluate competencies; iv) failure to homologate the classification and ranking list; vi) lack of notification of any decision procedure, either of the exclusion act

6 See, for example, Recommendation no. 4/B/2004, in the Report to the Assembly of the Republic 2004, in the link. http://www.provedor-jus.pt/restrito/rec_ficheiros/rec4B04.pdf

7 See statistical data in the Bulletin of the Observatory of Public Employment, in www.dgaep.gov.pt.

8 As took place with the regime of teachers' performance evaluation, regulated, in 2008, through regulatory decrees nos. 2/2008, of 10 January, and 11/2008, of 23 May, and, in 2009, through regulatory decree no. 1-A/2009, of 5 January, which added the guidelines transmitted by the Ministry of Education to schools, on 19 November 2009, on the regime to be applied to teachers who do not present a proposal of individual objectives.

9 Amongst other aspects, complaints from teaching staff deriving from the Staff of the Pedagogical Zone (QZP) of the Autonomous Region of Madeira (RAM) who, when applying to the competition, could not manifest preferences concerning the places to which they be assigned due to absence of the teaching component (case R3239/09); and complaints from applicant teaching staff for assignment due to specific conditions, who failed to be placed as a result of the alteration in order to satisfy the transitory needs of the schools (amongst other aspects, case R4866/09).

or the final ranking in the procedure, or the respective draft decision; vii) signature of the contract on the same day that the selection jury applied the second selection method and decided to contact the candidate it had chosen «in order to provide the candidate with the job position put up for competition», overlooking - on an outright and manifestly illegal basis - the right of administrative and judicial opposition against the decision taken in the competition. Evidence was also found of absence of concretisation of the legal grounds that justify addition of the term to the contract, and in connection thereof, of the stipulated duration of the contract.

3. After questioning the management body of the Schools Grouping in question, in relation to the questions raised, the latter expressed its willingness to redress the breach of legality. To this effect, it observed, specifically, that, given that the competition was vitiated by illegality from the outset, it would be impugned, due to its non-validity. In relation to the cause of termination of the contract prior to the end of the stipulated time period, it was emphasized that article 84 of the regime of the employment contracts for persons fulfilling public functions, seemed to configure the possibility of declaration of nullity, by the public contracting party, with the consequent «immediate suspension of enforcement of the contract, on those grounds»[10], and noted that the possibility of enforcing the contract via mutual agreement shouldn't be excluded, in view of the common understanding of the nature of the negotiating declaration of unilateral administrative statement on the validity of administrative contracts.
4. Finally, attention was drawn to the fact that, under legal terms, opening of the competition, for external recruitment of a worker with a fixed-term contract, presupposes observance of the applicable norms of Law no. 12-A/2008, of 27 February.
   For further details, consult the link.
   http://www.provedor-jus.pt/restrito/rec_ficheiros/OF_R2184_09.pdf

Case: R-5278/08 (A4)
Entity addressed: Directorate-General of Veterinary Sciences
Subject: Performance Evaluation. Law no. 10/2004, of 22 March, in particular article 3 paragraph and), article 8, no. 1, paragraph a); Regulatory Decree no. 19-A/2004, of 14 May, article 15; and also articles 123, no. 1, paragraphs c) and d), and 124, (all of the Administrative Procedure Code).

Summary:

1. A complaint was submitted to the Ombudsman's Office from a civil servant working at the Directorate-General of Veterinary Sciences for whom objectives had been set for the year 2007 and the respective evaluation had been carried out. However, the complainant claimed that no work had been distributed to him. The entity addressed never presented elements proving that the work had been carried out, but, in the meantime, maintained the evaluation that had been made. This position was maintained by the Minister of Agriculture, Regional Development and Fisheries.
2. Given that the evaluation should focus on the service that was effectively provided and in view of the applicable legal framework, the evaluation was not based on facts and therefore, on these grounds, is invalid.
3. In terms of definition of objectives/yardsticks to be used in the evaluation, it was verified that these were unclear and had not been duly substantiated.[11] On these grounds, it was defended that analysis of the objectives and their yardsticks would be sufficient in order to prove their inappropriateness in the context of the evaluation and the consequent lack of grounds for the evaluation.
4. The Ombudsman also stated that the performance evaluation system incorporates a provision that guarantees the possibility of subsequent homologation by the chief coordinator of the service, considering that the act of the Director-General of Veterinary Sciences who attributed and homologated the performance evaluation did not have the necessary validity, given that the author did not have the necessary competency.
5. On these grounds, the Ombudsman decided to censure the denounced administrative conduct.
   For further details, consult the link.
   http://www.provedor-jus.pt/restrito/rec_ficheiros/ANOT_5278_08.pdf

Cases: R4890/09 (A4) and R6455/09 (A4)
Entities addressed: Institute of Employment and Professional Training, I.P. (IEFP, I.P.) and Institute of Social Security, IP (ISS, IP).
Subject: Public Institutes. Former civil servants. Transition to the regime of the individual employment contract. Legal employment relationship. Transition.

Summary:

1. Complaints were presented to the Ombudsman, by employees of the Institute of Employment and Professional Training (IEFP, IP) and the Institute of Social Security (ISS, IP), who worked as civil servants on 31 December, 2008, and exercised functions in the regime of an individual employment contract, within the framework

10 See Maria do Rosário Palma Ramalho, *Direito do Trabalho, Parte II – Situações Laborais Individuais (Labour Legislation, Part II – Individual Labour Situations)*, July 2006, p. 186.

11 Reference may be made, for illustrative purposes, to the absence of a standard registration format for the work produced and the absence of parameters for gauging non-compliance, compliance or exceeding the objective.

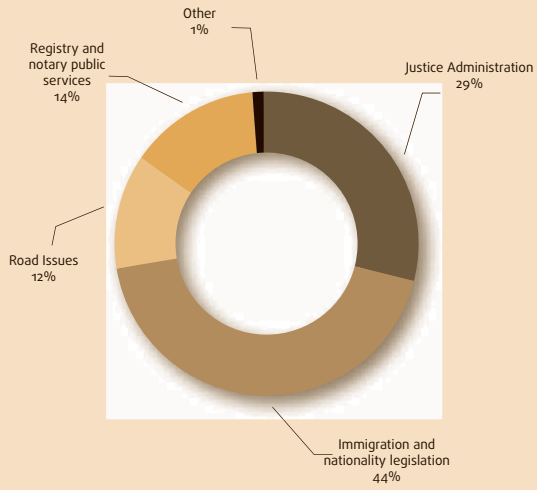
of the general mobility instrument specified in article 10, no. 2, of Law no. 53/2006, of 7 December (special assignment for exercise of functions in the same service in an employment contract regime). They aimed to ensure that the transition to the new careers and categories, carried out by virtue of application of the new regime on the legal employment relationship, careers and remuneration, approved by Law no. 12-A/2008, of 27 February, should refer to these functions and, specifically, to the higher remuneration earned as a result of exercising these functions.

2. It was concluded that, under the terms of the provisions established in articles 95 to 100 of Law no. 12-A/2008, that the transition to the new careers and categories shall be carried out in the basis of the career and category in which the workers are integrated on the date on which this transition takes effect (i.e. 1 January, 2009), as a result of which, for this purpose, the functions exercised in the regime of an individual employment contract, i.e. of a transitory nature, are not relevant. On the other hand, the new regime does not contemplate any figure of mobility that corresponds to the previous regime.
3. It was considered that the activity of the entities addressed did not deserve to be censured, and the cases were therefore closed.
   For further details, consult the links.
   http://www.provedor-jus.pt/restrito/rec_ficheiros/OF_R4890_09.pdf
   http://www.provedor-jus.pt/restrito/rec_ficheiros/OF_R6455_09.pdf .

Case: R-2368/09 (A4)
Entity addressed: District Hospital of Pombal, S.A.
Subject: Doctor. Leave of absence, holidays and absences. Parental leave. Article 16 of Decree-Law no. 89/2009, of 9 April, combined with article 51 of the Labour Code, approved by Law no. 7/2009, of 12 February, Law no. 4/2009, of 29 January and article 16 of Decree-Law no. 91/2009, of 9 April.

Summary:

1. A complaint was submitted to the Ombudsman by a doctor working at the District Hospital of Pombal, S.A., in relation to the exercise of his right to exercise parental leave.
2. The Board of Directors considered that parental leave should be used on a continuous or interspersed basis, but always for the full three months stipulated in the law prevailing at that time.
3. A Comment was drawn up stating that such situations stood in breach of the law prevailing at that time, and that the situation in question should be restituted, in accordance with the principle of material justice. In addition, in accordance with the provisions established in article 51 of the (new) Labour Code, combined with the other prevailing legal norms[12] the right to use the complementary parental leave, by the father, could be for the period that the latter considered most appropriate, up to a maximum of three months.
   For further details, consult the link.
   http://www.provedor-jus.pt/restrito/rec_ficheiros/REP_R2368_%2009.pdf



3.3.5. Department 5 - Judicial affairs, immigration and nationality legislation, road safety and traffic, registry services and notary public services

One fifth of all complaints formulated in 2009 to the Ombudsman (i.e. 1172 within a total of 6749) were sent to the Advisory Services sector that handles the issues identified above.

Viewing the year as a whole, special emphasis should be placed on the statistical relevance, in terms of its historical dimension, that is also connected to Portugal's presence in the Far East: the transcription procedures of births in the former Portuguese State of India. Even so, as was predicted in 2008, there was a substantial reduction in the number of complaints on delays occurring in the Central Registry Office. In these cases, an average of eight complaints were received per month, thus providing an annual total of 95 (compared to 818 in 2008). This was the main cause for the reduction in the number of cases (from 1544 in 2008 to 1172 in 2009) in this thematic group.

A second specific reference should be made about complaints from the district of Santarém (a total of 311). This surprising statistical surge was essentially due to

12 In addition to the norms listed in note 1, see other pertinent norms, either in the Labour Code, or in the legal diplomas designed to protect parentality.

requests from a single complainant (77 complaints corresponding to 6,5% of all cases in this thematic group), acting in the interest of hundreds of persons, the majority of whom do not reside in that district.

On the other hand, 2009 was also marked, as explained below, by the existence of an alarming set of problems in the visa-issue procedures adopted in the Consular Section of the Portuguese Embassy in Bissau, with clear implications on the level of complaints received and the number of open cases.

Finally, it should also be noted that a high percentage of complaints (around 13%) directly concerned the content of judicial decisions, and therefore did not give originate any diligent proceedings associated to drawing up formal cases, given that the Ombudsman does not interfere in judicial cases nor in issues that are being appraised by the courts. In these cases, the complainants are informed that disagreements in relation to judicial decisions should be manifested in the respective proceedings, under the terms of the legal provisions to which they are bound, and the cases were closed in the Ombudsman's Office without pursuing any other diligent proceedings.

Judicial affairs

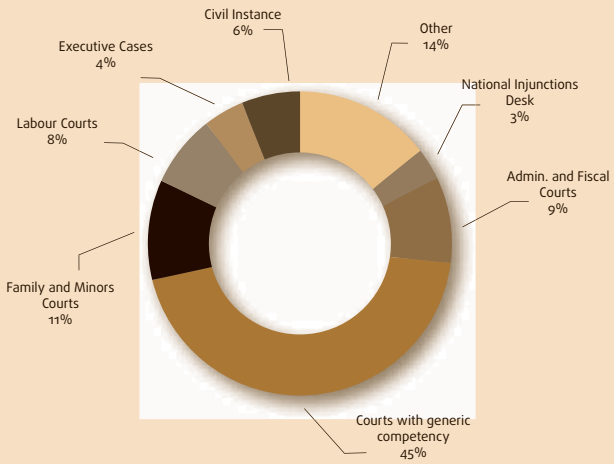
In terms of judicial affairs, there was also a statistically high number of complaints in relation to delays, in view of the limits of the Ombudsman's intervention in relation to judicial cases, as a result of article 22, no. 2, of the Ombudsman's Statute, which excludes sovereign bodies from the Ombudsman's powers of inspection, except for their administrative activity, and therefore in relation to judicial cases underway in the courts. As a result of this statutory requirement, the Ombudsman's intervention is restricted to administrative aspects. Complaints on judicial delays are guaranteed through the Supreme Councils of the Public Prosecution Service, of the Administrative and Fiscal Courts and of the Magistrature. In relation to the latter, it is important to state that communications of the Ombudsman concerning delays in judicial cases led the Supreme Council of the Magistrature to closely monitor the situation of the courts in question, within the framework of its attributions, with reportedly extremely positive results.

Mention should also be made of the positive collaboration provided by the Directorate-General of Justice Administration and by the Council of Justice Officials. (*see graph on Cases related to judicial delays*).

In total, delays in judicial cases led to 315 requests (around 27% of complaints in this thematic group) to be submitted to the Ombudsman.

Of these, 50 (i.e. 4,2%) were related to **judicial cases involving children** including, in particular, the Guarantee Fund of Alimony Payments due to Minors and other problems related to regulation of paternal power (e.g. visits, alimony payments and various forms of non-compliance), raising special problems that, purely for illustrative purposes, may be described in further detail.

Cases on judicial delays



In effect, notwithstanding the delays claimed in such cases, it was noted, in general, that the delays are not as accentuated as in other kinds of cases (e.g. inventories and bankruptcies that may take many years). It was also noted that the degree of intolerance of the interested parties in this aspect, as a general rule, is very muted, specifically when the cases involve maintenance payments to minors or when prior separation or divorce cases are underway in situations of litigation.

On the other hand, many complaints were related to **non-compliance with the payment of alimony payments**, generating great indignation and disgust at the incapacity to enforce court decisions on this matter. In these cases, it is sometimes possible to forward the interested parties to the Guarantee Fund of Alimony Payments due to Minors, created by Law no. 75/98, of 19 November, whose functioning is regulated by Decree-Law no. 164/99, of 13 May, which specifies that, when the person who is judicially obliged to provide alimony payments to a minor resident in national territory fails to pay the owed amounts, and the person receiving the alimony payments has net income below the national minimum wage, and does not benefit, in this context, from earnings from another person who acts as their guardian, the State will guarantee the benefits, until start of effective compliance of the obligation. Thus, whenever the requisites for attribution are satisfied, the Ombudsman informs complainants that they may request from the court establishment of provision of alimony payments at the responsibility of the aforementioned Guarantee Fund, in order for the court to set the benefits, in view of the economic capacity of the family household, the established amount of alimony payments

and the minors' specific needs. However it should be noted that forwarding such cases does not always imply that the problems will be resolved immediately, since the courts should pursue all diligent proceedings that are deemed to be convenient and, almost always determine implementation of inquests concerning the minors' needs.

A new problem in relation to the Ombudsman is related to the activity of **enforcement agents in enforcement cases**, regulated by arti les 801 and following articles of the Civil Procedure Code, in particular, in this context, confiscations made without first sending a summons to the person subject to the enforcement case (article 812-F of the same Code) - to the extent that this subject has inspired numerous complaints to the Ombudsman. In these cases, in addition to the diligent proceedings made to the solicitors responsible for enforcement cases (almost always with extremely positive results), an attempt is also made to inform the interested parties, amongst other aspects, that the jurisdictional control of the legality of acts of enforcement agents is specified, under the terms of the provisions established in article 809 of the Civil Procedure Code.

In 2009, complaints were also opened in relation to several delays in cases of labour courts (around 2%) and of Administrative and Fiscal Courts (also around 2%).

Also in relation to judicial questions, reference should be made to the fact that, in addition to individual complaints on **delays in the payment of fees due to attorneys** and intern attorneys for the services provided in the access system to the law and to the courts (1,1%), a statement was received on this subject from the Lisbon District Council of the Bar Association, subscribed by dozens of attorneys. In order to correctly ascertain the situation in question, and in compliance with the provisions established in article 34 of Law no. 9/91, of 9 April, that regulates the duty to hold a prior hearing with the entities addressed, the Institute of Financial Management and Infrastructures of the Justice System was consulted. In this regard, information was requested on the total amount of payments owed to legal professionals for the services provided in the framework of the access system to the law and to the courts, on the number of attorneys and intern attorneys who were owed any amount and also on the eventual existence of a payments plan. The Institute clarified that all expenses notes and fees received until that date had been settled in full, and that there were sufficient conditions in order to ensure that, in the future, there would be compliance with the provisions established in no. 1 of article 28 of Administrative Rule no. 10/2008, of 3 January, which determines that payment of the compensation due to legal professionals should be processed until the end of the following month. On this subject, it may be presumed (by the drastic reduction in requests from attorneys) that the situation is either fully regularized or to a large extent resolved.

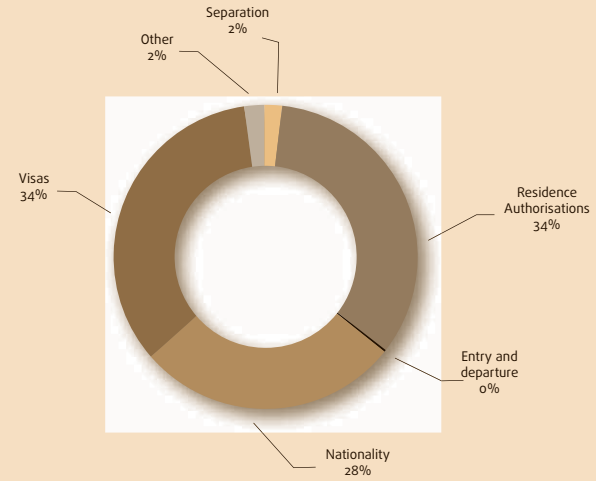
In relation to complaints received in regard to **disciplinary cases against attorneys**, and in view of the fact that these are subject to the exclusive disciplinary jurisdiction of the bodies of the Bar Association (article 109, no. 1, of the Statute of the Bar Association) and that the disciplinary action is governed by the precepts of the Statute of the Bar Association and Disciplinary Regulation and is exercised by the Supreme Council, either in a plenary session or via one of its chambers, and by the Councils of Deontology (article 1, no. 1, of the Disciplinary Regulation), the Ombudsman's intervention is restricted to ascertain whether or not any unjustified delay exists. This occurred in 15 situations (1,2%), wherein it is important to emphasise the accentuated and habitual delays verified in these cases.

Indeed, on the subject of disciplinary procedures against attorneys it is important to emphasise the **generalised non-compliance with no. 4 of article 146 of the Statute of the Bar Association**, which establishes that, as a general rule, the finding of facts within the case cannot exceed 180 days counted from the date of distribution, and in the event of the impossibility of obtaining information, from the Deontology Councils, on the likely deadline for reaching the decision of the cases. This question was already highlighted a year ago but there have been no significant developments in the meantime.

Foreigners' Rights

The delay verified in the decision of visa requests necessary in order to enable a **family to be re-united**, i.e. of the right of citizens with a valid residence authorisation to be re-united in Portugal with family members located outside Portugal, with whom they have lived in another country, that they depend upon or with which they cohabit, motivated around 34% of cases related to foreigners' rights.

Cases in relation to foreigners



Within the total number of complaints related to **delays in granting visas necessary for a family to be re-united**, 65% were related to the Consular Section of the Portuguese Embassy in Bissau (91 complaints), which demonstrates – as indicated above – the existence of a serious problem that motivated an intervention to the Visa Service Department of the Ministry of Foreign Affairs. This made it possible to conclude that the delays were caused, as a general rule, by the fact that the cases contained documents in which parts had been crossed out (thus impeding proof of the legal relationship of parenthood, under the terms of the provisions established in no. 3 of article 376 of the Civil Code) or wherein confirmation of documents by the Central Registry Office in Bissau was still pending, under the terms of the provisions established in no. 1 of article 540 of the Civil Procedure Code, to the extent that they raised well-founded doubts concerning the respective authenticity. Thus, while recognizing that the reasonable decision deadlines had been exceeded, the Ministry of Foreign Affairs invoked reasons of safety in terms of entry into the Schengen Area and the increased risk of illegal immigration in order to justify the need to confirm birth certificates and records. The Ombudsman considered that these grounds were reasonable.

Other justifications often advanced in order to deny visa requests are related to the insufficiency of financial resources of the interested parties, which led the Ombudsman to attempt to generalize the clarifications provided to interested parties concerning the regime established by Administrative Rule no. 1563/2007, of 11 December, offering a reminder that means of subsistence are considered to be the stable and regular resources which are sufficient for the essential needs of the foreign citizen and, where appropriate, his family, specifically for the purposes of foodstuffs, accommodation, health care and hygiene.

It should also be emphasized that in 34% of complaints on delays in enabling a family to be re-united, the entity addressed was the Consular Section of the Portuguese Embassy in New Delhi, which justified special attention in relation to the situation of that Consular Section.

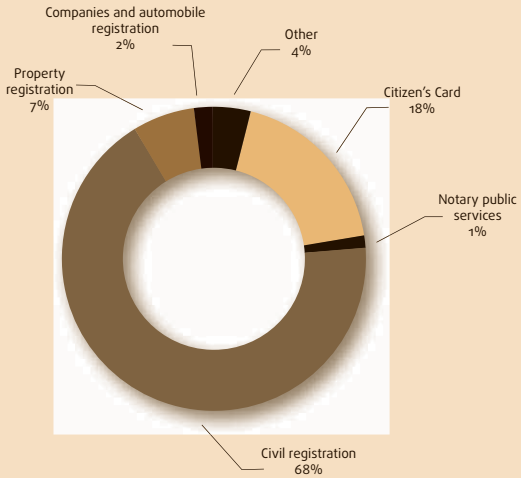
During 2009, around 28% of the cases in relation to foreigners concerned the Central Registry Office in relation to requests for **concession of Portuguese nationality, by naturalization**, within the framework of no. 1 of article 6 of Law no. 87/81, of 3 October (Nationality Law), in the wording given by Organisational law no. 2/2006, of 17 April. In effect, this legal provision, and also no. 1 of article 19 of the Regulation of Portuguese Nationality (approved by Decree-Law no. 237-A/2006, of 14 December) establishes that the Government will concede Portuguese nationality, by naturalization, to foreigners who are of majority age, or emancipated, in the light of Portuguese legislation, who have legally resided in Portuguese territory for at least six years, who have sufficient command of the Portuguese language and have not been convicted, with a sentence transited in *rem judicatum*, for a crime liable to a prison sentence of three years or more, in accordance with Portuguese legislation. The high number of cases involving this subject is also a sign of the stability of the permanence of foreigners in Portuguese territory, that is well worth noting.

In relation to cases involving the Border and Immigration Service (SEF), emphasis should be drawn to the fact that, in addition to **delays in the ordinary concession of residence authorisations**, there were 76 complaints concerning the decision of manifestation of interest, formulated within the framework of the provisions established in no. 2 of article 88 of Law no. 23/2007, of 4 July. It is important to emphasise that, given that this concerns official procedures (these cases are only initiated after a proposal from the Director-General of the Border and Immigration Service (SEF) or at the initiative of the Minister of Internal Administration), there is a major limitation on the Ombudsman's intervention which, as a general rule, is confined to delays in analysis of complaints regarding decisions that state the absence of a legal framework.

Registry services and notary public services

The following graph demonstrates the relative weight of each topic, in the field of registry services and notary public services.

Cases related to registry services and notary public services



As stated above, there has been constant reference over recent years to the question of **delays in the conclusion of thousands of cases involving transcription of**

birth certificates of individuals born before 20 January 1961, in Goa, Damão and Diu and, in 2008, there was a renewed approach to this issue before the Central Registry Office. Although the peak of complaints has been superseded, this topic also motivated 95 requests in 2009 (8% of the total within this Department), which led the Ombudsman to try to provide a new contribution in order to resolve these serious problems in terms of lack of certainty and security in the reconstitution of acts related to civil status, that also undermine secure entry into the Schengen Area and increase the risk of illegal immigration. Thus, having concluded for the need, in the cases of transcription of birth certificates for individuals born prior to 20 December 1961, in the former State of India, and after the Central Registry Office had demanded presentation of original copies of old documents from the Portuguese Administration that make it possible to establish the relationship of the interested parties with this territory, the Ombudsman recommended an urgent alteration to Decree-Law no. 249/77, of 14 June, in order to achieve legislative consecration of this requirement.

It is comforting to see that 75% of cases were related to registry services associated to transcription of birth certificates for individuals born in Goa, Damão and Diu.

The aforementioned historical connections, involving roots stretching back many centuries, are also responsible for unusual situations that are submitted to the Ombudsman for reasons that are not exactly of a judicial nature, but are related to questions of justice and equity. This was the case with a citizen who intended to acquire Portuguese nationality, given that he had been born in Cape Verde, did his military service in Portugal and had a legal employment relationship with the Portuguese army for almost 6 years. The particularity of this situation was essentially related to the requirement concerning legal residence in Portugal that is necessary for the naturalization request, but does not take into account the entire period of the legal employment relationship with the Portuguese Armed Forces. The diligent proceedings in relation to this case were not concluded in 2009, and therefore extended into 2010.

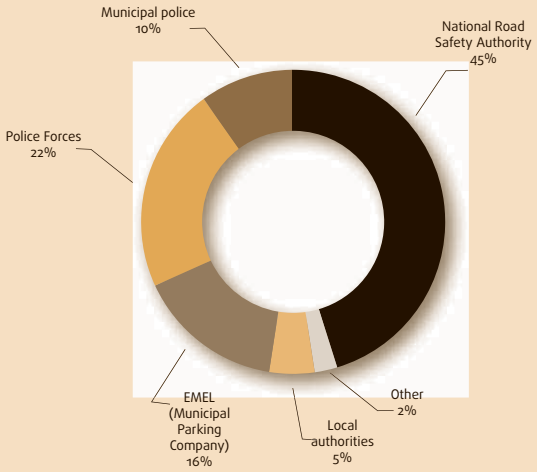
The 28 cases in relation to problems that arose in relation to the **issue of Citizen Cards** (2,2%) were handled directly with the Department of the Citizen Card of the Institute of Registry Services and of Notary Public Services, with highly satisfactory results that should be highlighted.

Road safety

The issue of road-related administrative offences generated around 7% of cases in this Department in 2009, with a total of 86 cases.

The main entity addressed in this regard is the National Road-Safety Authority. Complaints in relation to this authority primarily concerned two questions.

Road-related Administrative offences



On the one hand, complaints were related to the provision specified in no. 5 of article 172, of the Highway Code, which establishes that voluntary payment of a fine will terminate the respective administrative offence proceeding. In fact, although this is stated on the back of administrative offence records, many drivers are unaware of this regime, and, after paying the fines, unsuccessfully attempt to impugn the preparation of an official record by means of a letter sent to the President of the National Road-Safety Authority – whereas this possibility, as a general rule, is only available to someone who has made a deposit at the exact time when the record was opened. In these cases, the Ombudsman recognizes that the practice against which the complaint has been filed actually stands in conformity with the law.

The other main type of complaint, on the other hand, is related to the alteration of the practice which, for many years, was adopted by the Directorate-General of Road Traffic (which has now been replaced by the National Road-Safety Authority), to appraise all defence statements presented in administrative offence proceedings, even after voluntary payment of the fine.

In relation to less serious administrative offences, the Secretary of State of Civil Protection ruled on 17 March 2008, that after voluntary payment of the fine, the case should be closed and therefore the eventual defence statement should not be appraised due to absence of a subject. As in the previous situation, the Ombudsman is obliged to recognize that the law implies that voluntary payment of the fine determines, as a general rule, closing of the administrative offence proceeding.

Thus, in view of the prevailing legal and regulatory framework, none of the aforementioned procedures led to a comment made by the Ombudsman.
Complaints opened against the Institute of Mobility and of Land Transport were comparatively limited (21) and almost always concerned situations related to the issue of drivers' licences.

3.3.5.1. Summary of several interventions by the Ombudsman

Case: R-2262/09(A5)
Entity addressed: Institute of Mobility and of Land Transport (IMTT)
Subject: Motor-related disability/parking card. Article 2 of Decree-Law no. 307/2003, of 10 December. Rejection of a request for issue of a parking card for persons with motor-related disabilities.

Summary:

1. A complaint was presented to the Ombudsman against the rejection, by the IMTT, of a request for issue of a parking card for persons with motor-related disabilities, within the framework of Decree-Law no. 307/2003, of 10 December, formulated by a citizen suffering from a chronically obstructive illness and sleep deprivation syndrome.
2. Article 2 of Decree-Law no. 307/2003, does not authorize the issue of a parking card to persons whose motor-related disability does not have a direct effect on their upper or lower limbs, as a result of which the Ombudsman considered that there were no grounds for making a comment against the decision taken by the IMTT.
3. Broadening of the subjective scope of application of the norm to persons suffering from a motor-related disability of bodily functions, goes beyond the mere application of the law by administrative bodies and would situate the Ombudsman within the framework of options of a political nature.
4. Nonetheless the Ombudsman, recognized the relevance of the issue, in particular due to the serious repercussions that it has on the daily life of persons in underprivileged or unprotected situations, such as persons suffering from a disability, and therefore drew the attention of the Secretary of State Adjunct and of Rehabilitation to this subject.
   For further details, consult the link.
   http://www.provedor-jus.pt/restrito/rec_ficheiros/R_CH_2262_09.pdf

Case: R-2479/09(A5)
Entity addressed: Institute of Registry Services and of Notary Public Services (IRN)
Subject: Receipts. Itemised indication of a fine. Non-itemisation of the amounts charged for land registry on account of pecuniary sanctions.

Summary:

1. A complaint was presented to the Ombudsman due to the fact that the receipts issued by the Land Registry Office do not itemise the amounts charged for registration and for the pecuniary sanction levied due to exceeding the registration deadline.
2. This question arose as a result of the obligation to make a land registration and, in specific situations, of the obligation for this registration to be made by credit institutions, within a relatively short deadline. After exceeding this deadline, the person requesting registration is obliged to pay twice the amount, in the form of a pecuniary sanction.
3. The Ombudsman suggested to the IRN that the receipts issued should clearly itemise the portion corresponding to the amount of the registration, and the amount corresponding to the fine levied as a result of a delay in registration, together with the applicable legal norm.
4. The IRN communicated that it welcomed the viewpoint communicated by the Ombudsman and had already taken measures in order to alter the computer software applications in order to enable Land Registry Offices to issue receipts with express indication of the legal norm on the basis of which the pecuniary sanctions were levied.
   For further details, consult the link.
   http://www.provedor-jus.pt/restrito/rec_ficheiros/R_CH_2479_09.pdf

Case: 3042/09(A5)
Entity addressed: Institute of Financial Management and Infrastructures of the Justice System (IGFIJ)
Subject: Access to the Law and to the Courts. Attorneys' Fees. Processing of the compensation due to legal professionals at the end of the month after that in which the fact that determined such compensation occurred. No. 1 of article 28 of Administrative Rule no. 10/2008, of 3 January.

Summary:

1. Various complaints were presented to the Ombudsman in relation to delays in the payment of fees due to attorneys and intern attorneys for services provided within the access system to the law and to the courts.
2. In compliance with the duty to organize a prior hearing of the entities addressed, the IGFIJ was consulted

in relation to the total amount of the payments due to legal professionals for the services provided in the framework of the access system to the law and to the courts, on the number of attorneys and intern attorneys with any amount due to be received and also on the eventual existence of a payments plan.

3. The IGFIJ clarified that all expenses notes and fees received until that date had been settled in full, and that there were sufficient conditions in order to ensure that, in the future, there would be compliance with the provisions established in no. 1 of article 28 of Administrative Rule no. 10/2008, of 3 January.
4. The attorneys and intern attorneys who had submitted complaints were informed that in the event of persistent situations of delay in remuneration of the services provided within the access system to the law and to the courts they should communicate these situations to the Ombudsman.
   For further details, consult the link.
   http://www.provedor-jus.pt/restrito/rec_ficheiros/R_ANOT_3042_09.pdf

Case: R-5580/08(A5)
Entity addressed: Central Registry Office (CRC)
Subject: Concession of Portuguese nationality. Requirements. Legal qualification. Relevance of the fact of having committed a crime whose registration has been cancelled, within a case of acquisition of nationality. Extinction of the penalty. No. 1 of article 15 of Law no. 57/98, of 18 August. No. 5 of article 27 of the Regulation on Nationality.

Summary:

1. The Ombudsman was requested to intervene in relation to a case for acquisition of Portuguese nationality, underway in the Central Registry Office (CRC).
2. The question in this regard was related to the relevance attributed in a case for concession of Portuguese nationality, to a decision that had already been cancelled in the criminal record, under the terms of article 15 of Law no. 57/98, of 18 August and that had been obtained by consulting the file kept by the Criminal Investigation Police (PJ).
3. The Ombudsman considered that:
   a) Law no. 57/98, of 18 August, foresees definitive cancellation of decisions that imply penalties, and which thus corresponds to legal rehabilitation of a right, that automatically takes place, irrevocably, after the expiry of a specific period of time, without occurrence of a new conviction due to a crime in the meantime.
   b) In Decree-Law no. 352/99 of 3 September, that establishes the legal regime of the computing files of the Criminal Investigation Police (PJ), there is no specification of access for officials or coordinators of the central services of the registry services of the Institute of Registry Services and Notary public Services, in relation to information contained in the biographical file and persons sought by the Criminal Investigation Police (PJ).
   c) Case-law has progressively denied the possibility of attaching to a criminal case, the biographical file drawn from a computing file of the Criminal Investigation Police (PJ), and therefore the Ombudsman saw no grounds for establishing a different understanding in cases for the acquisition of Portuguese nationality underway in the Central Registry Office (CRC).
   d) Case-law has also rejected the possibility of using information cancelled within the criminal record, but obtained from a different channel, in a case for acquisition of Portuguese nationality.
4. Bearing all this in mind, the Ombudsman suggested reappraisal of the case for acquisition of nationality, in light of the aforementioned considerations.
   For further details, consult the link.
   http://www.provedor-jus.pt/restrito/rec_ficheiros/R_ANOT_5580_08.pdf

3.3.5.2. Sample cases that illustrate best practises Supreme Council of the Magistrature

The Ombudsman's intervention in relation to judicial cases is restricted to administrative aspects, and to eventual judicial delays, and is guaranteed via the Supreme Councils of the Magistrature, of the Public Prosecution Service and of the Administrative and Fiscal Courts.

The activity pursued by the Supreme Council of the Magistrature, after communications from the Ombudsman in relation to situations for which complaints were opened, constitutes an example of good practices observed in 2009.

In fact, the communications from the Ombudsman in relation to delays in judicial cases led the Supreme Council of the Magistrature to closely monitor the situation in the courts in question, within the framework of its attributions, with highly positive results.

On the other hand, clarifications are provided in relation to the situation of the judicial case against which a complaint has been filed and, when this is justified, on the grounds that may have led to a delay, which enables a full clarification to be provided to the complainant.

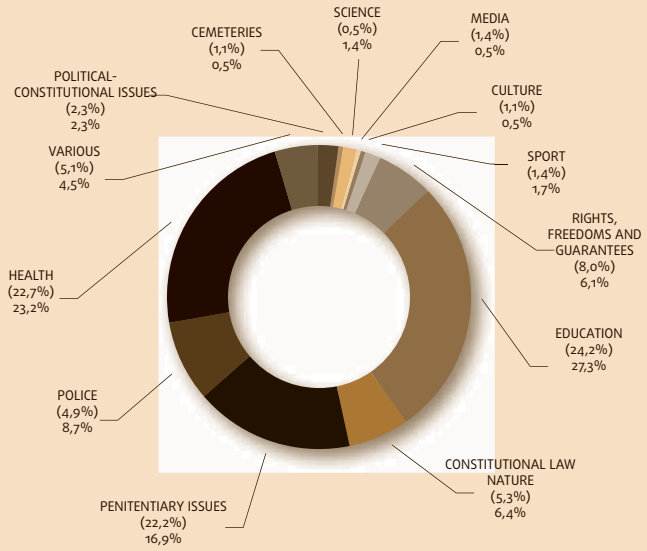
But on the other hand, whenever the Supreme Council of the Magistrature deems this to be necessary, it may also continue to monitor the situation and elimination of the judicial delay against which the complaint has been filed.

3.3.6. Department 6 – Political-constitutional affairs, rights, freedoms and guarantees, prisons and other detention centres, activity of the Security Forces, health, education, culture and science, media and sport

839 processes were distributed to this Department[1], corresponding to **growth of around 30% of the complaints in comparison with the previous year**. The pattern of complaints was in line with the trend recorded in the Institution as a whole, i.e. in terms of its evolution over the course of the year. Within the total no. of cases processed, 37% were opened in the first half of the year and the other 63% in the second half.

There was an increase in absolute terms of the number of cases in practically all issues handled by this department, with an additional 82 complaints concerning Education (+56%), 55 concerning Health (+39%) and 46 concerning the activity of the Police Forces (+170%).

There was also a clear increase in the number of complaints related to the **constitutionality of norms**, corresponding to an additional 23 cases, i.e. practically returning to the amount recorded in 2007.



(N = 661)
N = 839

The amount registered in 2008 is indicated between brackets.

1 This number includes cases redistributed to the Department after drawing up cases.

The slowdown in the number of **visits to prison establishments** experienced in 2008 was further intensified in 2009, partly due to the vicissitudes experienced by the Ombudsman. By contrast, there was an increase in the number of trips to educational establishments, as explained in greater detail below.

In addition to the formal recommendations issued during 2009, at the end of the year, the Ombudsman, reiterated its Recommendation no. 7/B/2007,[2] to the Assembly of the Republic concerning the system for setting compensation to be paid to local radio stations for allocating broadcast time within the framework of campaigns for national referenda. The Ombudsman also reiterated Recommendation no. 1/B/2003,[3] to the Government concerning the remuneration regime of judicial magistrates and of the Public Prosecution Service.

Inspections of constitutionality

In relation to inspections of constitutionality, three requests were presented to the Constitutional Court, all in the field of inspection by action. Two of these focused upon the modifications introduced by Law no. 2/2009, of 12 January, on the **Political-Administrative Statute of the Autonomous Region of the Azores**. This dichotomy was also found in the presentation, at the Ombudsman's initiative, of the question related to the legitimacy of creation of regional ombudsmen, even if only for specific sectors, and appraisal, at a broader level, of various legal solutions that were considered to stand in breach of the Fundamental Law, identified in the complaint.[4] A Judgement was also issued in 2009 that identified that both formulated requests were fully substantiated and well-founded.[5]

2 For further details, consult the link. http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec7B07.pdf

3 For further details, consult the link. http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec1b03.pdf

4 For further details, consult the link. http://www.provedor-jus.pt/restrito/requests_ficheiros/TC_Acores_FINAL.pdf and http://www.provedor-jus.pt/restrito/requests_ficheiros/DI_R283_09.pdf

5 For further details, consult the link. http://dre.pt/pdf1sdip/2009/09/18000/0659906616.pdf

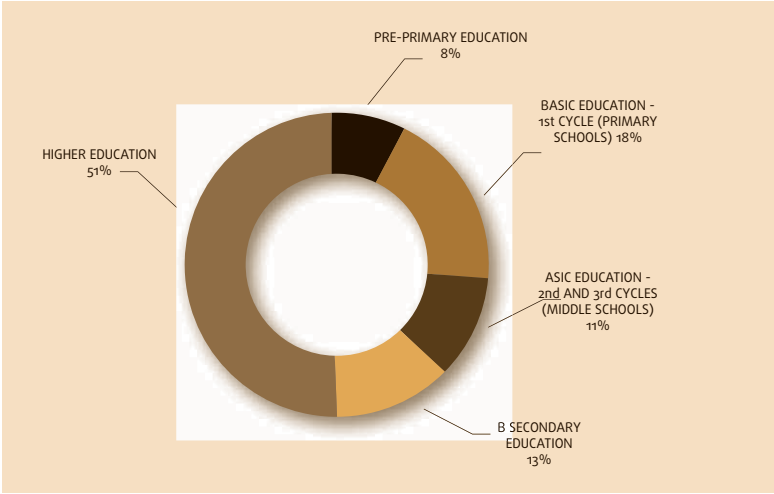
A third constitutionality inspection request was presented as a by-product of consideration of various complaints related to activity by local councils in relation to political party propaganda. Beyond concrete considerations of the unconstitutional nature of such acts, the Ombudsman was asked to make a declaration on the unconstitutional nature of the legal norm that empowered Mayors to apply fines in this field, given that the Constitution clearly requires intervention by an independent administrative body.[6]

In addition to the aforementioned case related to the indicated regional statute, another judgement was also published in 2009 in response to an initiative taken by the Ombudsman. This judgement denied the absence of well-founded grounds underlying the request for a declaration of the unconstitutional nature and illegality of the norms specified within articles 33 and 34 of Decree-Law no. 187/2007, of 10 May, in terms of the limitation on the maximum amount of the retirement pension.[7]

Judgement no. 494/2009,[8] was also issued in 2009, which did not result from an initiative taken by the Ombudsman, but nonetheless concurred with the position that the Ombudsman had previously, but unsuccessfully, defended before the Government. The Judgement declared the unconstitutional nature of legal norms that oblige «**special tax payments on account», from companies that have generated earnings which are exempt from paying Corporate Income Tax (IRC)**. (**Special tax payments on account** is a tax that companies within the general regime must pay. This tax corresponds to 1% of turnover (not profit) and is paid every year after the first 2 years of activity. The minimum payment is 1,250 euros and the maximum payment is 70,000 euros.) An identical position, in relation to this situation, and, mutatis mutandis, in relation to companies whose earnings were subject to the special rate of Corporate Income Tax (IRC), had been noted by the Ombudsman to the Minister of State and Finances together with the need to adopt legislative measures that would guarantee fiscal equity in such situations, in comparison with cases of application of the normal rate of Corporate Income Tax (IRC).[9] In situations in which it was decided not to present a legal action regarding the unconstitutional nature, it is important to underline one factor that led to over 10,000 people to file complaints - contestation of the normative solution of Law no. 12-A/2008, of 27 February, which converted, in the vast majority of cases, the previous legal employment relationship of nomination into the new figure of an employment contract, in order to exercise public functions. The reasons underlying this decision, which were impossible to communicate to such a large number of complainants, were made available in the Internet site of the Ombudsman.[10]

Education

There were a higher number of complaints related to the issue of Education. This phenomenon may be imputed to all levels of education except for Basic Education (primary and middle schools). There were also a higher number of complaints in two fields - implementation of the Education technology plan («e-escola» and «e-escolinha») and implementation of the new management regime for teaching establishments. (The «e-escola» programme was launched in June 2007 aiming at making laptops with internet broadband connectivity available to students, adult trainees and teachers; the «e-escolinha» programme was launched in 2008 and allows all children from 6 to 10 years old – about 500,000 students – to purchase a portable computer for €0, €20 or €50, depending on their benefit category in the social support system).



In terms of pre-primary Education, the number of complaints increased more than threefold, essentially related to registration in specific establishments or, on certain occasions, the vicissitudes of articulation between the public and social network, wherein complaints were filed on the alleged insufficient quality of the latter. In this context, visits to these establishments were used as the best means of re-establishing dialogue between the family and the school.

6 For further details, consult the link. http://www.provedor-jus.pt/restrito/requests_ficheiros/DI_R4862_08.pdf

7 For further details, consult the link. http://dre.pt/pdf2sdip/2009/05/095000000/1938919397.pdf

8 For further details, consult the link. http://dre.pt/pdf1sdip/2009/10/20600/0798707995.pdf

9 For further details, consult the link. http://www.provedor-jus.pt/restrito/pub_ficheiros/Relatorio_ Assembly_2008.pdf (Report to the Assembly of the Republic, 2008, pg. 734).

10 http://www.provedor-jus.pt/restrito/recficheiros/ R_2795_08M_informativa.pdf
The Constitutional Court, in its Judgement nº 154/2010, also issued a ruling with the same conclusion.

At the levels of **basic and secondary school education**, surprisingly, **there were a lower number of complaints related to Social Action**. This can be explained by the particular nature of the model adopted, based upon the level of family allowance, which means that calculation of social action is based upon all questions that, in both abstract and concrete terms, were addressed in the legal norms regulating attribution of scholarships and other benefits. As a result, the complaints that are now received, in general concern the conditions of compliance with the system, in the light of events that have occurred in the meantime, such as alterations in the composition or earnings of the family household (e.g. due to unemployment). By contrast, especially in terms of Secondary Education, there was a significant increase in the number of complaints related to evaluation, specifically in the National Exams and correction thereof.

Also at the level of Secondary Education, evidence was found in one school of the lack of corrective measures of the effects caused by a teacher who recorded a significant number of absences. Although the school alleged that no harm was done, the opposite conclusion was reached, by comparing the trajectory of the class in question with another class in the same school, and also with the situation in other teaching establishments. The Ombudsman recommended an increase in the level of teaching activities and this recommendation was implemented.[11]

In terms of Private and Cooperative Education, the Ombudsman decided to intervene in the conflict between a specific school and the State, in terms of the quantitative framework of the contract of association for a specific academic year. (A contract of association is signed between a school and the Ministry of Education, granting specific aspects of autonomy). It was verified that the maximum number of pupils covered had been defined late in the academic year, and a recommendation was made for consideration of the quantitative level that had been accepted in the previous year, together with measures to be taken to allow timely knowledge, by all schools within this regime, of the annually-established ceiling.[12] In response, the Ombudsman achieved a guarantee that such events would not reoccur in the future, and confirmed implementation of the conduct recommended in order to resolve the specific case.

There continued to be an excessive representation of complaints related to the field of Higher Education, however with a significant reduction in complaints related to equivalence or recognition of foreign qualifications, perhaps as a result of implementation of the mechanisms specified in Decree-Law no. 341/2007, of 12 October. By contrast, in terms of equivalent qualifications, several complaints were presented in the field of Secondary Education, and attention was drawn to the need for publication of the tables required by law, as a first step towards minimizing conflicts in articulation between various systems various, at both a qualitative and quantitative level.

Higher Education

Access	15	17,6%
Evaluation	9	10,6%
Social Action	16	18,8%
Fees	12	14,1%
Equivalent qualifications	8	9,4%
Other issues	25	29,4%

In terms of **social action in Higher Education**, it was rewarding to see enactment of Decree-Law no. 204/2009, of 31 August, of Recommendation no. 2/B/2007,[13] that ensured that foreign citizens in general are eligible to pursue studies, while identifying, as the limit, the possession of permanent residence, which in general requires five years permanent residence in Portugal. This effectively covers the vast majority of the so-called «second generation» of the immigration population. The prime objective of this initiative was to cover students who had studied in Portuguese primary, middle and secondary schools.

As in previous years, situations arose related to high amounts charged in the event of non-payment of tuition fees. The same position was communicated to the specific entities addressed, with positive results.[14]

As a result of the new regime of autonomy for schools, under the terms of Decree-Law no. 75/2008, of 22 April, several complaints were received in relation to designation proceedings of the Director of a Schools Grouping or of a school that does not pertain to a grouping. Several observations were made in relation to application of the legal regime in question, without detecting any grounds for declaring the non-validity of any election. Given the novelty of this new procedure, there was clearly a lack of resources in each Regional Directorate of Education in order to provide legal support for the activity of the General Councils of the schools groupings.

As indicated above, a number of visits were made during the year to teaching establishments, specifically to

11 For further details, consult the link. http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec5_A_2009(A6).pdf

12 For further details, consult the link. http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec_4A2009.pdf

13 For further details, consult the link. http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec2B07.pdf.

14 For further details, consult the link. http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec3B2009.pdf and http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec_08B09.pdf

pre-university establishments. Three visits were made to primary schools (1st Cycle of Basic Education), two of which had a pre-primary school attached, a further three visits were made to middle schools (2nd and 3rd Cycles of Basic Education) and one visit to a Secondary School.

The Ombudsman continues to monitor the **situation in the Colégio Militar**, (Basic and Secondary School ran by the Army) referred to in the 2008 annual report, concerning acts of violence perpetrated in the institutional relationship between pupils. Various proposals were formulated to the competent authority and a new visit was made to the Colégio Militar. We await the results of the measures taken, following the report drawn up by the inspection services of the Ministry of National Defence and the Ministry of Education.

Penitentiary Issues

The number of complaints related to functioning of the penitentiary system remained at the same levels recorded in previous years, but with significant changes in the key issues addressed.

FOOD	2	1,4%
ACCOMMODATION	9	6,3%
CORRESPONDENCE/TELEPHONE	6	4,2%
FLEXIBILITY OF THE SENTENCE	15	10,6%
OCCUPATION	3	2,1%
ORGANIZATION OF THE ESTABLISHMENT	6	4,2%
HEALTH	22	15,5%
SAFETY AND DISCIPLINE	17	12,0%
TRANSFER	28	19,7%
VIOLENCE	13	9,2%
VISITS	5	3,5%
OTHER	16	11,3%

A positive trend was the **decrease in the number of complaints related to unsatisfied requests to be transferred to another establishment**. While this topic continues to be the most frequent grounds for filing a complaint, it now represents less than 20% of all complaints received. Amongst the main grounds presented for making a transfer, in addition to achieving greater proximity to family members, safety risks were often alleged, sometimes related to debts originated as a result of consumption of narcotics. Given that these risks are real and the only alternative is isolation of the interested party, insufficient identification of the source of these risks, given the specific codes of conduct of the imprisonment regime, together with the systematic nature of drug consumption, make it difficult to propose a suitable solution. After closure of the Santarém prison establishment, there does not seem to have been continuity of the experience launched in this establishment, in the wake of the recommendation formulated by the Ombudsman, in 2003,[15] to use special wings for cases of increased protection.

The revision currently in progress - in terms of assignment of prisoners within the penitentiary system as a whole - may have lowered the presentation of transfer requests, first and foremost due to the creation of expectations in relation to future implementation of this system and application to each specific case. Also in terms of assignment, various difficulties were experienced in terms of correct forwarding of requests to enter therapeutic units, given the framework of concrete situations in the specific project of these units.

One of the main negative trends was **a significant increase in denunciations of acts of violence**, either perpetrated by penitentiary staff, or by the prisoners themselves, thus questioning certain actions, such as administrative omissions. The majority of complaints presented concerned the prison establishments of Monsanto, Carregueira, Santa Cruz do Bispo and Linhó.

There was also a **significant increase in the number of complaints related to health care access**, in general in terms of health care provided within the framework of the National Health Service (waiting lists for surgery or doctor's consultations) or dental care. In specific situations related to diabetes, on certain occasions the Ombudsman had recourse to the extremely open and helpful collaboration of the Portuguese Diabetes Association.

As mentioned above, as a result of the vicissitudes experienced in 2009, that seriously undermined the Ombudsman's global planning, significantly fewer visits were made to prison establishments. In comparison with the 17 visits made in 2008, only six visits were made in 2009, all made to central or special establishments. The Ombudsman hopes to overcome this deficiency in 2010.

The Ombudsman was delighted to see publication of the Code of Enforcement Prison Sentences and Imprisonment Measures, although many aspects will only be fully clarified after approval of the General Regulation specified in article 1, no. 2 of the Code. Attention should be drawn to the increase in the number of external control mechanisms, which have now been instituted or expanded, with decisive importance for gauging the use of suitable means of maintaining order and discipline.

15 See *3rd Report on the Prison System*, 2003, pg. 137. http://www.provedor-jus.pt/restrito/pub_ficheiros/Relatorio2003.pdf

National Health Service		**11**	5,6%
	Scope	4	
	Registration in a health centre	2	
	Connection between the health centre and hospital	5	
Attendance fees		**11**	5,6%
Sub-systems		**35**	17,9%
	Registration	19	
	Co-funding	16	
Provision of health care		**42**	21,5%
	NHS Hospital	30	
	Health centre	12	
	Contractualised Establishment	0	
Emergency assistance and transport of patients		**5**	2,6%
Installations		**0**	0,0%
Administrative Procedures		**64**	32,8%
Inspection and regulation		**4**	2,1%
Licensing		**0**	0,0%
Health authority		**3**	1,5%
Medication		**9**	4,6%
Other		**11**	5,6%

Health

Complaints related to Health issues increased by 33% compared to 2008, with greater focus on complaints related to attendance in hospitals and administrative procedures. Equally, although less relevant in quantitative terms, more complaints were filed in relation to emergency care, transport of patients and application of consultancy fees.

By contrast, fewer complaints were filed against the public health sub-systems, with greater emphasis on co-funded expense procedures. (See the following table).

In particular in relation to the health insurance plan for civil servants and their dependents (ADSE), the Ombudsman intervened and assumed a position in relation to various situations of general interest. First and foremost the Ombudsman censured the discount made in November 2008, from the 13th month of pension payments to pensioners, corresponding to all quotas that had fallen due, but had never been paid, due to lack of timely articulation with the Civil Servants Pension Scheme. Such discounts involved significant amounts and were made without any prior notice.

Equally, the Ombudsman pointed out the justice of adopting suitable administrative procedures in order to avoid differentiation in the co-funded amount, solely in function of the means of payment used, given that, in the case in question, beneficiaries who chose to make an advance payment of the totality of the expense suffered a comparative disadvantage in terms of subsequent reimbursement. Special emphasis was placed on the need to uphold transparency of procedures, in function of the relative and absolute justice of the co-funding process' end result. Also in relation to generic co-funding procedures, while avoiding criticism of the global solution defined in the respective table for supporting thermal treatment, a key advantage identified for this solution is that it does not undermine continuity of distinct treatments received in the wake of prior procedures, solely due to the fact that these were continued during thermal treatment and were supplied by the same concessionaire of the thermal spas.

In response to various cases of negative discrimination, including those involving pregnant women and blood donors, the Government's attention was drawn to the need to adopt solutions which guarantee correct consideration of beneficiaries of the health insurance plan for civil servants and their dependents (ADSE) as genuine users that are also full users of the National Health Service, without precluding the conventions subscribed to within the framework of the NHS.

Also focusing on the specific case of disarticulation between hospitals in the Lisbon region, the Ombudsman carefully monitored, with the competent Regional Health Administration, conclusion of works in order to establish a plastic surgery referral network, for correct forwarding of urgent situations.

In a related issue, three complaints were presented in relation to Law no. 37/2007, of 14 August, on anti-smoking measures. One of them concerned the legal regime itself, which was considered to be insufficient, while the other two cases concerned specific situations, one related to the alleged absence of inspection in the bar of a recreational association, and the other to the absence of procedures to combat illicit activities in the Portuguese Embassy.

Other Issues

Amongst the other issues handled by this Department, several complaints were filed on the **activity of municipal authorities concerning political propaganda,** due to the fact that several elections were held in 2009. In this framework, in addition to the request for successive abstract inspection of the constitutionality of the legal norm enabling sanctionary activity in this field, as cited above, there was also a desire to send a recommendation to various municipal councils where grounds for complaint were found in relation to either the prevailing regulatory text or the specific activity verified.[16]

Given that this may also concern fundamental rights, attention was placed on the legal norm established in Law no. 12-A/2008 which **as a general rule, prohibits signature of services provision contracts, by public bodies, with individual persons**. This solution was considered to lead to negative discrimination against professionals who, due to a legal imposition, cannot freely create a corporate body able to participate in such contracts, on an individual basis or jointly with anyone they deem appropriate. The most obvious case is that of attorneys, who can only exercise their profession in their own name or in partnership with other attorneys.[17]

Also in the wake of the legislative procedure that culminated in enactment of the aforementioned law and as a consequence of legal prohibitions, the question arose, in the same case, of the impossibility of involvement of trade unions that represent members of the Police Forces. The Government responded that, for evident practical reasons, this negotiation was pursued solely at the senior level of trade-union organizations i.e. confederations and federations. Without contesting this criterion, the Ombudsman nonetheless drew attention to the fact that, under the terms of the special norm that applies to them, trade unions for the Police Force are impeded from joining broader trade-union organisations. In this context, the Government's attention was drawn to the advantages of endowing useful meaning to the rights of the trade unions in question, as a result of their participation in this regard, thereby overcoming the negative and undesirable consequences that would result from the combined impact of the impediment in question and the legal norm that impedes the trade-unions of the Police Force from joining trade-union federations or confederations.

A recommendation was also made to the Government in relation to the legal regime governing so-called «total loss» within car insurance. Aware that, in this specific case, a court decision may overcome the most flagrant instances of injustice, a suggestion was made, in the abstract, to add to the possibility of decreeing total loss (i.e., payment of the market amount) the obligation for the insurance firm to present a vehicle available in the market, compatible with the characteristics of the vehicle that suffered the accident, at an equivalent price.[18]

In the field of discrimination, in this case in relation to access to Culture, a complaint was presented against the

16 For further details, consult the links
http://www.provedor-jus.pt/restrito/rec_ficheiros/rec_4B09.pdf
http://www.provedor-jus.pt/restrito/rec_ficheiros/rec5B09.pdf
http://www.provedor-jus.pt/restrito/rec_ficheiros/rec6B09.pdf
http://www.provedor-jus.pt/restrito/rec_ficheiros/rec7B09.pdf

17 For further details, consult the link. http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec1B2009A6.pdf

18 For further details, consult the link. http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec2B2009.pdf

practice, in a specific national monument, of charging differentiated admission charges, in function as to whether or not the visitor resides in the respective municipality. Having observed the pertinent norms, and although considering that such differentiation cannot be criticised *per se*, the municipality in question was informed that it was not possible to continue with the existing system, i.e. distinguish between residents on the basis of nationality, thus potentially excluding foreign residents, by demanding proof of their inclusion on the electoral register.

In relation to the **activity of the Security Forces**, there was significant, almost threefold, growth in the number of complaints, but this was partly the consequence of a low number of complaints in 2008. In relation to the content of complaints, it is important to emphasise two aspects.

First and foremost, it is important to note that the growth in the number of complaints against omissions that may be imputed to Security Forces is significantly higher than the number of complaints regarding the activity of the Security Forces. The phenomenon of insecurity, amongst other factors, also motivated complaints filed regarding rights that were considered to be undermined as a result of the joint activity of private individuals that stood in breach of the law and of the Police Forces, the latter resulting from insufficient or inefficient activity. Secondly there was major growth of complaints against the Police Force (PSP) in terms of application of legislation on weapons and explosives.

There was also a significant increase in the number of complaints related to the **scholarship concession procedures of the Science and Technology Foundation.**

3.3.6.1. Summary of several interventions by the Ombudsman

Case: R-1026/09 (A6)
Entity addressed: Directorate-General of Prison Services
Subject: Penitentiary system. Solicitor.
Object: Access conditions to prison establishments by a solicitor, in exercise of his functions. Decision: Formulation of a suggestion to foster greater recognitions of the rules that apply to solicitors.

Summary:

A complaint was presented in relation to the obstacles created to the entry of a solicitor to a specific prison establishment, in order to carry out a personal summons. Prior authorization from the director of the establishment was demanded, even though the solicitor was complying with a court order. In addition, a complaint was made against the fact that solicitors are not included within the legal norm that enables attorneys to enter prison establishments with a mobile phone when making a visit to the prisoner in question.

After consulting the management staff of the prison establishment, the latter denied that there had been an obstacle to entering the establishment, but nonetheless recognized that a significant delay had been caused to such entry, due to the fact that the staff members of the main gate were not aware of the rules applying to solicitors. It was also alleged that the professional nature of the visit by the interested party had not initially been clear.

Under these terms and in order to avoid future misunderstandings, a successful suggestion was made to place pertinent information in the main gate, in a clearly visible location, concerning rules on the implementation of visits and specifying that, certain persons, on grounds of their professional service, benefit from a special regime, such as a solicitor in exercise of his functions. This measure had the dual objective of alerting visitors for the need to demonstrate, from the outset, the reasons for their visit, while at the same time reinforcing clarifications provided to surveillance staff.

In relation to the use of a mobile phone, the requested modification of the prevailing legal norm – in order to expand the use of mobile phones within prison establishments - was not considered to be justifiable, since there is no parallel between the constitutional position of the attorney and that of the solicitor, in exercise of the rights of defence and the concomitant need to carry out diligent proceedings by telephone, either in the interest of the person that is being visited, or in the interest of other clients.

For further information, consult the links.
http://www.provedor-jus.pt/restrito/rec_ficheiros/ofR1026_09_EP.pdf http://www.provedor-jus.pt/restrito/rec_ficheiros/ ofR1026_09.pdf

Case: R-3109/08 (A6)
Entity addressed: Directorate-General of the Prison Services
Subject: Penitentiary system. Intimate visits.
Object: Limitations set on access to the regime of intimate visits, with discrimination in function of the type of prison establishment, in terms of civil status and legal-penal situation.
Decision: Formulation of proposals to the Directorate-General of Prison Services, with successful results.

Summary:

Since 2000 a programme of intimate visits to the Prison System has been formalized, functioning in a restricted number of prison establishments. Various complaints were presented in relation to this topic, focusing on the framework of the beneficiaries of the aforementioned regime, specifically the requirement for there to be a marriage between the visitor and visited person, when no such relation existed at the date of imprisonment. Viewed as a whole, these situations provided grounds for

a proposal to Directorate-General of the Prison Services to widen the regime of intimate visits:

a) to a higher number of prison establishments, and, if this is impossible, to ponder the use of installations that have currently been assigned, not only for the prisoners housed within the establishment in question but also for those housed in nearby prison establishments;

b) to relations that have not been officialised via marriage, provided that they are stable, even if initiated after the start of imprisonment;

c) to a broader group of beneficiaries, in order to encompass preventive imprisonment and persons condemned to prison sentences of less than three years. The first proposal was implemented, and it was indicated that the other two proposals would be contemplated within the new Code of Enforcement of prison sentences and imprisonment measures.

For further details, consult the link. http://www.provedor-jus.pt/restrito/rec_ficheiros/Ofic_ R3109_08.pdf

Case: R-3138/08 (A6)
Entity addressed: Government
Subject: Journalists' Statute. Freedom of expression and of creation. Of author's rights.
Object: Analysis of the constitutionality of the norms of articles 7-A, no. 4, and 7-B, nos. 3 and 4, of the Journalists' Statute, approved by Law no. 1/99, of 13 January.
Decision: Closure of the case, due to the consideration that the norms in question may be interpreted in conformity with the Constitution.

Summary:

The Journalists' Statute determines that journalists cannot oppose formal modifications made to their works by journalists who are their hierarchical superiors within the same editorial structure, provided that such alterations are necessary on grounds of the size of the article or grammatical correction.

The Ombudsman did not consider that this legal solution, as alleged in the complaint received in this regard, was of an unconstitutional nature, through violation of journalists' freedom of expression and freedom of creation, for the following reasons: the formal modifications cited in the law should be interpreted on a restrictive basis, in relation to the needs associated to the dimension or size of the text and its grammatical correction; the journalist may oppose any other modifications, of a formal or substantive nature, appealing, for this purpose, to the editorial board of the respective media body, the Commission of the Journalist's professional card, to the media regulatory authority (ERC), or in the final instance to the courts; the journalist is always entitled to oppose all and any modification, even when of a formal nature, if the modifications introduced undermine the work or affect the journalist's good name or reputation. In extreme circumstances, the journalist may refuse to associate his name to a piece of journalism in which he does not recognize his own authorship in the final wording or with which he does not agree.

For further details, consult the link.
http://www.provedor-jus.pt/restrito/rec_ficheiros/R_3138_08_1.pdf

Case: R-3423/09 (A6)
Entity addressed: Higher Institute of Engineering of Lisbon
Subject: Education. Higher Education. Access. De-bureaucratization.
Object: Requirement, by a public Higher Education establishment, for presentation of original documents in order to apply to a Master's Degree course.
Decision: Situation resolved after the Ombudsman's intervention.

Summary:

A complaint was presented against a specific public Higher Education establishment, because a candidate who intended to attend the Master's Degree offered in this institution, stated that he had been asked to present original copies of the documents included within his application. The candidate resides in the Autonomous Region of the Azores, and as a result was impeded from presenting his application.

The aforementioned institution was contacted, and the Ombudsman was informed that in similar cases, on an exceptional basis, submission of certified photocopies had also been permitted. Given that this solution would clearly be expensive in order to submit a simple course application, attention was drawn to the wording of article 32 of Decree-Law no. 135/99, of 22 April, established by Decree-Law no. 29/2000, of 13 March. The legal diploma establishes the general rule that simple photocopies of authentic or authenticated documents may be submitted, without prejudice to the possibility of requesting exhibition of original copies or certified photocopies in the event of a doubt.

This legal imposition was recognized, and the procedures were altered in conformity.

Case: R-4250/08 (A6)
Entity addressed: Ministry of Health
Subject: Health. Surgery. Referral.
Object: Non-existence of a referral network, in the Lisbon zone, for the specialist area of plastic surgery.
Decision: Monitoring of the situation until resolution of the detected omission.

Summary:

A complaint was presented in relation to the alleged consequences of late response to a case of amputated fingers. In the specific case, the injured person was ini-

tially sent to Hospital A, and then transported to Hospital B because this was the hospital service of his area of residence. Given that there was no plastic surgery team in the emergency service of Hospital B, He was then transported back to Hospital A. In response to the allegation that this delay had resulted in the impossibility of re-implanting the fingers, this allegation was denied because the health service did not normally make such re-implants in injured persons of a similar age to the person in question.

Given that it was not possible to dispute this affirmation, since it is the responsibility of medical science to make a statement in this regard, it was noted that, even if this were the case, the delay in treatment and uncertainty in relation to the possibility of carrying out a re-implant had undoubtedly caused unnecessary physical and psychological suffering.

In abstract terms, there was clearly a lack of suitable coordination between the various Hospital services, and this fact was communicated to the Regional Health Administration of Lisbon and the Tagus Valley. The Ombudsman was informed, in response, that referral between the health services was being studied, covering various specialist areas. This situation will therefore be monitored until the end of this process, subsequently confirming suitable knowledge of the established rules with the hospitals involved.

For further details, consult the link.
http://www.provedor-jus.pt/restrito/rec_ficheiros/OF_R4250_08.pdf

Case: R-5296/08 (A6)
Entity addressed: Ministry of Education
Subject: Education. Obligatory schooling. Free provision.
Object: Requirement, by a primary school (1st cycle of Basic Education), of payment of the school registration book and contribution to expenses.
Decision: Situation resolved through intervention by the Ombudsman.

Summary:

A complaint was presented against one primary school (1st cycle of Basic Education), because it demanded, at the time of matriculation, payment of the school registration book, and refused to issue a receipt. It also charged the amount of € 15, for an alleged «school box».

After consulting the Schools Grouping to which the aforementioned teaching establishment pertains, the Schools Grouping argued that this amount was designed to cover the cost of the document under appraisal, given that the Ministry of Education's Stationery Service (EME) does not provide it free of charge. In relation to the other amount under appraisal, it indicated that this was the result of a free decision taken by parents and guardians, intended to cover expenses related to photocopies and traditional festivities.

The Ombudsman considered that, although the amount in question was minimal, there was no legal basis for passing on the cost charged for the Pupil's Registration Book, since this stands in breach of the principle of free provision of obligatory schooling, as specified within the Foundation Law of the Educational System, in relation to the prohibition on demanding «tuition fees, and duties and fees related to matriculation, attendance and certification, within the framework of Basic Education» (see article 6, no. 5).

In relation to the parental donation and/or contribution, the Ombudsman did not oppose this situation, provided that it is genuine and taken on an informed and voluntary basis, but suggested that:

a) at an opportune moment, information should be provided on the voluntary nature of this contribution, with succinct information on the various activities and materials whose costs would thereby be covered;

b) there should be an express statement and clarification that there would be no individual damages in the event of refusing to pay this amount;

c) there should be an express statement of the indicative nature of the indicated amount, and that lower contributions or contributions staggered over time would also be accepted;

d) a receipt should be delivered for any amount charged, with indication of the its voluntary character and the purpose for which it was intended;

e) information should be posted in the School or made available in the Internet concerning the projects and activities already implemented as a result of the funding provided by these contributions, which would not have been possible without such assistance, with accounting-type data enabling parents and educational guardians to understand the manner in which such amounts had been spent.

These suggestions were accepted.

For further details, consult the link.
http://www.provedor-jus.pt/restrito/rec_ficheiros/Ofic_R5296_08.pdf

3.3.7. Autonomous Region of the Azores - Local Office of the Ombudsman

In 2009, 101 complaints were presented to the Local Office of the Azores of the Ombudsman's Office - a 6% increase in relation to 2008, when 95 complaints were submitted.

Of the 107 cases closed, 17% were resolved in a manner that satisfied the objectives of the complainants, wherein half of these situations resulted directly from the Ombudsman's intervention. 50% of the complaints submitted were closed due to lack of legal grounds

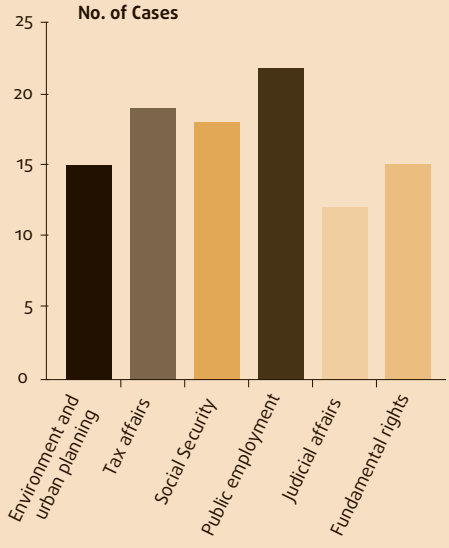
Autonomous Region of the Azores

for the invoked objective. 18% of the complaints were closed due to grounds that may be imputed to the complainant, either due to a lack of response to the request for clarifications, or due to withdrawal of the complaint.

Around half of the universe of entities against which complaints were filed corresponded to the Autonomous Regional Administration (47,5%). There was also a significantly high number of complaints presented against the direct and indirect services of the Central Administration, (24%). Complaints against sovereign bodies and services in the area of the Justice administration corresponded to 7% of the total. Around 18% of complaints were opened against the local municipal administration, wherein the municipal councils of Ponta Delgada, Angra do Heroísmo and Horta received the same percentage of complaints (around 15% each, the former with 4 complaints and the other two councils with 5 complaints each). The number of complaints against private entities was extremely low (2,7%).

Complaints presented from the island of São Miguel continued to increase (43, in 2007; 52 in 2008 and 57 in 2009); there were 78 complaints from the island of Terceira in 2009, compared to 85 in 2008 and 63 in 2007. The number of complaints from the island of Faial stabilised (8 in 2007, 14 in 2008, and 14 in 2009), wherein it is clear that the number of complaints associated to the reconstruction procedure in the wake of the 1998 earthquake is no longer statistically significant.

No. of Cases opened per year, per area



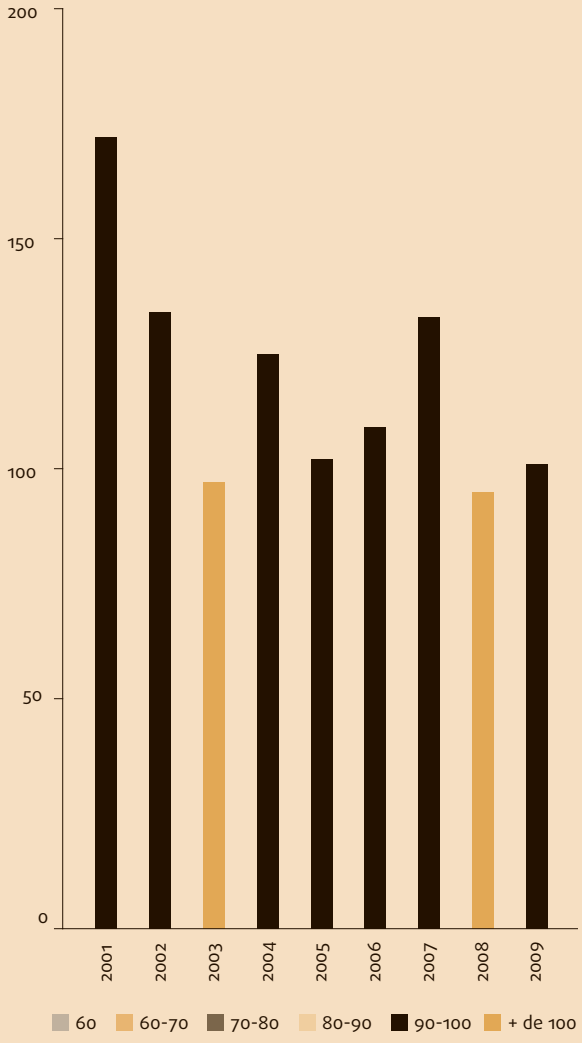
Women represented 28% of all individual complainants; while corporate bodies represented 7% of all complainants.

The legal public employment relationship, considering the three public administrations as a whole, was associated to around 25% of the total number of complaints submitted to this Local Office.

Environment, territorial planning and urban planning were responsible for 17% of complaints, followed by the areas of social security (11%); Justice Administration (10%) and tax affairs (7%). Complaints were also opened in residual areas such as health, that had 2 complaints in 2009 (1 in 2007 and 4 in 2008). Nonetheless, a special ombudsman for health users was set up in 2010 (Resolution of the Regional Government nº 32/2010, of 4 March).

In the last three years there has been a downward trend in the number of complaints presented in person (44, 37 and 32, respectively, in 2007, 2008 and 2009). In 2008 and 2009 there was a significant increase in the number of complaints submitted in writing (2008: 57 - of which 3 were submitted by electronic means; 2009: 69, of which 13 were submitted by electronic means).

Evolution of Cases - Local Office Azores 2001-2009



The activity of the Local Office of the Azores continued to cover the various Departments of the Ombudsman's activity in 2009.

Concerns in relation to the topics of the environment, territorial planning and urban planning led diligent proceedings to be pursued in relation to questions on water supply waste residues and salubriousness, and also noise. The question of whether urban planning operations are in conformity with municipal master plans has begun to generate an increasing number of complaints. It should be remembered that municipal master plans (PDMs) were implemented in the Azores much later than in the rest of Portugal. Reference was also made to building works that lacked planning permission and lack of inspection by local authorities. The inspection powers of local authorities in relation to issues of salubriousness and safety also led to a suggestion made to a local authority.

For further details, consult the link.
http://www.provedor-jus.pt/restrito/rec_ficheiros/Anot_R4579_08.pdf

In relation to tax affairs, the complaints received in the Local Office did not tend to focus on the decisions taken by the tax administration, but rather the respective consequences, i.e. the tax administration had recognised that the individual taxpayers were right, but the respective tax amounts that had been unduly charged were not restituted to them. Nonetheless, in a specific case, the Ombudsman had the opportunity to make a statement on alleged double consideration of the ageing criterion in relation to municipal property tax.

For further details, consult the link.
http://www.provedor-jus.pt/restrito/rec_ficheiros/Anot_R2421_07.pdf

Complaints were opened primarily against the alterations that have occurred in the legal regime of social security, specifically, in relation to family benefits and deferred benefits.

Modifications that have occurred within the framework of the legal public employment relationship also motivated the highest number of requests for intervention by the Ombudsman, considering the Central, Regional and Local Administration. But other questions were also addressed. In this regard, the Ombudsman made statements on issues related to counting time of service, in the case of transfer from the regional administration to the central administration. It also addressed, in the area of education, the question of provision of support to pupils; and, of special regional relevance, a complaint was appraised on rejection of a request for integration in the island's new regional permanent staff.

For further details, consult the link.
http://www.provedor-jus.pt/restrito/rec_ficheiros/Anot_R5926_08.pdf

Finally, for cases related to judicial activity, the majority of complaints were filed against judicial delays, also including - given that they fall within the competency of the respective area - delays in the appraisal of cases for concession of nationality and questions related to registry services.

3.3.7.1. Summary of several interventions by the Ombudsman

Case: R-2421/07 (Azores)
Entity addressed: Angra do Heroísmo Tax Office
Subject: Municipal Property Tax (IMI). Ageing coefficient. Dual consideration.

Summary:

The complainant requested the Ombudsman's intervention, because he considered that his interests had been harmed as a result of the terms of application of the ageing coefficient in the evaluation of his dwelling by Angra do Heroísmo Tax Office.

1. The complainant owned a house built in 1935, that underwent improvement works in 2005. He considered that the ageing coefficient should only take into account the actual age of the building, in function of the construction date, and not consider the improvements introduced in 2005, given that these should be considered in other headings, namely, in calculation of area (A) and quality (Cq), because otherwise there would be dual consideration of the same factors. If this understanding had been followed by the tax administration, a coefficient of 0,45 would have been applied rather than the coefficient of 1,00 that was effectively applied.
Invoking article 44 of the Municipal Property Tax Code (CIMI), he stated that the Cv should be applied, on a taxative basis, to 2 distinct types of situations: a) Buildings with planning permission license (the first part of the legal norm); b) Buildings without planning permission license (the second part of the legal norm).
In relation to buildings without planning permission license, there is no doubt that one should consider the date of the respective construction, but this does not apply to the first segment of the norm.
If one fails to consider the antiquity of the building, it is impossible to distinguish for fiscal purposes, valuation between the newly constructed building and the existing building, with a recent planning permission license granted due to restoration, conservation or expansion works.
In a new building, the complainant also suggested that a planning permission license corresponds to the construction date, thereby ensuring an identical date between the antiquity of the building and the respective utilisation permit. But in relation to an existing

building, that has been subject to improvement and expansion works in the meantime, it is necessary to distinguish between the respective antiquity, identified by the construction date, to be evaluated by the coefficient Cv and the «improvement and expansion» to be evaluated using other coefficients; that of alteration of the building (expansion in A) and of quality (improvement in Cq).

In other words, the ageing coefficient should evaluate the antiquity of the building; when this does not coincide with the date of issue of the corresponding planning permission license, and therefore other coefficients should be used to value works that justified the issue of the latter planning permission license.

In summary: if the building is new and has the respective permit, the Cv for the date of the permit should apply; but if the building is not new and has been subject to building works that were not subject to a planning permission license, the Cv associated to the original construction date should apply; if the building is not new and has been subject to expansion and improvement works subject to a planning permission license, the coefficients related to the areas and quality should apply, but the coefficient Cv associated to the original construction date should apply, i.e. that related to its initial construction rather than the date of subsequent works.

2. Is important to note here that, as a result of article 93 of Law 64-A/2008, of 31 December, a second item (no. 2) was added to the aforementioned article 44 of the CIMI which specified that «(In) buildings subject to expansion works, the rules established in the previous number shall apply, respectively, in accordance with the age of each part».
3. Consultation with the tax administration provided the following clarifications, in conformity with the same article 44 of the CIMI.

   a) no doubts arise when the date of issue of the utilisation permit coincides with the date of conclusion of the construction works.

   b) In the case of old buildings subject to restoration/conservation works which do not require issue of a new utilisation permit, in this case the age of the buildings is counted from the date of the original construction works.

   c) in the case of old buildings that have been subject to expansion works, in order to determine the asset-based age of the old part (the original building) this will be counted from the date of the utilisation permit when this exists or from the date of conclusion of the building works and the age of the most recent part will be counted from the date of the utilisation permit when this exists or from the date of conclusion of the building works. If as a result of the expansion works, a utilisation permit is issued for the totality of the building, the age will be counted from the date of issue of this utilisation permit.

   d) Finally, in the case of issue of a utilisation permit for legalization of buildings for which a utilisation permit was not issued at the date of their conclusion, the age of the buildings would be counted from the date of conclusion of the original construction works.
4. The Ombudsman considered that existence of «construction works» was a decisive factor for the purposes of use of the ageing coefficient (see, in relation to the concept of construction, paragraph a) of no. 1 of the legal regime on urbanization and construction, republished, most recently, by Law no. 60/2007, of 4 September). In the final analysis, the existence or non-existence of such works shall determine the valuation of the building.

   Consideration was also made of the fact that in order to determine the quality and comfort coefficient (article 43 of the Municipal Property Tax (IMI)) the fact that the element, «deficient state of conservation» is mentioned does not imply that there is dual consideration of the ageing factor. While in article 43 this was an element that lowered the amount to be determined, in terms of the ageing coefficient, the construction works implemented, regardless as to whether or not a planning permission license was issued, would be factors that would increase the valuation of the building (furthermore the very concept of ageing includes not only age and antiquity, but also deterioration over time, which is interrupted by the building works).
5. To this extent, the decision of the Angra do Heroísmo Tax Office stood in conformity with the law.

   For further details, consult the link.

   http://www.provedor-jus.pt/restrito/rec_ficheiros/Anot_R2421_07.pdf

Case: R-5926/08 (Azores)
Entity addressed: Regional Health Directorate of the Regional Government of the Azores
Subject: Human Resources. Integration in the island's regional permanent staff. Exercise of functions in a public business entity.

Summary:

1. A complaint was presented against the Regional Health Directorate of the Regional Government of the Azores based upon a disagreement in relation to a decision taken by that administrative service which rejected a request aimed at integration of a worker in the permanent staff of the island of the Pico, in a situation of definitive nomination.

   This objective was based upon the provisions established in Regional Legislative Decree no. 26/2008/A, of 24 July, which adapted Law no. 12-A/2008, of 27

February to the Regional Public Administration of the Azores, establishing the regimes of the legal public employment relationship, careers and remuneration of workers who exercise public functions.

The regional diploma specifically established rules that led to maintenance and conversion of the legal public employment relationship, to integration in the regional permanent staff of the island of workers in situation of precarious employment and who have performed functions corresponding to the permanent needs of the services.

2. Having performed functions, since 2005 until 2008, in Hospital x, and since 2008, in the Health Centre y, in both cases in a regime of an administrative supply contract, the complainant considered that he was in a suitable condition to benefit from the regime specified in no. 1 of article 8 of the aforementioned regional diploma.

   By contrast, the autonomous regional administration considered that exercise of functions in that health unit should be considered as an interruption, from the date of transformation of the region's hospitals into public business entities, i.e. from 1 January 2007, the date of entry into force of the alterations introduced to the statute of the Regional Health Service by the Regional Legislative Decree no. 2/2007/A, of 24 January.
3. The complainant would nonetheless be covered, by the case of regularization specified in no. 6 of the aforementioned article 8 of the regional diploma adapting the national regimes of the legal public employment relationship and careers.
4. The question to be resolved was thus related to the time of service provided in Hospital x: should it be counted for the purposes of integration in the permanent staff of the island?

   The response had to be negative

One could argue, firstly and foremost, that the simple reference to the autonomous regional administration, in relation to the regimes of the public employment relationship, careers and remuneration clearly suggested that this solely concerned the direct autonomous regional administration.

A decisive factor in this regard was that the regional diploma adapted Law no. 12-A/2008, of 27 February which, in no. 3 of article 5 expressly states that the legal diploma does not apply to public business entities.

Now, by virtue of the aforementioned regional diploma of 2007, Hospital x was converted into a public business entity, therefore excluding application of the regional adaptation to the respective workers.

It was concluded that there was no illegality in the decision of the administrative service in question.

For further details, consult the link.

http://www.provedor-jus.pt/restrito/rec_ficheiros/Anot_R5926_08.pdf

Case: R-5901/07 (Azores)
Entity addressed: Regional Directorate of Communities
Subject: Teaching work. Non-teaching component. Overtime Service.

Summary:

In addition to the teaching component, the teacher/complainant accompanied pupils covered by special educational plans, corresponding to a total of 14 pupils. These were pupils with learning difficulties who need special monitoring. One of these pupils was deaf, another had psychomotor difficulties (which implied a support teacher within the classroom).

The teacher considered that this work, by its intrinsic nature, fell within the concept of remunerated work, and should therefore be viewed as overtime work.

After consulting the government department responsible for education, the Ombudsman was informed that, in the situation under appraisal, the respective service consisted in monitoring specific needs detected on a one-off basis in the learning process of a discipline (monitoring of study of the practical aspects of the respective discipline) but did not constitute a lesson in its own right, and therefore should be viewed as a non-teaching activity. It also added that, in the majority of the time claimed as overtime work, no service had been provided (the pupils only actually attended 4 of the 11 indicated support activities).

Consideration was made of the provisions established in the Statute of the Teaching Career in the Autonomous Region of the Azores (ECDRAA), approved by Regional Legislative Decree no. 21/2007/A, of 30 August. In this legal diploma, article 117 (weekly duration) establishes that (1) - teaching staff exercising functions is obliged to provide 35 hours of service per week and (2) - the weekly schedule of teachers includes a teaching component and a non-teaching component pursued over the five working days of the establishment.

The teaching component includes, under the terms of article 118 of the ECDRAA, in addition to (i) lessons administered to pupils pertaining to classes attributed to the teacher, (ii) systematic educational support, understood to include support corresponding to the provision of duly-prepared teaching services with previously defined objectives to a specific and nominal group of pupils and (iii) substitution lessons resulting from the need to overcome unforeseen short-term absences.

The non-teaching component for teaching staff (article 121 of ECDRAA) includes implementation of individual work and the provision of work at the level of the educational or teaching establishment. At the level of the educational or teaching establishment, this component should be included within the respective pedagogical structures in order to contribute towards implementation of the school's educational project and full satisfaction of the educational needs of the pupils.

In view of the content of the non-teaching component, in accordance with the terms specified in no. 5 of article 121, the Ombudsman concluded that, provided that the limits on the teachers' working week were respected, and bearing in mind that the distribution of teaching services is the responsibility of the school's executive council (see the main body of the text of no. 5 of article 121 of the ECDRAA), the attribution and performance of individual support functions to pupils, under the terms described in the legal diploma, was included within the legal definition of the non-teaching component, and therefore no illegality existed.

Case: R-4579/08 (Azores)
Entity addressed: Lajes do Pico Municipal Council
Subject: Dogs. Capture, kennelling and slaughter.

Summary:

The complaint received was based on the allegation that suitable procedures were not being guaranteed for the capture of Dogs, whose aggressive behaviour was a factor of risk for the safety of persons and animals.

Lajes do Pico Municipal Council was the entity addressed, given the competencies specified in paragraph x) of no. 1 of article 64 of Law no. 169/99, of 18 September (capture, kennelling and slaughter of dog and cat species) and no. 1 of article 19 of the legal diploma that regulates the European Convention on the Protection of Domestic Animals (Decree-Law no. 276/2001, of 17 October, altered by Decree-Law no. 315/2003, of 17 December on the retrieval, capture and compulsive slaughter of domestic animals).

However the competencies of the municipal council were not exclusive in this field, since other entities, such as the Republican National Guard (GNR), the Police Force (PSP) and, in general, all police authorities have inspection powers. Concerted activity is desirable in order to resolve the problem in question.

Notwithstanding the finding that the local authority had already implemented various measures in order to resolve the situation in question, the specific aspects of the complaint led the Ombudsman to use the competency conferred by article 33 of Law no. 9/91, of 9 April, under the following terms:

1. The situation underlying the complaint was analysed, by the various public entities involved, from the perspective of the European Convention on the Protection of Domestic Animals and the legal norms that regulate the Portuguese legal framework.
2. However, under the terms of the provisions established in sub-paragraph ii) of paragraph a) of article 2 of Decree-Law no. 312/2003, of 17 December (that established the legal regime on owning dangerous and potentially dangerous animals as domestic pets), the definition of a «dangerous animal» is any animal that has seriously wounded or killed another animal outside the owner's property or, also, any animal that has been considered by the competent authority to constitute a safety risk for persons or animals, due to its aggressive behaviour or specific physiological characteristics.
3. The dogs against which the interested party opened a complaint, should be considered to be dangerous or potentially dangerous animals.
4. To the extent that, within the framework of the provisions established in article 16 of Decree-Law no. 312/2003, of 17 December, «municipal councils in particular (...), specifically municipal veterinarians and municipal police, the Republican National Guard (GNR) and Police Force (PSP) are responsible for guaranteeing inspection of compliance [of the legal regime on owning dangerous and potentially dangerous animals] (...)», it was suggested that these measures should be coordinated between the various organisations.

It was also suggested that the measures that were already being considered by Lajes do Pico Municipal Council should be considered within the framework of an action plan involving the various entities with competency in the field of capture and slaughter of dangerous dogs in order to achieve definitive resolution of the problem, in the interest of all.

For further details, consult the link.
http://www.provedor-jus.pt/restrito/rec_ficheiros/Anot_R4579_08.pdf

Case: R-3412/07 (Azores)
Entity addressed: Regional Directorate of Communities
Subject: Human Resources. Transfer to the Border and Immigration Service (SEF). Category of integration. Counting of time of service.

Summary:

The complainant presented a complaint to the Ombudsman against the Border and Immigration Service (SEF) because he considered that his interests had been undermined when counting his time of service, while working for this security service.

He began working at SEF, on 1 November 2003, as a result of a requisition for his services that was subsequently extended, and he entered the full-time staff of this body on 3 January 2005, as a result of a transfer from Regional Directorate x of the Regional Government of the Azores. In the Regional Directorate he had worked within the technical-professional career, as a principal specialist professional technician, paid in the category 3, index 337. He entered the career of Support for Investigation and Inspection of SEF, with an identical category and index, in the category of specialist assistant level 1.

He considered that the time of service provided in the Regional Directorate x should be counted for the purposes of progression in his career at SEF.

However his claim lacked sufficient grounds.

He invoked the legal norm of Decree-Law no. 244/89, of 5 August, which determined that «(The) time of service provided in the central, regional and local Public Administration, is of relevance - in terms of antiquity in the category and in the career - for the purposes of promotion and progression, when the staff assigned to the respective services and organisations is transferred to/ from one of the Administration's corporate bodies.»

He also invoked article 18 of Decree-Law no. 353-A/89, of 16 October, that, in the case of mobility, specified the relevance of the time of service provided in the original career category for the purposes of progression in the new career (see no. 3).

However it was necessary to consider the fact that the careers covered by the statute of the SEF's staff are subject to a special regime, governed by its own statute, which at that time was the regime approved by Decree-Law no. 290-A/2001, of 17 November, with alterations, rather than by the Common Statute of Careers in the Public Administration. (See, to the same effect, the Judgement of the Supreme Administrative Court (STA) of 4 February 1993: «(...) Careers subject to a special regime (...) presuppose their own functional content and ordering and a form of specialisation that is indispensable for exercise of the respective positions, which will be created and disciplined by legal diplomas that establish specific statutes».

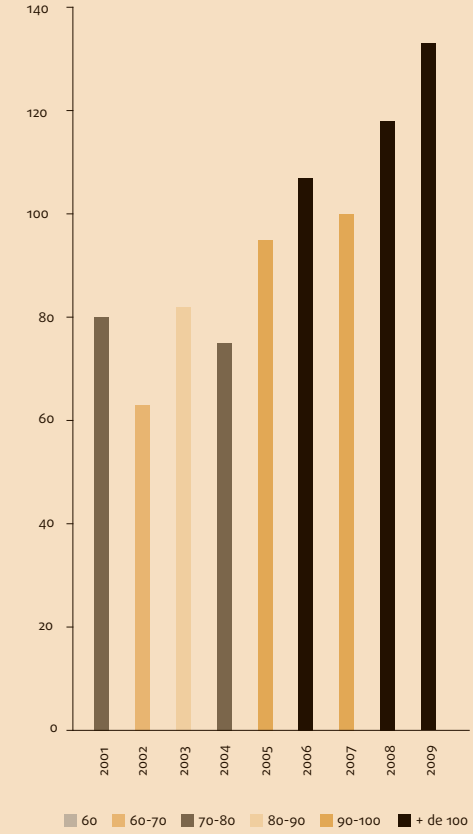
It was precisely such specialisation and specific functional content that justified the fact that Decree-Law no. 244/89, of 5 August, does not apply to the case in hand. The transfer specified in article 4 of the statute of the SEF has its own characteristics, resulting, first and foremost, from the fact of presuming a probationary period of at least one year (no. 3 of the same article). The situation of those workers who have already been working for the Public Administration and then enter careers of the SEF was considered from the perspective of the same statute - that specified integration in the category and index corresponding to identical remuneration or, in the event that there is no equivalent level, to the next tier of remuneration in the index structure of the new career.

The Ombudsman considered that the decision taken by the SEF stood in conformity with the law.

3.3.8. Autonomous Region of Madeira - Local Office of the Ombudsman

In 2009, the Local Office of the Ombudsman in the Autonomous Region of Madeira, once again recorded significant growth, gradually reinforcing the rising number of citizens who seek intervention from the Ombudsman, following more effective inter-institutional cooperation at the regional level and effective recognition of the intervention capacity that the Ombudsman has achieved in relation to the various public bodies. (*see graph on the Evolution of Cases*).

Evolution of Cases - Local Office of the Autonomous Region of Madeira 2001- 2009



133 new complaints were admitted, originating an identical number of open cases. This corresponded to a 33% increase of new complaints in comparison with 2007, and 13% more complaints in comparison with 2008.

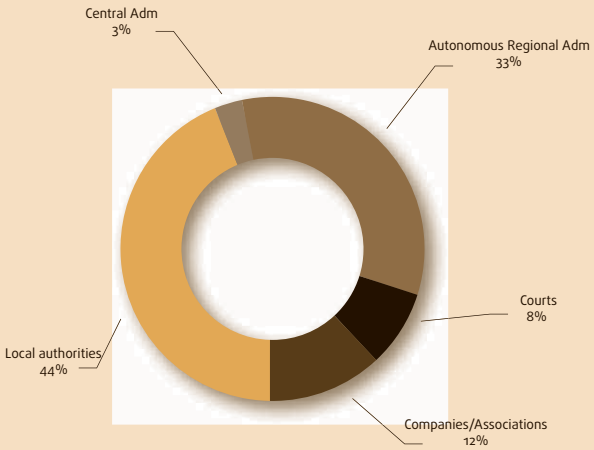
In 50% of cases it was possible to satisfactorily resolve the complaint that had been opened, via the Ombudsman's intervention. 20% of the complaints presented were considered to be unfounded, after analysing the competent diligent proceedings associated to drawing up the cases.

A small percentage was also recorded (8%), of appraisal of complaints that led to their preliminary rejection, given that the facts contained therein did not fall within the framework of the Ombudsman's activity.

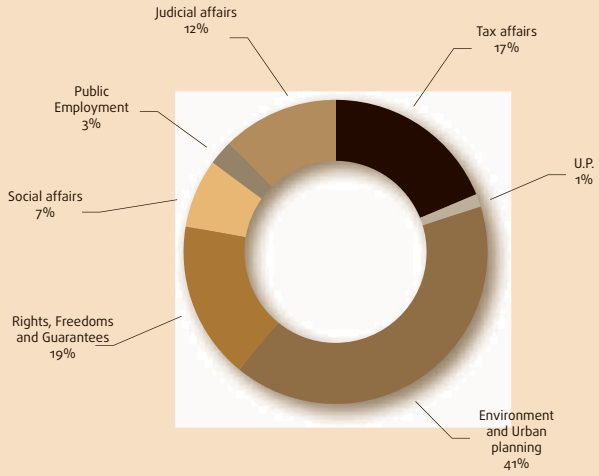
In around 44% of the complaints submitted to the Local Office, municipal councils were the main entities addressed (the municipality of Funchal was indicated in 51% of all complaints received in this context), whereas in 14% of cases, jurisdictional bodies were responsible for the highest percentage of requests. Emphasis should also be placed - as a consequence of the growing number of complaints related to tax affairs - to the number of complaints attributed to the Regional Directorate of Tax Affairs (9%).

Autonomous Region of Madeira

Entities addressed - 2009



Distribution of Cases by Subject – 2009



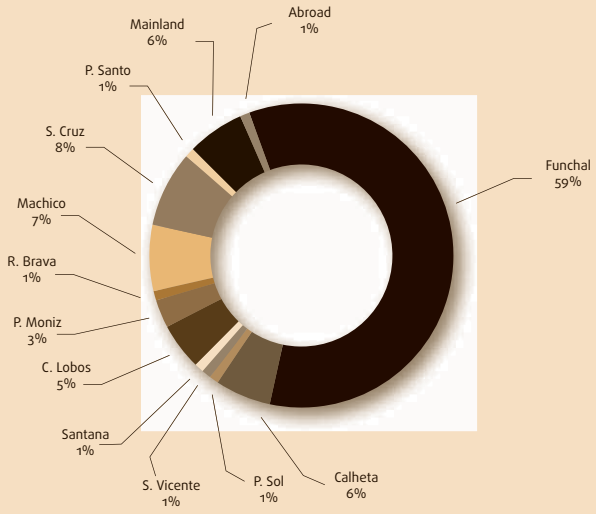
There is also clearly a greater thematic balance in the overall universe of complaints submitted for appraisal by the Ombudsman's Office. Three principal areas of intervention should be highlighted: issues related to **environment and urban planning**[1] (41%) always focusing primarily on the field of civic participation and intervention; issues related to **tutelage of rights, freedoms and guarantees**[2] (19%); and questions relating to **financial issues and tax affairs**, with 17%.[3] (*See graph on Distribution of Cases*).

At a similar level, but lower than the aforementioned topic, we find complaints related to the Justice Administration[4] 12% and social affairs[5] with 7%.

It is interesting to note that there has been a gradual decrease in these levels since 2007. In relation to other issues handled – 3% of citizens requested the Ombudsman's intervention in relation to the public employment relationship; 1% in relation to protection of minors', women's, senior citizens' and disabled citizens' rights – which corresponds to the broad multi-disciplinary nature of the areas of activity of the advisory services. In terms of the distribution of complaints by geographic origin, the majority were opened in the municipality of Funchal (59%), followed by the municipalities of Santa Cruz (8%), Machico (7%), Calheta (6%) and Câmara de Lobos (5%), the latter with relatively balanced percentage amounts. Emphasis should also be drawn to the new development of a significant number of complaints filed from the Portuguese mainland (6%).

In relation to the question of gender, it was concluded that the majority of individuals who contacted the Local

Geographical origin of Complaints - 2009



1 In relation to the first aspect, where the main interlocutors are local authorities, citizens' complaints focused primarily on questions relating to the legality of works built by private individuals (planning permission, failure to respect legal norms on distances between buildings, in breach of the provisions established in section III of the General Regulation on Urban Buildings, compliance with the urban-planning parameters defined in the respective Municipal Master Plan (PDM). In relation to the environment, the vast majority of questions handled focused on situations related to noise disturbances, illegal landfills, or compliance with the legal regime on the obligatory requirement for protection and licensing within the framework of extraction of inert substances.

2 In 2009, questions related to foregoing the duty to provide a response, by public organisations, and also issues related to teaching and education and health.

3 The vast majority of complaints concerned eventual irregularities committed by the Tax Administration when drawing up the respective processes, together with issues related to consumers' rights.

4 Principally imputed to judicial delays.

5 Issue where the main concern is the deficient functioning of social security services, requesting intervention by the Ombudsman, often based on playing a role as a mediator, in order to regularise the taxpayer situation of complainants or to update dependency benefit.

Office of the Ombudsman in 2009 were men (63%). In 93% of cases, complaints were filed by natural persons, rather than by corporate bodies.

In 44% of situations, the complaint was formalised in person, but almost as many complaints were formalised in writing (42%). Use of electronic means, a rising trend, was the third most popular means of presenting a complaint (14%).

Over the course of 2009, organisations pertaining to the Autonomous Regional Administration, together with virtually all municipal councils questioned, continued to manifest their intention to ensure greater flexibility and informality in the procedural mechanisms applied, promptly responding to requests sent to them. Unfortunately, there continued to be excessive delays in response mechanisms from the municipality of Santa Cruz, and once again there was clear inefficiency demonstrated by the respective services, which, on certain occasions, led to an unjustified procedural delay and a relative loss of the useful effects intended by the Ombudsman's Office's enforcement of interventive mechanisms. Nonetheless, recent restructuring implemented in the executive of Santa Cruz Municipal Council, makes it likely that there will be improvement in the relationship underlying drawing up cases.

Within the vast range of complaints received, one of the main topics is the resolution of **urban-planning and environmental con□icts**.

In the **urban-planning** field[6], the Ombudsman was responsible for an exemplary intervention in relation to Porto Santo Municipal Council, by virtue of an alleged omission of measures, by that local authority, within the framework of the illegal situation of urban-planning verified in the complainant's home address, in that municipality. It was possible to overcome the illegal situation cited in the records, through enforcement and conclusion of the competent case for legalization of the building, under the terms specified in articles 106 and following articles of Decree-Law no. 555/99, of 16 December, in the wording given by Law no. 60/2007, of 4 September, and an administrative offence proceeding was also opened against the infringer.

In terms of the **environment**, many complaints continued to focus on noise disturbances, illegal landfills and compliance with the legal regime on the obligatory nature of protection and licensing in the scope of extraction of inert substances.

In this regard, a case was opportunely drawn up in 2009, at the Ombudsman's **own initiative**[7] regarding the continued illegal extraction of inert substances in Ribeira dos Socorridos – in the municipality of Funchal, in breach of the obligatory protection and licensing regime specified by the Regional Regulatory Decree no. 7/2008/M, of 21 April. Further to the inspections made by the Ombudsman, it was ascertained that there had been approval of the new legal regime on protection, extraction and dredging of inert substances in the coastal zone of the Autonomous Region of Madeira, under the terms stipulated in the Regional Legislative Decree no. 28/2008/M, of 12 August, together with the «Recovery Plan for the Ribeira dos Socorridos», presupposing application of a series of systematic and structuring measures for that site, over a 5-year period.

In another situation[8], the Ombudsman's intervention was requested in relation to alleged environmental and public health damages caused by open-air depositing of earth and rubble in the riverbed and riverbanks of the Ribeira da Metade – in the parish of Faial, municipality of Santana.

The Local Office for the Autonomous Region of Madeira initiated the competent diligent proceedings with the bodies in question. In this framework, it was possible to detect illegal mining of mineral substances in the left back of the estuary of the Ribeira do Faial. As a result, the Ombudsman ordered the respective administrative offence proceeding to be drawn up, and after formulation of the proposal for a final decision, the Regional Directorate of the Environment decided to suspend the records provisionally for a three-month period, counted from the date of notification to the infringer, also determining compliance with a series of administrative injunctions.

In terms of **economic-financial issues and tax affairs**, a complaint was made on the apparent omission of inspection mechanisms for the exercise of tourism entertainment activity in the Region[9], by tourism and travel agencies, within the framework of Decree-Law no. 209/97, of 13 August, in the wording given by Decree-Law no. 263/2007, of 20 July.

Publication of the Regional Legislative Decree no. 12/2008/M, of 20 May, that adopted the new legal regime for tourism and travel agencies to the Autonomous Region of Madeira, implemented by Decree-Law no. 263/2007, of 20 June, together with the entry into force of the Regional Legislative Decree no. 30/2008/M, of 12 August, that established the legal regime for tourism entertainment companies, has fostered more effective preventive measures, together with prompt application of administrative offence measures in situations of reiterated non-compliance by infringers.

In the field of **social affairs**, the small number of complaints filed focused on the deficient functioning of the social security services. This led the Ombudsman's Office

6 See Case R5923/08 (Madeira).

7 Case P08/08 (Madeira).

8 See the Case R3738/07 (Madeira).

9 See the Case R5807/07 (Madeira).

to intervene, often acting as a mediator, in order to regularise the complainants' tax status or update dependency benefits.

In one situation in particular[10], the decision to reject the attribution of unemployment benefits, as formulated by the petitioner in November 2007, was contested. In this context it was necessary to appraise the criterion corresponding to the guarantee period, as a cumulative condition for attribution of unemployment benefits (in accordance with the provisions established in Decree-Law no. 220/2006, of 3 November, adapted to the Autonomous Region of Madeira by the Regional Legislative Decree no. 21/2008/M, of 19 June), it was concluded that the discounts made in this social protection regime, could not be counted in conjunction with the discount period for the social security system, for the purposes of satisfying the guarantee period for access to the right to unemployment benefits, given that two distinct social protection regimes existed at the time, that led to various effects within the framework of unemployment protection for Public Administration employees.

In relation to the **public employment relationship**, the Local Office of the Ombudsman in the Autonomous Region of Madeira pursued diligent proceedings in relation to the University of Madeira[11], in order to appraise a situation of eventual intimidation and moral harassment in the workplace. Drawing up the records made it possible to restore legality in this regard.

In the field of **judicial issues**, a brief reference should be made to two complaints[12] which were opened and processed, motivated by alleged violent conduct by the police authorities, wherein the Ombudsman's Office monitored the records on organisation of the respective internal enquiry and its transformation into a disciplinary case. In this context, the respective case conclusions are still being formulated.

In relation to tutelage of other fundamental education and teaching rights, a comment was made to the rector of the University of Madeira[13], due to irregularities found within admission procedure to the Master's degree course in Economics (First Edition), for the 2008/09 academic year. Drawing up the case made it possible to determine approval of the specific legal norm governing the series of studies under appraisal, in addition to the commitment to achieve prompt approval of the respective specific norms in other courses provided by the University of Madeira.

10 Case R6280/08 (Madeira).
11 See Case R619/09 (Madeira).
12 Cases R4565/09 (Madeira) and R6139/09 (Madeira).
13 Case R2307/09 (Madeira).

3.3.8.1. Summary of several interventions by the Ombudsman

Case: P-08/08 (Madeira)
Entities addressed: Regional Secretariat of Social Equipment and Transport; Regional Secretariat of the Environment and Natural Resources
Subject: Environment.

Summary:

After learning of continued illegal extraction of inert substances from the Ribeira dos Socorridos – in the municipality of Funchal, in clear breach of the legal regime on the obligatory requirement for protection and licensing established by the Regional Regulatory Decree no. 7/2008/M of 21 April, and considering that such non-compliance directly caused several environmental disasters in 2008, His Excellency the Ombudsman promptly determined that a case should be opened, at his own initiative, under the terms of articles 4 and 24 of Law no. 9/91, of 9 April.

Within the time period identified herein, the competent entity (the Regional Secretariat of Social Equipment/ Regional Directorate of Infrastructures and Equipment) had neglected to enforce redressment mechanisms intended to ensure compliance with the respective environmental legal requirement. The Ombudsman therefore consulted the body in question, in order to question the measures to be adopted or pondered in order to redress the situation in hand and exhorted the administrative authorities to apply administrative offence measures, in situations of reiterated non-compliance by infringers.

After diligent proceedings pursued by the Local Office of the Ombudsman of the Autonomous Region of Madeira verification proceedings were launched, overseen by the Office of Studies and Opinions of the Regional Secretariat of Social Equipment, and the respective conclusions were communicated to the Ombudsman.

The new legal regime on protection, extraction and dredging of inert substances in the coastal zone of the Autonomous Region of Madeira was also approved, under the terms stipulated by the Regional Legislative Decree no. 28/2008/M, of 12 August, that determined enforcement of more rigorous inspection mechanisms and promotion of more effective preventive measures on this issue.

Finally, communication was made of implementation of efforts aimed at approving the «Recovery plan for the Ribeira dos Socorridos», a document to be signed between the Regional Secretariat of the Environment and the Regional Secretariat of Social Equipment, that presupposes application of a series of systematic and structuring measures for that site, over a 5-year period.

The records were closed within the framework of paragraph c) of article 31 of the Ombudsman's Statute (Law no. 9/91, of 9 April), once legality was restored.

Case: R-619/09 (Madeira)
Entity addressed: University of Madeira
Subject: Public employment.

Summary:

The intervention of the Ombudsman was requested in the University of Madeira, in the framework of eventual intimidation and moral harassment in the respective workplace.

After diligent proceedings pursued by the Local Office of the Ombudsman of the Autonomous Region of Madeira and organisation of a meeting between the intervening parties in the case, the complainant reassumed effective exercise of her professional activity, and the Ombudsman was also informed of the transfer of the professor against which the complaint had been filed to another Higher Education institution.

The records were closed within the framework of paragraph c) of article 31 of the Ombudsman's Statute (Law no. 9/91, of 9 April), once legality was restored.

Case: R-3738/07 (Madeira)
Entities addressed: Santana Municipal Council and other
Subject: Environment.

Summary:

The intervention of the Ombudsman was requested in relation to alleged environmental damage and harm to public health caused by open-air depositing of earth and rubble in the riverbed and river banks of the Ribeira da Metade – in the parish of Faial, municipality of Santana.

The Local Office of the Ombudsman's Office for the Autonomous Region of Madeira initiated the competent diligent proceedings with the Regional Directorate of the Environment/Madeira, Santana Municipal Council, Regional Directorate of Public Buildings and the Regional Directorate of Trade, Industry and Energy. In this framework, it was possible to detect the existence of illegal mining activity of mineral substances in the left back of the estuary of the Ribeira do Faial.

As a result, the Ombudsman ordered the respective administrative offence proceeding to be drawn up, by the respective administrative entities (Regional Directorate of the Environment/Madeira and Regional Directorate of Trade, Industry and Energy).

After formulation of the proposal for a final decision, the Regional Directorate of the Environment decided to provisionally suspend the records for a three-month period, counted from the date of the respective notification to the infringer, under the terms specified in articles 281 and 282 of the Penal Procedure Code, that apply on a subsidiary basis to the illicit act of a mere social offence and the respective case, by virtue of the terms established in articles 32 and 41 of Decree-Law no. 433/82, of 27 October, with its subsequent alterations.

During the aforementioned time period, the following administrative injunctions were determined: i) immediate suspension of the mining activity of mineral substances in the site without the necessary license; ii) cleaning of the plot of land and removal of all residues deposited therein iii) placing of a fencing enclosure in order to impede illegal deposits of residues by third parties; iv) deposit of an amount to a Social Solidarity Institution.

Information was obtained from the Regional Directorate of Trade, Industry and Energy, that illegal extraction of stone from the left bank of the Ribeira do Faial had been subject to careful monitoring and inspection by the respective services, and an administrative offence proceeding had been opened against the infringers identified in this context, as a result of the topographical alterations caused to the site.

Notwithstanding this fact, the company responsible for the infringement appealed against the respective decision, and the matter was submitted to the Judicial Court of the District of Funchal, which is currently appraising the records.

The case was closed within the framework of paragraph c) of article 31 of the Ombudsman's Statute (Law no. 9/91, of 9 April), once legality had been restored.

Case: R-5807/07 (Madeira)
Entity addressed: Regional Secretariat of Human Resources
Subject: Economic-financial activities /tourism.

Summary:

A complaint was filed against the alleged omission of inspection mechanisms for the exercise of tourism entertainment activities in the Region, by tourism and travel agencies that are subject to Decree-Law no. 209/97, of 13 August, in the wording given by Decree-Law no. 263/2007, of 20 July.

In the framework of compliance with the duty to provide a prior hearing, established in article 34 of Law no. 9/91, of 9 April, clarifications were provided by the Regional Secretariat of Human Resources, that explained that inspection actions had been carried out by the Regional Inspectorate for Economic Activities, specifically in the Port of Funchal. The situations of illegality encountered in this regard had also been filed to the competent criminal bodies. A certain degree of inefficiency was also recognised in relation to on-site inspection mechanisms implemented by this Regional Inspectorate. The Inspectorate awaited submission, by the complainants, of a list of vehicles allegedly operating in a situation of illegality.

Further to the diligent proceedings associated to drawing up cases, implemented by the Local Office, the

Ombudsman's Office was informed that a legal diploma is being drawn up, aimed at adaptation to the Autonomous Region of Madeira of the regime introduced by Decree-Law no. 263/2007, of 20 July, in order to ascribe new competencies to the organisations included within the structure of the Regional Secretariat of Tourism and Transport, in particular the Regional Directorate of Tourism.

Publication of the Regional Legislative Decree no. 12/2008/M, of 20 May, which adapted to the Autonomous Region of Madeira the new regime on tourism and travel agencies, implemented by Decree-Law no. 263/2007, of 20 June, together with the entry into force of the Regional Legislative Decree no. 30/2008/M, of 12 August, which established the legal regime for tourism entertainment companies, led to the promotion of more effective preventive measures, together with prompt application of administrative offence measures in situations of re-iterated non-compliance by infringers.

Since then, the Ombudsman has monitored the diligent inspection procedures carried out by the inspection services of the Regional Directorate of Tourism, in particular 13 joint initiatives undertaken, in 2009, in collaboration with the Regional Directorate of Land Transport and the Regional Command of the Police Force (PSP) – Madeira. After analysing the administrative work, it was possible to identify situations that will lead to summons to be filed for an administrative offence, together with monthly scheduling of inspections of tourism information professionals, in partnership with the other competent bodies in this field, and in accordance with the official reports of joint operations implemented by the Traffic Squadron of the Funchal Police Division. The records were closed in the framework of paragraph c) of article 31 of the Ombudsman's Statute (Law no. 9/91, of 9 April), after satisfying the requirements necessary to restore legality in this regard.

Case: R-2307/09 (Madeira)
Entity addressed: University of Madeira
Subject: Education and teaching

Summary:

The intervention of the Ombudsman was requested in relation to the Rector of the University of Madeira, due to irregularities found within the framework of the procedure for admission to the Master's Degree course in Economics (First Edition), corresponding to the academic year of 2008/09.

After conclusion of the competent diligent proceedings associated to drawing up the case opened in relation to the entity addressed, approval of a specific legal norm was determined, governing the series of studies under appraisal, in addition to the commitment to achieve prompt approval of the respective specific norms in other courses provided by the University of Madeira. A comment was formulated to the entity addressed, in conformity with the provisions established in article 33 of Law no. 9/91, of 9 April (the Ombudsman's Statute).

For further details, consult the link.

http://www.provedor-jus.pt/restrito/rec_ficheiros/Ofic_R2307_09_2.pdf

RELATIONS WITH EUROPEAN AND INTERNATIONAL ORGANIZATIONS AND WITH OTHER OMBUDSMEN AND EQUIVALENT INSTITUTIONS

4.1. International Relations

In today's increasingly internationalised world, where challenges are increasingly shared, with more and more common solutions, the activity pursued by the Portuguese Ombudsman in the framework of cooperation with equivalent foreign and international entities and organizations, is of fundamental importance.

- In addition to bilateral cooperation, other key activities include:
- In the European Union, relations with the European Ombudsman and with the Ombudsmen of other member states and candidate countries, specifically via the European Ombudsmen Network;
- In the framework of the Council of Europe, cooperation with the Commissioner for Human Rights and with the equivalent institutions of the member states, above all through the round tables of national Ombudsmen and a network of Contact persons;
- Participation, as a member, in the European Network of Ombudsmen for Children (ENOC) and in the European Ombudsman Institute (EOI);
- Participation, as a member, in the Mediterranean Ombudsmen Association (AOM) and in the Ibero-American Federation of Ombudsmen(FIO). It is also important to mention the fact that the Portuguese Ombudsman was elected as Deputy-Chairman of the FIO, in the FIO's XIV conference and general meeting, held on 28-29 October 2009;
- Combined efforts and exchange of experiences within the Portuguese-speaking world, in order to foster dissemination of the figure of the Ombudsman within this area;
- Participation, as a member, in the International Ombudsman Institute (IOI), in particular in the context of the European region;
- The Ombudsman's status as the Portuguese national human rights institution in conformity with the Paris Principles, which confers the possibility of taking an active part in various forums and debates within the United Nations - first and foremost in the Human Rights Committee.
- The key events organised at the international level in 2009, which the Ombudsman attended or sent a delegate, include the following:

7th Seminar of the National Ombudsmen of the Member-States of the EU and candidate countries	Paphos, Cyprus 5-7 April	Coordinator Dr. João Portugal
«Alliance of Civilizations: International Conference on Human Rights», organised by the Presidency of Human Rights that reports to the Prime Minister of the Republic of Turkey	Ankara, Turkey 21-23 May	Adviser Dra. Catarina Ventura
IX World Conference of the International Ombudsman Institute (IOI) and the ceremony to commemorate the bicentenary of institutionalisation of the Swedish parliamentary Ombudsman	Stockholm, Sweden 9-12 June	Dr. Jorge Silveira in his capacity as acting Ombudsman
13th Annual Conference and general meeting of the European Network of Ombudsmen for Children (ENOC), dedicated to the topic «The higher interest of the child»	Paris, France 23-25 September	Deputy Ombudsman Dra. Helena Vera-Cruz Pinto Assistant in the Ombudsman's Cabinet Dra. Adriana Barreiros
XIV Annual Conference and General Meeting of the Ibero-American Federation of Ombudsmen(FIO)	Madrid, Spain 28-29 October	Ombudsman Juiz Conselheiro Alfredo José de Sousa Deputy Ombudsman Dr. Jorge Silveira Coordinator Dr. João Portugal
Inauguration of the head office of the Mediterranean Ombudsmen Association (AOM), followed by an International Conference dedicated to the topic «What role is played by international and regional networks of Ombudsmen in the promotion and development of these institutions?	Tangiers, Morocco 4 November	Deputy Ombudsman Dra. Helena Vera-Cruz Pinto

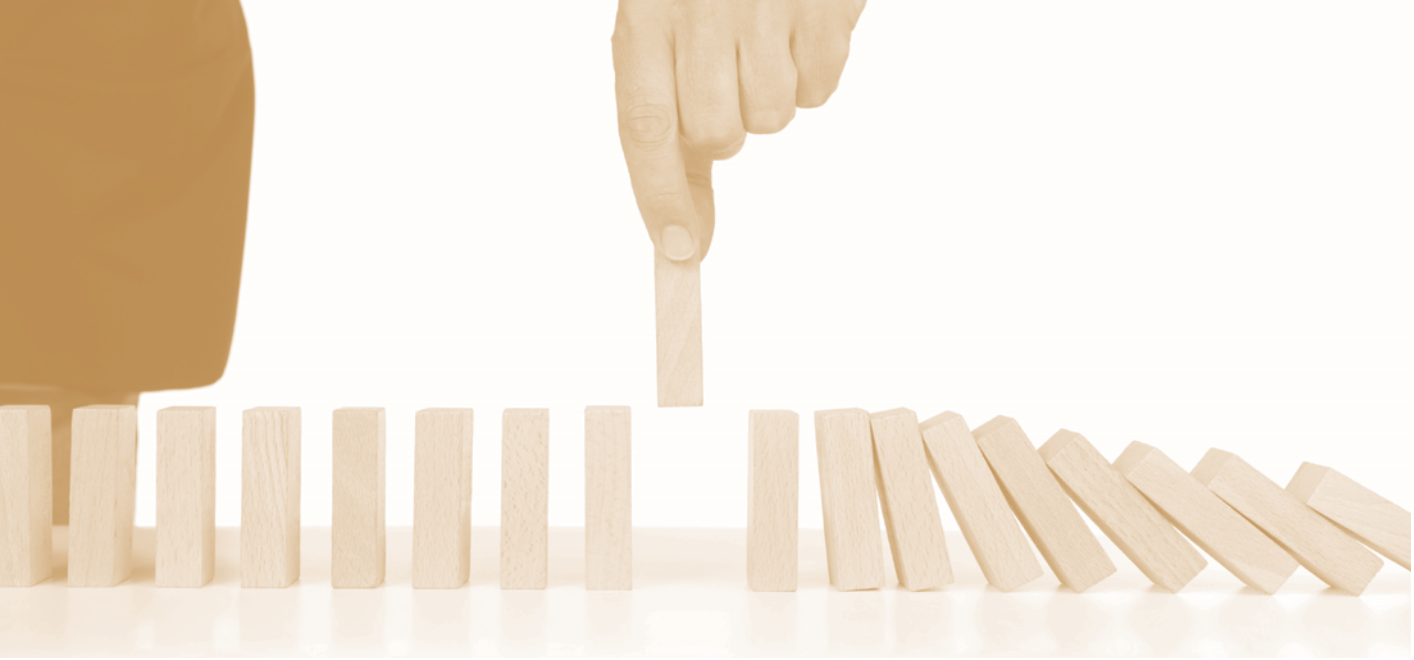
1st International Forum of Ombudsmen, organised by the General Ombudsman of the Union	Brasilia, Brazil 10-12 November	Ombudsman Councillor Judge Alfredo José de Sousa
Meeting of the Working group of the Universal Periodic Revision, of the United Nations, dedicated to examination of Portugal	Geneva, Switzerland 4 December	Assistant to the Ombudsman's Cabinet Dra. Adriana Barreiros
Educational Training Course in Children's Human Rights, organised by the Council of Europe	Helsinki, Finland 3-5 December	Staff-member Dra. Teresa Cadavez
3rd Meeting of the Mediterranean Ombudsmen Association (AOM), dedicated to the topic «Transparency in public services – what role for the Ombudsman?»	Athens, Greece 14-15 December	Ombudsman Councillor Judge Alfredo José de Sousa Deputy Ombudsman Dra. Helena Vera-Cruz Pinto

Finally, it is also important to consider, in the ambit of International Relations, visits from foreign delegations received by the Portuguese Ombudsman and/or by its staff members.

2009, was a transition year between mandates, and there was only one official visit, on 22 September, by the Ambassador of the Republic of the Uzbekistan in Portugal, Mr. Aloev Bakhromjon (who resides in France), to establish exploratory contacts for signing a Protocol between the Ombudsmen of both countries.

The Portuguese Ombudsman has also aroused considerable academic interest. In 2009, there was a visit by Prof. Miyuky Sato, Associate Professor at the University of Kyorin, in Japan, for the purposes of comparative analysis.

MANAGEMENT OF RESOURCES



5.1. Administrative and Financial Management

The Budget of the Ombudsman's Office for 2009 presented an equivalent amount to that recorded in 2008, with only a 1% increase, due to adjustment for inflation.

Budgetary execution was based on principles of transparency and economy, compliance with the budgetary execution norms for 2009.

Personnel Management in the Ombudsman's services, including the Local Offices of the Autonomous Regions of the Azores and Madeira, was undertaken in accordance with evolution of the needs experienced over the course of 2009, with a slight reduction in expenses.

Overall budgetary execution and, in particular, of amounts assigned to acquisition of goods and services, ensured that the previously stipulated limits were not exceeded.

The amount presented for rents, corresponds to the expenses assumed with the premises of the Local Office of the Autonomous Region of the Azores.

In 2009, the main professional training priority was training initiatives on legislation applying to the civil service and new rules on hiring civil servants. 33 training initiatives were organised for 42 trainees with an average duration of 21 hours.

In relation to investment expenditure, this amount was spent on construction of a new floor in order to resolve, if only partially, the physical space limitations of the existing premises and enable better administration of previous major maintenance problems.

2009 Budget

Initial Budget	5 446 326,78 €
Staff expenses	4 162 804,81 €
Acquisition of current services and goods	679 221,13 €
Rents	15 922,00 €
Training	26 312,47 €
Investment expenses	223 967,58 €

Staff in functions in the Ombudsman's Services (as of 31 December 2009)

Ombudsman's Cabinet and Deputy Ombudsmen	10
Advisory Services	46
Directorate of Technical Services and Administrative Support	41
Contracted Staff	7

5.2. Public relations

In 2009, there continued to be personalised attendance - either in person, or via the telephone - in order to:

Bring the Ombudsman closer to citizens;

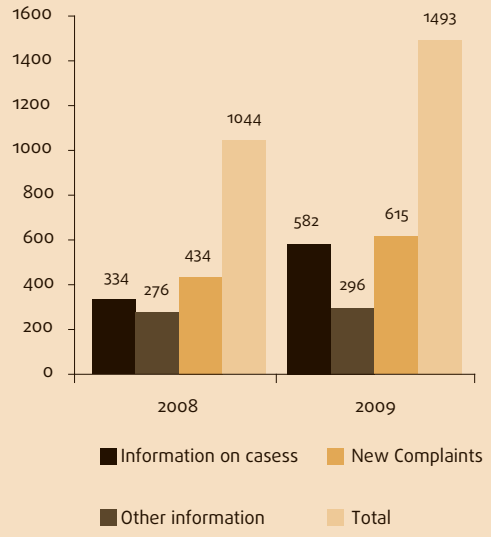
Inform citizens about their right to present a complaint to the Ombudsman;

Provide a swifter response to information requests regarding open cases.

5.2.1. Public Attendance

Year	Attendance in person				Telephone Attendance							
					General Number				Hotline			
	Information on cases	Other information	New Complaints	Total	Information on cases	Other information	New Complaints	Total	Information on cases	Other information	New Complaints	Total
2008	334	276	434	1044	1326	1257	18	2601	120	1615	18	1753
2009	582	296	615	1493	1603	987	25	2615	162	1227	24	1413

5.2.2. Attendance in person

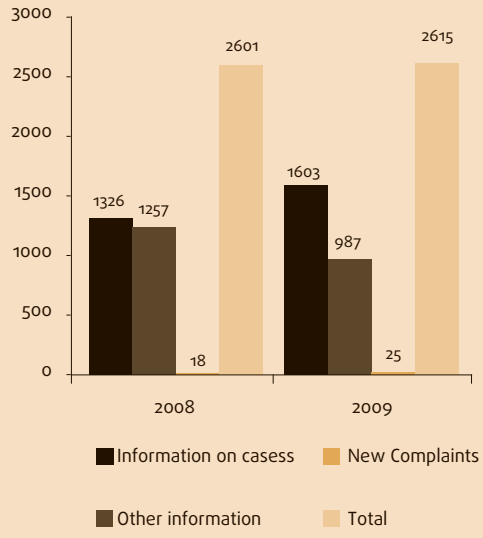


The number of information requests presented in person increased in 2009 and the number of new complaints submitted to the Directorate of Information and Public Relations also increased.

5.2.3. Telephone Attendance

General Telephone Number

Year	Information on cases	Other information	New Complaints	Total
2008	1326	1257	18	2601
2009	1603	987	25	2615



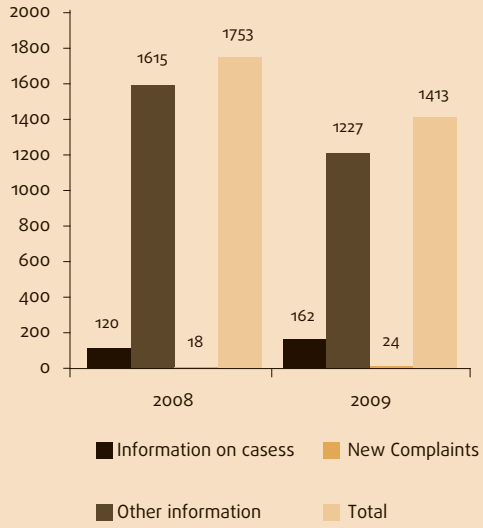
5.3. The Ombudsman's portal

The Ombudsman's portal remained updated throughout 2009 in order to provide information on the Ombudsman.

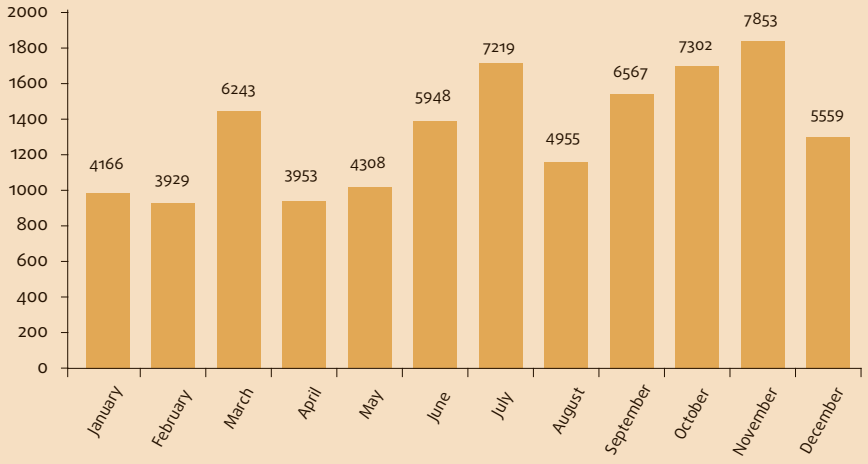
The highest number of accesses to the portal was recorded in November.

Hotline

Year	Information on cases	Other information	New Complaints	Total
2008	120	1615	18	1753
2009	162	1227	24	1413



Monthly accesses to the Portal



ANALYTIC INDEX

Subject	Proc. No. / Page no.	Entity addressed
Citizens with Disabilities		
Parking Card.	09/2262-R(A5) - page 65	Institute of Mobility and Land Transport (IMTT)
Civil liability		
Tourism entertainment	07/5807-R(Madeira) - page 85	Regional Secretariat of Human Resources
Consumer rights		
Transport.	09/1383-R(A2) - page 48	CARRIS
Water. Interruption of water supply.	09/2014-R(A2) - page 49	INDAQUA Matosinhos
Education		
Access to Higher Education.	09/3423-R(A6) - page 74	Instituto Superior de Engenharia, Lisbon
Admission to a Master's degree course.	09/2307-R(Madeira) - page 86	University of Madeira
Obligatory schooling.	08/5296-R(A6) - page 75	Ministry of Education
Environment		
Illegal extraction of inert substances.	08/0008-P(Madeira) - page 84	Regional Secretariat of Social Equipment and Transport; Regional Secretariat of the Environment and Natural Resources
Open-air depositing.	07/3738-R (Madeira) - page 85	Santana Municipal Council and other
European and national funds		
«Porta 65-Young People» Programme.	09/3015-R(A2) - page 48	Institute of Housing and Urban Renewal
Financial issues		
Savings certificates.	08/0838-R(A2); 08/3084-R(A2); 08/0386-R(A2) - page 47	Minister of State and Finances
Special low-interest rate mortgage credit	07/6522-R(A2) - page 42	Minister of State and Finances
Health		
Non-existence of a referral network for the specialist area of plastic surgery	08/4250-R(A6) - page 74	Ministry of Health
Justice Administration		
Attorneys' fees.	09/3042-R(A5) - page 65	Institute of Financial Management and Infrastructures of the Justice System
Labour issues		
Attribution of a productivity bonus.	09/1142-R(A3) - page 55	TAP
Leisure		
Dogs. Capture, kennelling and slaughter.	08/4579-R(Azores) - page 80	Lajes do Pico Municipal Council
Media		
Journalists' Statute.	08/3138-R(A6) - page 74	Government

Penitentiary system		
Access to a prison establishment by a solicitor.	09/1026-R(A6) - page 54	Directorate-General of Prison Services
Intimate visits	08/3109-R(A6) - page 73	Directorate-General of Prison Services
Public Employment		
Competition for fixed-term contract.	09/2184-R(A4) - page 58	Sophia de Mello Breyner Schools Grouping
Counting of time of service.	07/3412-R(Azores) - page 80	Regional Directorate of the Communities
Integration into full-time staff	08/5926-R(Azores) - page 78	Regional Health Directorate of the Regional Government of the Azores
Intimidation and harassment.	09/0619-R(Madeira) - page 85	University of Madeira
Performance evaluation.	08/5278-R(A4) - page 59	Directorate-General of Veterinary Sciences (MADRP)
Teacher. Overtime service.	07/5901-R(Azores) - page 79	Regional Directorate of the Communities
Transition to the regime of an individual employment contract.	09/4890-R(A4); 09/6455-R(A4) - page 59	Institute of Employment and Professional Training, I.P. (IEFP; I.P.); Institute of Social Security
Use of parental leave.	09/2368-R(A4) - page 60	District Hospital of Pombal, S.A.
Registry services and notary public services		
Concession of Portuguese nationality.	08/5580-R(A5) - page 66	Central Registry Office (CRC)
Land registration.	09/2479-R(A5) - page 65	Institute of Registry services and of Notary public services
Social Security		
Delay in the attribution of pensions.	08/1026-R(A3) - page 54	Civil Servants Pension Scheme, I.P.; Secretary of State Adjunct and of the Budget
Disability allowance.	09/2155-R(A3) - page 54	Institute of Social Security, I.P.; Secretary of State for Social Security
Family allowance for children and young people.	09/1093-R(A3) - page 53	Secretary of State for Social Security
Unemployment Benefits.	09/0004-P(A3) - page 53	Secretary of State for Social Security
Tax affairs		
Municipal Property Tax (IMI).	07/2421-R(Azores) - page 77	Angra do Heroísmo Tax Office
Territorial planning		
Municipal forestry protection plans	03/0016-P(A1); 09/1675-R(A1) - page 43	Ministry of Agriculture, Rural Development and Fisheries
Municipal forestry protection plans	08/5392-R(A1) - page 44	Condeixa-a-Nova Municipal Council
Urban planning		
Construction works.	07/0358-R(A1) - page 44	Fafe Municipal Council
Construction works.	07/5935-R(A1) - page 44	Cascais Municipal Council
Urban renting.	08/3574-R(A1) - page 43	Pombal Municipal Council

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